

August 9, 2005

To: Joint Committee on Children's Issues
From: Emalene Correll, Research Associate
Re: Overview of 2004 Joint Committee Activities

The Joint Committee on Children's Issues operates pursuant to KSA 46-3001 and, for the 2005 Interim, pursuant to the provisions of Section 4 of SB 4, enacted during the 2005 Special Session.

Oversight of the implementation and operation of the children's health insurance plans authorized by other sections of the act that created the Committee is a responsibility assigned by law to the Committee. The statute also directs the Committee to study other children's issues the Committee deems necessary. From time to time, the Legislative Coordinating Council has asked the Joint Committee to study an issue that relates to children and youths. Since its creation, in addition to exercising oversight of the children's health insurance program operated along with Medicaid coverage for children as HealthWave, the Committee has spent a part of each interim on issues relating to the child welfare system, including foster care services and related mental health services and child-in-need-of-care issues.

In the 2004 Interim, the Joint Committee was asked by the Legislative Coordinating Council to include a study of programs for children age zero to five; several proposed changes in the child-in-need-of-care-laws previously identified by the Committee in 2003; and the expansion of HealthWave to include children prior to birth.

Children's Health Care Coverage

The statute that created the Joint Committee on Children's Issues is a part of the act that authorizes the state to participate in the State Children's Health Insurance program, sometimes referred to as SCHIP or as Title XXI, a reference to Title XXI of the Social Security Act under which federal cost sharing is authorized for health care for eligible children and youths who are not eligible for Medicaid. The Kansas statute also sets out criteria to be met in the design and operation of a Kansas program that meets the requirements for federal cost sharing under Title XXI. Among the statutory directives are to design the program as a health insurance program for children and to make it a "seamless" program that includes those children whose health benefits eligibility comes from Title XIX (Medicaid), as well as Title XXI. The statute also directs that all children and youths who receive health benefits are to be eligible for 12 months, regardless of whether eligibility is through Medicaid or SCHIP. A major difference between the programs is that Kansas chose to create a new program under Title XXI, rather than expand Medicaid coverage for children with Title XXI funds, as did some other states. As a result, the SCHIP portion of children's health insurance in Kansas is not an entitlement program as is Medicaid. The Title XXI program was named HealthWave when it was initiated in Kansas.

Subsequent to obtaining federal approvals and making program changes necessary to merge Title XIX (Medicaid) and Title XXI (SCHIP) health care coverage for children and youths under one managed care program, the merged programs have been operated under the name HealthWave, the term originally used to market the SCHIP portion of the program. Beginning in the fall of 2001, the Department of Social and Rehabilitation Services chose to begin enrolling certain Medicaid-eligible adults under the same managed care contract so that HealthWave, which is usually identified as health insurance for children and youths, now includes some adult Medicaid clients. For this reason, caution must be exercised in using HealthWave statistics for comparison purposes and to distinguish between the total caseload and that portion of the caseload that represents children and youths.

Committee Activity

The statute that authorizes SCHIP directs the Secretary of the Department of Social and Rehabilitation Services to report, both verbally and in writing, to the Joint Committee on Children's Issues prior to each legislative session "on the status of the Kansas insurance coverage for children program." Beginning in 1999, the Committee has devoted a part of its interim study time to the merged program known as HealthWave and has received some of the required reports from the Department of Social and Rehabilitation Services. In addition to information from the state agency, the Committee has received presentations from the entities that contract with the state to operate parts of HealthWave—FirstGuard Health Plan of Kansas, the managed care provider for most health services; Doral Dental, the current and immediate past contractor for dental services; MAXIMUS, the contractor for certain administrative services; and The Consortium, the contractor for mental health services.

At its July 12, 2004, meeting, the Committee reviewed action by the 2003 Legislature on provider rate increases for both Medicaid and SCHIP, and heard conferees representing the Department of Social and Rehabilitation Services and the HealthWave contractors. In addition, the Committee asked to have a report from Electronic Data Systems (EDS), the fiscal agent for Medicaid, on its response to problems with reimbursement for pharmacists and dentists that had arisen in conjunction with the change in fiscal contractors from Blue Cross-Blue Shield to EDS. A member of the staff of the Kansas Health Institute discussed the impact of SCHIP on Kansas children in reviewing a study done by the Institute. A representative of the Kansas Dental Association spoke to the Committee about efforts to encourage more licensed dentists to participate in both the Title XIX and Title XIX components of HealthWave. The Association recommended the current reimbursement system for dental services, under which Doral reimburses dentists for services provided to children and youths who are eligible for HealthWave under Title XXI and EDS processes claims for services for children and youths who are eligible under Title XIX, be combined in order that dentists need deal with only one claim procedure. The Committee heard a report from the Department of Social and Rehabilitation Services staff on the cost and potential of converting the Medicaid-eligible component of HealthWave children to a 12-month plastic identification card, rather than issuing paper cards each month to such children.

Conclusions and Recommendations

The Committee concluded that adequate continued federal funding for the SCHIP portion of HealthWave is a concern. Kansas has benefitted from a provision in the original Title XXI legislation that allows federal funds allocated to a state that are not fully utilized to be returned for reallocation to states that have used their entire allocation. Since the Kansas program was initiated very soon after federal funds became available and has enrolled more children and youths than anticipated, Kansas has been the beneficiary of reallocated funds. Should Congress change the federal law

relating to the reallocation of funds or take other action relating to changes in funding, the Kansas program would be forced to make program changes. Even with a continuation of the same federal policies regarding funding, the Kansas program may experience a shortfall due to continued growth in the number of children and youths enrolled.

The Committee remained concerned, as noted in its 2003 report, that Title XIX-eligible children continue to receive monthly paper cards indicating their HealthWave eligibility, while the Title XXI- eligible children and youths receive one plastic card that is good for 12 months. Since children and youths are eligible for health coverage for 12 consecutive months, regardless of how they enter HealthWave, the continued use of monthly paper eligibility identification for a portion of the participants represents an additional cost and creates an obvious distinction between Medicaid-eligible and SCHIP-eligible clients which may, as it has in the past, deter some parents from seeking health coverage for their children because they erroneously perceive Medicaid as a “welfare” program. In light of the legislative history of the children’s health insurance authorizing legislation, the Committee believes that as much as possible, there should be no obvious distinction as the route of entry into HealthWave.

The Committee noted it had earlier suggested that, regardless of the contract status of Medicaid-eligible adults in terms of managed care, there be different nomenclature applied to the adults covered under the contract in order that the term “HealthWave” be associated in outreach and the public’s mind only with health care coverage for children and youths. This distinction should be implemented in all phases of the program from the application process to the identification used to assure providers of eligibility.

Further, the Committee noted the same problems with the delivery of mental health services for HealthWave clients that were identified in conjunction with the foster care system also exist in HealthWave.

The Committee recommended continued monitoring of the availability of dental services for children and youths enrolled in HealthWave.

Child Welfare System

Since its creation, the Joint Committee has held hearings and sponsored roundtable discussions on various aspects of the private-public partnership through which services are provided for children and youths who are placed in the custody of the state, and other services directed toward preserving families and avoiding the removal of children and youths from the homes of birth parents.

Committee Activity

At its June 23, 2004, meeting, the Joint Committee heard a presentation from the Foster Youth Agenda, a group of current and previous foster children from Wyandotte County that directs its activities toward advocacy for children and youths in the foster care system toward assisting those currently in foster care to understand the system and helping them deal with issues that arise in foster care, and toward assisting persons who have aged out of foster care and those still in the system to understand their potential for becoming productive, successful adults. In 2004, the Foster Youth Agenda representatives told the Committee of both good and bad experiences they had as foster children and of an issue that had come to the attention of the group and for which they requested legislative assistance. The latter issue is that of receiving money from the estate of a birth

parent on the death of such parent. Several youths explained the problems they had encountered in trying to access such money. The representatives asked for assistance from the Legislature in receiving money from the estate of a deceased parent and suggested, in the case of younger children in foster care, such money be held for their use in making the transition from foster care to independent living.

In November, the Committee sponsored a roundtable discussion of mental health services for children and youths in the child welfare system. The roundtable participants included foster parents, providers of mental health services (both public and private), representatives of community mental health centers, birth parents of children and youths in foster care, and members of the Committee. The roundtable participants identified a number of issues related to the delivery of mental health services to children and their families or foster families as noted below.

- Discrimination against persons with disabilities exists in the child welfare system and proceedings under the child-in-need-of-care laws. Often persons with disabilities such as hearing or sight impairment are deemed by professionals as being unable to care for their own or foster children without regard to the wrap-around services that can be made available to them or their ability to utilize adaptive skills to provide child care.
- Issues relating to access to mental health services were identified, many of which had been brought to the attention of the Committee previously. Access issues include: the distance birth and foster parents have to travel to access services for children in their care, causing adults to miss a day of work and children to miss school; the lack of mental health specialities in some parts of the state and the failure to use private practice providers not associated with the contractor to provide such services; the need to open up the medical card to more providers for children with severe emotional disturbances; the hours that providers are available which make it impossible for birth parents to access court-ordered services they must complete in order for a child to be returned to the home; and delays in responding to referrals for services.
- Parents and foster parents are afraid to complain about providers or services because they believe services will be discontinued if they do so. Both biological and foster parents expressed concern about possible repercussions if they “make waves.”
- Medicaid in Kansas is “on an edge” making foster care contractors, the state agency, and mental health providers nervous about its future and impeding efforts to improve the system.

During several of its meetings in 2004, the Committee heard from representatives of the Department of Social and Rehabilitation Services on the development of new contracts for foster care, family preservation, and adoption beginning July 1, 2005.

Conclusions and Recommendations

As the Committee had noted in previous reports, there have been improvements in the public-private partnership through which children placed in the custody of the state are provided foster care and other services through entities that contract with the Department of Social and Rehabilitation Services. The 2004 study led the Committee to agree, as it did in 2003, that since the

foster care contractor system was initiated eight years ago, there has been considerable progress in defining responsibilities, in improving the level of services, and in accountability. There appears to be agreement that children in foster care are better served than was the case prior to the initiation of the present system. However, Committee study during the 2004 interim continued to identify unresolved issues, some of which can be addressed through “fine tuning” the contractor system and others that need to be addressed more aggressively by the state agency and contractors.

The Committee noted the 2004 Legislature had enacted a proviso to an appropriation bill that:

- Requested a study to be completed during the fiscal year ending June 30, 2005, of how other states address issues in their child welfare systems and the results thereof;
- Directed the Department of Social and Rehabilitation Services to hold focus groups around the state to address identified system issues; and
- Hold a one-day “summit” meeting that included representation of all mental health service providers.

The Committee anticipated the results of compliance with the proviso to be reported during 2005.

The Committee expressed concern that, in each of the past four years, the members had heard the same concerns and problems with the delivery of mental health services to children, youths, and their families and each year the Committee has been told the problems are being addressed. Statistics are presented showing how many hours of service had been provided and improvement in the time between requests for services and the initiation of services. Yet, each year, the Committee members hear from birth and foster families of the same bad experiences, the same service gaps, the same failures to address specific types of mental health issues, and the same problems with tailoring services and service availability to the needs of families in the child welfare system.

The Committee recommended members of The Consortium*, Department of Social and Rehabilitation Services staff, and representatives of providers in private practice sit down and develop plans for allowing private practitioners to be affiliated with community mental health centers in order that clients in foster care and HealthWave may access services not otherwise readily accessible. The parties were to respond during the legislative session.

Judicial Issues

For the past three years, the Joint Committee has sponsored a roundtable discussion involving district court and magistrate judges who deal either exclusively or part of their caseload with cases arising under the Child-in-Need-of-Care Code. In the past two years, the judges and Committee members have been joined by district and county attorneys who file petitions for hearings under the Code.

* There is a new foster care contractor for both HealthWave and the severely emotionally disturbed (SED) children in foster care beginning July 1, 2005.

Committee Activity

At its December 2, 2004, meeting, the Committee held its third roundtable on judicial and legal issues relating to children in need of care and legal issues relating to the child welfare system. Participants included judges representing judicial districts varying in size, caseload, and geographic location, several district and county attorneys, and Committee members.

Three of the judges had been participants in previous roundtables, indicating that they found them useful and were appreciative of an opportunity to have an open discussion with members of the Legislature on issues of concern to both the judiciary and legislators.

The roundtable participants discussed several issues that had been raised in previous roundtable discussions and other issues not previously raised. Among issues that had been raised previously, but not addressed, were the following.

- Amendment of KSA 35-1544, to allow an order for continuance and informal supervision prior to adjudication to be extended beyond the current one-year statutory limit if all parties agree. (An order for informal supervision allows the court to order the parties to secure services that will enable the family to deal with problems without a finding that the child or youth who is the subject of a petition is a child in need of care, with the parties remaining under the supervision of the court to insure compliance with the order. Such orders can be revoked at any time for cause, and the case proceed to a hearing and a finding on the petition.)
- Allowing the judge who has handled a case under the Child-in-Need-of-Care Code to handle an adoption or appointment of a permanent guardian when parental rights have been severed. The case would be moved to a court that handles probate matters following severance. (This is an issue in the larger judicial districts in which the court has divisions that handle specialized cases. In the smaller judicial districts, the same judge hears all types of cases.)
- Add a new definition to the Code that would allow a finding of “families in need of services.”
- Authorize the court to order a child to be placed in a secure facility prior to adjudication if the child has a history of “running” in order to prevent the child who is the subject of a petition from leaving an out-of-home placement between the hearing for temporary custody and the adjudication hearing.

In discussion of the above suggestions, it was noted that frequently, the birth parents desire to comply with a court order to participate in specific services in order to avoid removal of the child from the home or to facilitate return to the home, but are unable to comply due to their inability to access the court-ordered services that would insure the child can be safely reintegrated with the birth family. Inability to access services can arise because the services are not available in the community, because the family cannot afford to pay for the services, or because the hours that services are available place participation by parents in the position of jeopardizing their employment if they take time off to comply. In some instances, families are unable to comply with an order because they do not have the funds to do so. It was suggested that, if the parents are making a good faith effort to comply but are unable to do so within the current one-year limit on informal supervision, the court be allowed to extend the order for a specified additional time period to avoid the family disruption or hostility which a finding that the child is a child in need of care may engender.

In the case of transfer of a case to another court for an adoption proceeding or order for permanent guardianship, the transfer may result in the child remaining in foster care longer than necessary, because home studies that have been done in the first court are replicated and the judge who is familiar with the case and the child is not involved with the proceedings following the severance of parental rights.

Roundtable participants expressed the need for prevention, rather than allowing a family situation to escalate to the point that a petition to find a child to be a child in need of care is filed with the court. Several spoke to specific interventions that have been developed in the judicial districts which they serve to make intervention and prevention a priority. The suggestion that an alternative finding of a "family in need of services" that was offered relates to prioritizing family preservation.

The roundtable also discussed the reasons for delays in holding a hearing for temporary custody that may result in a child remaining out of his or her home for a longer period of time. It was noted that delays of 60 to 90 days can occur because a psychological evaluation of the child has not been completed or because the parents appear at the hearing without an attorney resulting in a postponement. In some instances, the court appoints an attorney due to the parents' inability to pay for representation. In more rural areas, where services are less available, there may be a delay in final disposition of the case because parents are unable to access services. Because court dockets are crowded, there may be a considerable delay in being able to reschedule a hearing.

There was a consensus that the sooner services for the child can be started, the better. For this reason, the court needs as much flexibility as possible, including the authority to extend orders for informal supervision and a procedure for learning in advance of a hearing whether the parents will need a court-appointed attorney.

There was also discussion of creating a system under which representation of children and youths in child-in-need-of-care cases is handled by a cadre of attorneys who are specialists in such representation and handle all such cases. The proposed system would resemble the public defender system used for the representation of defendants in adult criminal cases. The belief was expressed that such a system would enhance the level of representation of children and youths who are the subject of such cases.

Roundtable participants discussed developing a more specific description of truancy, noting that what constitutes truancy varies among school districts. It was suggested that daily reporting over a defined period of time would assist in such cases. Currently, truants are mandated to appear in court, with no other recourse.

The roundtable members were informed about two bill drafts requested by a member of the Committee and were asked to provide follow-up suggestions and recommendations.

Conclusions and Recommendations

The Committee decided to request the introduction of a bill to amend KSA 33-1544 to authorize the court to extend an order for continuance and informal supervision beyond 12 months if the child is remaining in the parental home and more evaluation or services are necessary, or if compliance with court-ordered services has not been achieved for good cause.

The Committee also recommended that statutory authority be given to enable the same judge that handled a child-in-need-of-care case to handle adoption or the appointment of a permanent guardian following an order for termination of parental rights. Such authority should be discretionary and allow each judicial district to make arrangements that are appropriate for the district.

The Committee agreed with conferees that delays and postponements would be reduced if the court were to be informed in advance of a hearing of the need for a court-appointed attorney to represent the parents. The members were also interested in the creation of a system of public representatives who serve as the attorneys representing children and youths in child-in-need of care cases. Such a system might expedite cases and result in better representation for children and youths. Judicial branch representatives were asked to provide information on how funding could be handled, to provide cost estimates, and to prepare a proposal for Committee consideration in the future.

The Committee recommended the issue of creating an alternative definition of a “family in need of services” be referred to the appropriate Committees of the Legislature.

The Committee recommended the issues relating to truancy be referred to the education committees, with a recommendation that judges be invited to participate in discussion of the issue and to work with the committees on the resolution.

A bill was requested to delete the expiration date in the legislation authorizing pilot projects, authorizing the presence of parent advocates in child-in-need-of-care cases. The bill also would delete references to pilot projects and extend the authorization for the presence of such persons statewide. The bill was to be introduced at the request of the Committee.

Programs for Children Age Zero to Five

In 2004, the Joint Committee on Children’s Issues was asked by the Legislative Coordinating Council to review programs in Kansas directed to children aged zero to five. The request was the result of a review of some programs by the Social Services subcommittee of the House Committee on Appropriations during the 2003 Session.

Committee Activity

At its June meeting, the Committee heard a staff presentation on programs that are currently in existence, heard several conferees, and discussed how to proceed with the study. In addition to scheduling a roundtable discussion on the topic, the Committee decided to request authority to create a five-member subcommittee to look at the programs identified by staff and to prioritize programs on which the Committee should concentrate its efforts. Authority for a subcommittee was granted, along with authorization for meeting dates. However, for a number of reasons, the subcommittee was not able to meet during the 2004 Interim.

The Committee did sponsor a roundtable discussion of early childhood programs. Participants included representatives of some state agencies that are concerned with children’s programs, program providers, advocacy groups, and some clients of early childhood education programs, as well as Committee members. The roundtable discussion identified the following issues.

- There are coordination and cooperation among programs serving children and their families at the local level.
- Needs exceed program capacity in many areas.

- There is a disparity in the availability of programs serving children age zero to five in the state, with some areas having few, if any, of the programs available in more populated areas.
- Programs have different criteria for eligibility resulting in the same child being eligible for some services, but not others, regardless of the need for the service.
- There are some programs that should be available regardless of financial need or the potential for abuse or neglect or other eligibility criteria. In general, quality child care should be available to all children under age five, regardless of where they live, the financial status of the family, or whether the child is at risk.
- There is some outcome measurement in place, but this is not a requirement for all programs.
- The state could provide assistance in the development of outcome measures since many small programs do not have the resources to do this.
- There is some agreement that the goal of programs that serve children age zero to five should be children who are physically, emotionally, and socially ready for success in school.
- Committee members raised questions about duplication, the appropriate governmental level to be assigned responsibility for assuring duplication does not occur, how programs are funded, and which programs must meet federal requirements.

Conclusions and Recommendations

The Committee concluded that a review of the major programs that serve preschool children needs to be conducted. Such a study should include a review of the persons served, the extent to which such programs are available, the funding sources, the type of outcome measurements in place, the extent to which programs may overlap, the extent to which coordination occurs at both the state and local level, and whether any programs should be discontinued or expanded. Because of time constraints and a reduced number of meeting days, the Committee was unable to carry out such a review during the 2004 Interim.

The Committee recommended the Joint Committee on Children's Issues spend a portion of its time on those programs serving children age zero to five selected for review by the Committee during the 2005 Interim. A through review may need to be undertaken over several years in order to cover the programs now in place.

Expanded HealthWave Services

The Joint Committee was asked by the Legislative Coordinating Council to consider the expansion of HealthWave to include services to neonates prior to birth.

Committee Activity

The Committee heard information presented by representatives of the Department of Social and Rehabilitation Services on in utero medical procedures that are reimbursed under Medicaid. In general, and pursuant to federal regulations, Medicaid reimburses only for those generally accepted and medically necessary procedures that pertain to the health of the pregnant female. The Committee asked that the agency return at a later time with information as to what in utero procedures other states cover and a list of generally accepted medical procedures that might improve the outcome of the fetus and result in a child who was generally healthier at the time of birth.

On the second day of the December meeting, the issue of what services are available and not available under HealthWave was continued. The scheduled conferee from the Department of Social and Rehabilitation Services was unable to be present, but a representative of the agency indicated they had been directed to provide a list of covered services and procedures, as well as services and procedures not now covered by HealthWave. In addition, the agency had been asked to report on what other states are doing, what procedures are considered experimental, and what type of procedures directed to improving outcomes for the fetus, rather than the pregnant woman, could be covered. It was noted the report would be forwarded to the Committee when it was completed.

A representative of FirstGuard answered questions about procedures covered by the managed care provider and clarified differences between Title XIX (Medicaid) and Title XXI services.

Committee Conclusions and Recommendations

The Committee asked that the report on prenatal care be provided to the Committee at the start of the 2005 Session.