

PRELIMINARY SUMMARY OF LEGISLATION 2017 KANSAS LEGISLATURE



This publication contains summaries of selected bills enacted by the Legislature as of 12:00 noon, March 31, 2017. Bills that have not yet been signed by the Governor are included.

A supplement containing summaries of major bills which were enacted after that date will be distributed during the week of April 10, 2017. An additional supplement will be mailed after the wrap-up session in May.

Highlights, a summary of major legislation, will be prepared after the Legislature adjourns and will be mailed to legislators as soon as possible. *The Summary of Legislation*, which accounts for all bills enacted by the 2017 Legislature, will be distributed at a later date.

These documents are available on the Kansas Legislative Research Department's website: <http://www.kslegislature.org/klrd> (under "Summaries").

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AGRICULTURE AND NATURAL RESOURCES

Public Wholesale Water Supply Districts; HB 2066

HB 2066 requires the Secretary of Transportation to reimburse a public wholesale water supply district for the cost to relocate water pipelines in a state highway right-of-way, excluding those water lines that cross a highway and have 90 percent or more of its water lines on private right-of-way.

Motor Fuel Service Companies; HB 2136

HB 2136 establishes maximum license application fees for each service company that works with motor fuel dispensing devices. Beginning with the 2017 license year, the Secretary of Agriculture is authorized, by order, to set the fees with the following maximum amounts:

- Commencing July 1, 2017, the maximum amount shall be \$100;
- Commencing July 1, 2019, the maximum amount shall be \$110;
- Commencing July 1, 2021, the maximum amount shall be \$120; and
- Commencing July 1, 2023, the maximum amount shall be \$130.

The bill also changes the continuing education requirements for licensed fuel service technical representatives (technical representative). Beginning on July 1, 2017, each technical representative who has had ten years of continuous licensure with no administrative enforcement actions is eligible to obtain a three-year license. The bill establishes the three-year license fee at an amount not to exceed \$300 and requires those technical representatives to complete continuing education at a frequency not exceeding once every three years.

Additionally, the bill authorizes the Secretary of Agriculture to promulgate rules and regulations requiring technical representatives in violation of this legislation or rules and regulations to seek renewal of a license on an annual basis, as well as to establish criteria for reinstatement of eligibility for the three-year license.

Finally, the bill gives authority to the Kansas Department of Agriculture to charge a fee to the attendees of continuing education seminars in an amount not more than is necessary to cover the expenses incurred by the agency.

The bill takes effect upon publication in the *Kansas Register*.

Administrative Appeals Process for Certain Fertilizer and Water Orders; HB 2312

HB 2312 makes several changes to existing law regarding the administrative appeals process for certain fertilizer and water orders.

The bill requires notice be provided and that there is an opportunity for a hearing under the Kansas Administrative Procedure Act before final action may be taken on certain fertilizer orders (*i.e.* custom blending of fertilizers, ammonium nitrate dealers, and fertilizer brand registration).

In addition, the bill codifies current rules and regulations that allow for review of water orders by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

The bill also clarifies current law that allows for the Secretary of Agriculture to review water orders and establishes a uniform administrative appeals process for water orders.

Finally, the bill repeals KSA 82a-1902, which currently requires the Department of Administration to contract with or employ administrative law judges, court reporters, and other personnel to conduct the proceedings that occur when an order of the Chief Engineer is reviewed.

ELECTIONS AND ETHICS

County-level Canvass Date for Congressional Special Elections; SB 43

SB 43 amends provisions recently enacted in 2017 HB 2017 in regard to filling vacancies in the U.S. House of Representatives. The bill changes the county-level canvass date for these congressional elections to coincide with the date for other county-level canvasses by deleting the current requirement to hold the congressional election county canvass on the third day following the election and replacing it with a requirement to follow the provisions of KSA 2016 Supp. 25-3104. The bill makes other adjustments, including moving the state canvass date from the sixth day to the third day following the county-level canvass. The bill also makes technical changes.

The bill takes effect upon publication in the *Kansas Register*.

Filling Congressional Vacancies; HB 2017

HB 2017 amends KSA Chapter 25, Article 35, dealing with filling congressional vacancies.

The bill changes the minimum number of signatures of registered voters required for an independent candidate to petition for nomination to fill a congressional vacancy to 3,000. Previous law required an independent candidate to submit a number of signatures equal to 4 percent of qualified voters in the congressional district. The bill states such petitions may not be circulated for signatures until after the date of the election is proclaimed by the Governor.

The bill changes the requirements for which political parties are required to call a district convention in the case of a congressional vacancy. The bill requires each political party that has obtained official recognition to call a convention. Under previous law, each political party whose candidate for governor received not less than 5 percent of the votes cast at the next preceding election of the governor was required to call a district convention in the event of a vacancy.

The bill adjusts related time frames to conform to federal overseas voter ballot requirements and makes additional conforming changes, as outlined below:

- Modifies the time frame within which the election must be held to fill a congressional vacancy, from 45 to 60 days to 75 to 90 days after the Governor proclaims the date of the election (KSA 25-3502);
- Modifies the time frame within which a congressional district convention of the district party of each officially recognized political party must be called by the state chairperson of each such party, from “at least 25 days” after the proclamation is issued to between 15 and 25 days after issuance of the proclamation (KSA 25-3504);
- Moves the day on which the county boards of canvassers must meet, from the second to the third day following the election;

- Moves the day on which the state board of canvassers must meet, from the fourth to the sixth day following the election; and
- Makes additional technical and conforming changes.

The provisions of the bill take effect January 1, 2017, and the bill takes effect upon publication in the *Kansas Register*.

EMPLOYERS AND EMPLOYEES

Unemployment Insurance Benefits and Separation Pay; HB 2329

HB 2329 revises a provision of Kansas Employment Security Law, commonly referred to as unemployment insurance (UI), pertaining to the distribution of benefits when an individual receives a post-employment separation payment. Under current law, weekly UI benefits stop until separation pay has been exhausted, usually at the rate of the individual's normal weekly wage. The cessation of benefits previously began a week after separation from employment. Under the bill, the start date of cessation begins a week after separation pay has been paid. Individuals whose benefits stopped for 52 weeks or more due to separation pay are entitled to a new benefit year, which is calculated using the employment base period of the prior claim.

FEDERAL AND STATE AFFAIRS

Federal Regulations—Federal REINS (Regulation from the Executive in Need of Scrutiny [HR 26]) Act; HCR 5003

HCR 5003 urges Congress to propose the Regulation Freedom Amendment to the *U.S. Constitution*. The proposed language of the Regulation Freedom Amendment would be as follows:

Whenever one quarter of the members of the United States House of Representatives or the United States Senate transmits to the President their written declaration of opposition to a proposed federal regulation, it shall require a majority vote of the House of Representatives and the Senate to adopt that regulation.

The concurrent resolution specifies the Kansas Secretary of State must send an enrolled copy of the resolution to each member of the Kansas congressional delegation and work with Kansas' legislative leaders to send a copy to the legislative leaders in other states, including the speaker of the house and the president of the senate of every state legislature in the United States.

FINANCIAL INSTITUTIONS

State Banking Board Appointments; SB 66

SB 66 amends provisions relating to the terms of service for members of the State Banking Board (Board). The bill specifies a Board member cannot serve more than two full three-year terms. In the event of vacancy on the Board, the bill requires the Governor to appoint a new member of the same qualification to fill the unexpired term, but this mid-term appointment of a new Board member will not be considered a full term for purposes of the two-term limit. The bill also deletes language relating to the original appointment of Board members.

Reciprocity for Kansas Trust Companies and Bank Trust Departments; HB 2110

HB 2110 amends a provision governing the ability of an out-of-state trust company or trust department of a bank to establish a branch facility in Kansas.

Under current law, such out-of-state entities are prohibited from establishing or operating a trust facility in Kansas unless the laws of the state where the entity is located reciprocally authorize a Kansas-chartered trust company, trust department of a bank, corporation, or other such business entity (entity) to establish or operate a trust facility within that state. The out-of-state trust entity also must provide proof that its home state has reciprocity with Kansas.

The bill clarifies this prohibition, by deleting the terms “reciprocally” and “reciprocity,” and instead provides that the proof provided by the home state demonstrates the home state (of the out-of-state entity) authorizes a Kansas-chartered entity to establish or authorize a trust facility within that state.

The bill takes effect upon publication in the *Kansas Register*.

HEALTH

Medical Student Loan Act and Medical Residency Bridging Program—Eligible Practice Areas; Restrictions on Outsourcing and Privatization; SB 32

SB 32 amends the Medical Student Loan Act (Act) and the statute establishing the Kansas Medical Residency Bridging Program (Program), and restricts the outsourcing and privatization of certain state operations and facilities.

Medical Student Loan Act

The bill amends the Act by expanding the eligible practice areas loan recipients may engage in to meet their loan obligations under the Act. The bill adds general psychiatry and child psychiatry to the definitions of “approved postgraduate residency training program” and “service commitment area.” The bill also allows a loan recipient under the Act to meet the loan obligation to engage in the full-time practice of medicine and surgery in a service commitment area if the person served as a full-time faculty member of the University of Kansas School of Medicine (KUMC) in general or child psychiatry. Additionally, the bill allows a loan recipient to satisfy the obligation to engage in the full-time practice of medicine and surgery in a service commitment area by performing at least 100 hours per month of on-site mental health care at a medical facility, a community mental health center, Larned State Hospital (LSH), Osawatomie State Hospital (OSH), or any facility that provides mental health services and is operated by a state agency.

The bill requires, subject to appropriations, KUMC to enter into medical student loan agreements with six individuals who commit to satisfying their loan obligations by practicing or teaching, as described above, general or child psychiatry. The bill creates the Psychiatry Medical Loan Repayment Fund in the State Treasury, and all moneys credited to the Fund shall be expended only for expenses associated with general or child psychiatry students under the Act. The bill specifies that no moneys shall be transferred from the Comprehensive Grant Program account of the State Board of Regents to the Medical Loan Repayment Fund or the Psychiatry Medical Loan Repayment Fund or expended for any related purposes.

Kansas Medical Residency Bridging Program

The bill amends the statute establishing the Program by expanding the eligible practice areas. The bill adds persons in a mental health care residency training program in general or child psychiatry to the list of persons with whom KUMC may enter into residency bridging loan agreements.

The bill requires, subject to appropriations, KUMC to enter into residency bridging loan agreements with three medical residents training in general or child psychiatry. The bill creates the Rural Health Bridging Psychiatry Fund in the State Treasury, and all moneys credited to the Fund shall be expended only for expenses associated with general psychiatry or child psychiatry residents under the Program. The bill specifies that no moneys shall be transferred from the Comprehensive Grant Program account of the State Board of Regents to the Rural Health Bridging Psychiatry Fund or expended for any related purposes.

Restrictions on Outsourcing and Privatization of Certain State Operations and Facilities

The bill prohibits the outsourcing or privatization of any operation or facility of LSH, OSH, or any facility that provides mental health services and is operated by a state agency, including, but not limited to, any action to transfer all or any part of the rated bed capacity at LSH or OSH without specific authorization by the Legislature. Additionally, the Secretary for Aging and Disability Services shall not be allowed to transfer or assign any person admitted to an institution for the purpose of circumventing the outsourcing or privatization restrictions imposed in KSA 2016 Supp. 75-3373.

The bill takes effect upon publication in the *Kansas Register*.

Kansas Lay Caregiver Act; SB 68

SB 68 creates the Kansas Lay Caregiver Act (Act). The bill includes the following definitions:

- “Aftercare” means assistance that is provided by a caregiver to an eligible patient after discharge of the patient from the hospital, is related to the condition of the patient at the time of discharge, and does not require professional licensure in order to perform the assistance;
- “Caregiver” means an individual who is 16 years of age or older, has a significant relationship with the patient, provides aftercare to an individual, and is identified by the patient or the patient’s legal guardian as a person who is involved with the healthcare of the patient;
- “Discharge” means the release of a patient from hospital care to the residence or temporary residence of the patient following an inpatient admission;
- “Legal guardian” means an individual who is appointed by a court to make decisions regarding the healthcare of a patient; and
- “Residence” means the dwelling the patient considers to be the home of the patient, but does not include any rehabilitative facility, hospital, nursing home, assisted living facility, group home, or other healthcare facility licensed by the Kansas Department of Health and Environment (KDHE).

A hospital is required to provide each patient, or the patient’s legal guardian, with an opportunity to designate a caregiver following the patient’s admission into the hospital and prior to the discharge of the patient. Prior to discharge, a patient is allowed to change the designated caregiver; however, a patient is not required to designate a caregiver. The bill does not require an individual designated as a caregiver by a patient to accept the role of caregiver.

A hospital is deemed to have complied in full with the Act if the patient or the patient’s legal guardian:

- Declines to designate a caregiver when given the opportunity; or

- Objects to the disclosure of medical information to the caregiver regarding the patient.

If a patient has designated a caregiver, the hospital is required to notify the designated caregiver concerning the discharge or transfer of the patient to another licensed facility as soon as practicable prior to discharge or transfer. In the event the hospital is unable to contact the designated caregiver, such lack of contact shall not interfere with the medical care or appropriate discharge provided to the patient. As soon as practicable prior to the discharge of the patient, the hospital is required to attempt to consult with the designated caregiver to prepare the caregiver to provide aftercare for the patient. The hospital is required to provide the patient and the caregiver an opportunity to ask questions during the consultation.

At or before discharge, the hospital is required to:

- Provide the caregiver with any discharge instructions for the patient; and
- Educate the caregiver concerning the aftercare of the patient in a manner consistent with current accepted practices, based on learning needs of the caregiver, and that allows the caregiver the opportunity to ask questions about aftercare.

In the event the hospital is unable to contact the designated caregiver, such lack of contact shall not interfere with, delay, or otherwise affect an appropriate discharge of the patient.

The bill does not:

- Confer upon a caregiver any authority to make healthcare decisions on behalf of the patient;
- Create a private right of action against a hospital, hospital employee, or duly authorized agent of the hospital for any acts or omissions, including by a caregiver;
- Remove the obligation of a third-party payer to cover a healthcare item or service that the third-party payer is obligated to provide to a patient under the terms of a valid agreement; or
- Provide grounds for any adverse licensure action or other disciplinary action against any hospital by KDHE, against any licensee of the State Board of Healing Arts, or against any licensee of the Board of Nursing.

The Act takes effect July 1, 2018.

Simon's Law—Certain Physician Orders for Minors; Sub. for SB 85

Sub. for SB 85 creates Simon's Law. Specifically, the bill addresses instituting do-not-resuscitate (DNR) and similar physician's orders, petitions to enjoin violations of the bill and

resolve parental disagreements, required disclosure of policies by facilities and physicians, and law concerning emergency health care.

Instituting Do-Not-Resuscitate Orders, Similar Orders

The bill provides that a DNR or similar physician's order can not be instituted for an unemancipated minor unless at least one parent or legal guardian of the minor has been informed, orally and in writing, of the intent to institute the order. A reasonable attempt to inform the other parent must be made if the other parent is reasonably available and has custodial or visitation rights. The information does not need to be provided in writing if, in reasonable medical judgment, the urgency of the decision requires reliance on providing the information orally.

The bill provides that either parent or the unemancipated minor's guardian may refuse consent for a DNR or similar order, either orally or in writing. Further, the bill provides that no DNR or similar order can be instituted, orally or in writing, if there is a refusal of consent.

The bill requires the following information to be contemporaneously recorded in the patient's medical record:

- By whom and to whom the information was given;
- Date and time information was provided;
- Whether the information was provided in writing;
- The nature of attempts to inform the other parent or the reason for not attempting to notify the other parent if only one parent has been informed; and
- Any refusal of consent to a DNR or similar order by parents or legal guardians.

Petitions to Enjoin Violations of Bill, Parental Disagreement

The bill allows either parent to petition the district court of the county in which the patient resides or is receiving treatment for an order enjoining violations or threatened violations of the provisions of the bill or to resolve a dispute over whether to institute or revoke a DNR or similar order. Upon receiving such a petition, the district court must issue an order fixing the date, time, and place of hearing on the petition. Notice of the hearing will be given at the district court's direction. A preliminary hearing can be held without notice if the court determines it necessary to prevent imminent danger to the child's life. The hearing can be conducted in a courtroom, treatment facility, or some other suitable place at the court's discretion.

If the parents of a minor patient disagree on whether to institute or revoke a DNR or similar order, the district court must resolve the conflict based on a presumption in favor of providing cardio-pulmonary resuscitation. Additionally, in the event the parents of a minor patient disagree, a DNR or similar order can not be implemented until there is a final determination of the court proceedings, including any appeals.

Disclosure of Policies by Facilities and Physicians

The bill provides that, upon request of patients, prospective patients, residents, and prospective residents, health care facilities, nursing homes, and physicians must disclose, in writing, certain policies of the facility or agency, including those relating to:

- A patient or resident;
- The services a patient or resident may receive involving resuscitation or life-sustaining measures; and
- Treatments deemed non-beneficial, ineffective, futile, or inappropriate.

The bill specifies there is no requirement that a health care facility, nursing home, or physician have a written policy relating to or involving resuscitation, life-sustaining, or non-beneficial treatment for unemancipated minor patients or adult patients, residents, or wards.

Relationship to Other Law Concerning Emergency Health Care

The provisions of the bill can not be construed to alter or supersede law concerning emergency care by health care providers found in KSA 2016 Supp. 65-2891.

Home Health Agencies; SB 154

SB 154 amends law concerning home health agencies, including licensure and services. The bill also adds and amends definitions applicable to home health agencies and adds to and clarifies those excluded from the home health agency licensure requirement. Further, the bill reconciles current statutes with certain provisions in Executive Reorganization Order No. 41, specifically the transfer of health occupations credentialing from the Kansas Department of Health and Environment (KDHE) to the Kansas Department for Aging and Disability Services (KDADS).

Definitions

The bill adds the following definitions to law concerning home health agencies:

- “Attendant care services” means basic and ancillary services provided under home and community based services (HCBS) waiver programs;
- “Supportive care services” means services that do not require supervision by a health care professional, such as a physician assistant or registered nurse, to provide assistance with activities of daily living that the consumer could perform if such consumer was physically capable, including, but not limited to, bathing, dressing, eating, medication reminders, transferring, walking, mobility, toileting, and continence care, provided in the consumer’s temporary or permanent place of residence so the consumer can remain safely and comfortably in the consumer’s temporary or permanent place of residence. No home health services are included in supportive care services; and

- “Supportive care worker” means an employee of a home health agency who provides supportive care services.

The definition for “home health agency” is amended to add “supportive care services” and “attendant care services” as follows: a public or private agency or organization or a subdivision or subunit of such agency or organization that provides for a fee one or more home health services, supportive care services, or attendant care services provided under HCBS waiver programs at the residence of a patient but does not include local health departments not federally certified home health agencies, durable medical equipment companies that provide home health services by use of specialized equipment, independent living agencies, KDADS, and KDHE.

The definition of “home health aide” is amended to insert “supportive care services” and “certified nurse aide” and to clarify requirements as follows: an employee of a home health agency who is a certified nurse aide, is in good standing on the public nurse aide registry maintained by KDADS, and has completed a 20-hour home health aide course approved by KDADS who assists, under registered nurse supervision, in the provision of home health services and who provides assigned health care to patients but shall not include employees of a home health agency providing only supportive care services or attendant care services.

Licensure

The bill requires any agency, including any Medicare or Medicaid provider, that provides one or more of the home health services, supportive care services, or attendant care services specified in the bill, or that holds itself out as providing one or more of such services or as a home health agency, to be licensed. Any agency found to be providing services meeting the definition of a home health agency without a license shall be notified of the agency’s need to become licensed. The agency shall be offered a 60-day temporary license to continue operating during the pendency of an application for licensure. If the agency fails to obtain licensure within 30 calendar days, the Secretary for Aging and Disability Services (Secretary) shall assess a fine on the agency. The Secretary is not allowed to grant a temporary license to any unlicensed agency that is providing services in a way that presents imminent harm to the public.

Fee

Law requiring a fee to accompany an application for licensure by a home health agency is changed to specify the fee shall be based on the unduplicated number of patients admitted to a health home during the prior licensure year.

Cancellation

The bill requires a home health agency to file its annual report and pay the annual fee within 30 days of the licensure renewal expiration date to avoid automatic licensure cancellation.

New Owner

Law requiring a new owner of a home health agency to file an application for licensure with the Secretary 90 days prior to the effective date of the sale, transfer, or change in corporate status is changed to eliminate the 90-day requirement.

Exclusions

The bill adds to and clarifies those excluded from home health agency licensure requirements as follows:

- Individuals who personally provide attendant care services if such persons are not under the direct control and doing work for or employed by any business entity;
- Individuals who personally provide one or more home health or attendant care services, if such individuals are employed in accordance with a self-directed care arrangement; or
- Outpatient physical therapy agencies that are certified to participate in the Medicare program and that provide services only to outpatient physical therapy patients.

Training

The bill allows the Secretary to require an employee of a home health agency to complete a course of instruction and satisfactorily pass a related examination within 90 days of employment as a condition of continued employment. The bill deletes a provision stating the Secretary shall not be allowed to require as a condition to employment or continued employment by a home health agency that persons providing only attendant care services as an employee of a home health agency complete any course of instruction or pass any examination.

Complaints

The bill allows complaints against a home health agency to be made through a hotline maintained by KDADS and eliminates the requirement a complaint be made in writing.

Medicaid Expansion—KanCare Bridge to a Healthy Kansas Program; Reimbursement for Clubhouse Rehabilitation Services; HB 2044

HB 2044* establishes the KanCare Bridge to a Healthy Kansas Program (Program). The Kansas Department of Health and Environment (KDHE) is required to administer and promote the Program and provide information to potential eligible individuals who live in medically underserved areas of the state. The bill modifies the eligibility requirements for the Kansas Medical Assistance Program, on or after January 1, 2018, to include any non-pregnant adult under 65 years of age who is a U.S. citizen or legal resident and who has been a resident of Kansas for at least 12 months, whose income does not exceed 133 percent of the federal poverty level (FPL), to the extent allowed under the federal Social Security Act as it exists on the effective date of the bill, and subject to the requirements of the Program. The bill requires referral to workforce training programs, creates a Program Drug Rebate Fund and a Program Privilege Fee Fund, creates a health insurance coverage premium assistance program, addresses federal denial and approval of financial participation, requires submission of a waiver request to the federal government, requires various Program reports to the Legislature, and creates a Program Working Group.

** This bill was vetoed by the Governor on Thursday, March 30. At the time of publication, the veto message resided with the House of Representatives for consideration (a motion to table consideration of the veto override was adopted).*

Additionally, the bill requires the Secretary of Health and Environment (Secretary) to include reimbursement for clubhouse rehabilitation services within the Medicaid program on and after the effective date of the bill, subject to the limits of appropriations. The bill authorizes the Secretary to enter into contracts with certified clubhouse providers and requires the contracts be entered into by July 1, 2017, with an expiration date of July 1, 2020. The bill limits reimbursement under the contracts to \$1.0 million for any one fiscal year. The bill defines “clubhouse” and requires a report be made to select legislative committees.

The bill takes effect upon publication in the *Kansas Register*.

KanCare Bridge to a Healthy Kansas Program

Workforce Training Program Referral

The bill includes provisions for the referral of certain non-disabled adults to the state’s existing workforce training programs and work search resources, as outlined in the bill. The bill provides exemptions from the referral for:

- Full-time students for each year they are enrolled in a postsecondary education institution or technical school; and
- At the discretion of KDHE, for parents with minor children in the home.

Program Application

The bill requires the Program application to screen applicants for education status and employment status, and requires applicants to acknowledge KDHE referrals to workforce training programs and work search resources.

Health Insurance Coverage Premium Assistance Program

The bill allows KDHE to establish a health insurance coverage premium assistance program for individuals with an annual household income of not more than 133 percent of FPL or for individuals eligible for health insurance coverage through an employer but who cannot afford the premiums.

A premium assistance program must contain eligibility requirements similar to those for the Program and provide that an individual’s payment for a health insurance coverage premium cannot exceed 2 percent of the individual’s annual income.

Federal Denial of Approval and Financial Participation

If a denial of federal approval and federal financial participation that applies to any part of the Program occurs, KDHE is not prohibited from implementing any other part of the program that is federally approved for federal financial participation or does not require federal approval or federal financial participation—except, if at any point the federal match for non-pregnant adults under 65 years of age and with income not exceeding 133 percent of FPL is less than the

enhanced federal match rate under the federal Health Care and Education Reconciliation Act of 2010, as it exists on the effective date of this bill, KDHE is required to terminate the Program over a 12-month period, beginning on the first day the federal medical assistance percentage falls below such amount.

KDHE is allowed to make changes to the Program if required by the U.S. Department of Health and Human Services (HHS) or federal statute or regulation.

Waiver Request

KDHE is required to produce and submit a waiver request to HHS to implement the Program with services to begin on or before January 1, 2018.

Program Drug Rebate Fund

The bill creates the KanCare Bridge to a Healthy Kansas Program Drug Rebate Fund (Rebate Fund) as a reappropriating fund. All moneys collected or received by the Secretary from drug rebates connected to Program beneficiaries must be deposited in the Rebate Fund and such funds must be expended for the sole purpose of Medicaid medical assistance payments for Program beneficiaries. The bill requires the Rebate Fund remain intact and inviolate and not subject to transfers and allotments. The bill provides for the monthly transfer of interest earnings, as outlined in the bill, from the State General Fund (SGF) to the Rebate Fund.

Rebate Fund Report to Legislature

On or before January 8, 2018, and on or before the first day of the regular legislative session each year thereafter, the Secretary is required to prepare and deliver a report to the Legislature summarizing all expenditures from the Rebate Fund, Rebate Fund revenues, and recommendations regarding the adequacy of the Rebate Fund to support necessary Program expenditures.

Program Privilege Fee Fund

The bill creates the KanCare Bridge to a Healthy Kansas Program Privilege Fee Fund (Privilege Fee Fund) as a reappropriating fund. All moneys collected or received by the Secretary from privilege fees connected to Program beneficiaries must be deposited in the Privilege Fee Fund and such funds must be expended for the sole purpose of Medicaid medical assistance payments for Program beneficiaries. The bill requires the Privilege Fee Fund remain intact and inviolate and not subject to transfers and allotments. The bill provides for the monthly transfer of interest earnings, as outlined in the bill, from the SGF to the Privilege Fee Fund.

Privilege Fee Fund Report to Legislature

On or before January 8, 2018, and on or before the first day of the regular legislative session each year thereafter, the Secretary is required to prepare and deliver a report to the Legislature summarizing all expenditures from the Privilege Fee Fund, Privilege Fee Fund

revenues, and recommendations regarding the adequacy of the Privilege Fee Fund to support necessary Program expenditures.

Program Cost Savings Report to the Legislature

On or before January 8, 2018, and on or before the first day of the regular legislative session each year thereafter, the Secretary is required to prepare and deliver a report to the Legislature summarizing the cost savings achieved by the State from the movement of beneficiaries from the KanCare program to the Program, including, but not limited to, the MediKan program, the medically needy spend-down program, and the breast and cervical cancer program. The bill provides the method for calculating the cost savings.

Inmate Inpatient Hospitalization Cost Savings Report to the Legislature

On or before January 8, 2018, and on or before the first day of the regular legislative session each year thereafter, the Secretary of Corrections is required to prepare and deliver a report to the Legislature identifying the cost savings achieved by the State from the use of the Program to cover inmate inpatient hospitalization.

KDHE Annual Report to Legislative Committees

On or before February 15 of each year, the Secretary is required to present a report to the House Committee on Appropriations and the Senate Committee on Ways and Means summarizing the costs for the Program and the cost savings and additional savings identified in previously mentioned annual reports to the Legislature on the Drug Rebate Fund and the Privilege Fee Fund and the report on Program cost savings.

Program Working Group

The bill establishes the KanCare Bridge to a Healthy Kansas Working Group (Program Working Group) that is charged with identifying non-SGF sources to fund any Program shortfall identified by the Secretary in the annual report to the Legislative Committees.

The Program Working Group has the following membership:

- Two House members appointed by the Speaker of the House of Representatives;
- One House member appointed by the Minority Leader of the House of Representatives;
- Two Senate members appointed by the President of the Senate;
- One Senate member appointed by the Minority Leader of the Senate;
- One representative from each of the following:
 - Kansas Hospital Association;

- Kansas Medical Society;
 - Kansas Association for the Medically Underserved;
 - Kansas Academy of Family Physicians;
 - Association of Community Mental Health Centers of Kansas;
 - Kansas Dental Association;
 - Kansas Emergency Medical Services Association;
 - Kansas Optometric Association; and
 - Kansas Pharmacists Association; and
- One representative of Program consumers from Alliance for a Healthy Kansas.

The members of the Program Working Group are to elect the chairperson from members of the Program Working Group who are members of the House of Representatives in even-numbered years and from members of the Program Working Group who are members of the Senate in odd-numbered years.

Kansas Legislative Research Department staff is required to provide assistance as requested by the Program Working Group.

Legislative members of the Program Working Group are to receive compensation and travel expenses and subsistence expenses or allowances, as provided by KSA 75-3212, for attending a meeting of the Program Working Group or a subcommittee meeting thereof. Non-legislative members do not receive compensation, subsistence allowance, mileage, or associated expenses from the State for attending a meeting or subcommittee meeting of the Program Working Group.

The Program Working Group is required to meet no less than two times in a calendar year. Nine members constitute a quorum, of which the bill requires at least four to be legislative members of the Program Working Group. Additionally, on or before March 15 of each year, the Program Working Group is required to report to the Legislature recommendations for funding the Program, as necessary.

Clubhouse Rehabilitation Services

The bill defines “clubhouse” to mean a community-based psychosocial rehabilitation program in which a member, with staff assistance, is engaged in operating all aspects of the clubhouse, including food service, clerical, reception, janitorial, and other member services, such as employment training, housing assistance, and educational support. A clubhouse program is designed to alleviate emotional and behavior problems with the goal of transitioning to a less restrictive level of care, reintegrating the member into the community, and increasing social connectedness beyond a clinical or employment setting.

On or before January 1, 2020, the Secretary is required to report to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services information, findings, and recommendations related to the clubhouse rehabilitation services provided under the bill.

The provisions of the bill related to clubhouse rehabilitation services sunset on July 1, 2020.

Opioid Antagonists; HB 2217

HB 2217 enacts new law and amends the Kansas Pharmacy Act (Act) to create standards governing the use and administration of emergency opioid antagonists approved by the U.S. Food and Drug Administration (FDA) to inhibit the effects of opioids and for the treatment of an opioid overdose. The bill requires the Board of Pharmacy to issue a statewide opioid antagonist protocol, define applicable terms, establish educational requirements for the use of opioid antagonists, and provide protection from civil and criminal liability for individuals acting in good faith and with reasonable care in administering an opioid antagonist. The Board of Pharmacy is required to adopt rules and regulations necessary to implement the provisions of the bill prior to January 1, 2018.

Definitions

The bill defines the following terms:

- “Bystander” means a family member, friend, caregiver, or other person in a position to assist a person who they believe to be experiencing an opioid overdose;
- “Emergency opioid antagonist” means any drug that inhibits the effects of opioids and is approved by the FDA for the treatment of an opioid overdose;
- “First responder” includes any attendant (as defined in the Emergency Medical Services Act), any law enforcement officer (as defined in the Kansas Code of Criminal Procedure), and any actual regular or volunteer member of any organized fire department;
- “First responder agency” includes, but is not limited to, any law enforcement agency, fire department, or criminal forensic laboratory of any city, county, or the State;
- “Opioid antagonist protocol” means the protocol established by the Board of Pharmacy pursuant to the bill;
- “Opioid overdose” means an acute condition including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death resulting from the consumption or use of an opioid or another substance with which an opioid was combined, or that a layperson reasonably believes to be resulting from the consumption or use of an opioid or another substance with which an opioid was combined, and for which medical assistance is required;

- “Patient” means a person believed to be at risk of experiencing an opioid overdose;
- “School nurse” means a professional nurse licensed by the Board of Nursing and employed by a school district to perform nursing procedures in a school setting; and
- “Healthcare provider” means a physician licensed to practice medicine and surgery by the State Board of Healing Arts, a licensed dentist, a mid-level practitioner as defined in the Act, or any person authorized by law to prescribe medication.

Statewide Opioid Antagonist Protocol

The Board of Pharmacy is required to issue a statewide opioid antagonist protocol establishing the requirements for a licensed pharmacist to dispense emergency opioid antagonists. The protocol must include procedures to ensure accurate record-keeping and education of the person being furnished the emergency opioid antagonist. The education must include, but not be limited to: opioid overdose prevention, recognition, and response; safe administration of an emergency opioid antagonist; potential side effects or adverse events that may occur as a result of administering an emergency opioid antagonist; a requirement that the administering person immediately contact emergency medical services for a patient; and the availability of drug treatment programs.

Pharmacist Duties

A pharmacist may furnish an emergency opioid antagonist to a patient or bystander subject to the bill requirements, the Act, and any rules and regulations adopted by the Board of Pharmacy. In furnishing an emergency opioid antagonist, a pharmacist shall not permit a person being furnished such antagonist to waive any consultation required by the bill or any rules and regulations adopted by the Board of Pharmacy.

Training Requirements

First responders, scientists or technicians operating under a first responder agency, or school nurses are authorized to possess, store, and administer emergency opioid antagonists as clinically indicated, provided all personnel with access to such antagonists receive at least the following minimum training:

- Techniques to recognize signs of an opioid overdose;
- Standards and procedures to store and administer an emergency opioid antagonist;
- Emergency follow-up procedures, including the requirement to summon emergency ambulance services either immediately before or immediately after administering an emergency opioid antagonist to a patient; and

- Inventory requirements and reporting any administration of an emergency opioid antagonist to a healthcare provider.

First Responder Agency Procedures

A first responder agency electing to provide an emergency opioid antagonist to its employees or volunteers for the purpose of administering such antagonist is required to procure the services of a physician to serve as a physician medical director for the first responder agency's emergency opioid antagonist program. The physician medical director is used to obtain a supply of emergency opioid antagonists, receive assistance developing necessary policies and procedures that comply with the bill and any rules and regulations, train personnel, and coordinate agency activities with local emergency ambulance services and medical directors to provide quality assurance activities.

Liability Protection

The bill provides protection from liability as follows:

- Any healthcare provider or pharmacist who prescribes or dispenses an emergency opioid antagonist in good faith and with reasonable care in accordance with the bill is not, by an act or omission, subject to civil liability, criminal prosecution, or any disciplinary or other adverse action by a professional licensure entity;
- Any patient, bystander, or school nurse, or a first responder, scientist or technician operating under a first responder agency, who receives and administers an emergency opioid antagonist in good faith and with reasonable care pursuant to the bill to a person experiencing a suspected opioid overdose is not, by an act or omission, subject to civil liability or criminal prosecution unless personal injury results due to gross negligence or willful or wanton misconduct in administering the antagonist; and
- Any first responder agency employing or contracting any person who administers an emergency opioid antagonist in good faith and with reasonable care pursuant to the bill to a person experiencing a suspected opioid overdose is not, by an act or omission, subject to civil liability, criminal prosecution, or any disciplinary or other adverse action by a professional licensure entity or any professional review.

Diabetes Information Reporting; HB 2219

HB 2219 requires the Secretary of Health and Environment (Secretary) to identify goals and benchmarks and develop plans to reduce the incidence of diabetes in Kansas, improve diabetes care, and control complications associated with diabetes.

The bill requires the Secretary to submit a report to the Legislative Coordinating Council, by January 10 of each even-numbered year, on the following information:

- The financial impact and reach diabetes is having on the Kansas Department of Health and Environment (KDHE), the state, and localities. This information will include the number of individuals with diabetes impacted or covered by programs administered by the Secretary, the number of individuals with diabetes and family members impacted by the prevention and diabetes control programs implemented by KDHE, and the financial toll or impact diabetes and its complications place on KDHE and how that compares to other chronic diseases and conditions;
- An assessment of the benefits of implemented programs and activities aimed at controlling and preventing diabetes, including documenting the amount and source of any funding directed to KDHE from the Kansas Legislature;
- A description of coordination of diabetes management, treatment, or prevention activities and programs within KDHE;
- The development or revision of action plans to address reducing the impact of diabetes, pre-diabetes, and diabetes complications and the identification of expected benchmarks for diabetes control and prevention; and
- The development of a budget identifying the needs, costs, and resources required to implement the action plans.

Unless there are unobligated funds available within KDHE to use for the requirements of the bill, the requirements are limited to diabetes data existing within KDHE prior to the effective date of the bill.

INSURANCE

Risk-based Capital Instructions; SB 15

SB 15 updates the effective date specified in the Insurance Code for the risk-based capital (RBC) instructions promulgated by the National Association of Insurance Commissioners for property and casualty companies and for life insurance companies from December 31, 2015, to December 31, 2016.

Fair Access to Insurance Requirements; SB 17

SB 17 amends law and adds a section relating to the Fair Access to Insurance Requirements (FAIR) Plan. The bill creates the FAIR Plan Act (Act).

The bill states the purpose of the Act is to make available basic property and casualty insurance to persons who have property interests in Kansas and are in good faith entitled, but unable, to obtain coverage through the voluntary market. The bill also requires the FAIR Plan to operate under the Act and provide equitable distribution and placement of risks among all member insurers who have chosen to participate.

The bill requires policies to be issued for a term of one year and on forms and in accordance with the reasonable rates and rating procedures approved by the Kansas Insurance Commissioner (Commissioner).

The bill requires the Commissioner to enter an order regarding the rate plan within 60 days of the filing of proposed rates, but the Commissioner may extend the period for entering an order for an additional 30 days with notice provided to the facility. An order disapproving a rate must state the grounds for disapproval and those findings. The Commissioner is required to approve proposed insurance rates before policies or endorsements can be issued.

The bill grants the Commissioner authority to adopt rules and regulations, no later than January 1, 2018, necessary to administer provisions of the Act.

Third Party Administrators Act; SB 22

SB 22 enacts and amends law relating to third party administrators (TPAs). The bill creates the Third Party Administrators Act (Act). The bill takes effect upon publication in the *Kansas Register*.

Definitions

The bill adds and amends TPA definitions used in the Act. The bill amends the definition of “administrator” to clarify the individuals or business entities considered TPAs and under the purview of the Act and further updates those entities and activities not considered TPAs. The bill adds definitions for the following terms: affiliate or affiliated; business entity; collateral; commissioner (Kansas Commissioner of Insurance [Commissioner]); control, controlling, controlled by, and under common control with; United States generally accepted accounting principles consistently applied (GAAP); home state; insurance producer; insurer; National

Association of Insurance Commissioners (NAIC); non-resident TPA; payor; person; stop-loss insurance; underwrites or underwriting; and uniform application.

Application for Home State TPA License

The bill sets forth requirements for home state TPA licensure. “Home state” is defined in the Act as the U.S. jurisdiction that adopted this Act or a substantially similar law governing TPAs and has granted the TPA a home state license.

Prior to performing any function as a TPA in Kansas, the bill requires the person to first apply to be a TPA in the person’s home state and receive a license from the regulatory authority of that home state. A person applying to Kansas as the home state will be required to apply for licensure by submitting an application to the Commissioner, accompanied by the following information and documents:

- All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, certificate of existence from the Kansas Secretary of State, and other applicable documents;
- Bylaws, rules, regulations, or similar documents regulating the internal affairs of the applicant;
- NAIC biographical affidavits for individuals responsible for the applicant’s conduct of affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in a corporation or partners or members in a partnership, association, or limited liability company; any shareholders or members holding 10 percent or more of voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control over the applicant’s affairs;
- Audited financial statements or reports (described below under the headings related to audited and unaudited financial statements and reports);
- Unaudited financial statements in lieu of audited financial statements, if the Commissioner grants a hardship exemption;
- A statement describing the business plan, including information on staffing levels and activities, proposed in Kansas and nationwide. The bill requires the plan provide details of the applicant’s capability for providing a sufficient number of experienced and qualified personnel in the areas of claim processing, record keeping, and underwriting;
- The license application fee, as provided by rules and regulations; and
- Other pertinent information, as required by the Commissioner.

Additionally, the bill requires a TPA licensed or applying for licensure to make copies of all contracts with payors or other persons utilizing the TPA's services available for the Commissioner's inspection; produce accounts, records, and files for examination, and make officers available to give information with respect to the TPA's affairs; and notify the Commissioner of any material change in ownership, control, or other circumstance affecting qualification for a TPA license.

Financial Statements and Reports—Requirements

The bill requires a person applying to Kansas as its home state to apply for TPA licensure by submitting audited annual financial statements or reports for the two most recent fiscal years demonstrating the applicant has a positive net worth.

If the applicant has not been in existence for two years, the bill requires the applicant to include financial statements or reports for any completed fiscal years and for any month during the current fiscal year with completed statements or reports. The bill requires these financial statements and reports to be certified by at least two officers, owners, or directors of the applicant and prepared in accordance with GAAP.

Additionally, the bill requires a columnar consolidating or combining worksheet to be filed with an audited annual financial report prepared on a consolidated basis, containing the following information:

- Amounts shown on the consolidated audited financial report shown on the worksheet;
- Amounts for each entity stated separately; and
- Explanations of consolidating and eliminating entries included.

The bill also grants the Commissioner the authority to require an applicant to include any other information as the Commissioner deems necessary for a review of the applicant's current financial condition.

Unaudited Financial Statements and Reports

The bill sets guidelines for unaudited financial statements. Upon written request and good cause shown, the bill authorizes the Commissioner to grant an applicant a hardship exemption from filing audited financial reports. In this instance, the applicant is required to submit unaudited financial statements. These statements, including notes, will be accepted if they are reports compiled or reviewed by a certified public accountant or if the internal financial reports are certified by at least two officers, owners, or directors of the TPA, in accordance with GAAP.

Additionally, an applicant submitting unaudited financial statements is required to secure and maintain a surety bond for the use and benefit of the Commissioner, in the amount of 10 percent of funds handled for the benefit of Kansas residents or \$20,000, to be held in trust for the benefit and protection of covered persons and any payor or self-funded plan against loss by reason of acts of fraud or dishonesty. A TPA licensed or applying for a home state license that

administers or will administer governmental or church self-insured plans in Kansas or any other state will be subject to a mandatory surety bond requirement, regardless of whether the TPA files audited or unaudited financial reports. This bond requirement is the greater of \$100,000 or an amount equal to 10 percent of the aggregate total amount of self-funded coverage under church or governmental plans handled in Kansas and all additional states in which the TPA is authorized to do business.

Refusal to Issue a TPA License

The Commissioner is permitted to refuse to issue a license if the Commissioner determines the applicant or any individual responsible for the applicant's conduct of affairs is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had an insurance or TPA certificate denied or revoked for cause by any jurisdiction. Additionally, the Commissioner is authorized to refuse to issue a license to a person operating under certain self-funded plan operations because that person does not require licensure and instead will need to register with the Commissioner annually.

Validity of a License

A TPA license issued by the Commissioner will be valid as long as the TPA continues in business in Kansas and remains in compliance with the Act and applicable rules and regulations, unless the license is surrendered, suspended, or revoked by the Commissioner.

Non-resident TPA License

The bill provides the requirements for non-resident TPA licenses. Unless a TPA has obtained a Kansas home state TPA license, any TPA performing duties as a TPA in Kansas is required to obtain a non-resident TPA license. A TPA will not be eligible for a non-resident license if the TPA does not hold a home state license in a state that has adopted substantially similar TPA law. Additional requirements for non-resident TPA licensure include biennial filings; an application fee; production of accounts, records, and files for examination; and making officers available for information requests.

A non-resident TPA is not required to hold a non-resident license in Kansas if the TPA is licensed in its home state and the TPA's duties in Kansas are limited to the administration of a group policy or plan and no more than a total of 20 percent of covered persons, for all plans the TPA services, reside in Kansas and less than 100 covered persons reside in Kansas.

Further, the Commissioner is permitted to refuse or delay issuance of a non-resident TPA license if the TPA cannot satisfy the Act's requirements or grounds exist for the home state's revocation or suspension of the TPA home state certificate of authority or license.

Annual Reports

The bill requires any TPA licensed under the Act to file an annual report for the preceding calendar year with the Commissioner by July 1 of every year. The annual report will:

- Include the audited financial statement attested to by an independent certified public accountant, or the same parameters for consolidated audited reports and unaudited financial statements provided for in the application for TPA home state licensure;
- Be verified by at least two officers, owners, or directors of the TPA; and
- Include the complete names and addresses for all payors, or employers and trusts for self-funded plans, the TPA had agreements with during the preceding fiscal year, and the number of Kansas residents covered by each of the plans.

Denied, Suspended, or Revoked Licenses

The bill requires denial, suspension, or revocation of a TPA license if the Commissioner finds the TPA is in an unsound financial condition, is using methods or practices in the conduct of its business that could cause further business transactions in Kansas to be hazardous or injurious to insured persons or the public, or has failed to pay any judgment rendered against the TPA in Kansas within 60 days after the judgment becomes final.

Further, the bill authorizes the Commissioner to deny, suspend, or revoke a license if the TPA violates lawful rules, regulations, or orders of the Commissioner under the Kansas Insurance Code; refuses to be examined or produce required documents, refuses to give information about the TPA's affairs, or refuses to perform any other legal obligation; refuses to pay proper claims or perform services under contracts; the TPA fails to meet any qualifications for which issuance of a license could have been refused; or any individual responsible for the conduct of affairs was convicted, entered a plea of guilty or *nolo contendere* to any felony or to certain misdemeanors, or is under suspension or revocation in another state.

Additionally, the Commissioner is permitted to immediately suspend a TPA license, without advance notice or hearing, if one or more of the following circumstances exist: the TPA is insolvent or impaired; a proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced; the financial condition or business practices of the TPA pose an imminent threat to the public health, safety, or welfare of Kansas residents; or a final order suspending or revoking the TPA's license in its home state has been entered. In lieu of or in addition to suspension or revocation, the Commissioner is permitted to impose an administrative penalty upon the TPA in accordance with the Kansas Administrative Procedure Act.

Delivery of Written Materials

The bill requires the TPA to promptly deliver any policies, certificates, booklets, termination notices, or other written communications to insured parties or covered individuals upon receipt of instructions from the payor to deliver them.

Written Statements Between TPA and Insurer

The bill amends the requirements for a written agreement between a TPA and an insurer. The written agreement must include a statement of duties the TPA is expected to perform on behalf of the insurer and the lines, classes, or types of insurance the TPA is authorized to administer. Further, the bill requires the agreement to include an underwriting provision.

Additionally, the bill permits termination of the written agreement and suspension of underwriting authority. However, an insurer is required to fulfill any lawful obligations for policies affected by the written agreement.

Payment to a TPA

The bill updates language concerning an insurer's utilization of TPA services and clarifies the process for payment of return premiums or claims.

Recordkeeping Requirements

The bill updates the requirements for maintenance of books and records in these ways: removes a location requirement and requires those books and records be maintained for at least five years; specifies when confidential and privileged documents are not subject to the Kansas Open Records Act, subpoena, or discovery, or admissible in evidence in private civil action, and specifies the provision sunsets on July 1, 2022; prohibits the Commissioner from testifying in private civil actions concerning confidential documents; and provides guidelines for when and how the Commissioner can share and receive confidential and privileged documents with and from other state, federal, and international regulatory agencies, the NAIC, and federal and international law enforcement agencies. The bill further specifies the Commissioner is not prohibited from releasing final adjudicated actions; the payor owns records generated by the TPA pertaining to the payor, but the TPA retains rights; and the procedure for a TPA to transfer records instead of maintaining them for five years in the event the payor and TPA cancel their written agreement.

Advertising

The bill specifies a TPA must obtain a client's prior written consent before the TPA can mention any current or former client in advertising.

Collection and Payment of Claims

The bill amends law to update those items collected by a TPA on behalf of a payor and held by the TPA in a fiduciary capacity; specifies a written agreement between a TPA and payor must include the TPA periodically rendering an accounting to a payor detailing the transactions performed by the TPA; outlines the procedure for the TPA to record deposits and withdrawals collected and deposited for more than one payor; further updates fiduciary account language; specifies all claims paid by the TPA from funds collected on behalf of or for a payor shall be paid only as authorized by the payor; and dictates how the payments from an account maintained or controlled by a TPA may be made.

Compensation to the TPA

The bill prohibits a TPA from entering into an agreement or understanding with a payor that has the effect of making the amount of the TPA's commissions, fees, or charges contingent upon savings affected by the adjustment, settlement, and payment of losses covered by the payor's obligations. The bill does not prohibit a TPA from receiving performance-based compensation for providing hospital or other auditing services; providing managed care or

related services; or being compensated for subrogation expenses. Further, the bill does not prevent a TPA's compensation from being based on premiums or charges collected or on the number of claims paid or processed.

Disclosure of Fees and Charges

The bill amends law by updating the written notice required to be provided from a TPA to covered individuals; specifies the reason for collection of funds and requires information to be identified to the insured party and separate from any premium; and requires the TPA to disclose to the payor all charges, fees, and commissions the TPA receives from services it provides to the payor.

Registration Required

The bill requires annual registration with the Commissioner from a person not required to be licensed as a TPA under the Act but who underwrites, collects charges or premiums from, or adjusts or settles claims on residents of Kansas only in connection with life, annuity, or health coverage provided by a self-funded plan other than a governmental or church plan. The bill further specifies the provision does not apply to an insurer or employees of an insurer or TPA.

Repealed Statutes

The bill amends nine statutes and creates new statutes relating to TPAs. One statute requiring the agreement between an insurer and a TPA to make provision with respect to the underwriting or other standards pertaining to the business underwritten by the insurer is repealed with enactment of the bill.

Supplemental Health Insurance Provided by the Kansas Board of Regents; SB 110

SB 110 authorizes the Kansas Board of Regents to independently provide, through self-insurance or the purchase of insurance contracts, health care benefits for employees of a state educational institution as defined in KSA 76-711 (the University of Kansas, Kansas State University of Agriculture and Applied Science, Wichita State University, Emporia State University, Pittsburg State University, and Fort Hays State University) when the state health care benefits program (the State Employee Health Plan [SEHP]) is insufficient to satisfy the requirements of the federal Mutual Educational and Cultural Exchange Act of 1961. These health care benefits are limited to those in the SEHP not meeting federal requirements.

The bill takes effect upon publication in the *Kansas Register*.

Health Care Provider Insurance Availability Act and Nurse Practice Act— Amendments; HB 2118

HB 2118 amends and creates law supplemental to the Health Care Provider Insurance Availability Act and amends the Nurse Practice Act to address requirements and exclusions from coverage pertaining to the liability of the Health Care Stabilization Fund (HCSF) and charitable health care providers and certain exempt licensees of the Board of Nursing.

Health Care Provider Insurance Availability Act—Amendments

HCSF Liability—Exclusions from Coverage of Certain Claims

The bill enacts law to state the HCSF would not be liable for any claim against a health care provider if the health care provider's liability for the incident giving rise to the claim is:

- The result of professional services rendered as a charitable health care provider;
or
- Covered under the Federal Tort Claims Act (FTCA).

This new law is made part of and supplemental to the Health Care Provider Insurance Availability Act.

Definitions

The bill expands the definition of “full-time faculty employed by the University of Kansas Medical Center [KUMC]” to permit a person licensed to practice medicine and surgery who holds a full-time appointment at KUMC to be employed part-time by the U.S. Department of Veterans Affairs if such employment is approved by the executive vice-chancellor of the KUMC.

The bill also creates a definition for the term “charitable health care provider,” which is the same meaning as in the Kansas Tort Claims Act.

Required Professional Liability Insurance—Exclusions From

The bill permits insurance carriers providing professional liability insurance coverage to exclude liabilities incurred by such providers as a result of professional services rendered as a charitable health care provider or in the event the provider is covered under the FTCA.

Inactive Health Care Providers—Tail Coverage

The bill establishes an annual maximum amount of \$3 million for the aggregate fund liability for judgments and settlements arising from claims made in a fiscal year against a resident or nonresident inactive health care provider.

Nurse Practice Act—Amendments

The bill expands a licensure provision applying to advanced practice registered nurses (APRNs) holding exempt licenses to permit an APRN who has been granted such license also to be exempt from the requirements to carry professional liability insurance and participate in HCSF coverage under the Health Care Provider Insurance Availability Act. The bill also permits the Board of Nursing to issue an inactive license to any APRN as defined in the Board of Nursing's rules and regulations who applies for such license, pays the required fee for an initial license or renewal of the license, and who is not regularly engaged in advanced practice registered nursing in Kansas. The inactive licensee will not be required to meet continuing

education requirements and will be prohibited from engaging in the practice of advanced practice registered nursing in Kansas. The bill also creates requirements, including continuing education requirements to be established in rules and regulations, for an APRN with an inactive license who seeks to become licensed to regularly engage in advanced practice registered nursing in Kansas.

JUDICIARY

Revised Uniform Fiduciary Access to Digital Assets Act; SB 63

SB 63 enacts the Revised Uniform Fiduciary Access to Digital Assets Act (2015) (Act).

General Applicability

The bill would define “digital asset” as an electronic record in which an individual has a right or interest, but it would not include an underlying asset or liability unless the asset or liability is itself an electronic record.

The Act authorizes access to digital assets by four common types of fiduciaries. Specifically, the Act applies to:

- A fiduciary acting under a will or power of attorney executed before, on, or after July 1, 2017;
- A personal representative acting for a decedent who died before, on, or after July 1, 2017;
- A guardianship or conservatorship proceeding commenced before, on, or after July 1, 2017; and
- A trustee acting under a trust created before, on, or after July 1, 2017.

Additionally, it applies to a custodian of a digital asset if the user resides in Kansas or resided in Kansas at the time of the user’s death. “Custodian” is defined as a person who carries, maintains, processes, receives, or stores a user’s digital assets. The bill does not apply to digital assets of any employer used by an employee in the ordinary course of the employer’s business.

The bill allows a “user,” defined as a person who has an account with a custodian, to use an online tool to direct the custodian to disclose to a designated recipient or not disclose some or all of the user’s digital assets, including the content of electronic communications. If the tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using the tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record. If the user has not used the tool or the custodian does not provide one, the user can allow or prohibit disclosure of some or all of the user’s digital assets, including the content of electronic communications, in a will, trust, power of attorney, or other record. A user’s authorization using one of those records or the online tool overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user’s assent under the terms of service.

The Act does not change or impair a right of a custodian or user under a terms-of-service agreement to access and use the user’s digital assets or give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents. Further, a fiduciary or designated recipient’s access to digital assets can be modified or eliminated by a user, federal law, or a terms-of-service agreement if the user has not provided direction as described above. In

applying and construing the Act, the bill requires consideration of the need to promote uniformity of the law with respect to its subject matter among states that enact it. Additionally, the bill includes a severability clause. The bill defines key terms and amends the definition of “personal property” in the statute defining terms for construction of state law to include digital assets.

Disclosure of Assets

The bill outlines a custodian’s responsibilities in disclosing digital assets and the timeline for disclosure as well as other actions allowed, such as charging a reasonable administrative fee or choosing not to disclose deleted assets. Further, the bill provides specific guidelines for disclosure to each of the types of fiduciaries described above, including provisions specific to disclosure of digital assets, as well as the content of electronic communications, and procedures to compel disclosure.

Personal Representative of Deceased User

A custodian must disclose the content of electronic communications to a personal representative acting for a decedent if the deceased user consented or a court directs disclosure. Further, absent a user’s prohibition or a court order, a custodian must disclose a catalog of electronic communications and digital assets to a representative acting for a decedent if the representative provides certain documentation to the custodian, including a written request for disclosure; a certified copy of the user’s death certificate; and a certified copy of a letter appointing the representative, small estate affidavit, or court order.

Agent Under a Power of Attorney

To the extent a power of attorney expressly grants an agent authority over digital assets and the content of electronic communications, and unless otherwise directed by the principal or the court, a custodian must disclose the assets, a catalog of electronic communications, and the content if the agent provides certain documentation, including a written request for disclosure and an original or copy of the power of attorney. The bill also amends the Kansas Power of Attorney Act to include exercising authority over the contents of electronic communications in the list of actions that may be granted if expressly authorized in a power of attorney.

Trustees

A custodian must disclose any digital asset, including a catalog of electronic communications and the content, to a trustee who is an original user of an account absent a court order or provided in trust. Additionally, unless otherwise ordered by the court, directed by the user, or provided in a trust, the custodian must disclose the assets, a catalog of electronic communications, and the contents to a trustee that is not an original user if the trustee provides certain documentation to the custodian, including a written request for disclosure, a certified copy of the trust, or a certification of the trust. The bill also amends the Kansas Uniform Trust Code to specify that a trustee can access digital assets held in trust.

Guardian or Conservator

After an opportunity for a hearing conducted pursuant to the Act for Obtaining a Guardian or a Conservator, or Both (Guardianship Act), a court may grant a guardian or conservator access to a ward or conservatee's digital assets, including a catalog of electronic communication, but not the contents. The custodian must then disclose the digital assets if the guardian or conservator provides certain documentation to the custodian, including a written request for disclosure and a certified copy of the court order granting that access. The bill also amends the Guardianship Act to prohibit a guardian or conservator from accessing the ward or conservatee's digital assets absent such an order. Further, a guardian or conservator with this general authority to manage the ward or conservatee's assets can request suspension or termination of an account for good cause.

Duties of a Fiduciary

The bill specifies legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including the duties of care, loyalty, and confidentiality, and describes the scope of a fiduciary or designated recipient's authority over a user's digital assets.

POSTSECONDARY EDUCATION

Nursing Service Scholarship Program; SB 100

SB 100 amends statutes governing the Nursing Service Scholarship Program (Program) to give priority when awarding scholarships to a qualified applicant whose sponsor is a mental health or treatment facility. The bill defines “mental health or treatment facility” and amends the definition of “sponsor” to include mental health or treatment facilities. The bill also amends the definition of “school of nursing” to require that a school be under the control and supervision of the Kansas Board of Regents (KBOR), a municipal university, or a not-for-profit independent institution of higher education that has its main campus or principal place of operation in Kansas, maintains open enrollment as that term is currently defined by statute, and is operated independently and not controlled or administered by the State or any agency or subdivision thereof.

The bill clarifies that a nursing student need not be a Kansas resident to qualify for a scholarship under the Program and that the scholarship cap of 70 percent of the cost of tuition is 70 percent of the cost of in-state tuition. The State will fully fund the amount of each scholarship awarded to an applicant whose sponsor is a mental health or treatment facility as opposed to sharing the cost with the sponsor.

Sponsorship by a scholarship recipient can be transferred from one sponsor to another as long as the agreement transferring such sponsorship provides for service in a mental health or treatment facility. Such a transfer already was allowed for agreements that provide for service in a rural area.

Finally, the bill requires KBOR to provide an annual report on the Program to the Senate and House Committees on Education.

Cleveland University Exempt from the Kansas Private and Out-of-State Postsecondary Institution Act; SB 166

SB 166 exempts Cleveland University in Kansas City from the Kansas Private and Out-of-State Postsecondary Education Institution Act.

Wichita State University Affiliation with Wichita Area Technical College; SB 174

SB 174 affiliates the Wichita Area Technical College (WATC) with Wichita State University (WSU). The bill designates the institutional infrastructure of the WATC as the WSU Campus of Applied Sciences and Technology, which will be governed by and operated as a technical college campus within WSU. The campus will continue to be a technical college and eligible for funding that is available to technical colleges.

The bill changes the governing board of WATC to an industry advisory board to the President of WSU for the WSU Campus of Applied Sciences and Technology. Members of the industry advisory board will be appointed by the President of WSU. All powers and duties of the governing board will be transferred to WSU, subject to the rules and regulations and supervision of the State Board of Regents.

Sale of Property; HB 2109

HB 2109 authorizes the Board of Regents to sell three pieces of property owned by Kansas State University, and transfer one piece of property owned by Wichita State University.

**Sumner County Representative on the Cowley County Community College
Board of Trustees; HB 2164**

HB 2164 adds to the Cowley County Community College (CCCC) Board of Trustees a member elected by the qualified electors of Sumner County as long as Sumner County provides financial support for the benefit of CCCC. The bill outlines requirements for primary and general elections for the additional member, including when the elections will be held and the methods for becoming a candidate for the position. The first additional member will serve a two-year term commencing on the second Monday in January 2018 following the election. Subsequent additional members will serve four-year terms. If Sumner County terminates financial support or if support lapses, the additional member can serve until the expiration of his or her term, the CCCC Board of Trustees will discontinue the additional member plan at the expiration of that member's term or upon a vacancy, and Sumner County will not conduct further elections. Finally, the bill defines key terms and amends the Community College Election Act to allow the CCCC Board of Trustees to have up to eight members, including the additional member.

The bill takes effect upon publication in the *Kansas Register*.

STATE AND LOCAL GOVERNMENT

Bonding Necessary in Public-Private Partnership (P3) Agreements; SB 55

SB 55 revises the Kansas Fairness in Public Construction Contract Act by requiring a contractor involved in a public-private partnership (P3) agreement with a public entity to furnish the following bonds:

- A performance bond, which is equal to the full contract amount; and
- A payment bond, which is equal to the full contract amount for the protection of claimants supplying labor or materials to the contractor or subcontractors in the performance of work.

The bill applies to P3 contracts valued at more than \$100,000. The bonds must allow for the recovery of attorney fees and related expenses.

The terms “public-private agreement,” “private contribution,” and “public benefit” are defined in the bill.

Hunting and Fishing Violations; HB 2191

HB 2191 amends current law allowing a resident of Kansas charged with violating provisions of law requiring a license, permit, stamp, or other issue from the Kansas Department of Wildlife, Parks and Tourism (KDWP) to avoid being convicted if the person presents to the court or the office of the arresting officer an issue of KDWP that was valid at the time of the persons alleged violation rather than the date of an arrest.

Additionally, the bill specifies the “physical” license be forfeited, suspended, or surrendered if ordered so by a judge.

The bill also makes the provision of law requiring an officer to prepare a written citation to an individual charged with violating any of the laws pertaining to wildlife and parks permissive rather than mandatory. Finally, the bill eliminates a provision that subjects officers to being found guilty of misconduct and removal from office if they violate the provisions of law relating to the issuance of citations.

Historic Lake Scott State Park; HB 2192

HB 2192 changes the name of “Lake Scott State Park” to “Historic Lake Scott State Park.”

TAXATION

Income Tax—Reform; Sub. for HB 2178

Sub. for HB 2178 makes a number of changes in the Kansas individual income tax structure.

The bill repeals, effective for tax year 2017, the exemption for non-wage business income that has been in effect since tax year 2013. Taxpayers may also begin claiming certain non-wage business income losses in conformity with federal treatment (but will not be able to file amended returns for previous tax years when such losses were not eligible to be claimed for Kansas income tax purposes). Special subtraction modification provisions relating to net gains from certain livestock sales are repealed.

Medical expenses allowed as itemized deductions under federal law will also become available as Kansas itemized deductions beginning in tax year 2017. (Legislation enacted in 2015 had repealed the medical expense deduction altogether for state income tax purposes.)

Individual income tax rates are increased beginning in tax year 2017 such that the state will be utilizing a three-bracket system of 2.70 percent, 5.25 percent, and 5.45 percent. (Prior law for tax year 2017 had provided for a two-bracket system with rates of 2.70 and 4.60 percent. The state had previously utilized a three-bracket system from 1992 through 2012.) Additional formulaic provisions that could have provided for rate reductions in certain future years based on growth in selected State General Fund (SGF) tax receipts are repealed.

The bill is expected to increase SGF receipts as follows:

- FY 2018—\$590.2 million;
- FY 2019—\$453.8 million;
- FY 2020—\$458.6 million;
- FY 2021—\$463.4 million; and
- FY 2022—\$468.2 million.

Sales Tax Exemption—Agricultural Fencing; HB 2387

HB 2387 provides a sales tax exemption for all property and services purchased during 2017 or 2018 necessary to reconstruct, repair, or replace any fence used to enclose agricultural land that was damaged or destroyed by wildfires occurring in 2016 or 2017.

The exemption may be claimed at the point of sale with an exemption certificate developed by the Department of Revenue. Additional language establishes a refund mechanism relative to taxes previously collected on any such qualifying purchases.

The bill takes effect upon publication in the *Kansas Register*.

TRANSPORTATION AND MOTOR VEHICLES

Increase Fee Limit for Vessel Registrations; SB 26

SB 26 increases the maximum fee, from \$30 to \$60, that could be charged by the Secretary of Wildlife, Parks and Tourism for vessel registrations. The Secretary is required to adopt rules and regulations to fix the amount of the vessel registration fee. Under law not amended by the bill (KSA 2016 Supp. 32-1110), only a motorboat or a sailboat must be registered.

Commercial Motor Vehicle Definition Clarification; SB 36

SB 36 amends law related to commercial motor vehicles.

The bill removes various definitions related to commercial motor vehicles from the statutes and replaces references to those terms with references to definitions in the Code of Federal Regulations (CFR) as of July 1, 2017, or any later version established in rules and regulations of the Kansas Corporation Commission (KCC). The bill also replaces references to definitions in “rules and regulations adopted by” the KCC with the same reference to the CFR or later version as adopted by the KCC in rules and regulations.

The bill clarifies KCC authority to regulate motor carriers by specifying authority for only those that operate vehicles meeting the definition of “commercial motor vehicle.” A “commercial motor vehicle” is defined in 49 CFR 390.5 as having a gross weight of 10,001 pounds or more, designed or used to transport more than 8 passengers (including the driver) for compensation, designed or used to transport more than 15 passengers (including the driver) not for compensation, or used to transport hazardous materials.

The bill also repeals a registration fee for vehicles of certain interstate motor carriers that transport commodities. Following changes in federal law, the fee was phased out several years ago.

Voluntary Identification on Vehicle, Driver’s License, or Identification Card of Those Needing Assistance with Cognition; Sub. for SB 74

Sub. for SB 74 enacts Joey’s Law. The bill authorizes issuance of placards to persons who need assistance with cognition including, but not limited to, persons with autism spectrum disorder, for use in a vehicle. The bill also authorizes a decal to be affixed to a license plate in addition to a placard and placement of an indicator the person needs assistance with cognition on a driver’s license or nondriver identification card issued by the Division of Vehicles (Division). Issuance of a placard will require an application submitted to the Division, and placement of an indicator on a driver’s license or nondriver identification card will be upon request to the Division. If a person requests a decal, the bill directs such information be included as part of the vehicle registration.

The bill requires satisfactory proof a person needs assistance with cognition and that the proof include a statement from a person licensed to practice the healing arts in any state, an advanced practice registered nurse licensed in Kansas, a licensed physician assistant, or a person clinically licensed by the Kansas Behavioral Sciences Regulatory Board certifying that such person needs assistance with cognition.

The design of the placard will be determined by the Director of Vehicles (Director) for use in any motor vehicle operated or occupied by such person. The bill requires the placard be suitable for attachment to the visor of the vehicle or placement on the dash of the vehicle.

In addition to the placard, the bill directs the Director to issue to the person who needs assistance with cognition an individual identification card to be carried by the person who needs assistance with cognition when the motor vehicle with the placard is being operated or occupied by such person. Information on the card will include the date of birth and the gender of the person to whom the card is issued.

Placards and individual identification cards associated with them will be valid as long as the person who needs assistance with cognition is eligible for a placard. The bill requires permanent placards and individual identification cards be returned to the Kansas Department of Revenue upon the death of the person who needs assistance with cognition. (Requirements for placards and accompanying identification cards are very similar to those for receiving a placard indicating a person with disability; see KSA 2016 Supp. 8-1,125.)

Any person who willfully and falsely represents that such person has the qualifications to obtain a placard will be guilty of a class C misdemeanor. Any person authorized to certify a person needs assistance with cognition for purposes of obtaining a placard who willfully and falsely certifies a person has the qualifications to obtain a placard and an individual identification card also will be guilty of a class C misdemeanor. Any person who utilizes any placard or associated identification card issued to another person will be guilty of an unclassified misdemeanor punishable by a fine of not less than \$100 and not more than \$300.

The bill authorizes the Secretary of Revenue to adopt rules and regulations necessary to carry out the provisions of Joey's Law.

The bill is named for a man who needed assistance with cognition and who was killed in a struggle with a police officer after a traffic stop.

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