Approved: March 25, 2011
Date

MINUTES OF THE TRANSPORTATION AND PUBLIC SAFETY BUDGET COMMITTEE

The meeting was called to order by Chairman Virgil Peck at 3:30 p.m. on March 15, 2011, in Room 142-S of the Capitol.

All members were present.

Committee staff present:
Daniel Yoza, Office of the Revisor of Statutes
Aaron Klaassen, Kansas Legislative Research Department
Jeannie Dillon, Committee Assistant

Conferees appearing before the Committee:
Viola Riggin, Director KUPI, Department of Corrections
Britt Nichols, Inspector General, Juvenile Justice Authority
Chad Austin, Vice President, Government Relations, KS Hospital Asn.
Dan Morin, Director of Government Affairs, Kansas Medical Society

Others attending:
See attached list.

The Chair opened the hearing on **HB 2359 - Adding the department of corrections to statutes regarding payment of health care expenses for people in custody.**

Daniel Yoza, Assistant Revisor, briefed the Committee on **HB 2359.**

Viola Riggin represented the Department of Corrections as a proponent to **HB 2359**. She stated that the Department of Corrections supports the use of Medicaid rates in establishing the medical costs charged for prisoners and believes that the savings for the taxpayers of the State should be extended to cover inmates in the department's custody. (Attachment 1)

Britt Nichols, Inspector General, Kansas Juvenile Justice Authority, appeared before the Committee as a proponent to the bill. He stated that it would be appropriate to include the Juvenile Justice Authority within the enabling provisions of the **HB 2359** amendments to KSA 22-4612. (Attachment 2)

Dan Morin, Director of Government Affairs, Kansas Medical Society, spoke as an opponent to **HB 2359**. Mr. Morin stated that if the population served continues to increase under current reimbursement rates, it is likely that the program will begin to see attrition in the provider network. (Attachment 3)

Chad Austin, Kansas Hospital Association, gave testimony in opposition to **HB 2359**. Mr. Austin stated that hospitals are already contributing their fair share to Medicaid and providing services to every Medicaid patient at a loss. (Attachment 4)

Written testimony in opposition to **HB 2359** was submitted by Cynthia Smith, Providence Medical Center/Saint John Hospital. (Attachment 5)

Chairman Virgil Peck closed the hearing on **HB 2359**.

The Chair asked the committee to direct their attention to **HB 2173 - Kansas Highway Patrol; fees for certain services.** Moved by Representative Mesa, seconded by Representative Bethell to amend line 11, striking the word fixed and adding "negotiated", and in line 22, striking the word fixand adding "negotiate". Motion passed. Moved by Representative Bethell, seconded by Representative Gonzales to pass **HB2173** favorably as amended. Motion passed.

The meeting was adjourned at 4:40 p.m.

The next meeting is scheduled for March 16th, 2011, at 3:30 pm.

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Ray Roberts, Secretary of Corrections

Department of Corrections

Sam Brownback, Governor

Testimony on HB 2359
to
The House Public Safety Budget Committee

By Ray Roberts
Secretary
Kansas Department of Corrections

March 15, 2011

The Department of Corrections supports the use of Medicaid rates in establishing the medical costs charged for prisoners and believes that the savings for the taxpayers of the State should be extended to cover inmates in the department's custody. The Department of Corrections urge this Committee to extend the savings provided to county law enforcement, county department of corrections, and the Kansas Highway Patrol via 2006 HB 2893 to all taxpayers through inclusion of the Medicaid rates to prisoners confined by the department.

The application of Medicaid rates for the Department of Corrections is estimated to result in a savings in medical costs for its inmates of $600,000 for FY 2012, which has already been removed from the Governor's proposed FY 2012 budget. The department's medical care provider, Correct Care Solutions, agrees to amend its contract with the department to reflect those savings.

The department is obligated by both the Kansas and United States Constitutions to provide medical care to persons in its custody irrespective of cost. HB 2359 would put the medical expenses incurred by state governmental entities for the treatment of prisoners on par with the medical expenses paid for by the state for indigent citizens in the community. As it is now, hospitals provide discounts to health insurance companies and to the state for the treatment of indigent persons in the community, but not to governmental entities that are constitutionally required to provide medical care to prisoners in their custody.

The Department of Corrections urges favorable consideration of HB 2359.

Transportation/Public Safety
Budget Committee
Date: 3-15-2011

Attachment 1

TESTIMONY ON HB 2359

before the

HOUSE COMMITTEE ON TRANSPORTATION & PUBLIC SAFETY BUDGET

by KANSAS JUVENILE JUSTICE AUTHORITY

MARCH 15, 2011

Curtis Whitten, Commissioner
cwhitten@jja.ks.gov

Appearing on behalf of JJA:
Britt Nichols, Inspector General ig@jja.ks.gov

CHAIR PECK AND COMMITTEE MEMBERS:

Thank you for your continuing attention to matters of Juvenile Justice in Kansas.

For reasons explained by the Department of Corrections and our joint health care provider, it is appropriate to include the Juvenile Justice Authority within the enabling provisions of HB 2359's amendments to KSA 22-4612.

Respectfully submitted,

KANSAS JUVENILE JUSTICE AUTHORITY

Transportation/Public Safety
Budget Committee
Date: 3-15-11
Attachment 2

KANSAS MEDICAL SOCIETY
Established 1859

To: House Transportation and Public Safety Budget Committee

From: Dan Morin
Director of Government Affairs

Date: March 14, 2011

Subject: HB 2359; Adding the Department of Corrections to statutes regarding payment of health care expenses for people in custody

The Kansas Medical Society appreciates the opportunity to submit the following comments in opposition to HB 2359. The bill limits the amounts that the Department of Corrections and the Kansas Juvenile Justice Authority would be obligated to pay health care providers and health care facilities for services rendered for patients not covered by private insurance. That limit would be the applicable Medicaid rate under the legislation.

First, the physician community understands the seriousness of the financial challenges facing our state, and that there are no easy decisions for policymakers when it comes to balancing the needs of the state with the resources which are available.

We are fortunate in Kansas that the vast majority of physicians participate in the Medicaid program. Although there are some areas where we need to shore up the network somewhat, we have made very positive strides forward in recent years in assuring access to care for the covered population. The physician participation rates are high compared to most other states, even though Medicaid reimbursement is on average about 20% below Medicare rates, and well below rates (as much as 30-40%) paid by private insurers. As recently as November 2009, Governor Parkinson used his allotment authority to implement a 10% cut in Medicaid provider reimbursement. The reimbursement cut took effect on January 1, 2010 and saved the state general fund (SGF) approximately $18 million for the final 6 months of the fiscal year (FY 2010). Because the cut also had the effect of reducing the amount of federal matching funds that would otherwise be available, the total impact on Medicaid providers was estimated at $58 million in FY 2010. Had the cuts not been restored by the legislature for Fiscal Year 2011, physician practices all across the state would have needed to re-evaluate their ability to absorb Medicaid patients into their practices.

Some context is very important here. Medicaid is not the only public program that affects physician practices. The Medicare program, which covers those 65 and over, also has tremendous influence on medical

practices. Medicare, though it pays better than Medicaid, is still well below private insurers, and for physicians, Medicare fees have been essentially frozen for the past seven years and now face a 29% cut in January 2012. Another public program which serves a significant segment of our population in several areas of the state is the TRICARE program, which provides health benefits for the military and their dependents. TRICARE also reimburses providers on the Medicare fee schedule.

Medicaid currently covers over 356,000 Kansans; Medicare covers about 410,000 Kansans, and TRICARE roughly 125,000 individuals. Together these publicly financed health programs cover over 890,000 Kansans—over 30% of our population. The number of Medicaid enrollees will continue to grow with the significant Medicaid expansion that was a part of the federal health care reform legislation. In the very near future, over one million Kansans, over a third of our current population will likely be covered by these public programs. Health care providers understand this dynamic, and must plan accordingly for it. That is why one cannot look at the Medicaid program as a stand-alone public program, and why decisions on a medical practice's capacity to absorb Medicaid patients is heavily influenced by what is happening in the other public programs.

The prison population is also a more difficult group to treat. A lack of access to health care services prior to entry, poor dietary and exercise habits, and substance abuse contribute to a sicker population which costs more to treat. Many state prison inmates have one or more medical problems, lead lifestyles that make them extremely at risk to communicable diseases, have higher rates of mental illness and are likely to have chemical dependency problems. The prison population is also aging. The National Institute of Corrections lists arthritis, hypertension, ulcer disease, prostate problems and myocardial infarction among the most common chronic diseases among elderly inmates.

We will continue to encourage physicians to maintain their commitment to Medicaid, in order to assure continued access to care for the population served by this important public health care program. However, if the population served continues to increase under current reimbursement rates, or if future cuts are implemented, it is likely that the program will begin to see attrition in the provider network.

Thank you for considering our comments in opposition to HB 2359.

Tom Bell
President and CEO

TO: House Transportation and Public Safety Budget Committee

FROM: Chad Austin
Vice President, Government Relations

DATE: March 15, 2011

RE: House Bill 2359

The Kansas Hospital Association appreciates the opportunity to provide comments on House Bill 2359 which would amend K.S.A. 22-4612 by allowing the Kansas Department of Corrections, the Kansas Juvenile Justice Authority, or their respective medical provider to pay the Medicaid payment rates to health care providers for services rendered to inmates. This is not a new issue for the Legislature to consider. It has its genesis with the passage of House Bill 2893 during the 2006 session. House Bill 2893 was achieved because the two sides, hospitals and local law enforcement agencies, had issues in conflict that needed to be corrected. For hospitals, it was the practice of "un-arresting" individuals in custody to avoid paying for services. For the Kansas Sheriff's Association the issue was payment rates. In the end, both sides agreed that if providers would accept Medicaid payment rates for services rendered then the practice of "un-arresting" would be discontinued. It was a win-win for both sides.

Department of Corrections Inclusion

During the negotiations and subsequent hearings on House Bill 2893, the Kansas Department of Corrections attempted to be included in the bill. Our members were unanimous in their opposition to their inclusion for several reasons:

- The state was not responsible for the payment of claims for inmates. They had contracted that out to Correct Care Solutions.
- Correct Care Solutions had entered into contracts with many of the hospitals and physicians in the regions surrounding the prison facilities and had negotiated discounts and access provisions appropriate for the area.
- Provider Assessment-enhanced Medicaid payment rates were still below the cost of care and they were not willing to shift those losses to employers and others in their communities responsible for keeping the local hospital afloat.
- The costs for providing care to prison inmates far exceed the average costs for a typical Medicaid patient.

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ATTACHMENT 4

Background on Medicaid Payment Rates to Hospitals and Physicians

Until the passage of the Medicaid Provider Assessment legislation during the 2004 session, Medicaid payment rates to hospitals and physicians had not received an "inflationary" update in more than ten years. Some fees on the schedule remained at the same level as when they were first developed in the early 1970's. Growth in state expenditures was solely due to case load increases and additional mandates from the federal government, not from indexed increases in payments. Cost report data showed that the Medicaid program was paying less than 54 percent of the costs for outpatient services and 20 percent for inpatient.

It became evident that these rates were not sustainable and the Medicaid Provider Assessment program was created. In essence, hospitals were asked to contribute to the state's share to draw down federal matching dollars to improve payment rates. Hospitals are taxed nearly $35 million annually which in turn creates nearly $88 million in payment increases for hospitals and physicians. And while this is welcome relief it still does not cover the cost of providing services to Medicaid beneficiaries. The provider assessment "enhanced" fee schedule is still far below that of other payers.

Milliman, one of the world's largest independent actuarial and consulting firms, was commissioned by the America's Health Insurance Plans, the Blue Cross and Blue Shield Association, and the American Hospital Association in 2008 to evaluate the financial impact to insurers and employers of the "cost shift" resulting from Medicaid and Medicare underpayments. They determined that the cost shift resulted in a 15 percent hidden tax. Jon Pickering, Principal and Consulting Actuary at Milliman, Inc., who co-authored the report concluded "As we consider approaches to expand coverage ..., we need to keep in mind the disparity among Medicare, Medicaid, and commercial provider payment rates, and the pressure that this disparity places on hospitals, physicians, and commercial payers."

Hospital's are already contributing their fair share – by providing $35,000,000 annually to support the Medicaid fee schedule and by providing services to every Medicaid patient at a loss. The rationale our members expressed during the last five years are still valid. Asking hospitals and employers to underwrite losses for providing health care services to inmates while the company responsible for paying for and providing those services is allowed to profit from the Department is wrong. While we support efforts to work cooperatively with the Department of Corrections and their contractors, imposing arbitrary payment levels such as those from Medicaid or Medicare that are inadequate and inappropriate for inmate services is not something the legislature should mandate.

Thank you for your consideration of our comments. We respectfully requests that no action is taken on House Bill 2359.

Providence Medical Center
Saint John Hospital
Sisters of Charity of Leavenworth Health System

Testimony on House Bill 2359
Relating to health care payments for persons in custody
House Transportation
and Public Safety Budget Committee
March 15, 2011

Providence Medical Center/Saint John Hospital are part of the Sisters of Charity of Leavenworth Health System, a faith-based hospital system which has existed in Kansas since 1864.

This is the fourth time we have offered testimony to a legislative committee to oppose the proposal for hospitals in Kansas to accept Medicaid rates for treatment of state prisoners in our hospitals. The Kansas Department of Corrections has tried to get this bill passed almost every year since 2006.

We are disappointed to learn that the Department of Corrections and Juvenile Justice Authority again seek to reduce what the state and/or its contractor pays for health care for prisoners at our hospitals. **The state should not seek to reduce its costs on the backs of community hospitals like Saint John Hospital and Providence Medical Center, which have already agreed to provide health services at a significantly discounted rate to persons jailed in state prisons.** They are not easy patients to serve.

Providence Medical Center and Saint John Hospital have contracts with CCS to provide both inpatient and outpatient care to prisoners at Lansing Correctional and other state prison facilities. These contracts were signed in October 2003, and are extended annually unless either party gives notice of termination at least 30 days prior to the expiration date.

Our current reimbursement rates are set well below charges, at 52 percent of billed charges for inpatient care, and 65 percent of billed charges for outpatient surgery and emergency room services. In 2009, the two hospitals' charges for these patients totaled $1.45 million and, under the contract, CCS paid $773,239. Today's Medicaid rates would be less than half that with just under $373,800 in reimbursement to the hospitals for $1.45 million in charges. We are aware those rates could be reduced even further.

DOC representatives have previously testified that the revisions to law proposed would save the state from $250,000 to $500,000 in health care expenses – on the backs of your community hospitals – by paying Medicaid rates. Their claims do not accurately demonstrate what the savings that CCS offers will cost your community hospitals. **We calculate that our hospitals alone would lose almost $400,000 in revenue annually, as the attached chart shows.**

No community hospital can survive on Medicaid rates and, again, persons in custody are not easy patients to serve. Frankly, our hospitals would be unlikely to continue our relationship with CCS and Lansing at those rates.

We urge you to reject this bill.

Respectfully submitted,

Cynthia Smith
Advocacy Counsel
(785) 580-8508

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Attachment 5