

MINUTES

LEGISLATIVE BUDGET COMMITTEE

November 8-9, 2007
Room 514-S—Statehouse

Members Present

Representative Sharon Schwartz, Chairperson
Senator Stephen Morris
Senator Laura Kelly
Representative Lee Tafanelli
Representative Don Dahl
Representative Bill Feuerborn

Members Absent

Senator Dwayne Umbarger, Vice-Chairperson

Staff Present

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
Cody Gorges, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Michele Alishahi, Kansas Legislative Research Department
Jarod Waltner, Kansas Legislative Research Department
Jim Wilson, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Nikki Feuerborn, Chief of Staff, House Appropriations Committee
Melinda Gaul, Chief of Staff, Senate Ways and Means Committee
Shirley Jepson, Committee Assistant

Conferees

Lieutenant Governor John Moore
Randy Nelson, Senior Vice-President of Product Development and Engineering,
Hawker Beechcraft
Jim Walters, Senior Vice-President of Human Resources, Cessna Aircraft Co.
Gary Haulmark, National Community Pharmacists Association
Brian Caswell, Walkar Drug, Baxter Springs

Sam Boyajian, Gardner Pharmacy, Gardner
Van Coble, Medicap Pharmacy, Winfield
Brad Smoot, Legislative Counsel, CareMark
Barbara A. Levy, Vice-President and General Counsel, Pharmaceutical Care
Management Association
Michael Harrold, Senior Director, State General Affairs, Express Scripts
David Root, Medco Government Affairs
Dr. Marcia Nielsen, Executive Director, Kansas Health Policy Authority
Chris Howe, Director of Purchases, Department of Administration
Doug Farmer, Chief of Staff, Office of Attorney General
Don Jordan, Secretary, Department of Social and Rehabilitation Services
Greg Tangari, President, Kansas Chapter of National Association of Social Workers
Ira Stamm, Ph.D., Psychologist
Julie Wood-Warner, Ph.D., Kansas Psychological Association
Ron Hein, Mental Health Credentialing Coalition
Dr. Dan Lord, Ph.D., Licensed Clinical Marriage and Family Therapist
Elaine Ptacek, Licensed Clinical Professional Counselor
Mary Elaine Hayes, Licensed Clinical Professional Counselor
Dr. Rusty Andrews, Ph.D., Licensed Clinical Marriage and Family Therapist
Bruce Linhos, Executive Director, Children's Alliance of Kansas
Michael J. Hammond, Executive Director, Association of Community Mental Health
Centers of Kansas
David Johnson, Executive Director, Bert Nash Community Mental Health Center, Inc.,
Lawrence
Walt Hill, Executive Director, High Plains Mental Health Center, Hays
Amy Campbell, Kansas Mental Health Coalition
Carol Foreman, Deputy Secretary, Department of Administration

**Thursday, November 8
Morning Session**

**Aviation Industry Update on Research and Development
and Workforce Training**

John Moore, former Lieutenant Governor of Kansas, appeared before the Committee to introduce the speakers from the aircraft industry, and noted that the aircraft industry is the pride of Kansas and one of the powerful engines of the state's economy.

Randy Nelson, Senior Vice-President of Product Development and Engineering, Hawker Beechcraft, presented an update on the aviation industry as a major contributor to the economic vitality of Kansas ([Attachment 1](#)). Highlights from Mr. Nelson's testimony included:

- Aircraft industry in Kansas supports 36,500 direct jobs with a payroll of approximately \$2.4 billion.
- Each aviation job generates an additional 2.9 jobs.
- Kansas delivers more than 50 percent of all U.S. general aviation aircraft.

- State tax revenues - 22 percent of total state budget; \$1.3 billion in state tax revenue.
- Wages expected to advance in the next 10 years to \$5.5 billion per year.
- To maintain a leadership position, industry and the State must invest.
- Industry driven by technology investment with continued research necessary to maintain leadership in the world.
- State's investment in the National Institute of Aviation Research (NIAR) has allowed the aircraft industry to obtain significant federal and industry funding.
- International growth in the aircraft industry is substantial.
- Aircraft industry will request funding of \$5 million from the State for aviation related research for FY 2009 to maintain a leadership role in the world.

Mr. Nelson stated that there has been some decline in research funding at the federal level with a majority of federal funds directed to the space program; however, funding is still available for basic research. Mr. Nelson noted that a skilled workforce is a constrained commodity within the state.

The Committee requested a list of projects that have been funded with state dollars as well as the amount which has been used to leverage federal dollars.

Jim Walters, Senior Vice-President of Human Resources, Cessna Aircraft Company, presented testimony on aviation jobs and the impact to the state's economy ([Attachment 2](#)). Mr. Walters stated that an available workforce is critical to the success of the industry and as global competition increases, it will be necessary to provide incentives to maintain a workforce in Kansas. It is estimated that approximately 20,000 skilled workers will be needed over the next 10 years. It will be necessary to provide flexible, business-driven, high-tech training to meet the skilled worker needs now and in the future. The Kansas Technical Training Initiative (KTTI) was formed in 1998 to respond to an insufficient labor pool, changing demographics, and advances in technology. Investment from Sedgwick County, the City of Wichita, and the aviation industry has provided for the Jabara Campus to be built at the Jabara Airport, to provide education programs with a business-driven approach and a trained workforce.

Responding to questions from the Committee, Mr. Walters noted that the aircraft industry is banding together to develop technical training to attract students for a viable workforce in the future. Training will need to change as technology changes and funding for the training will be a critical issue.

The Kansas Aviation Industry is requesting aviation training funding from the State in the amount of \$5 million in each of the next five years for building and construction, equipment and machinery, and programs and curriculum to protect jobs in Kansas.

Study of Duties and Responsibilities of Pharmacy Benefit Managers as Proposed in 2007 SB 272

Cody Gorges, Legislative Research Department, provided an overview of the duties of pharmacy benefit managers as defined by Kansas law and additional legislation introduced in 2007 SB 272, a bill that provides for further oversight of pharmacy benefits managers (PBMs) ([Attachment 3](#)). Mr. Gorges stated that the 2006 Legislature enacted the Pharmacy Benefits Manager Registration Act, which applies to any pharmacy benefits manager who provides claims processing services, other prescription drug or device services, or both, to covered persons who are residents of Kansas.

The act, however, does not apply to any pharmacy benefits manager who holds a certificate of registration as an administrator pursuant to KSA 40-3810. That certificate is issued by the Insurance Commissioner. SB 272 was introduced to address some of the problems raised by pharmacists with the Registration Act and requires PBMs to:

- Perform duties with care, skill, prudence, and diligence with standards applicable to a fiduciary;
- Notify the covered entity of any activity or policy that would present a conflict of interest;
- Provide the covered entity all financial and utilization information related to the provision of benefits and services to covered individuals. PBMs would be permitted to designate any information as confidential.
- Comply with certain requirements when dispensing a substitute prescription drug for a prescribed prescription drug to a covered individual.
- Pass the payment or benefit associated with dispensing prescription drugs based on the volume of sales for certain drugs, classes, or brands, in full, to the covered entity.
- Disclose all financial terms and arrangements for payment or compensation of any kind that applies between the PBM and any prescription drug manufacturer or labeler.

Gary Haulmark, National Community Pharmacists Association, provided testimony on the oversight of pharmacy benefit managers and support for SB 272 ([Attachment 4](#)). Mr. Haulmark indicated that the following problems exist with the current law:

- PBMs are unregulated drug middlemen who administer the prescription drug benefit portion of health insurance plans for private companies, unions, and governments. PBMs manage all aspects of the prescription drug benefit plan, including creating formularies of preferred medicines, negotiating with drug manufacturers for discounts on rebates, and negotiating with pharmacies to establish retail networks for dispensing drugs.
- A number of situations exist between PBMs and pharmacists across Kansas that make it difficult for the pharmacists to serve their customers.
- PBMs do not negotiate contracts with individual independent pharmacies but rather offer a “take it or leave it” contract.
- Blue Cross-Blue Shield of Kansas has changed its definition of rural pharmacy resulting in many pharmacies across the state being excluded from more favorable contract terms.
- Many small community pharmacies across the state are facing financial problems.
- Cost of prescription drugs has skyrocketed since introduction of PBMs.
- A number of states have passed or have proposed legislation addressing problems associated with PBMs.
- Many mail order prescription houses are owned by the PBMs.

Afternoon Session

Brian Caswell, Chairman of the Governmental Affairs Committee with the Kansas Pharmacists Association and president of Wolkar Drug in Baxter Springs, presented testimony in support of SB 272 ([Attachment 5](#)). Mr. Caswell felt that SB 272 would create:

- A more fair, transparent, and honest environment when it comes to prescription coverage by holding the PBM industry accountable for its decisions;
- Allow the State the opportunity to watch for potential and active abuse issues;
- Require any PBM to disclose to its client financial gains that it has secured through its relationship with the plan sponsor;
- Protect the PBM industry's proprietary information;
- Should not increase healthcare or prescription management costs; and
- Increase honesty in the system.

Sam Boyajian, Pharmacist, Gardner Pharmacy, presented testimony in support of SB 272 ([Attachment 6](#)). As a pharmacist, Mr. Boyajian noted that he has experienced financial losses imposed by the PBMs, as well as spending a great deal of time dealing with problems for his patients caused by the PBMs.

Van Coble, Medicap Pharmacy, Winfield, presented testimony in support of SB 272 ([Attachment 7](#)).

Written testimony in support of SB 272 was received from Leah Sommerville, RN, Osteopathic Clinic, Winfield ([Attachment 8](#)).

Written testimony in support of SB 272 was received from Yvonne Branine, RN, Director of Nursing, Winfield Rest Haven ([Attachment 9](#)).

Brad Smoot, Kansas Legislative Counsel for CVS Caremark, presented testimony in opposition to SB 272 ([Attachment 10](#)). Mr. Smoot stated that it is difficult to determine the problem that needs to be fixed by the legislation and proposed that ongoing conversation with retail pharmacists would be more beneficial. Mr. Smoot noted that the delivery of healthcare and pharmacy services is rapidly changing, the cost of healthcare is growing, and changes in the reimbursement rates make it difficult for small community pharmacies to prosper.

Responding to a question from the Committee, Mr. Smoot stated that the law requires that a contract be offered to one pharmacy in each county; however, several counties do not have a pharmacy.

Barbara Levy, Vice-President and General Counsel, Pharmaceutical Care Management Association, presented testimony in opposition to SB 272 ([Attachment 11](#)). Ms. Levy indicated that PBMs have helped to expand access to drug coverage, lower costs, and increase quality. Ms. Levy noted that prescription drug spending has been slowed by rapid growth in generics and a shift toward mail-order dispensing. With regard to regulations, Ms. Levy stated:

- PBMs do not contract directly with consumers and do not create benefit designs;
- PBM activities currently are regulated;
- Legislation has been considered and rejected in 20 states that would impose restrictions on PBMs;

- PBMs are heavily regulated directly at the state level in their capacity as licensed, certified, or registered entities;
- PBMs are regulated indirectly through contractual compliance with state and federal requirements imposed on insurers, HMOs, and employer-sponsored plans; and
- The marketplace is working nationally.

Michael Harrold, Senior Director State General Affairs, Express Scripts, presented testimony in opposition to SB 272 ([Attachment 12](#)). Mr. Harrold noted that the introduction of Medicare-Part D has brought about an increase of problems for local pharmacists. Mr. Harrold stated that he does not feel that SB 272 addresses problems that may be facing the small pharmacist.

Responding to a question from the Committee, Mr. Harrold stated that PBMs negotiate the cost of dispensing prescription drugs. The ability of the PBM to have a larger buying power results in the lower cost of prescription drugs.

David Root, Medco Government Affairs, presented testimony in opposition to SB 272. Mr. Root stated that the industry is a negotiated, contract-driven, business which mandates the best possible prices and results in competitive pricing.

Review of Request for Proposal of Legal Services on Contingency Fee Basis

Leah Robinson, Legislative Research Department, provided background information relative to potential Legal Services Contracts that may exceed \$1.0 million ([Attachment 13](#)). Ms. Robinson stated that the 2000 Legislature enacted the “professional services sunshine act” which establishes procedures to be followed when a state agency wishes to enter into a contract for professional services with certified public accountants, attorneys, or consultants. The act requires that, prior to entering into a legal services contract where the amount of fees to be paid reasonably may exceed \$1.0 million, the Director of Purchases must submit a proposed Request for Proposal (RFP) to the Legislative Budget Committee. Ms. Robinson stated that if the Legislative Budget Committee does not take action on the RFP, then the agency would need to wait 60 days before proceeding with any action.

Chris Howe, Director of Purchases, Department of Administration, provided information on an RFP from the Office of the Attorney General for legal services-outside counsel relating to pharmaceutical matters that may exceed \$1.0 million ([Attachment 14](#)). Mr. Howe noted that this is the first time such a request has been made. With reference to the bidding process, Mr. Howe stated that candidates would be selected on their history with litigation in the area to produce a greater recovery and a best match for the agency. The Board, as set by statute, to review applicants would be made up of the Secretary of Administration or designee, Director of Purchases or designee, and the agency head or designee.

Doug Farmer, Office of the Attorney General, stated that the RFP refers to a pharmaceutical pricing issue. It has been determined that the magnitude of the case would be beyond the resources of the Attorney General's Office and require the services of outside counsel. It is anticipated that if the case moves forward, the fee for outside counsel would exceed \$1 million.

Senator Morris moved to approve the Request for Proposal (RFP) from the Office of Attorney General. The motion was seconded by Representative Feuerborn. Motion carried. Representative Dahl requested to be recorded as voting “no” on the motion.

Update on Health Care Reform

Dr. Marcia Nielsen, Executive Director, Kansas Health Policy Authority (KHPA), presented an update on Health Reform in Kansas to improve the health of Kansans ([Attachment 15](#)). A copy of the Report to the Health Policy Board is included with the testimony. Dr. Nielsen stated that SB 11, as passed by the 2007 Legislature, created a premium assistance program and outlined development of health reform options. KHPA has developed high priority policy options directed at health reform:

- Promote personal responsibility including healthy behaviors, informed purchase of health care services, contribute to the cost of health insurance, based on a sliding scale.
- Prevention and medical homes to focus on obesity, tobacco control, chronic disease management, and incentives for primary care medical homes.
- Provide and protect affordable health insurance to focus on small business, children, and the uninsured.

KHPA estimates that the cost of the proposed health reform for Kansans will be approximately \$159.8 million, including federal matching dollars; and approximately \$86.3 million from the State General Fund.

Friday, November 9 Morning Session

Representative Tapanelli moved to approve the minutes of August 14-15, 2007, as written. The motion was seconded by Representative Dahl. Motion carried.

Senator Morris moved to approve the minutes of October 22-23, 2007, as written. The motion was seconded by Representative Dahl. Motion carried.

Reimbursement for Community Mental Health Services

Amy Deckard, Legislative Research Department, provided an overview of Community Mental Health Center reimbursement ([Attachment 16](#)). Community Mental Health Centers (CMHCs) receive funding from four major sources: state grant, county funding, third party payments, and Medicaid. Because of an issue brought forward by the Centers for Medicare and Medicaid Services (CMS) regarding the certified match approach used by the state for Medicaid payments, CMS will no longer allow CMHCs to certify match using this approach.

Starting July 1, 2007, Medicaid payment to CMHCs is made through a Prepaid Ambulatory Health Care Plan (PAHP). SRS indicates that this change should satisfy CMS' concerns about how Kansas is utilizing Medicaid funds: preserve Medicaid funding for these services; support key aspects of the established public mental health system; and allow persons a wider array of choices of mental health providers.

Ms. Deckard noted that the 2007 Legislature added \$17.0 million from the State General Fund for FY 2008 to maintain funding for the public community mental health system after the elimination of the certified match process.

Don Jordan, Secretary, Department of Social and Rehabilitation Services (SRS), provided testimony on changes in the Kansas Public Mental Health System ([Attachment 17](#)). Secretary Jordan indicated that CMS did not recognize community mental health centers as governmental entities and, therefore, they could not use the certified match system. Because some Medicaid program and payment policies have changed in conjunction with the transition to managed care and to meet CMS requirements, some CMHCs continue to have challenges in billing for Medicaid at the same level as they did in FY 2007. The Secretary stated that SRS continues to be concerned about the financial condition of some CMHCs. The agency has undertaken extensive public mental health system reform, in collaboration with a broad range of system stakeholders, to be responsive to CMS concerns while both preserving the core infrastructure of Kansas' public mental health system and enhancing both the service array and the number of qualified mental health providers. Monitoring will continue to assess overall progress and support long-term success. Secretary Jordan felt that some of the problems being experienced by the CMHCs are related to the change in the system, becoming familiar with the new system, and will lessen as the system becomes stable.

Greg Tangari, Chapter President, Kansas Chapter of National Association of Social Workers, presented testimony on reimbursement for mental health services ([Attachment 18](#)). Mr. Tangari stated that the reimbursement rates are critical to a small business. He indicated that excess paperwork is a concern, noting that it sometimes takes approximately 50 minutes to prepare paperwork after one hour of psychotherapy treatment. Mr. Tangari indicated that the difference in the reimbursement rate between non-licensed and licensed providers of psychotherapy is a concern.

Mr. Tangari proposed the following:

- Legislation to allow the clinician to bill insurance for the time it take to complete paperwork.
- Limit utilization reviews to once a year per client for mental health providers.
- Support the passage of SB 380, introduced in the 2007 Legislative Session, to improve the current law on 'mental health parity' so that mental health care is treated substantially equivalent to medical and surgical benefits.

Ira Stamm, Ph.D., Psychologist, presented testimony on the reimbursement for mental health services ([Attachment 19](#)). Mr. Stamm indicated that the decreasing fee schedules for outpatient treatment will lead to further dismantling of the mental health infrastructure in Kansas.

Julie Wood-Warner, Ph.D., Kansas Psychological Association (KPA), presented testimony on reimbursement for mental health services ([Attachment 20](#)). The Kansas Psychological Association represents doctoral level psychologists, currently approximately 730 psychologists licensed to practice in the state. Ms. Wood-Warner stated that KPA is concerned that the review process and the implementation strategies for vendorship and how it is maintained for all mental health provider groups.

Additional testimony with regard to the reimbursement for mental health services was provided by the following:

- Ron Hein, Legislative Counsel for the Mental Health Credentialing Coalition ([Attachment 21](#));

- Dr. Dan Lord, Ph.D., Licensed Clinical Marriage and Family Therapist (LCMFT), on behalf of the Mental Health Credentialing Coalition ([Attachment 22](#));
- Elaine Ptacek, Licensed Clinical Professional Counselor, on behalf of the Mental Health Credentialing Coalition ([Attachment 23](#));
- Mary Elaine Hayes, Licensed Clinical Professional Counselor, on behalf of the Kansas Association of Masters in Psychology (KAMP) ([Attachment 24](#));
- Dr. Rusty Andrews, Ph.D., LCMFT, on behalf of the Kansas State University Graduate Programs in Marriage and Family Therapy and The Mental Health Credentialing Coalition ([Attachment 25](#));
- Bruce Linhos, Executive Director, Children's Alliance ([Attachment 26](#));
- Michael J. Hammond, Executive Director, Association of Community Mental Health Centers of Kansas ([Attachment 27](#));
- David Johnson, Executive Director, Bert Nash Community Mental Health Center, Inc., Lawrence;
- Walt Hill, Executive Director, High Plains Mental Health Center, Hays; and
- Amy Campbell, Lobbyist for the Kansas Mental Health Coalition ([Attachment 28](#)).

Update on the State Employee Compensation Oversight Commission

Carol Foreman, Chairperson, State Employee Compensation Oversight Commission, presented testimony on the work of the Commission directed at the State Employee Compensation Plan, since the end of the 2007 Legislative Session ([Attachment 29](#)). The Commission covered a number of topics, including:

- Review of the State's current plan;
- Comparison of the State of Kansas to other states;
- Testimony and e-mail comments from employees, representatives from agencies and employee organizations regarding possible changes to the State's pay plan for classified employees;
- Benefit Value Comparison Analysis from the Hay Group;
- Panel of private and public sector employers discussing their pay plans and philosophies;
- Direction to the Hay Group as to the general guidelines for a revised State of Kansas pay plan; and
- A presentation on the general concepts and structures of the recommended pay plans for the classified workforce as well as an overall implementation plan.

Ms. Foreman stated that the Hay Group's proposal is to adopt five pay plans for the approximately 22,000 classified state employees, with each plan addressing the specific occupational issues of the job classifications assigned to the plan. The proposed system aligns both wage rates and compensation practices with industry and market standards, allowing the State to provide for true competitive compensation for employees in diverse occupations.

Each group in the new plan will be phased into the new system over a three-year period. The goal is to begin implementation of the plan at the beginning of FY 2009. Ms. Foreman noted that a critical piece of the plan will be the funding for FY 2009 in order to begin the implementation of the plan.

Update on Consensus Estimating Process

Legislative Research Department staff provided an update on the Consensus Estimating Process:

- Actual FY 2007 Resources, Demands, and Balances of the State General Fund - Preliminary ([Attachment 30](#)).

J. G. Scott stated that the ending balance on June 30, 2007, was \$935.0 million, or approximately \$112.9 million above the estimate. Actual receipts were \$5.809 billion, \$87.8 million or 1.5 percent above the estimate. Actual FY 2007 expenditures were \$25.1 million less than the total approved by the 2007 Legislature; however, \$21.4 million budgeted in FY 2007 is now authorized to be spent in FY 2008.

- Human Services Consensus Caseload Estimates for FY 2008 and FY 2009 ([Attachment 31](#)).

Amy Deckard reported that the estimate for FY 2008 has decreased by \$9.3 million and includes a decrease of \$8.3 million from the State General Fund, due largely to a decrease in estimates for SRS Inpatient Mental Health services and KHPA Regular Medical expenditures, partially offset by small increases in other areas.

The FY 2009 initial estimate is \$2.1 billion, including \$880.2 million from the State General Fund. The estimate is an all funds increase of \$61.4 million and a State General Fund increase of \$43.3 million as compared to the revised FY 2008 estimate. Regular Medical expenses for KHPA were increased by \$27.0 million from the State General Fund and \$43.0 million from all funds due to increased caseloads and higher per person expenditures.

- November 2007 K-12 School Finance Consensus Estimates ([Attachment 32](#)).

Michele Alishahi reported that the revised K-12 budget for FY 2008 has increased by \$26.561 million. It is anticipated that the additional \$56.4 million will be needed for FY 2009 over the FY 2008 revised estimate.

- Initial State General Fund Memorandum for FY 2008 (Revised) and FY 2009 ([Attachment 33](#)).

Alan Conroy reported that the FY 2008 estimate was increased by \$160.5 million, or 2.9 percent, above the previous estimate, mainly in individual income taxes and corporation income taxes. The initial estimate for FY 2009 is \$6.170 billion, an increase of \$452.8 million above the newly revised FY 2008 figure. One factor influencing the FY 2009 growth rate relates to several pieces of legislation enacted in 2005-2007 that will reduce the amount of severance, income, estate, corporation franchise, and motor carrier property tax receipts deposited into the State General Fund relative to prior law.

Mr. Conroy noted that overall the economy is growing; however, retail sales tax receipts have been revised downward. Energy prices, the housing market, inflation, and value of the dollar in the

international market are all factors in the economy. The agricultural industry is expected to continue to improve.

- State General Fund Receipts, Expenditures and Balances, FY 2007 - FY 2011 (Attachment 34).

The meeting was adjourned at 2:10 p.m. The next meeting will be held on December 18, 2007.

Prepared by Shirley Jepson
Edited by Leah Robinson

Approved by Committee on:

December 18, 2007

(Date)