

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 10:30 A.M. on January 25, 2005 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Senior Assistant, Revisor of Statutes
J. G. Scott, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Susan Kannarr, Kansas Legislative Research Department
Matt Spurgin, Kansas Legislative Research Department
Judy Bromich, Administrative Analyst
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Gary Daniels, Acting Secretary, Kansas Department of Social and Rehabilitation Services (SRS)

Others attending: See attached list

Chairman Umbarger explained that the minutes for the meetings of January 13 and January 19, 2005, were presented to the committee for review and scheduled for approval on Thursday, January 27, 2005. If there are any additions or revisions to the minutes, notification should be given to the Chairman's office.

The Chairman welcomed Gary Daniels, Acting Secretary, Kansas Department of Social and Rehabilitation Services, who presented an overview of the agency ([Attachment 1](#)). He detailed information regarding the SRS Program Divisions of Health Care Policy, Integrated Service Delivery and Administration. Secretary Daniels explained that their mission is to protect children and promote adult self-sufficiency. He explained that this is done through two primary programs within SRS and detailed the following information:

Health Care Policy Division

- Mental Health
- Community Supports and Services (Developmental and Physical Disability)
- Addiction and Prevention Services
- Medical Policy
- State Hospitals

The Secretary also addressed Health Care Policy outcomes regarding community inclusion (community based services, prevention, consumer driven, evidence-based practice; independence (housing, employment, health) and co-occurring issues (those individuals diagnosed with more than one disorder).

Integrated Service Delivery

- Child Support Enforcement
- Economic and Employment Support
- Rehabilitation Services
- Child and Family Services
- Direct Service Delivery Through Field Offices

Secretary Daniels also detailed information on the division outcomes regarding maximum independence and self sufficiency, maintain families, protect children and adults, quality customer service and community capacity and partnerships.

The Secretary provided information regarding the Consensus Caseload Estimating Process done twice a year with the Kansas Department of Social and Rehabilitation Services, Division of the Budget and the Kansas

CONTINUATION SHEET

MINUTES OF THE Senate Ways and Means Committee at 10:30 A.M. on January 25, 2005 in Room 123-S of the Capitol.

Legislative Research Department regarding Temporary Assistance for Families, Adoption, Foster Care, General Assistance, Nursing Facilities-Mental Health and Regular Medical Assistance. The 2005 Kansas Department of Social and Rehabilitation Service's Legislative Proposals are detailed on the last page of the written testimony submitted by Secretary Daniels. Committee questions and discussion followed. Chairman Umbarger addressed the situation of the growth of those in Sexual Predator Treatment Program at a more alarming rate than what was anticipated. Secretary Daniels explained that SPTP will be moved into the new state security hospital (Isaac Ray Building) at Larned State Hospital sometime later in the summer in 2005 which will accommodate the population in the SPTP. The Secretary noted that SRS has a group of individuals currently working on other ways to provide services to this population other than the State Hospitals. Senator Barone requested an update from SRS regarding the Sexual Predator Treatment Program (SPTP) regarding the in that the treatment is not successful because very few have come out of the program to date and information on possibly other ways to treat this population.

Secretary Daniels provided an update of the Kansas Department of Social and Rehabilitation Services Deferrals, Audits and Penalties (Attachment 2). He addressed the following items in detail:

- Child Welfare Managed Care Deferral
- State Hospital Title XIX Disallowance
- Child Welfare Rehabilitation Services Medicaid Audit
- OIG (Office of Inspector General) audit of LEA Funding
- Disability Determination Services (DDS) OIG Audit Recoupment
- SYNAR (Federal Synar Amendment) Penalty
- SACWIS (Statewide Automated Child Welfare Information System) IV-E Recoupment

Committee questions and discussion followed. Regarding the issue of federal deferrals, audits and penalties SRS is facing, Secretary Daniels wanted the committee to know that the State leaders in the Statehouse, as well as the Governor, are taking these issues very seriously. He noted that the Governor plans a trip to Washington, D.C., in the near future to engage the Kansas Congressional Delegation in the process to try to recoup some of these threats of loss of funds. Secretary Daniels mentioned that he has been impressed at how well SRS has been able to manage to control these expenditures. He noted that they have been able to manage the known deferrals SRS has up to this point in time and feels there may be shortfall of approximately \$6.1 million which has not been covered by the money recouped from Medicaid in the Child Welfare deferrals.

Chairman Umbarger recognized Audrey Dunkel, Senior Fiscal Analyst, Kansas Legislative Research Department, who gave a staff briefing on the Kansas Department of Social and Rehabilitation Services Deferrals and Potential Audit Penalties (Attachment 3).

The meeting adjourned at 11:40 a.m. The next meeting is scheduled for January 26, 2005.

**SENATE WAYS AND MEANS
GUEST LIST**

Date January 25, 2005

| NAME | REPRESENTING |
|------------------|--|
| Kennie Leffler | Budget |
| Heather Morgan | DOB |
| Twila Drybread | DOB |
| Laura Howard | SKS |
| Jois Weck | SRS |
| Abigail Bailey | KMS |
| Savannah Meyer | KMASW Intern |
| Elisa Rawles | KMASW Intern |
| Stacy Little | Little Govt. Relations |
| Cheryl Bellard | Coventry Health Care |
| Kerrie Bacon | Kansas Commission on Disability Concerns |
| Tom Bruno | EDS |
| Mike Hammond | HCMHCK |
| Andy Sanchez | KAPF |
| Thomson Jones | SILCR |
| Steve Solomon | The Farm, Inc. |
| MATT FLETCHER | INTERHAB |
| _____ | Intern - Sen. Kelly |
| Fletch Lucky | Kansas Hospital Assn |
| | |
| | |
| | |
| | |

Agency Overview

Senate Ways and Means Committee

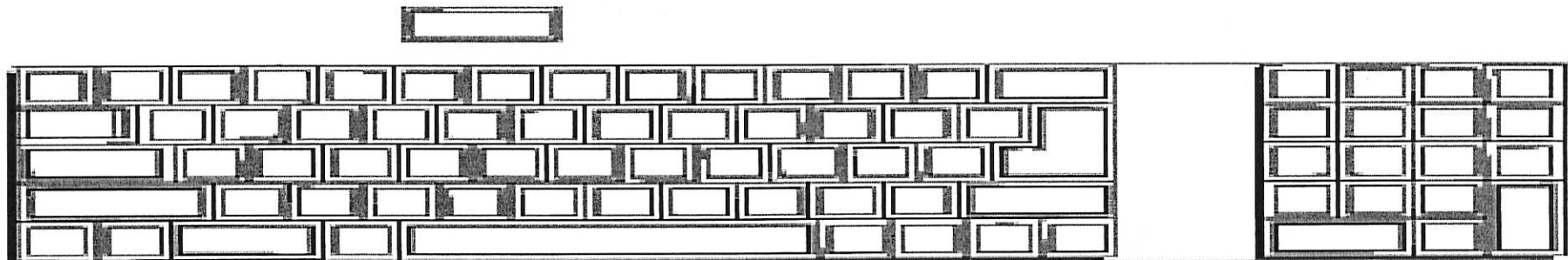
Gary Daniels, Acting Secretary

January 25, 2005



Kansas Department of Social and Rehabilitation Services

Senate Ways and Means
1-25-05
Attachment 1



SRS Program Divisions

Office of the Secretary
Gary Daniels, Acting Secretary

Health Care Policy

- Addiction and Prevention Services
- Community Supports and Services
 - Developmental Disabilities Waiver
 - Physical Disabilities Waiver
- Medical Policy/Medicaid
 - HealthWave
- Mental Health Services
- State Hospitals
 - Kansas Neurological Institute
 - Larned State Hospital
 - Osawatomie State Hospital
 - Parsons State Hospitals
 - Rainbow Mental Health Facility
 - Sexual Predator Treatment Program

Integrated Service Delivery

- Child Protective Services
- Child Support Services
- Children and Family Services
 - Adoption
 - Family Preservation
 - Foster Care
- Economic and Employment Support
 - Food Assistance
- Child Care and Early Childhood Development
- Rehabilitative Services
- Regional Offices
 - Kansas City Metro
 - Northeast Region
 - South Central Region
 - Southwest Region
 - West Region
 - Wichita Region

Administration

- Accounting & Administrative Operations
- Audit and Consulting Services
- Financial Management
- Customer Affairs
- Human Resources
- Information Technology
- Legal
- Legislative Affairs
- Media Affairs
- Strategic Management Support



Health Care Policy Division

Mental Health

Community Supports and Services
(Developmental Disability and Physical Disability)

Addiction and Prevention Services

Medical Policy

State Hospitals

Health Care Policy Outcomes

✓ Community Inclusion
Community Based Services

✓ Prevention

✓ Consumer driven

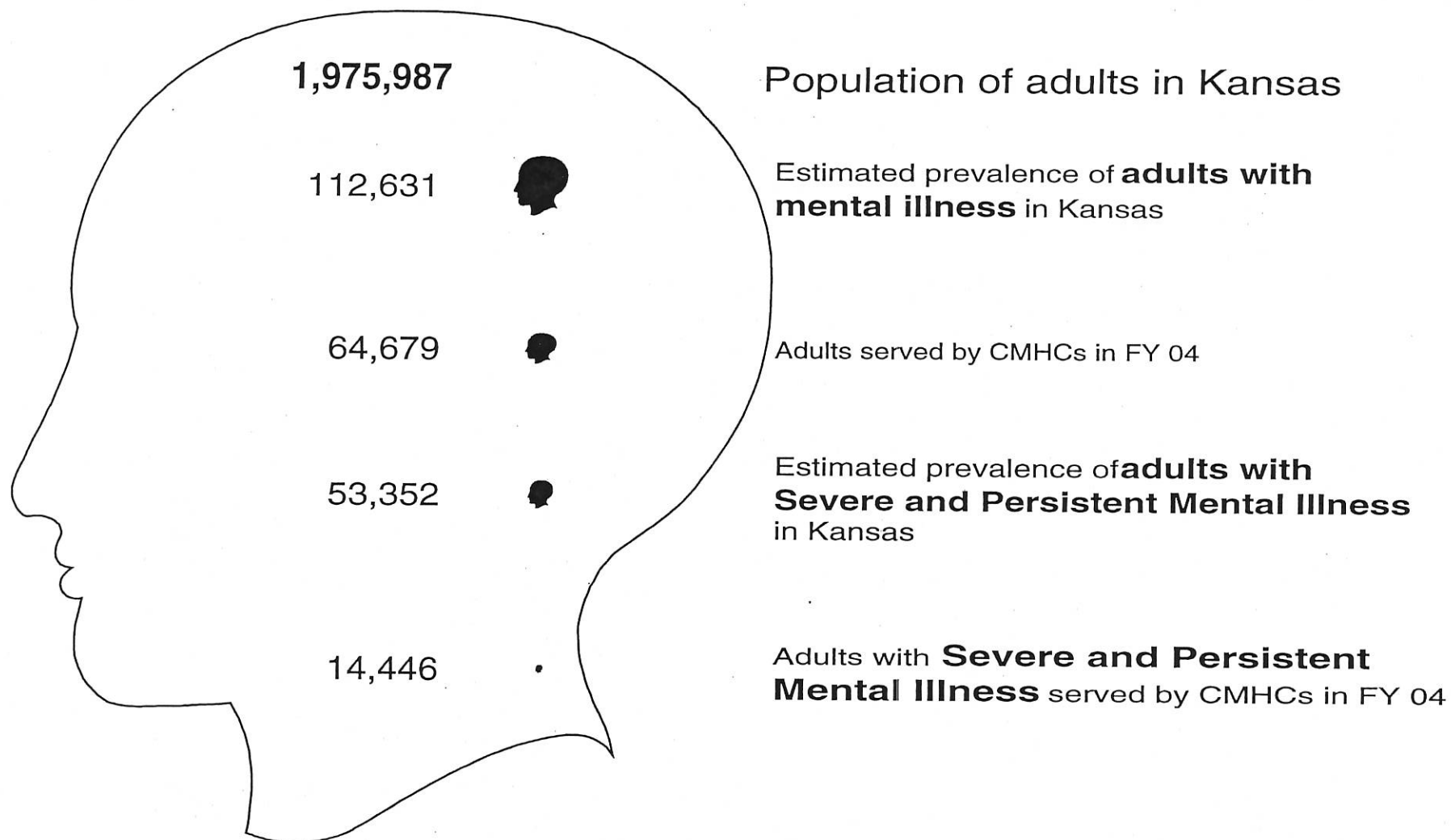
✓ Independence
*Housing
Employment
Health*

✓ Evidence-based practice

✓ Co-occurring Issues (*those diagnosed with more than one disorder*)



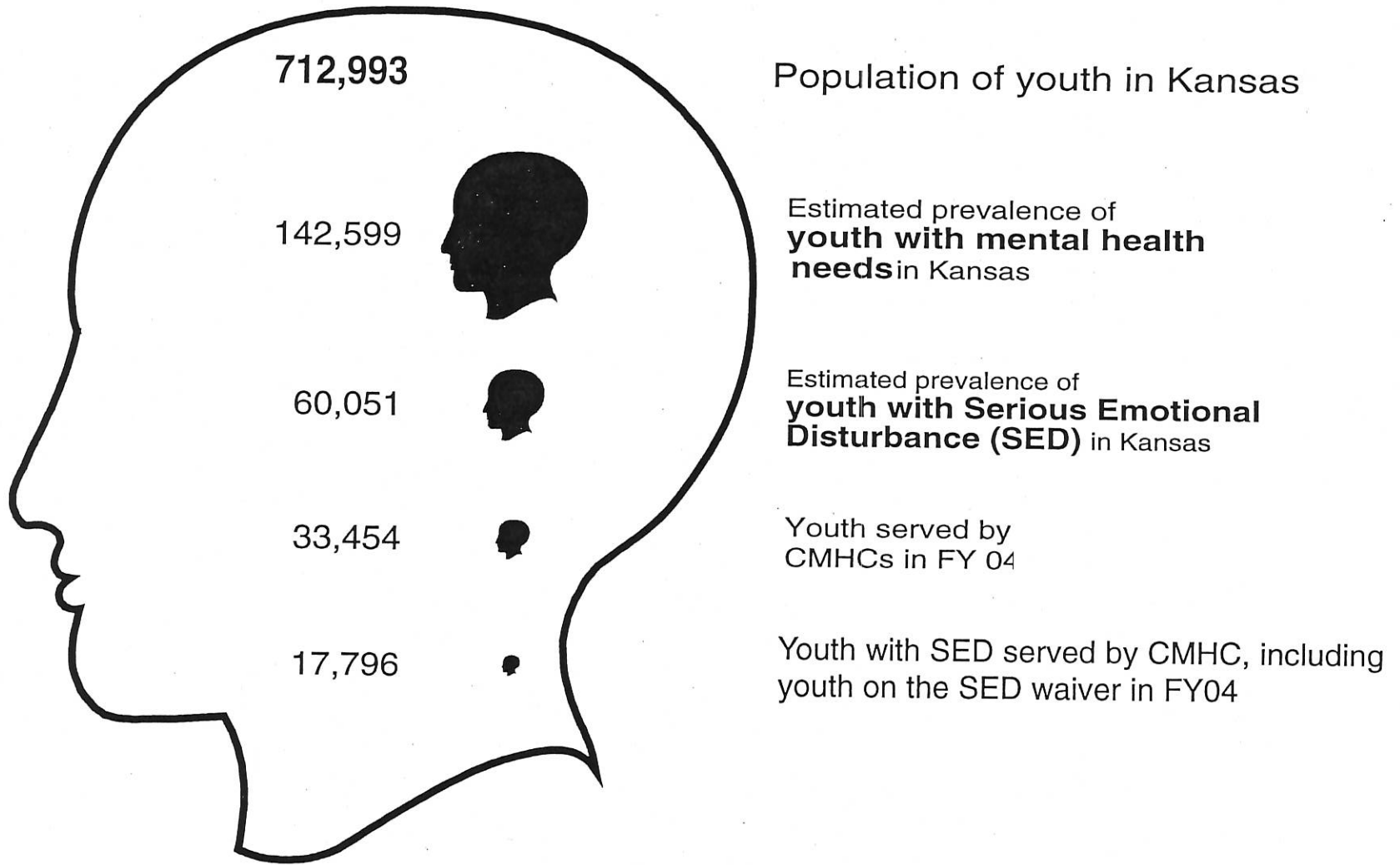
Prevalence of Mental Illness in Adults and Adults Served by Community Mental Health Centers (CMHC)



An adult with a severe and persistent mental illness (SPMI) means one who meets specific diagnostic criteria, displays significant functional impairment and/or evidences a high level of risk in their recent life circumstances.



Prevalence of Mental Illness in Youth and Youth Served by Community Mental Health Centers (CMHC)

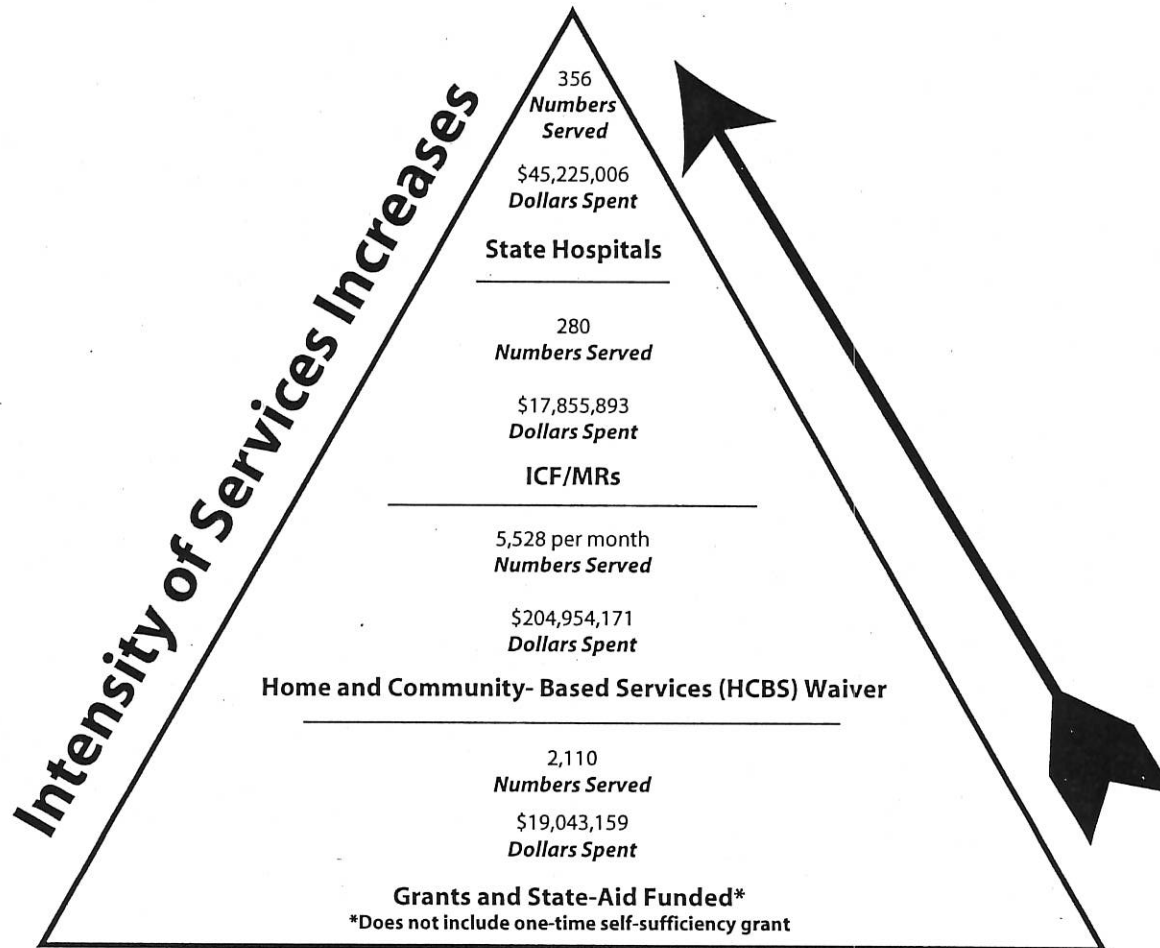


The term serious emotional disturbance (SED) refers to a diagnosed mental health condition that substantially disrupts a youth's ability to function socially, academically, and emotionally.



Community Supports and Services Developmental Disability Services

FY 2004





Waiver Overview

Technology Dependent

- Children birth to 18 years, hospitalized or imminent risk of hospitalization
- Requires medical device to compensate for loss of vital body function
- Serves 40-48 children per month
- \$181,244 all funds

Traumatic Brain Injury

- Individuals 16 years to 64 years of age
- Person has sustained a traumatically acquired brain injury
- Served an average of 123 individuals per month
- This is a rehabilitation waiver. Average length of stay on the waiver is 2 years and 11 months
- \$5,455,886 all funds

Physical Disability

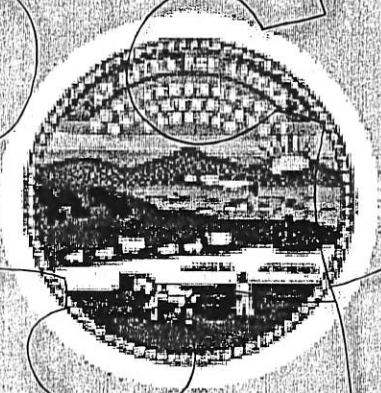
- Individuals 16 to 64 years of age
- Must be determined disabled by Social Security standards
- Must require assistance completing daily living activities or instrumental activities of daily living
- Are eligible for care provided in a nursing home
- Served average of 3,667 individuals per month (2004)
- \$59,736,010 All Funds

Developmental Disability

- Individuals age 5 and up who meet definition of mental retardation or developmental disability
- Eligible for care in an Intermediate Care Facility/Mental Retardation (ICF/MR)
- Served an average of 5,528 individuals per month
- \$204,954,171 all funds



SRS Addiction and Prevention Services



Treatment Trends FY 2004

Total Person's Served 14,911

- 78.63% were at or below the Federal Poverty Guidelines
- 17.62% were 18 years or younger
- 24.40% of all clients that entered treatment were diagnosed with a psychiatric problem prior to admission

Services to Women

- 32.98% of all clients were female
- 6.71% were pregnant
- 28.79% that were pregnant at admission had a primary problem of cocaine
- 67% of SRS referrals entered treatment (Children & Family Services, Economic & Employment Services, Foster Care, etc.)

Department of Corrections 4th Time DUI Clients

Admissions into treatment

Males 590

Females 42

- 15.51% diagnosed with psychiatric problem prior to treatment
- 59.40% of total admissions completed treatment

Priority Populations

- SRS clients (TANF, Family Preservation, Foster Care, etc.)
- Low income Kansans (pregnant women and women with children, IV drug users, co-occurring, those at risk for HIV, involuntary commitments, those at risk for TB.)

Risk and Protective Factors Predict Adolescent Problem Behaviors

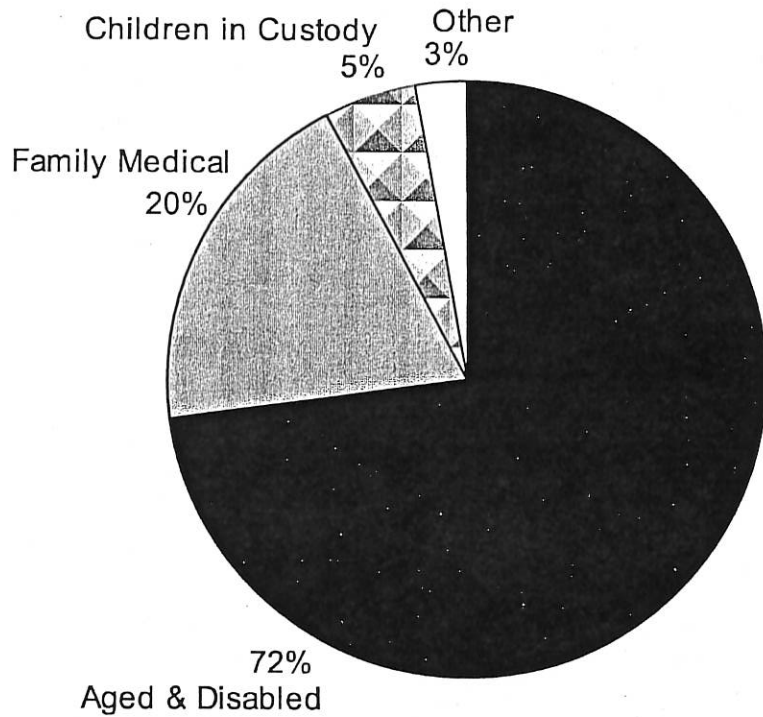
SRS utilizes the Kansas Communities That Care Student Survey to assess the risk and protective levels of 6th, 8th, 10th and 12th graders.

In FY2004, 36% of KS 6th, 8th, 10th, and 12th graders surveyed have high level of risk, while 46% have high levels of protection. KS youth experience less risk and more protection than other youth across the country.



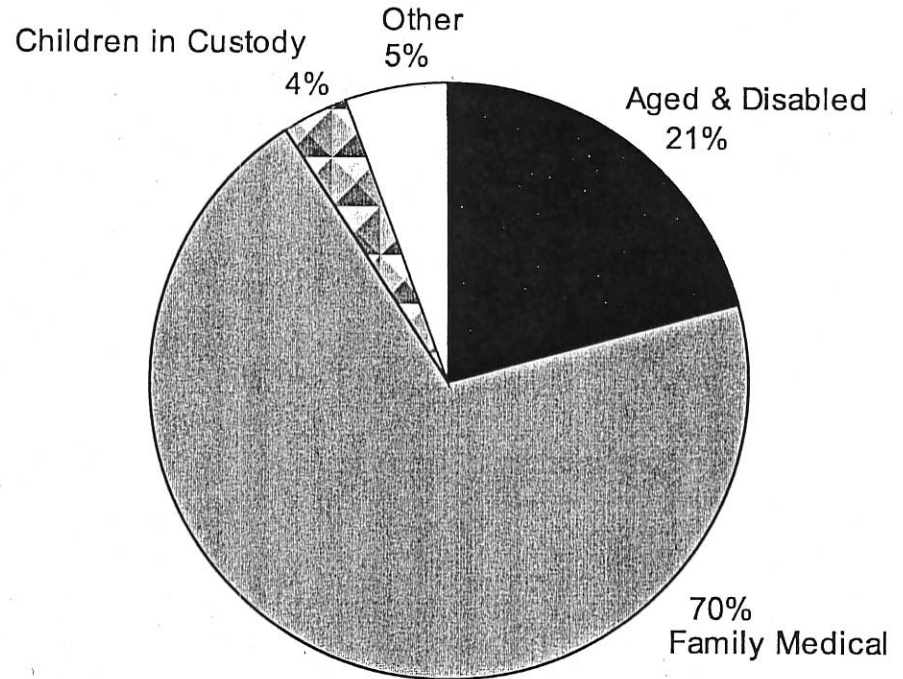
Medicaid Expenditures and Beneficiaries FY 2004

Expenditures as a Percent of FY04 Medicaid Budget Value in Dollars



Total Expenditures \$1,051,056, 766 all funds

FY 04 Beneficiaries Percent of people served in FY04 Medicaid Budget



Total Beneficiaries 247,109 monthly average



State Mental Health Hospitals Overview

SRS funds three hospitals

Larned State Hospital

Larned serves 59 western Kansas counties (including adults and children). Larned also serves as the state forensic hospital.

Osawatomie State Hospital

Osawatomie serves adults in 46 eastern Kansas counties (including Sedgwick).

Rainbow Mental Health Facility (Kansas City)

Rainbow serves adults in 10 eastern counties and youth with Serious Emotional Disturbance in 46 eastern counties

Services Provided

- Inpatient mental health facilities for adults who are:
 - Diagnosed with Severe and Persistent Mental Illness (SPMI)
 - Committed for forensic evaluation/treatment
 - Children with Serious Emotional Disturbance

| | |
|------------------------------------|--------------|
| Adults Average Daily Census (2004) | 259 |
| Youth Average Daily Census (2004) | 24 |
| Total Expenditures | \$58,351,089 |

Sexual Predator Treatment Program (SPTP)

- Provides treatment to persons committed by courts pursuant to the Sexually Violent Predator Act
- In-patient treatment at Larned State Hospital

SPTP Census and Expenditures

| | |
|----------------------|--------------------------------|
| Number served (2004) | 108 (increase from 88 in 2003) |
| Total Expenses | \$4,517,045 |



State Developmental Disability Hospitals Overview

SRS funds two hospitals

Kansas Neurological Institute (Topeka)

Parsons State Hospital and Training Center (Parsons)

Responsibilities

Residential treatment, training and care facilities for people with developmental disabilities

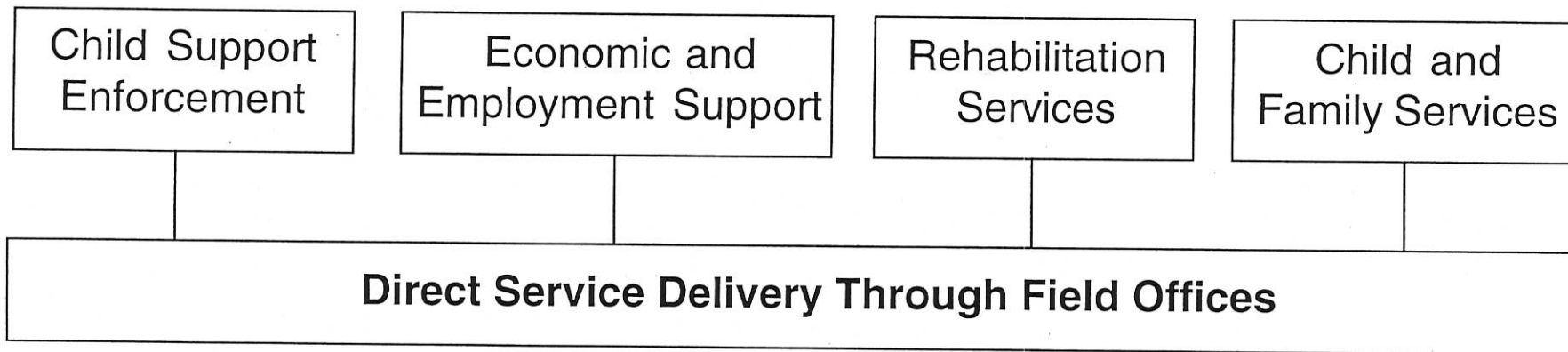
Meet compliance of federal Medicaid Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR)

Census and Expenditures

| | |
|-------------------------------------|--------------|
| Parsons Average Daily Census (2004) | 188 |
| Expenses (2004) | \$20,559,301 |
| | |
| KNI Average Daily Census (2004) | 168 |
| Expenses (2004) | \$24,665,705 |
| (more medically dependent) | |



Integrated Service Delivery Division



Division Outcomes

Maximize Independence and Self Sufficiency

Maintain Families

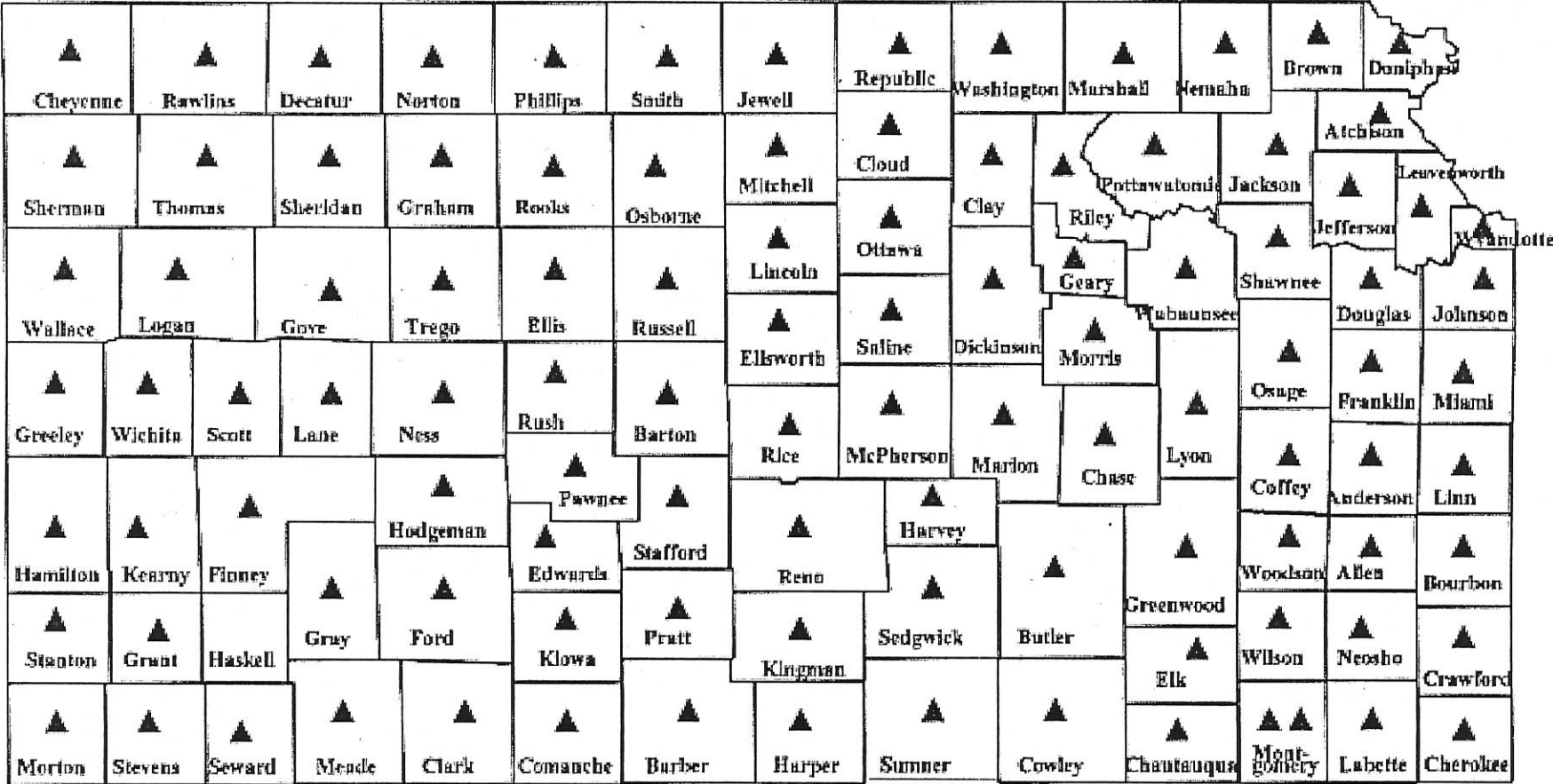
Protect Children and Adults

Quality Customer Service

Community Capacity and Partnerships

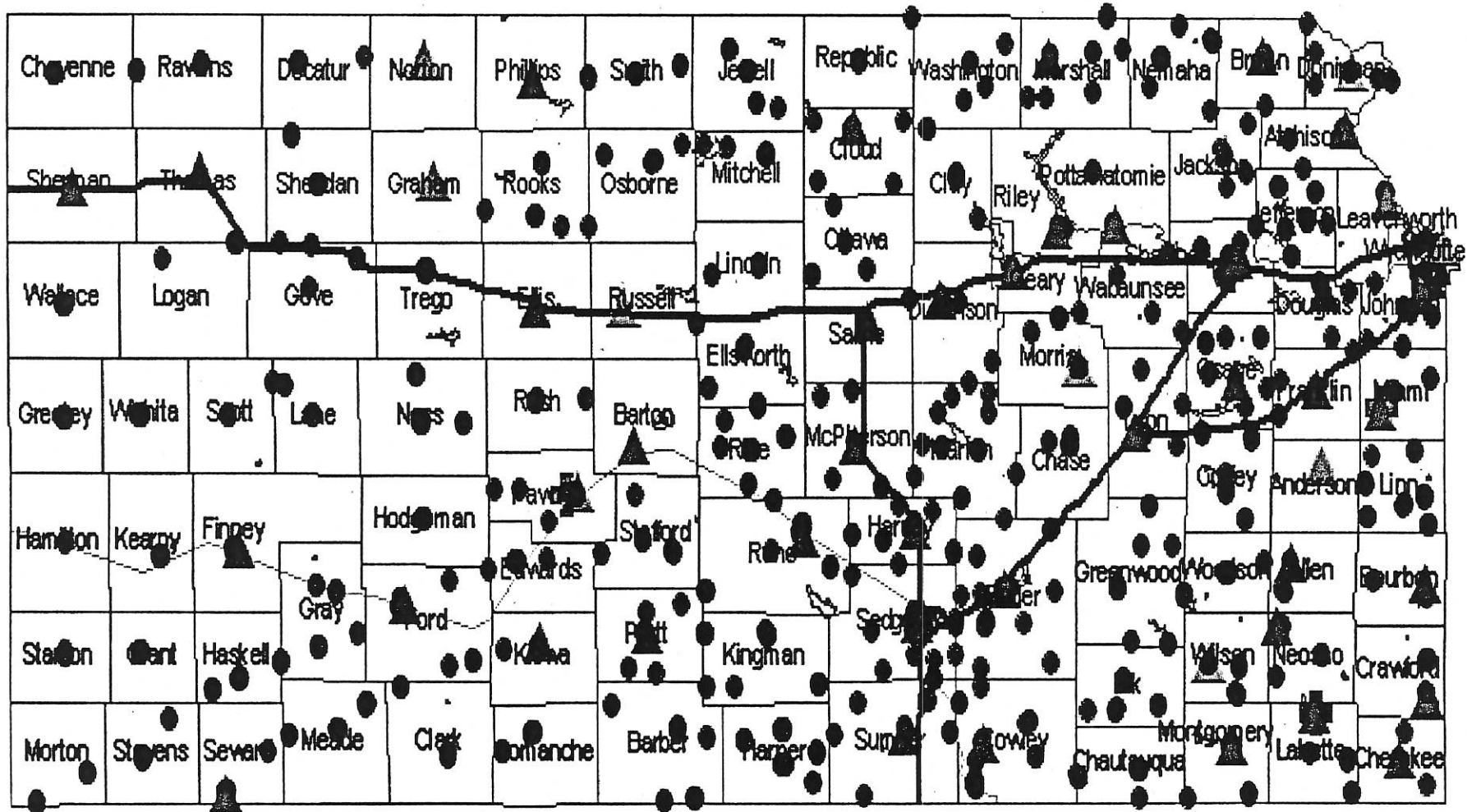


Access to SRS Services Before Service Delivery Redesign 105 Local County Offices



SRS Access Points

Over 850 Access Points Statewide



1-800-369-4777

www.srskansas.org



Kansas Department of Social and Rehabilitation Services



Who Receives Public Assistance?

GENERAL CASH ASSISTANCE

(Disabled & 32% FPL= \$1.43)

- 42 average age
- 99% are one person households
- 67% have high school diploma
- 55% have physical disability
- 4% have mental disability
- 18% also receive LIEAP benefits

TAF CASH ASSISTANCE

(32%FPL=\$2.41/hr for 3 persons)

- Household head is 29 years old
- 96% are headed by female, Avg. children per household is less than 2,
- 59% have high school diploma,
- 50% have severe barriers to employment,
- Avg. time on assistance is 12 mo.,
- 30% also receive LIEAP

CHILD CARE ASSISTANCE

(185%FPL=\$13.94/hr for 3 persons)

- Household head is 29 years old
- 95% are headed by female
- 5% are headed by grandparent
- \$57 is the avg. family share/mo.
- Most are licensed provider

FOOD ASSISTANCE

(130%FPL=\$9.80/hr for 3 persons)

- Household head is 41 years old
- 68% are Families and Children
- 32% are Elderly and Disabled
- 56% have high school diploma
- 30% have earned income
- Average time on assistance is 16 mo.

Every \$5 in food benefits generates \$9.20 in economic activity. Total Food Assistance benefits provided is \$133.9 million or over \$300 million in economic activity. Over 9,000 TAF parents at an average wage of \$7.63/hr who join the labor force with the help of child care assistance earn about \$110 million. This is in addition to the impact child care assistance has on the economy as a whole-another \$87 million.

| | Average Month Benefit | # of Served | |
|-------------------------|-----------------------|-------------|------------|
| GENERAL CASH ASSISTANCE | \$160 | 4,651 | Individual |
| TAF CASH ASSISTANCE | \$316 | 17,056 | Families |
| CHILD CARE ASSISTANCE | \$506 | 17,358 | Children |
| FOOD ASSISTANCE | \$257 | 77,027 | Household |



Work Matters - Return on Investment

Rehabilitation Services

Typical Case

53% male. 82% white 59% never married. HS diploma or GED. 29% mental illness. 27% physically impaired.

Average Case Length 2 years

Return on Investment

For every **\$1** spent, **\$11** is returned in taxes.

Average Case Cost \$18,647

Success Measured by:

95% of those rehabilitated achieved competitive employment.

TAF Employment Service

Typical Case

29 year old single mom with 2 children. Mom has a HS diploma or GED and some barriers to employment.

Average Case Length 12 months

Return on Investment

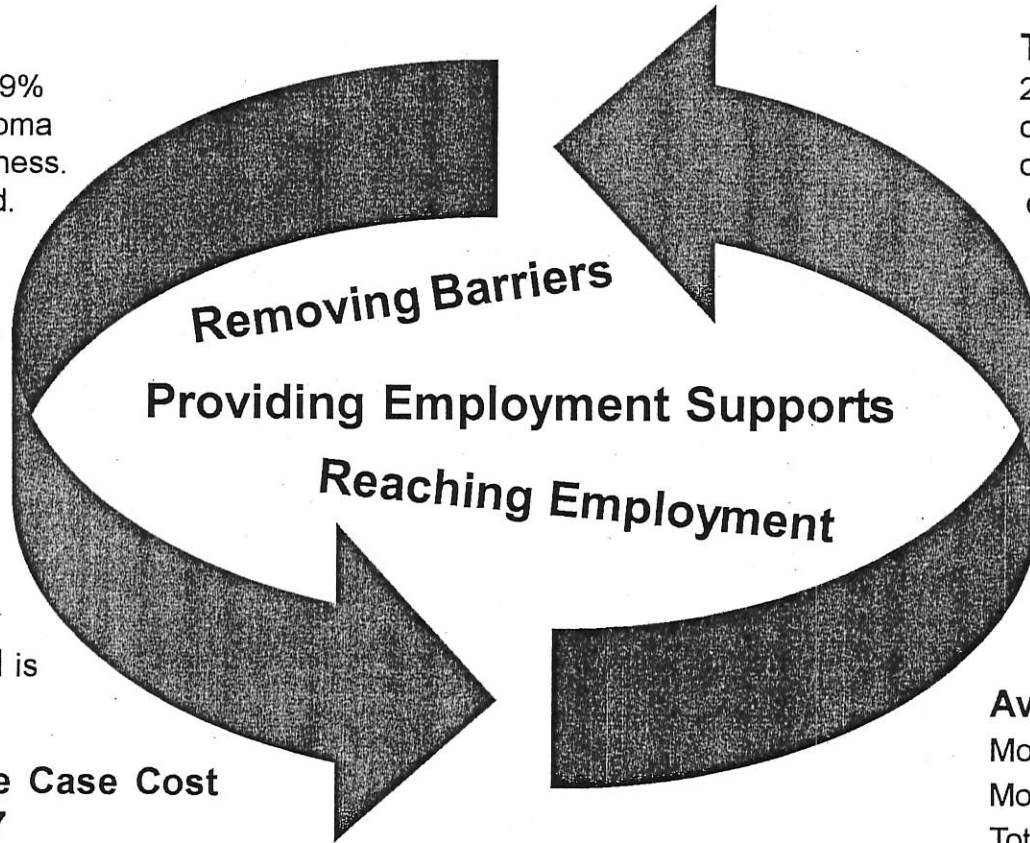
Successful Employment
Performance Bonuses

Average Case Cost

Monthly cash benefit: **\$313**
Monthly employment benefit: **\$63**
Total monthly benefit: **\$376**
Total annual benefit: **\$4,514**

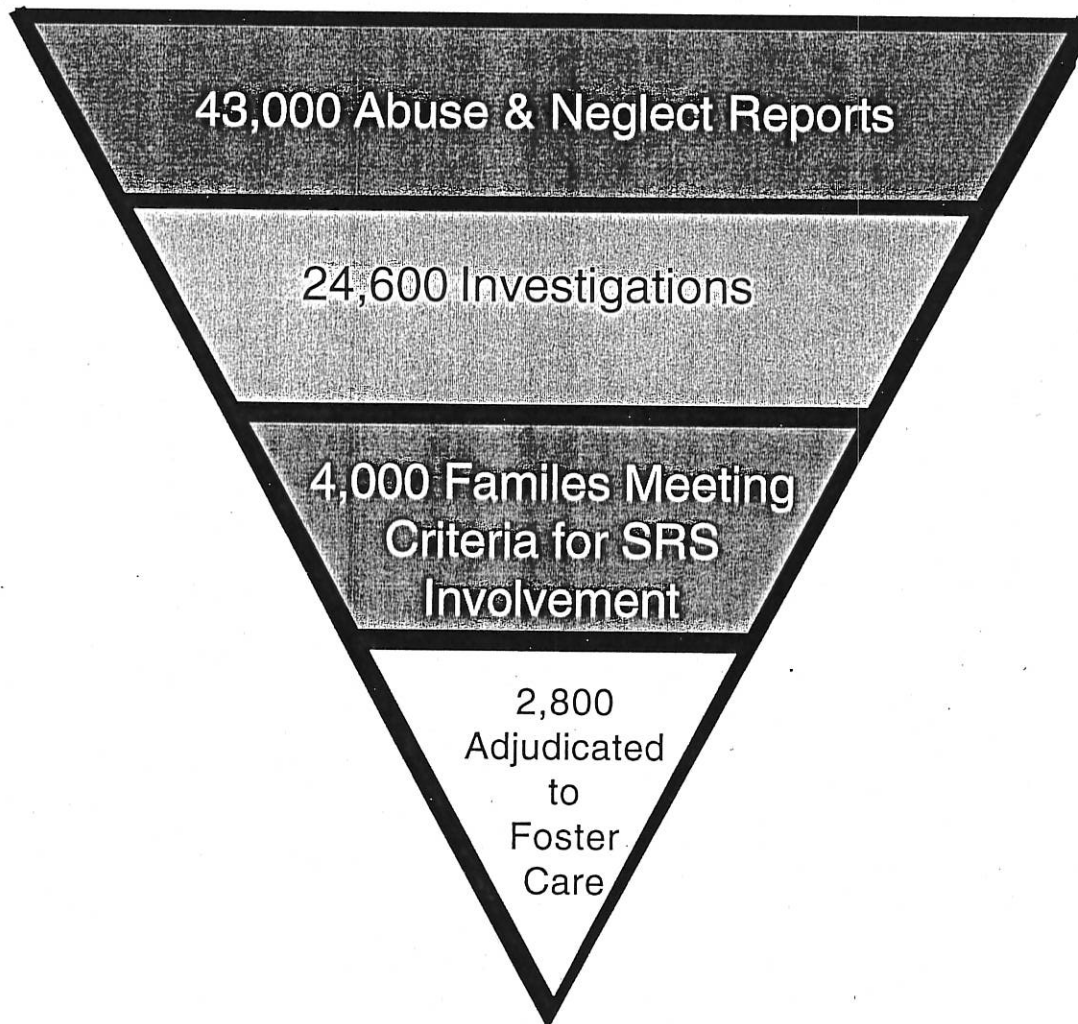
Success Measured by:

Employment
Continued Employment
Increase on Earnings



Child Welfare

Fiscal Year 2004



Building Blocks for a Quality Early Childhood System

Education of Child Care Professionals



825 Children Served



11,216 Child Care Professionals Served



3,622 Participants



Economics
Child Care in Kansas is a 1/2 billion dollar industry.

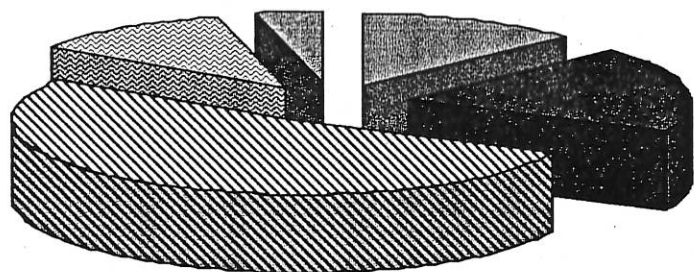


20,397 Parents Served
48,850 Child Care Professionals Served



Adult Protective Services

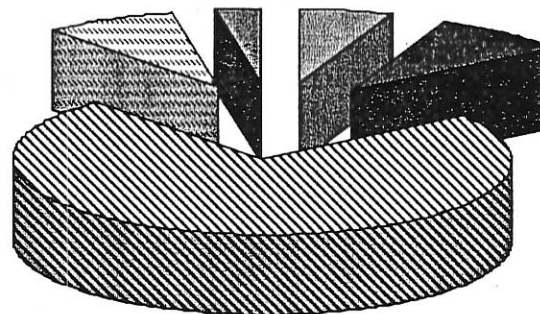
Investigations



- Abuse 790
- Neglect 1,165
- ▨ Self Neglect 3,218
- ▨ Exploitation 708
- Fiduciary Abuse 243

Total Investigations 6,124

Confirmations



- Abuse 100
- Neglect 140
- ▨ Self Neglect 1,180
- ▨ Exploitation 139
- Fiduciary Abuse 51

Total Confirmations 1,610



Child Support Enforcement (CSE)

Children and Custodial Parents

122,000 cases

28,000 cases with open TAF or Foster Care

94,000 non public assistance cases

91,000 of CSE's cases have support orders

Non Custodial Parents

involved in CSE cases: 108,000

CSE has 54,000 active income withholding orders in place.

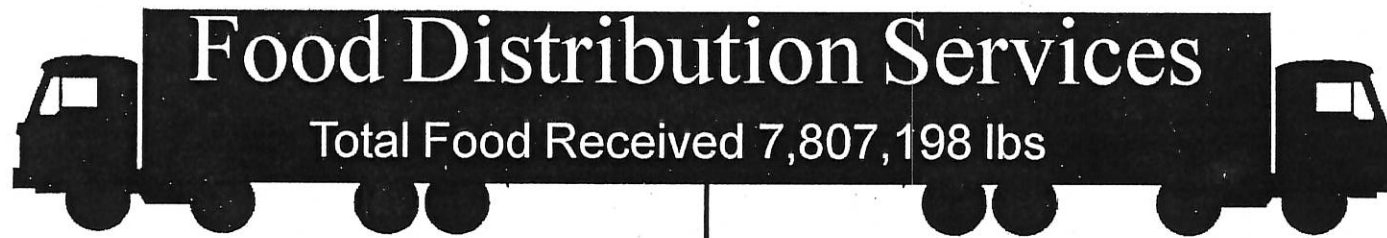
FY 2004 Total Support Collected by CSE: \$152,000,000

.....75% to Families

..... 8% to State to recover public assistance paid

.....17% to Federal to recover public assistance paid





Home Use Programs

Meal Preparation Programs

**The
Emergency Food
Assistance Program**

**Commodity
Supplemental
Food Program**

**Soup Kitchen
Food Bank**

**Charitable Institution
Commodity Program**

**Nutrition Services
Incentive Program**

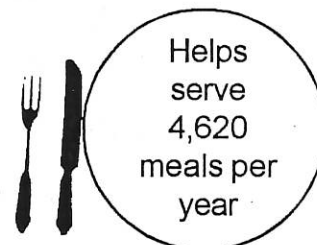
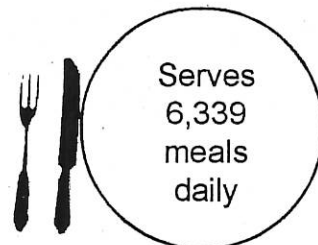
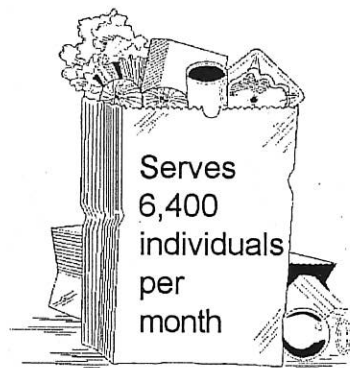
3,438,919 lbs
400 sites

2,067,014 lbs
5 sites

1,063,021 lbs
76 sites

643,068 lbs
8 sites

595,176 lbs
55 sites



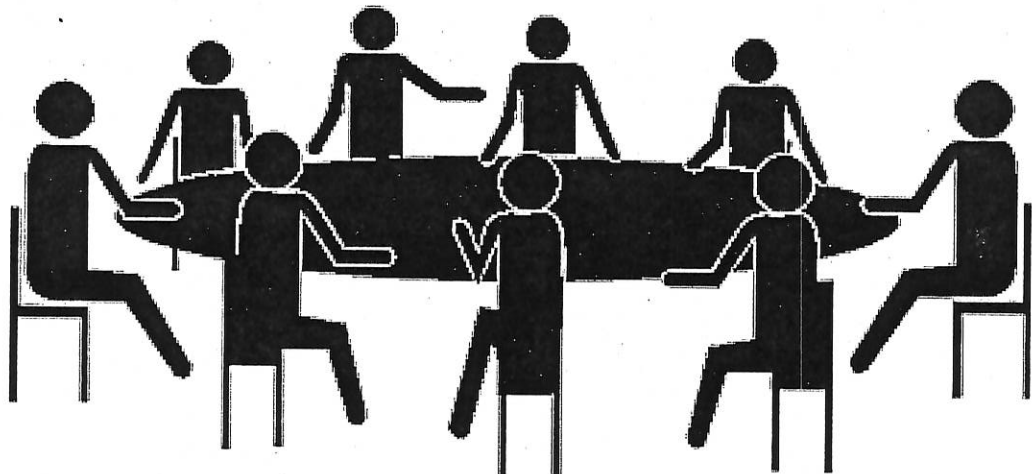
Consensus Caseload Estimating Process

SRS, Division of Budget, Legislative Research Department

Temporary Assistance
for Families

Adoption

Foster Care



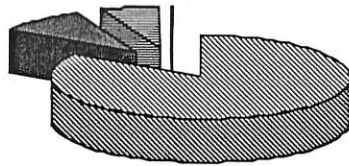
General
Assistance

Nursing Facilities -
Mental Health

Regular Medical
Assistance



SRS Expenditures by Category FY 2006 Governor's Budget Recommendation



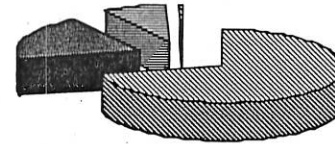
- █ Direct Assistance, Grants and Benefits \$2,349.0 million (83.9%)
- █ Direct Services Delivery \$268.9 million (9.6%)
- █ Administration \$175.1 million (6.2%)
- █ Capital Improvements \$8.2 million (0.3%)

Direct Assistance, Grants & Benefits (millions)

| | |
|--|-----------|
| Medical Assistance & HW | \$1,526.3 |
| Developmental & Physical Disability Services | \$353.2 |
| Children & Family | \$167.3 |
| Mental Health | \$74.6 |
| Child Care & Employment | \$87.7 |
| Cash Assistance | \$92.7 |
| Substance Abuse | \$21.0 |
| Rehabilitation Services | \$25.4 |
| Other | \$0.7 |

Total \$2,801.2 million
(totals may not add due to rounding)

Proposed Department of Human Services Expenditures FY 2006 Governor's Budget Recommendation



- █ Direct Assistance \$972.7 (71.4%)
- █ Direct Services Delivery \$268.9 million (19.7%)
- █ Administration \$113.1 (8.3%)
- █ Capital Improvements \$8.2 (0.6%)

Direct Assistance, Grants & Benefits (millions)

| | |
|---|---------|
| Developmental & Physical Disabilities | \$353.2 |
| Children & Families | \$167.3 |
| Medical Services for MH, DD, PD, SA & CFS (Estimate) | \$150.0 |
| Cash Assistance | \$92.7 |
| Child Care & Employment | \$87.7 |
| Mental Health | \$74.6 |
| Rehabilitation Services | \$25.4 |
| Substance Abuse | \$21.0 |
| Other | \$0.7 |

Total \$1,362.9 million
(totals may not add due to rounding)



2005 SRS Legislative Proposals

1. Process for Reviewing Prescription Drugs (HB 2107)
2. Supporting Children to Support our Future Act: Full Administrative Process for Child Support Establishment and Enforcement
3. Sharing Forensic Mental Health Records
- 4a. Expanded Access to State and Federal Criminal History Records Through KBI and FBI
- 4b. Enhanced Background Checks for SRS Employment
5. Reporting Abuse, Neglect or Exploitation of Certain Persons
6. Injunctive Authority to Cease Operations of Unlicensed Facilities
7. Maintaining Families and Supporting Older Youth Act



Kansas Department of

Social and Rehabilitation Services

Gary Daniels, Acting Secretary

Senate Ways and Means Committee
January 25, 2005

Update on SRS Deferrals, Audits and Penalties

Office of the Secretary
Gary Daniels, Acting Secretary
785.296.3271

For additional information contact:
Public and Governmental Services Division
Kyle Kessler, Director of Legislative and Media Affairs

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
phone: 785.296.0141
fax: 785.296.4685
www.srskansas.org

Senate Ways and Means
01-25-05
Attachment 2

Kansas Department of Social and Rehabilitation Services
Gary Daniels, Acting Secretary

Senate Ways and Means Committee
January 25, 2005

Update on SRS Deferrals, Audits and Penalties

Child Welfare Managed Care Deferral. 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 in the 1997 Balanced Budget Act that became effective in August, 2003. Because child welfare contract payments are a fixed amount per child and are designed to cover a broad array of services, CMS defines these contracts as managed care contracts subject to the new regulations.

To date, CMS has deferred all four quarters of state FY 2004 totaling \$30.5 million and removed these funds from the State's Medicaid account. CMS has also told the department that they will defer the two quarters ending December 31, 2004 for a total deferral of \$38.6 million. CMS has reviewed claim detail for the first three quarters deferred and has offered to pay the department 25% of the amount claimed. If the same methodology is applied to all six quarters, SRS could expect to recover \$9.8 million. A significant portion of the amount CMS refuses to pay is related to new edits and to Targeted Case Management (TCM) for behavioral management. Eliminating TCM for child welfare is an issue that CMS has pursued with many states.

The department has worked diligently since the first deferral action to resolve the child welfare deferrals with CMS. While many issues have been resolved, there continues to be significant Medicaid dollars withheld from Kansas. The Governor is making plans to travel to Washington, DC to begin a political dialogue on these issues.

This month the department awarded new child welfare contracts that will become effective July 1, 2005. The new contracts include no Medicaid in the rates. Rather, contractors will bill Medicaid on a fee-for-service basis. SRS is working with CMS to make sure required changes to the State Plan are being made so children in out-of-home placements will continue to receive Medicaid services.

State Hospital Title XIX Disallowance. In January 2004 CMS disallowed education costs of \$11.1 million incurred between 1994 and 1999 by the State Mental Health Hospitals. Medicaid costs in State Hospitals are claimed by filing cost reports. These cost reports are audited by SRS. SRS temporarily removed the educational costs from the claims and kept the cost reports open for several years while resolving education cost issues. When SRS resolved the issues, the cost reports were finalized and the

education claim was submitted to CMS. CMS disallowed the claim because it was made beyond the two-year filing period. The agency believes this requirement is not applicable to this claim and is currently appealing the disallowance. A ruling is expected from the Departmental Appeals Board (DAB) in the spring of this year. The education costs were paid to the hospitals by SRS, thus, the shortage is in the SRS Medicaid account. If the appeal is lost, the state hospital will have to return the funds to the SRS Medicaid fund. This loss of revenue to the state hospital Title XIX account will mean significant and severe shortages in the state hospital budgets.

Child Welfare Rehabilitation Services Medicaid Audit. The Office of Inspector General (OIG) is currently reviewing Kansas' use of the Rehabilitation Services Option of the federal Medicaid program between July 1, 2001 and June 30, 2003. Services currently being reviewed by OIG include in-home family therapy and behavior management attendant care for foster care, adoption, and family preservation. The auditors have expressed concern in two areas: not being able to reconcile the Medicaid claim to the detail documentation supporting the claim, and the department not strictly adhering to the Medicaid State Plan for claiming. The Medicaid State Plan requires payments to be the lesser of the capitated rate or the actual expense on a child by child basis. The Department's claims have recognized this on an aggregated basis but not on a child by child basis. While no fiscal impact is currently known, similar OIG reviews have been conducted in two other states resulting in monetary findings of approximately \$20 million. The Rehabilitation Services section of the State Plan is currently being reviewed and updated by SRS.

OIG Audit of LEA Funding. The Office of Inspector General (OIG) from the Department of Health and Human Services has completed a review of federal Medicaid claims Kansas made for medically necessary health related services provided by local school districts to children with disabilities. The OIG also reviewed federal Medicaid claims made for administrative costs of local school districts associated with supporting activities related to the Medicaid program. SRS has not yet received final reports of these reviews, but indications are that OIG will recommend significant recovery be sought by CMS from the State. It is estimated the findings could total \$40 million. The OIG has indicated the basis for this recommendation will be improper bundled rate methodology, out-dated and improperly established rates, lack of procedural compliance by local school districts, and lack of adequate SRS oversight of school district procedures and reporting. SRS is modifying and updating the bundled rate methodology and working with school districts to reach compliance with OIG's concerns.

Disability Determination Services (DDS) OIG Audit Recoupment. DDS is funded 100 percent with federal funds for all work completed on behalf of the Social Security Administration. An audit by the OIG found that DDS's expenditures were overstated by \$4,923,606 because indirect costs were not allocated correctly between July 1, 1998

and March 31, 2002. The department appealed the finding to the Social Security Administration because SRS was operating under an approved cost allocation plan. The appeal was lost, but a second appeal has been filed with the U.S. Department of Health and Human Services. A final decision has not yet been made.

SYNAR Penalty. The Federal Synar Amendment enacted in 1992 requires that all states adopt a law limiting access to tobacco products by minors under age eighteen. Kansas passed the law in 1997. An eighty percent or better compliance rate is required. Kansas maintained compliance for the past five years, however, in FFY 2004, the rate dropped to 62 percent. This put Kansas out of compliance with federal requirements. The law declares that 40% of state Substance Abuse Prevention and Treatment (SAPT) Block Grant funds can be withheld if the targeted compliance is not achieved (\$5 million penalty for Kansas). No states have been penalized yet at this level. An alternative option has been implemented by Substance Abuse Mental Health Services Administration (SAMHSA). States can obligate 1% of state funds toward addressing youth access to tobacco for each percentage point the state is over the compliance level. For Kansas this would be \$2.3 million. Once the Center for Substance Abuse Prevention (CSAP) reviews the Annual Synar Report, they will provide additional information regarding an appeal process and hearing. SRS is working with our partners (Kansas Department of Revenue, Division of Alcoholic Beverage Control; Kansas Department of Health and Environment; and the Regional Prevention Centers) to improve the state's compliance rate and prevent future penalties.

SACWIS IV-E Recoupment. Enhanced Title IV-E funding was provided to states to help develop and implement a Statewide Automated Child Welfare Information System (SACWIS). From 1993 to 1996 states were allowed to claim a special enhanced federal match for costs associated with developing a comprehensive automated case management tool that supports social workers' foster care and adoptions assistance case management practices. Kansas claimed some enhanced funding during this period, but later decided not to pursue completion of a full SACWIS system. It is likely that the State will have to pay back \$924,787 which is the difference between enhanced funding and standard IV-E funding. To date, the Federal Government has not taken this money.

SRS Deferrals, Potential Audit Penalties, and Related Financing & Budget Issues

As of January 2005

| | Period | Estimated Amount | Anticipated Reimb. | Shortfall After Reimb. | Expected FY Affected |
|--|-----------------------|------------------|--------------------|------------------------|----------------------|
| Known Issues with Estimated Amounts | | | | | |
| 1 CW Managed Care Deferral | 6/03 - 12/04 (6 qtrs) | 38,634,911 | 9,756,920 | 28,877,991 | 2005 |
| 2 State Hospital Medicaid Deferral | 1994 - 1999 | 11,100,000 | 0 | 11,100,000 | 2005 |
| 3 OIG Audit Finding for DDS expenditures | 7/1/98 - 3/31/2002 | 4,923,606 | 0 | 4,923,606 | 2005 |
| Financing Issues | | | | | |
| 4 CW Contracts Funding Shift for FY06 | 7/1/05 - 6/30/06 | 9,733,175 | 0 | 9,733,175 | 2006 |
| 5 TANF/CCDF Shortage | 7/1/05 - 6/30/06 | 31,989,326 | 0 | 31,989,326 | 2007 |
| At Risk Issues | | | | | |
| 6 OIG Review of Child Welfare Rehab. | 7/1/01 - 6/30/2003 | 20,000,000 | 0 | 20,000,000 | 2007 |
| 7 OIG Audit of LEA Funding | 4/1/97-6/30/2 | 40,000,000 | 0 | 40,000,000 | 2006 |
| 8 Synar Penalty | 10/1/03 - 9/30/04 | 2,263,746 | 0 | 2,263,746 | 2005 |
| 9 SACWIS Penalty | 2/1993 - 5/1996 | 924,787 | 0 | 924,787 | 2005 |

NOTES:

All amounts are estimates and subject to change. Even the first category listed are estimates and may change through continued negotiations, appeals, and settlements.

1 This amount covers the six quarters from when the Federal Balanced Budget Act required CW contractors to be managed care providers until January 1, 2005, when CMS agreed SRS had met the managed care requirements. No further deferrals are expected for this issue. CMS has said that they will pay the capitated rates for the last two quarters of SFY 2005. It is estimated that these last 2 quarters will be \$9 million XIX, equal to the budget amount.

The first two quarterly deferrals totaling \$13.3 million were adjusted in FY 2004. The expenditures were Jved out of Fund 3314 (SRS Title XIX) into other SRS funds. This is not reflected in the total above. In addition, \$9,467,785 of fee fund has been set aside for this

2 This money has been paid to the hospitals but was taken from the SRS XIX fund by CMS. Thus, the shortage is in the SRS fund and not in the hospitals.

3 SRS believes that costs were allocated to DDS under an approved cost allocation plan. The original appeal was lost but a second appeal is in progress. Fee fund has been set aside to cover this penalty.

4 This amount is not a deferral or penalty but rather a budget shift related to Medicaid in the child welfare contracts. Through the consensus caseload process, the title XIX funds have remained budgeted at the same level. Under the new CW contracts which are fee-for-service, we believe several Medicaid encounters claimed in the past will be unallowable for Medicaid funding and have to be covered with state dollars.

These include targeted case management, therapy, and other services not currently allowable under Medicaid. If the historic amount of level V and level VI services are not claimable for Medicaid, this amount could be \$6 million more.

5 Because of a TANF shortage, SRS removed TANF from Foster Care and Early Head Start and asked for SGF FY 2006. In the DoB Recommendations, the shortage was funded with one time funds in FY 2006 (IGT, Fee Funds, and all remaining TANF). Since one time funds were used, this TANF problem was shifted to FY 2007. The shortage represents the FC and Head Start funding only. An additional shortage will be present for any caseload growth not covered by SGF during the consensus process and the budget

6 Two other states with similar OIG audits have experienced findings of about \$20 million. This audit is still in progress and the amount of possible audit findings are unknown at this time.

7 We have not received a report from OIG. This amount is an estimate of the unallowable amounts related to rate setting, payment methodology, bundled rates, and administrative claiming issues OIG has raised. Total payments reviewed were approximately \$120 million during this period so the unallowable estimate is one third of the payments.

8 An 80% compliance rate is mandated. For FFY 2004, compliance was only 62%. The statutory penalty for noncompliance is 40% of the Substance Abuse Prevention and Treatment Block Grant. This would amount to \$5 million. An alternative option being offered by SAMHSA is that Kansas can obligate state funds to address youth access to tobacco. This alternative requires Kansas to spend SGF equal to 1% of the block grant amount for each point Kansas was out of compliance. This amount is reflected above.

9 We have not received formal notice of payment or a reduction of our IV-E grant. The estimated penalty is the difference between the enhanced IV-E funding percentage we claimed during this period and the normal IV-E funding allowed for these types of services. The normal rate should have been claimed since SRS did not develop an integrated child welfare system that meets the federal government's requirements.

Fee fund revenue has been set aside to cover this penalty.

January 25, 2005

Department of Social and Rehabilitation Services Deferrals and Potential Audit Penalties

Medicaid is a federal/state matching funds program that purchases preventive, primary, and acute health services for low-income individuals, children, families, persons with disabilities, and the elderly. The Federal match is determined by the Federal Medical Assistance Percentage or FMAP rate. The FMAP rate for Kansas is approximately 60.0 percent. This means that the federal government will reimburse the state for 60.0 percent of costs under the Medicaid program with no limit to the match. Because there is no cap on federal match, states are required to provide estimates of their quarterly expenses. Each state is then allotted a certain amount for each quarter to draw down as expenditures are made for the state Medicaid program. When a state experiences a deferral or penalty, their quarterly allotment is then reduced by that amount, leaving a resource deficit that must be filled by other funds or expenditures must be reduced.

A deferral occurs when the Centers for Medicare and Medicaid Services (CMS) identify expenditures as inappropriate. The agency is given notice of the deferral, and the reduction occurs in the second quarter after the deferral notification. Once the agency has received a formal notification of the deferral from CMS, the agency has 30 days to respond, if it chooses to do so. Once the response is reviewed there is a formal disallowance, which can then be appealed.

An audit penalty occurs when the Office of the Inspector General (OIG) performs an audit of the state's expenditures and finds an audit exception. The agency gets a copy of the audit report, and can appeal the findings to CMS. Once a penalty has been determined, it may be deducted from the state's quarterly payment or paid by the state.

The Department of Social and Rehabilitation Services is aware of several penalties, deferrals, and ongoing audits. The following table reflects the penalties, audits, and/or deferrals that are likely to have a fiscal impact in the current fiscal year, budget year, or the out year.

Department of Social and Rehabilitation Services Deferrals, Audits Penalties and other Penalties

| Deferral/Audit | FY 2005 | FY 2006 | FY 2007 |
|--|----------------------|----------------------|----------------------|
| Child Welfare Managed Care Deferral | \$ 28,877,991 | \$ 0 | \$ 0 |
| State Hospital Medicaid Deferral | 11,100,000 | 0 | 0 |
| OIG Audit Finding for Disability Determination Services Expenditures | 4,923,606 | 0 | 0 |
| Synar Penalty | 2,263,746 | 0 | 0 |
| SACWIS Penalty | 924,787 | 0 | 0 |
| OIG Audit of LEA Funding | 0 | 40,000,000 | 0 |
| OIG Audit of Child Welfare Rehabilitation | 0 | 0 | 20,000,000 |
| TOTAL | \$ 48,090,130 | \$ 40,000,000 | \$ 20,000,000 |

Senate Ways and Means

1-25-05

Attachment 3

Explanation of Deferrals/Audit Penalties

FY 2005

Child Welfare Managed Care Deferral

During the 2004 Legislative Session, the Department of Social and Rehabilitation Services informed the Legislature that \$30.5 million in Medicaid funding used in the child welfare contracts had been deferred in FY 2004.

The deferral is based on claims for all four quarters of FY 2004 and the first two quarters of FY 2005 for the community-based service contracts. The deferrals are being made because the state did not comply with new managed care regulations which became effective in August of 2003. The agency indicates that it is now in compliance with the federal regulations. Compliance was achieved by shifting expenditures for children under the child welfare contracts to Medicaid, where the services are paid on a fee for service basis. The agency expects no further deferrals on this issue.

State Hospital Medicaid Deferral

In November 2002, CMS deferred \$11.1 million of education costs and formally disallowed the amount in January 2004. (The disallowance letter states \$13.3 million, however, CMS has only taken the \$11.1 million originally deferred from the Medicaid account.) This amount represented the costs incurred but not yet claimed by the State Mental Health Hospitals between FY 1994 and FY 1999. Medicaid costs in State Hospitals are claimed by filing cost reports. These cost reports are audited by SRS. SRS temporarily removed the educational costs from the claims and kept the cost reports open for several years while resolving education cost issues. When SRS resolved the issues, the cost reports were finalized and the education claim was submitted to CMS.

The deferral was made because CMS asserts the agency did not meet the two year timely filing requirement. The agency believes this requirement is not applicable to this claim and is currently appealing the disallowance. A ruling is expected in May 2005. SRS has paid the Hospitals for these educational costs so the \$11.1 million deficiency is currently in the SRS Title XIX fund.

If SRS loses the appeal, the state hospital Title XIX account will have to return the funds to the SRS Medicaid fund. The agency FY 2005 budget estimate results in an ending balance of \$2.2 million in the Hospitals Title XIX fund. The FY 2006 request results in a \$0 ending balance for the fund. If the agency appeal is not successful, the State Hospitals will require an additional \$8.9 million in state funds or expenditure reductions of that amount for FY 2006 to achieve a \$0 ending balance.

Office of the Inspector General Audit of Disability Determination Services

The Disability Determination Services (DDS) program in Department of Social and Rehabilitation Services makes disability and blindness determinations for the U.S. Social Security Administration on the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) claims filed or reviewed in Kansas. DDS is funded 100.0 percent with federal funds for all work completed on behalf of the Social Security Administration. An audit by the OIG found that DDS's expenditures were overstated by \$4,923,606 because indirect costs were not allocated correctly between July 1, 1998 and March 31, 2002. The agency appealed the finding to the Social Security Administration because it was operating under an approved cost allocation plan. The appeal was

lost, but a second appeal has been filed with the U.S. Department of Health and Human Services. A final decision has not yet been made.

Synar Potential Penalty

The federal Synar Amendment enacted in 1992 requires that all states adopt a law limiting access to tobacco products by minors under age 18 (Kansas did so in 1997). It also requires states to monitor retailer compliance to restrict the sale of tobacco products to minors. In Kansas, the Division of Alcoholic Beverage Control (ABC) conducts random inspections of licensed tobacco vendors to assist SRS/Addiction and Prevention Services in this monitoring process. The Synar Amendment requires that states conduct inspections of retail outlets with a number sufficient to yield reliable results. Of the approximately 3,100 tobacco retailers licensed by the ABC, 650 randomly selected outlets will be inspected by an underage youth working with agents from the ABC.

Kansas was required to maintain an 80.0 percent or better compliance rate by September 30, 2004. The sample design allows for a statistical range for error of plus or minus 3.0 percent; thus, 23.0 percent is the maximum level for violations. Kansas has maintained its compliance rate near the 80.0 percent target for the past five years. The Federal Fiscal Year 2004 rate determined in late October 2004, will for the first time put Kansas out of compliance with federal requirements. Inspections conducted between October 1, 2003 and September 30, 2004, resulted in violations by 220 of the 571 retail outlets selected in the random sample. The outcome is a compliance rate of 62.0 percent, which is 18.0 percent below the target required.

The law declares that state Substance Abuse Prevention and Treatment Block Grant funds can be withheld if the targeted compliance is not achieved. No states have been penalized yet at this level. An alternative option has been implemented by the federal Substance Abuse and Mental Health Services Administration (SAMHSA). Rather than the federal agency withholding 40.0 percent of Substance Abuse Prevention and Treatment Block Grant funds, the State could be required to obligate state funds toward addressing youth access to tobacco. The amount would equal 1.0 percent of the SAPT Block Grant for each percentage point the state is over the 20.0 percent level. The agency estimates the penalty for Kansas could be \$2,263,746.

Statewide Automated Child Welfare Information System (SACWIS) Penalty

Enhanced Title IV-E funding was provided to states to help develop and implement a Statewide Automated Child Welfare Information System (SACWIS). From FFY 1993 to FFY 1996, states were allowed to claim 75.0 percent federal match for costs associated with developing a comprehensive automated case management tool that supports social workers' foster care and adoptions assistance case management practices. The state claimed some enhanced funding during this period, but later decided not to pursue completion of a full SACWIS system. The Federal Government has notified the state of an intent to recoup the funds totaling nearly \$1.0 million. To date, the Federal Government has not taken this money.

(Staff Note: The agency has requested an enhancement \$15.0 million all funds, \$7.5 million State General Fund to develop a SACWIS Child Welfare System in FY 2006. The Governor does not recommend the enhancement.)

FY 2006

OIG Audit of Local Education Agency (LEA) Funding

The Health and Human Services Office of Inspector General (OIG) completed an audit of Medicaid payments made to school districts for health related services to children with disabilities. The audit also looked at claims made for administrative costs of school districts. The audit expressed concerns about the state's bundled rate methodology and the lack of documentation maintained by the schools to support the payments. A final audit report has not been issued yet, however, the department anticipates some recovery will be sought by CMS. SRS is modifying and updating the bundled rate methodology and working with school districts to reach compliance with OIG's concerns. The estimated audit penalty reflects one-third of the amount claimed for the audit period, or \$40.0 million.

FY 2007

OIG Audit of Child Welfare Rehabilitation

OIG is reviewing Kansas' use of the Rehabilitation Services Option of the federal Medicaid program. Services being reviewed include in-home family therapy and behavior management for foster care, adoption, and family preservation. The review covers the period of July 1, 2001 through June 30, 2003 (the two years prior to the Child Welfare deferrals). The auditors have expressed concern in two areas: not being able to reconcile the Medicaid claim to the detailed documentation supporting the claim, and the department not strictly adhering to the Medicaid State Plan for claiming. The Medicaid State Plan requires payments to be the lessor of the capitated rate or the actual expense on a child by child basis. The Department's claims have recognized this on an aggregated basis but not on a child by child basis. While no fiscal impact is currently known, similar OIG reviews have been conducted in two other states resulting in monetary findings of approximately \$20.0 million. A risk also exists that any disallowances from the CMS deferrals in FY 2004 and FY 2005 may be applied to this audit period by OIG. The Rehabilitation Services section of the State Plan is currently being reviewed and updated by SRS.