

LEGISLATIVE UPDATE: Special Session
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Governor, Legislature Compromise on COVID-19 Response

Legislation negotiated between legislative leaders and Governor Kelly passed the Legislature at the end of a special two-day session, on Thursday. In the end, both legislators and the governor agreed to a position that left them getting enough of what each wanted to finalize a compromise position contained in [HB 2016](#).

The resulting legislation contains some curtailment of the Governor's emergency powers, legislative oversight of CARES Act federal funding, COVID-19 liability protections for health care workers and businesses, and the authority to close down schools transferred from the Governor to the State Board of Education (SBOE). Several sections of the 83-page bill relate to physicians and other health care providers.

Health Care Providers (Section 10) are provided civil liability immunity for cases arising from or relating to health care services and decisions delayed, altered, or otherwise changed during any state emergency order related to COVID-19. It does *not* include any services, decisions or omissions determined to constitute gross negligence or "willful, wanton, or reckless conduct."

The immunity does not apply to health care services *not related to COVID-19* and any state public health emergency order related to the pandemic. Additionally, the provisions apply retroactively to March 12, 2020 and are effective until the COVID-19 state of disaster expires.

While the law will not apply the same liability protection to nursing homes, it does provide these facilities an *affirmative defense to liability in a civil action*.

Telemedicine (Section 20) provisions related to COVID-19 are effective until January 26, 2021 and include:

- Physicians may issue prescription orders, including controlled substances, without conducting in-person patient examinations. Physicians are still required to conduct an appropriate assessment and evaluation of the patient's current condition and document the appropriate medical indication for prescriptions issued;
- Physicians are allowed to practice telemedicine under quarantine, including self-imposed quarantine;
- Physicians licensed in other states may practice telemedicine to treat patients in Kansas, if they advise the Board of Healing Arts (Board) in writing and a manner determined by Board, if they hold an unrestricted license to practice medicine and surgery in another state, and if they are not the subject of any investigation or disciplinary action by their licensing agency. The Board is allowed to extend this provision to other health care professionals licensed and regulated by the Board as deemed necessary to address the impacts of COVID-19; and,
- Clarifies that this section would not supersede or impact abortion statutes in Kansas.

Temporary Emergency Licensure (Section 22) allows the Board of Healing Arts (Board) to grant licensure to practice any profession they license, certify, register, or regulate to applicants with qualifications the Board deems sufficient to protect public safety, within the scope of professional practice authorized by this licensure – only for the purpose of preparing for, responding to, or mitigating any effect of COVID-19. This provision expires January 26, 2021.

Temporary Licensure for Other Health Care Professions (Section 23) provides a number of health care professions to temporarily practice independent of a collaborating physician agreement, as it relates to the COVID-19 emergency disaster declaration. Expanded authority is granted to PAs, APRNs, and nurse anesthetists to practice health care services "appropriate to such provider's education, training, and

experience within a designated health facility” and would not hold them liable in any criminal prosecution, civil action, or administrative proceeding related to the lack of a collaborative practice agreement.

Separate expansion of authority was granted to LPNs, related to support with the COVID-19 response, and liability protections are afforded commensurate with that expansion.

This entire section expires January 26, 2021, but will likely create increased momentum for APRNs seeking broader practice authority, independent of collaborating physician agreements. There were a host of **other provisions in HB 2016**, which may be found in the legislative [bill summary](#).

While there was widespread concern expressed by legislators that the final bill reflected a deal that was reached by only a few legislators and the Governor, without input and the ability to amend, legislative leaders were able to hold their chambers in check enough to pass the compromise legislation without amendments, by a vote of [107-12](#) in the House and [26-12](#) in the Senate.

Q & A

A couple of prominent questions heard in recent days are:

1. *Where does the Governor get authority to veto legislation?*

Article II, Section 14(a) of the Kansas Constitution allows the Governor to veto bills passed by the Legislature. Once received, the Governor may veto and return a bill to the legislative chamber where the bill originated, stating her objections to the legislation. The chamber of origin then has up to 30 days to respond to the veto message.

The original chamber, House or Senate, must provide a two-thirds majority to override and send to the second chamber. That chamber is then given up to 30 days to support the override with its own two-thirds majority vote. Once both chambers have provided the necessary vote to override the veto, a message to that effect is sent to the Governor and the bill becomes law.

2. *Is the 2020 legislative session really, really over?*

The Legislature held itself to only passing one COVID-19 related bill in the Special Session. That bill was the result of strong negotiations and compromise between legislative leaders and the Governor, and passed both chambers with strong majorities. Short of an unforeseeable emergency, “yes, it is really, really over.”

Now, everyone get to know the legislative candidates and be sure to get out and vote in August and November!