

Summary of Legislation

2013

This document contains a summary of legislation relevant to the policy priorities of the Kansas Academy of Family Physicians. Included are bills passed by the Legislature and some that did not advance in 2013.



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Legislation Passed

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HB 2066 – Physical Therapists’ Direct Referral

HB 2066 amends the Physical Therapy Practice Act to allow physical therapists to initiate treatment without referral from a licensed health care practitioner. The bill sets the following limitations on direct access:

- Requires physical therapists to obtain a referral from a physician or other appropriate licensed health care practitioner if, after ten patient treatments or 15 business days from the initial treatment, the patient is not progressing toward measurable, objective, and documented treatment goals;
- Requires physical therapists to provide written patient notice, prior to treatment, that a physical therapy diagnosis is not the same as a medical diagnosis by a physician; and,
- Physical therapists may provide wound debridement treatment only upon approval by a physician or other appropriate health care practitioner.

The bill defines the term “licensed health care practitioner” to mean “a person licensed to practice medicine and surgery, a licensed podiatrist, a licensed physician assistant or a licensed advanced practice registered nurse working pursuant to the order or direction of a person licensed to practice medicine and surgery, a licensed chiropractor, a licensed dentist, or licensed optometrist in appropriately related cases.”

The bill does not restrict a hospital or ambulatory surgical center from requiring a physician order or referral for physical therapy services for a patient being treated in the facility.

HB 2183 – Health Information Technology

HB 2183 includes amendments to the Kansas Health Information Technology and Exchange Act, renames it the *Kansas Health Information Technology Act*, transfers oversight and management to the Kansas Department of Health and Environment, and establishes the Advisory Council on Health Information Technology. The bill also replaces statutory references to “health information exchange” with “the sharing of information electronically,” and makes other technical changes to the Act.

Purpose of the Act

The bill updates the stated purpose of the Act, by indicating the Act is “to harmonize state law with the HIPAA privacy rule with respect to individual access to protected health information, proper safeguarding of protected health information, and the use and disclosure of protected health information for purposes of facilitating the development and use of health information technology and the sharing of health information electronically.” (The U.S. Department of Health and Human Services issued the Privacy Rule to implement national standards for the protection of health information pursuant to the Health Insurance Portability and Accountability Act of 1996 [HIPAA].)

Definitions

The bill revises definitions of the terms “approved health information organization,” “covered entity,” “health care provider,” “health information organization,” and “participation agreement.” Additionally, the

term “health information technology” is amended to specify that the term include an electronic health record, a personal health record, the sharing of health information electronically, electronic order entry, and electronic decision support.

The bill deletes the following terms from the Act: “corporation” (this term refers to the Kansas Health Information Exchange, created by Executive Order 10-06), “designated record set,” “DPOA-HC,” “electronic protected health information,” “health care clearinghouse,” “health plan,” “hybrid entity,” “interoperability,” “public health authority,” and “standard authorization form.”

The bill adds definitions of “authorization” and “department” to the Act. “Authorization” means a document that permits a covered entity to use or disclose protected health information for purposes other than to carry out treatment, payment or health care operations, and that complies with the requirements of 45 CFR § 160.508.

Oversight by the Department of Health and Environment

The bill transfers duties to establish and revise standards for the approval and operation of the statewide and regional health information organizations operating in the state from the Kansas Health Information Exchange (“corporation”) to the Department of Health and Environment. The Department is required to ensure that approved health information organizations operate within the state in a manner consistent with the protection of the security and privacy of health information of the citizens of Kansas.

Standards

Among the standards in the Act and those amended or created by the bill are these:

- Adherence to nationally recognized standards for interoperability, that is, the capacity of two or more information systems to share information or data in an accurate, effective, secure, and consistent manner;
- Adoption and adherence to rules promulgated by the Department regarding access to and use and disclosure of protected health information maintained by or on an approved health information organization; and
- Development of procedures for entering into and enforcing the terms of participation agreements with covered entities, which satisfy the requirements established by KDHE pursuant to participation agreement provisions of the Act.

The bill further prohibits State General Fund expenditures for the purpose of administration, operation, or oversight of the health information organizations, with the following exception: the Secretary is permitted to make operational expenditures for the purpose of adopting and administering the rules and regulations necessary to implement the Act.

Certificate of Authority and Re-approval, Health Information Organizations

The bill directs the Department to establish requirements to be used by approved health information organizations in participation agreements with covered entities. Among the requirements, the Department is required to provide:

- Specifications of procedures by which an individual’s protected health information will be disclosed by covered entities, will be collected by approved health information organizations, and will be shared with other participating covered entities and with the Department as required by law for

- public health purposes;
- Specification of procedures by which an individual may elect that protected health information be restricted from disclosure by approved health information organizations to covered entities; and
- Specifications of purposes for, and procedures by which a covered entity can access an individual's protected health information from the approved health information organization, including access to restricted information by a covered entity in an emergency situation when necessary to properly treat the individual.

The bill also provides procedural requirements for the written notice provided by covered entities to individuals and their personal representatives.

Health Information Organizations and Protected Health Information

The bill states that protected health information in the possession of an approved health information organization cannot be subject to discovery, subpoena, or other means of legal compulsion for the release of such information to any person or entity. Further, an approved health information organization cannot be compelled by a request for production, subpoena, court order, or otherwise, to disclose protected health information relating to an individual.

Advisory Council on Health Information Technology

The bill creates the Advisory Council on Health Information Technology (Council), a group that serves in an advisory role to the Secretary of Health and Environment. The Council is within the Division of Health, Department of Health and Environment. The Council includes 23 voting members serving, with the exception of the Governor and Secretary or their designees, in staggered terms at the commencement of the Council (term length, varying from one to four years for initial appointments, are determined by lot):

- Secretary of Health and Environment or designee;
- Governor or designee;
- Four legislators, selected as follows:
 - Chairperson and ranking minority member, or their designees, of the House Health and Human Services Committee; and
 - Chairperson and ranking minority member, or their designees, of the Senate Public Health and Welfare Committee;
- Two members representing consumers (appointed by the Secretary);
- One member representing employers (appointed by the Secretary);
- One member representing payers (appointed by the Secretary);
- One member representing local health departments (appointed by the Secretary, from a list of three names submitted by the Kansas Association of Local Health Departments);
- Three members representing hospitals (appointed by the Secretary, from a list of three names for each position submitted by the Kansas Hospital Association), including one member involved in the administration of a critical access hospital;
- Three members representing physicians (appointed by the Secretary, from a list of three names for each position submitted by the Kansas Medical Society), two of whom must be practicing physicians and one of who must be a physician in a primary care specialty;
- Two members representing pharmacists (appointed by the Secretary from a list of three names submitted by the Kansas Pharmacists Association), one of whom must be a practicing pharmacist.
- One member representing the University of Kansas Center for Health Information (appointed by the Secretary from a list of three names submitted by the University of Kansas Center for Health Information);

- One member representing the Kansas Foundation for Medical Care (appointed by the Secretary from a list of three names submitted by the Kansas Foundation for Medical Care);
- One member representing the Kansas Optometric Association (appointed by the Secretary from a list of three names submitted by the Kansas Optometric Association); and
- One member representing the Association of Community Mental Health Centers of Kansas (appointed by the Secretary from a list of three names submitted by the Association of Community Mental Health Centers of Kansas).

Following their initial terms of service on the Council, members are eligible for reappointment and, if reappointed, those members serve for four years. The bill makes other provisions for filling vacancies on and removal of members on the Council. The Council is required to meet at least four times per year and at times as the Council deems appropriate or as called by the Secretary. Members of the Council are entitled to compensation and expenses as provided in existing law. Members attending Council meetings or subcommittee meetings authorized by the Council are paid mileage and all other applicable expenses, provided those expenses are consistent with policies established from time-to-time by the Council.

SB 171 – State Budget/Appropriations

SB 171 includes funding for fiscal years (FY) 2013 (current year), 2014, and 2015. Multi-year funding was new to the State Budget process this year. Total State General Fund (SGF) expenditures were reduced from \$6.164 billion in the current year, to \$5.965 billion next year, and \$6.121 in FY 2015. In addition to new tax revenues, transfers from the state’s special funding sources, such as the State Highway Fund, will supplement the budget. The FY 2014 and FY 2015 budgets include a 1.5 percent reduction in funding for Regents institutions, including the Kansas University Medical Center. Kansas Medical Student Loan Program scholarships are *not* included in these reductions.

FY 2013

Medicaid Expansion:

- Language added that no state agency shall make expenditures for the purpose of expanding Medicaid under the Affordable Care Act unless the Legislature expressly consents to the expansion in FY 2013.

FY 2014

Kansas University Medical Center:

- Reduce operations funding by 1.5 percent or \$1.6 million SGF;
 - Language added stating that if medical program cuts are made, they must be proportional across all campuses – i.e., no one medical campus may be disproportionately targeted for reductions;
- Delete \$2.7 million SGF (\$3.9 million from all funds) to reflect a salary reduction;
- Appropriate \$1 million from the Educational Building Fund for the capital improvement enhancement of the Health Education Building (the governor recommended \$3 million); and
- Appropriate \$1.2 million SGF for start-up costs for the Midwest Stem Cell Therapy Center.

Medicaid Expansion:

- Language added that no state agency shall make expenditures for the purpose of expanding Medicaid under the Affordable Care Act unless the Legislature expressly consents to the expansion in FY 2014.

FY 2015

Kansas University Medical Center:

- Reduce operations funding to KUMC by 1.5 percent or \$1.6 million;
 - Language added stating that if medical program cuts are made, they must be proportional across all campuses – i.e., no one medical campus may be disproportionately targeted for reductions;
- Delete \$2.3 million SGF (\$3.4 million from all funds) to reflect a salary reduction;
- Delete \$7 million recommended by the governor for the capital improvement enhancement of the Health Education Building (no funding added in FY 2015); and
- Appropriate \$754,500 SGF for start-up costs for the Midwest Stem Cell Therapy Center.

Medicaid Expansion:

- Language added that no state agency shall make expenditures for the purpose of expanding Medicaid under the Affordable Care Act unless the Legislature expressly consents to the expansion in FY 2015.

Board of Healing Arts

- Language added allowing the use of funds from the Healing Arts Fee Fund to be used for a statewide education initiative to address chronic pain management in FY 2015.

HB 2059 – Sales and Income Tax Law; other Modifications

HB 2059 makes a number of adjustments to sales and income tax law; clarify the severance tax law of helium; expand the Rural Opportunity Zone (ROZ) program; make a minor change regarding the transfer of title of certain tax- exempt property; and authorize tax abatement for disaster- damaged property. Only sales and income tax changes are highlighted here.

Sales Tax

The bill would set the sales and use tax rate at 6.15 percent on July 1, 2013. The rate currently being levied is 6.3 percent, but was scheduled under current law to be reduced to 5.7 percent on July 1, 2013.

Sales and use tax disposition of revenue provisions would be adjusted, based on information provided by the Department of Revenue, to provide that the net of additional revenues in excess of 5.7 percent would be deposited exclusively into the State General Fund (SGF).

Income Tax

Relative to the individual income tax, a number of changes would be enacted to Kansas itemized deductions:

- The deduction for certain gambling losses would be repealed altogether;
- Most other itemized deductions (including mortgage interest and property tax) would be reduced by 30 percent in tax year 2013; 35 percent in tax year 2014; 40 percent in tax year 2015; 45 percent in tax year 2016; and 50 percent in tax year 2017 and thereafter;
- The deduction for charitable contributions would be fully retained; and
- Kansas standard deduction levels for married taxpayers filing jointly and for single heads-of-household would be set at \$7,500 and \$5,500 respectively, beginning in tax year 2013. Legislation enacted in 2012 had raised both standard deduction levels (from \$6,000 for married joint and

\$4,500 for heads of household) to \$9,000.

A new series of individual income tax rate cuts would be provided:

- Beginning in tax year 2014, the current bottom bracket of 3.0 percent would be reduced to 2.7 percent, and the current top bracket of 4.9 percent would be reduced to 4.8 percent. In tax year 2015, the top bracket would be further reduced to 4.6 percent. The two rate brackets would be set at 2.4 and 4.6 percent, respectively, in tax year 2016; 2.3 and 4.6 in tax year 2017; and 2.3 and 3.9 percent in tax year 2018;
- Future formulaic income tax rate relief would be provided under certain circumstances beginning as early as tax year 2019 based on the extent to which a specified group of SGF tax sources had increased over the previous fiscal year. Generally, rate relief would be triggered under the formula once that group of taxes exceeds the previous fiscal year's levels (beginning with FY 2018 growth over FY 2017) by 2.0 percent or more; and
- Additional language would partially restore the food sales tax rebate program, which had been repealed altogether by 2012 law. The income tax credits that could be claimed by eligible households would now be nonrefundable, whereas under prior law (before the repeal) the credits had been refundable.

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Legislation Not Passed

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SB 67 – Vaccination Exemption for Conscience or Personal Belief

SB 67 would amend K.S.A. 72-5209 and K.S.A. 2010 Supp. 65-508 concerning public health, relating to exemptions from the administration of vaccinations. The bill would have provided an additional exemption to childhood immunizations, for reasons of conscience or personal beliefs. The law already allows for an exemption based on religious beliefs.

HB 2219 – Clean Indoor Air Act Exemption

HB 2219 would amend the Kansas Indoor Clean Air Act as related to certain premises. The bill would add a definition of "private business" to mean any business where one or more persons are employed or engaged in the purchase, sale, provision or manufacturing of commodities, products or services, whether for-profit or not-for-profit, and which is not owned or controlled by any state or local governmental entity.

An exception to the Kansas Indoor Clean Air Act would be included in the bill to permit smoking in any private business if the proprietor or person in charge of the private business:

- Employs and serves only persons 21 years of age or older;
- Posts signs in a conspicuous place at each entrance that state no person under the age of 21 will be admitted;
- Posts signs in a conspicuous place at each entrance that state that the private business permits smoking on the premises only for persons 21 years of age or older;
- Posts in a conspicuous place at each exit the phone number the Kansas quit line signs (hotline to smoking cessation assistance); and
- Posts all required signs at eye level and no smaller than 12 inches by 12 inches in size.

HB 2145 – Medical Student Loan Program

HB 2145 would amend current law to allow obstetrics, gynecology, and general surgery to be included in the list of approved postgraduate residency training programs required for participation in the Medical Student Loan Program. The program requires one year of service for each year of assistance provided through the program, in a rural or medically underserved area, as defined by the enacting statutes.

HB 2251 – Advanced Practice Registered Nurse (APRN) Scope of Practice

HB 2251 would amend the Kansas Statutes to:

- Change nurse practice act definition of “diagnosis” to eliminate distinction between a nursing diagnosis and a medical diagnosis for APRNs;
- Authorize APRNs to serve as a Primary Care Provider and lead health care teams;
- Allow APRNs to order other nurses to execute the “medical regimen” as prescribed by a physician, dentist or APRN;
- Eliminate the requirement that APRNs need a written protocol from a physician for prescribing drugs;
- Authorize APRNs to independently order/prescribe medical devices, equipment, treatments, diagnostic and supportive services, including home health, PT, OT, and hospice;
- Provide for “global signature authority” for APRNs, which is defined to mean that any time a physician’s signature, certification, verification, authentication, or endorsement is required, that requirement may be legally fulfilled by an APRN.

Note: This bill did not receive a hearing this year. It is currently anticipated that another bill, with language not as far-reaching and similar to bills introduced in prior years, will be introduced in the 2014 legislative session. (Bill description provided by Kansas Medical Society.)

HB 2032 – Medicaid Expansion/ Healthy Kansas Act

HB 2032 would have amended the Medical Assistance Program (Medicaid) to expand eligibility to any adult under 65 years of age, not pregnant (already have eligibility) and whose income does not exceed 133% of the federal poverty level, to the extent provided under the federal Affordable Care Act.

(Note: See budget bill (SB 171) explanation for further information on Medicaid expansion.)

Bill summary information obtained from the Kansas Legislature website and Kansas Legislative Research Department, unless otherwise noted.