



**Kansas Hospital**  
ASSOCIATION

# 2021 Legislative Preview

## **Kansas State Budget and Medicaid**

### **Kansas State Budget**

The 2020 Legislature passed a budget for the state fiscal year beginning July 1, 2020 of \$18.7 billion, with \$7.8 billion in state expenditures. The approved budget anticipated an ending balance of \$99.2 million in the state coffers at the end of the fiscal year on June 30, 2021 and healthier than expected revenues increased that amount to \$363.5 million in November of 2020. However, the anticipated ending balance for FY 2022 is shortfall of \$152.5 million, which will require adjustments to the state's budget. Health activities in the Kansas Department of Health and Environment account for \$3.96 billion, or 19.9 percent of the total state expenditures. State General Fund receipts posted on January 4, 2021 indicate that revenues for state fiscal year 2021, which began on July 1, 2020, are 1.8 percent higher than estimated by the Consensus Estimating Group in November of 2020.

### **KanCare Expansion**

Ahead of the 2020 legislative session, a compromise bill focused on expanding Medicaid was introduced. The bill aimed to cap premiums, exclude lockout provisions, implement a hospital surcharge to cover the cost of expansion, a reinsurance program and would have established a rural primary health center pilot initiative. The compromise approach received five days of hearings in the Senate Public Health and Welfare Committee but failed to pass out of committee. Following the lack of passage in committee, the compromise program's funding was later stricken from the proposed budget.

Discussion on the topic during 2021 is likely to be focused on how expansion could have been helpful throughout the COVID-19 response efforts and will be tied to other policy proposals such as medicinal marijuana.

### **Provider Assessment**

In 2020, the Kansas legislature approved language allowing flexibilities in the provider assessment and directed Kansas hospitals to develop a self-sustaining program. Kansas hospitals continue to work with the state to comply with the legislation to maximize the non-State General Fund revenue opportunities it offers. The Center for Medicare and Medicaid Services has not yet approved the program changes necessary to achieve the self-sustaining program directed by the legislature in 2020. During the CMS

review period, KHA will continue to support budget language allowing the state to provide coverage for any shortfalls in the program pending CMS approval.

### **COVID-19 Response**

With rising COVID-19 cases, the 2020 Kansas legislature voted to leave for First Adjournment on March 19, two weeks ahead of the scheduled date, and did not return to Topeka until May 21 for a 24-hour Sine Die session. The Sine Die session's focus was on appropriations, COVID-19 response, the Kansas Emergency Powers Act, the power of local health officials and liability protection for healthcare providers and the business community.

Following a veto of critical Sine Die legislation, Governor Kelly called a special session on June 3. The legislative work was focused on a compromise in House Bill 2016, which created and amended laws related to COVID-19 response efforts. With that legislation and portions of the regulatory relief set to expire on January 26, 2021, the start of the legislative session is likely to be focused on what continuations need to be included, and changes needed, that will be negotiated in ongoing response efforts.

KHA has analyzed the legislation and will be working with policymakers to ensure that those essential policies for regulatory relief in COVID-19 response efforts are included in any extension legislation.

### **Alternative Rural Model**

Kansas Hospital Association and its members have been crafting an alternative rural health model for Kansas communities. The result of this initiative is the Primary Health Center model. This model now referred to in federal legislation as the Rural Emergency Hospital, provides "a sustainable option for rural areas to provide preventive and primary care, chronic disease management and emergency services; serving as an access point, and coordinating care for the individual when higher levels of service are needed." The model would focus on traditional episodic care resources while assuring continued local access to primary care, emergency services, new transitional care service and a continued role as a driver and leader for health in the community. The legislation is needed to provide flexibility with Kansas statutes to allow for consistency in recognizing the Rural Emergency Hospital as defined in federal legislation.

### **Medicaid Rates for the Kansas Department of Corrections**

Legislation was considered in previous legislative sessions that would require health care providers to accept Medicaid reimbursement rates for services rendered to prisoners in the custody of the Kansas Department of Corrections and the Juvenile Justice Authority. This legislation's interest appeared after the Kansas Legislative Post Audit reported that some prisoners might be eligible for "temporary" Medicaid assistance.

### **Telehealth**

The Kansas Telemedicine Act is likely to be discussed during the upcoming legislative session as providers and patients have recognized the value in both flexibility and safety provided to patients. In addition, the United Methodist Health Ministry Fund has invested in a statewide telehealth survey program to help evaluate the use of telemedicine by both patients and providers relating to efficacy,

satisfaction and access. Changes to the Act relating to COVID-19 response, establishing a provider-patient relationship for specialty services, coordination of care with primary providers and payment parity will be key provisions.

## **Legal**

### **Caps on Non-Economic Damages**

On June 14, 2019, the Kansas Supreme Court issued its opinion in *Hillburn v. Enerpipe LTD*. In the *Hillburn* decision, the court struck down the statutory cap on non-economic damages in personal injury cases. Subsequently, a press release was shared by the Court that stated that the court struck down the cap in personal injury cases other than medical malpractice actions. During the 2020 session, KHA partnered with the Kansas Medical Society to share a cautionary perspective on the ruling.

### **Apology Legislation**

Legislation was introduced in previous legislative sessions that require medical care facilities to implement policies to disclose unanticipated outcomes to patients and their families. The bill loosely defines a number of levels of unanticipated outcomes and medical errors. In addition, it defines a minimum set of data that must be provided in the notification to the patient and their family. The facility must also provide the patient with an apology and an offer of support services when needed. A copy of the facility's disclosure policy would have to be filed with the Kansas Department of Health and Environment at the time the policy was implemented. Failure to disclose an error and failure to report such error to KDHE would result in a civil fine of \$10,000 per incident.

### **Liability of County Hospital Debt**

During the 2020 Legislative Session, a bill was introduced to absolve a county for any county hospital debts if that county hospital closed. Specifically, the proposed legislation stated, "the county shall not be liable for any debts of the county hospital other than general obligation bonds issued for the county hospital or for any other debt obligation where the county specifically has agreed to be liable for such debt." As cities and counties face concerns over the economic impact of COVID-19 on the communities, this issue may again become part of the local government funding discussion.

### **Involuntary Discharge or Transfer from an Adult Residential Facility**

Legislation has been pre-filed for the 2021 Session to limit involuntary discharges and transfers from adult residential facilities. The bill also sets notice requirements and other criteria for involuntary discharges.

### **Immunity from Civil Liability for Adult Care Homes Related to COVID-19**

The bill passed during the 2020 Special Session, HB 2016, did not provide immunity from civil liability to adult care homes as it did for other health care providers. It instead provided an affirmative defense to claims that might arise due to compliance with statute, rule or regulation and are acting in substantial compliance with public health directives.

## **Health Care Workforce**

### **Behavioral Health Care**

The availability of inpatient behavioral health services for voluntary and involuntary patients is crucial for the well-being of Kansans and providers seeking placement for psychiatric patients. The Kansas Legislature may again be presented with a proposal to allow the privatization of Osawatomie State Hospital. KHA urges the legislature to carefully weigh the pros and cons of privatizing Osawatomie State Hospital and provide adequate funding for current and future behavioral health treatment centers.

### **Certified Nurse Assistant Training**

At present, there are restrictions on how and where an individual may obtain training and clinical instruction to become a certified nurse assistant. According to Kansas regulations, clinical instruction may only occur in a simulated laboratory, an adult care home or a hospital on a long-term care unit. Hospitals that do not have a long-term care unit are not eligible to provide clinical instruction. Several KHA members have inquired into expanding the list of eligible locations to include hospitals. Legislation or regulations may be proposed to permit Kansas hospitals to educate and train certified nurse assistants.

### **Anesthesiologist Assistant Licensure Act**

The flexibilities allowed health care providers during the COVID-19 pandemic are likely to find their way into substantive legislation in 2021. Last session, a bill creating the Anesthesiologist Assistant Licensure Act was introduced. It required anesthesiologist assistants to be licensed by the Kansas Board of Healing Arts. The bill included definitions of terms, establishes licensure requirements, maximum license fees and causes for revoking, suspending, or limiting a license. The bill limited the number of anesthesiologist assistants an anesthesiologist could supervise at any time to four. The bill also established the Anesthesiologist Assistant Council within the Board of Healing Arts to advise the Board in carrying out the Act's provisions. This same or similar language is likely to be brought before the 2021 Legislature.

### **Licensure of Surgical Technologists**

Legislation may be considered that would require the Kansas State Board of Healing Arts to regulate health care professionals practicing as surgical technologists. In 2018, legislation was introduced that defined and listed qualifications for surgical technologists and required the Board to adopt rules and regulations to establish continuing education requirements for surgical technologists. The bill prohibited medical care facilities from employing surgical technologists who do not have specified qualifications. The bill also specified that the practice of the healing arts does not include surgical technologists.

### **Advanced Practice Registered Nurse Scope of Practice**

Over the last several sessions, bills have been introduced to make the following changes to the Nurse Practice Act:

- Any Advanced Practice Registered Nurse who has less than 4,000 hours of licensed active practice under a collaborative relationship with a physician would be required to complete a

transition program that consists of 4,000 hours within a three-year period while maintaining a collaborative relationship with a physician or a full practice APRN;

- APRN practice, when not in the transition program, would be independent and no longer require a collaborative agreement with a physician, and there would be no physician oversight;
- Proof of national certification would be required for APRN licensure and renewal;
- The Kansas State Board of Nursing would have to recognize and approve the national certifying organizations with certification standards that are equal to or greater than the Board's standards;
- The Kansas State Board of Nursing would have to include in rules and regulations the federal drug enforcement administration registration and monitor APRN compliance with this requirement;
- APRNs would be able to prescribe medications independently; and
- APRNs would have to maintain malpractice insurance coverage through the Health Care Stabilization Fund.

Some or all of these provisions will likely be brought before the 2021 Legislature.

### **Assault of a Health Care Provider**

Assault on health care providers at work continues to be a concern for Kansas hospitals. In 2020, legislation was introduced to increase the penalty for assault or battery of a health care provider. It created a felony for anyone convicted of aggravated assault of a health care provider and created a misdemeanor for assault. Included in the definition of a health care provider was a person performing services for a medical care facility licensed under KSA 65-425 et seq., but who does not receive compensation, either directly or indirectly, for those services. Legislation introduced in 2021 may cover individuals licensed from the Kansas State Board of Healing Arts and the Kansas State Board of Nursing.

### **Workers Compensation**

Several bills have been pre-filed for the 2021 Session in relation to workers compensation. Those bills address the standard applied to whether or not an accident at work caused the injury at issue, instances when workers compensation benefits are disallowed and changes to the workers compensation law presumption of disqualifying drug impairment.

### **Minimum Wage**

Several bills have been pre-filed to address increasing the minimum wage in the state at varying levels.

## **Miscellaneous**

### **Opioid Misuse**

The use of opioids can be beneficial for managing pain, particularly with cancer and palliative care and for acute pain associated with injuries or surgery. The use of opioids may also be appropriate for chronic, non-cancer-related pain. Legislation will likely be introduced addressing opioid misuse. KHA encourages state policymakers to support provider-led initiatives to address opioid misuse in Kansas.

### **340B Drug Pricing Program**

The 340B Drug Pricing Program has been around for more than 20 years. As part of the Affordable Care Act, additional entities became eligible to participate in the program. At present, Kansas has more than 80 hospitals participating in the 340B Drug Pricing Program. Some states have sought legislation to provide protections to participating entities to protect network participation and pricing. Similar legislation may be proposed in Kansas.

### **Medical Cannabis**

Medical cannabis has been a frequent topic of discussion at the statehouse. Last session, a bill was introduced to enact the Veterans First Medical Cannabis Act by permitting a health care provider to issue a written certification to a patient with valid health care provider-patient relationship. It established the Cannabis Regulatory Commission within the Kansas Department of Revenue, tasked with adopting rules and regulations pertaining to medical cannabis growers, distributors, and medical use by patients. The Kansas Department of Health and Environment would have been required to establish a process to certify eligibility for applicants to receive cannabis products based upon information obtained from health care providers, and would issue identification cards, with a maximum fee of \$50, to individuals with qualified medical needs so they can receive and possess the appropriate cannabis product. Similar legislation is likely during the 2021 Session.

### **Anti-Vaccination Movement**

Health organizations, physicians, and scientists agree that vaccines are safe and effective. Despite this, there is a growing movement of parents and caregivers choosing not to vaccinate their children. In 2019, a grassroots effort was started to advocate against requirements for child vaccinations. The legislation is expected to be introduced that would provide exemptions regarding vaccination requirements in light of the ongoing effort to vaccinate the public for COVID-19.

### **Tobacco 21 Initiative**

Tobacco 21 is a national initiative to raise the minimum legal sales age for tobacco products to 21. Currently, 19 states have raised the age limit to purchase tobacco products, including Arkansas, Nevada, and Ohio. Often, the Tobacco 21 policies include the following provisions:

- Define tobacco products to include current and future tobacco products, including e-cigarettes;
- Prohibit the sale of tobacco products to persons under the age of 21;
- Require the tobacco retailer or their employee to verify the age of the purchaser before the sale;
- Require tobacco retailers to post signs stating that sales to persons under the age of 21 are prohibited;
- Designate an enforcement agency and establish a clear enforcement protocol;
- Create a tobacco retail licensing program if the jurisdiction has the authority to do so under state law;
- Dedicate funding to fully cover enforcement costs, either through licensing fees or as a provision in a state statute or local ordinance;

- Provide authority for the state, county, or municipality to inspect tobacco retailers for compliance with MLSA 21 and a mandated minimum number of annual compliance checks for every retail tobacco establishment;
- Provide penalties focused on the tobacco retailer or licensee rather than the youth purchaser or non-management employee. This would mean eliminating Purchase, Use, and Possession (PUP) penalties where they exist in current tobacco sales laws or policies;
- Establish a civil penalty structure for violations rather than a criminal penalty structure to avoid unintended consequences that disproportionately impact marginalized communities and undermine the public health benefits of the policy; and
- Where state legislation is pursued, ensure that local jurisdictions have the authority to enact more stringent regulations for tobacco products than state or federal law.

### **Tobacco Tax Increase**

The legislation is likely to be introduced to increase the cigarette tax from \$1.79 per package to at least \$2.79 per package.

### **Uniform Anatomical Gift Act**

A Senate bill introduced in 2019 amends the Uniform Anatomical Gift Act by providing that any citizen or resident of the State of Kansas would be authorized to make an anatomical gift. Further, the Act would give the individual the inherent right to decide whether to make an anatomical gift and about the conditions of use of the gift of all or part of the donor's body for transplantation, therapy, research education. The bill would prohibit discrimination against these rights of decisions. The Kansas Department of Health and Environment would be required to adopt rules and regulations to determine the process for such anatomical gifts. Upon adopting the rules and regulations, the Kansas Division of Vehicles would notify any individual regarding organ donations.

### **Rural Opportunity Zone Program Expansion and Extension**

In 2020, Senate Bill 135 aimed to expand the list of eligible counties for participation in the Rural Opportunity Zone Program to include the counties of Atchison, Cowley, Crawford, Dickinson, Ford, Franklin, Miami and Pottawatomie. Currently, no resident can enroll or participate in the Rural Opportunity Zone Repayment Program after June 30, 2021.

### **Disclosure of Medical Facility Fees**

Legislation may be considered that requires hospitals or health systems that charge facility fees for outpatient services or diagnostic testing where a professional fee also is expected to be charged to provide the patient with a written notice containing specific information. The information required in the notification would include a statement that fees in addition to professional fees will be charged, an estimate of the patient's potential financial liability and advise that the patient should contact their health insurer for additional information.

### **Right to Shop**

Legislation may be considered that requires Kansas insurance carriers to offer incentives for insureds to compare health care services and split potential saved costs.

### **Mandatory Enrollment in the Prescription Monitoring Program**

Legislation was introduced in past sessions that requires any prescriber, as defined in KSA 65-1626, who holds a current registration issued by the drug enforcement agency and prescribes controlled substances to register with KTRACS. Previous legislation also would require practicing pharmacists to register for the KTRACS program. The Kansas Prescription Monitoring Program, KTRACS, has been around for several years and is instrumental in monitoring the usage of controlled substances in Kansas. Other changes included in previous legislation would allow the Kansas Board of Pharmacy to provide data from the KTRACS program to individuals under an administrative subpoena or those operating a provider or pharmacist impaired provider program. The legislation would also require the prescription monitoring program advisory committee to develop written criteria to monitor and track activities of concern and provide regular updates to the legislature.

### **Antipsychotic Medications**

Legislation has been considered in the past requiring a healthcare prescriber to obtain informed consent prior to administering an antipsychotic medication with a boxed warning under 21 CFR 201.57 to an adult care home resident. Under the proposed legislation, prescribers would be required to obtain written informed consent from the resident or, if the resident is incapacitated, a person acting on behalf of the resident on a form provided by the Kansas Department for Aging Disability Services. Previous bill versions have included an emergency clause that sidesteps the written informed consent if the resident is at significant risk of physical or emotional harm or puts others at risk.