

Summary of Legislation

2020

This document contains a summary of legislation relevant to the policy priorities and professional practice of the Kansas Academy of Family Physicians. Included are bills passed by the Legislature and some that did not advance in 2020.



**KANSAS ACADEMY OF
FAMILY PHYSICIANS**
CARING FOR KANSANS

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Legislation Passed

HB 2016 – Omnibus COVID-19 Response

HB 2016 creates and amends law and makes appropriations regarding the governmental response to the coronavirus disease 2019 (COVID-19) 2020 pandemic in Kansas, as follows.

Coronavirus Relief Funds (Sections 1 through 4)

The bill appropriates the Coronavirus Relief Fund (CRF) in the Office of the Governor to provide relief for the effects of coronavirus in the state of Kansas in both fiscal year (FY) 2020 and FY 2021. Expenditures or transfers from the CRF require an affirmative vote of the Governor and a majority of the legislative members of the State Finance Council (SFC). The bill also permits the SFC to continue approving such requests during the Legislative Session.

In addition to the CRF funds, the bill applies the same approval process described above to any federal funds received under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Families First Coronavirus Response Act (Families First Act), the Paycheck Protection Program and Health Care Enhancement Act, and any other federal law that provides moneys to the state for aid for coronavirus relief. The bill permits any moneys from the federal government for coronavirus relief that are federally required to be deposited in a fund other than the CRF to be credited to such fund; however, those are subject to approval by the SFC in the same manner.

The bill renders the provisions of the 2019 and 2020 appropriations bills that provide general authority for the Governor to approve expenditure of federal funds as null and void, as it relates to aid received for the purposes of federal coronavirus relief.

State of Disaster Emergencies, Kansas Emergency Management Act, and Authority of Local Officials

The bill creates and amends law related to state of disaster emergencies and the Kansas Emergency Management Act (KEMA), including the following provisions.

Ratification and Limitation of 2020 State of Disaster Emergencies (Section 5)

The bill creates a new section of law ratifying and continuing from March 12, 2020, through September 15, 2020, the COVID-19-related state of disaster emergency declared by the Governor on March 12, 2020; ratified and continued by concurrent resolution through May 1, 2020; declared by proclamation on April 30, 2020; and extended by the SFC through May 26, 2020.

This section also prohibits the Governor from proclaiming any new COVID-19-related state of disaster emergency during 2020, unless the Governor makes specific application to the SFC and such action is approved by an affirmative vote of at least six legislative members of the SFC.

Closure or Cessation of Business or Commercial Activity (Section 6)

The bill creates a section of law effective on and after September 15, 2020, applicable during any state of disaster emergency declared under KEMA, prohibiting the Governor from ordering the closure or cessation of any business or commercial activity (for-profit or not-for-profit) for more than 15 days. At least 24 hours prior to the issuance of such order, the Governor must call a meeting of the SFC to consult with the SFC regarding the conditions necessitating the issuance of the order. After an order or orders have resulted in 15 days of such closures or cessation, the Governor may not order such closure or cessation, except upon specific application by the Governor to the SFC and an affirmative vote of at least six legislative members of the SFC, the Governor may order such closure or cessation of business or commercial activity, as approved by the SFC, for specified periods not to exceed 30 days each.

Any order violating or exceeding these restrictions will not have force and effect of law during the period of a state of disaster emergency and shall be null and void.

The provisions of this section expire on January 26, 2021.

Amendments to KEMA (Sections 32-34, 36)

The bill amends the section of KEMA allowing the Governor to declare a state of disaster emergency to specify this power is subject to the specific limits provided above regarding a COVID-19 new state of disaster emergency in 2020. The bill adds a provision stating the COVID-19 state of disaster emergency described in Section 5 shall terminate on September 15, 2020, except when the Legislature is not in session, upon specific application by the Governor to the SFC and an affirmative vote of at least 6 legislative members of the SFC, this state of emergency may be extended for specified periods not to exceed 30 days each. No such extension shall continue past January 26, 2021.

The bill amends the section of KEMA governing the powers of the Governor during a state of disaster emergency to:

- Specify the orders the Governor may issue are to exercise the powers conferred in this section;
- Specify these orders may be issued during the state of disaster emergency ratified by the bill;
- Require the Governor to call a meeting of the SFC within 24 hours of the issuance of any such order, for the purposes of reviewing the order;
- Replace a provision allowing such orders to be ratified by concurrent resolution of the Legislature with a provision declaring such orders null and void after the period of a state of disaster emergency has ended;
- Remove references to proclamations;
- Amend a provision allowing the Governor to perform and exercise other functions, powers, and duties to specify these must be in conformity with the *Kansas Constitution* and *Bill of Rights* and with the statutes of the state of Kansas, except any regulatory statute specifically suspended under the authority of this section;
- State the Governor shall not have the power or authority to temporarily or permanently seize, or authorize seizure of, any ammunition, or to suspend or limit the sale, dispensing, or transportation of firearms or ammunition pursuant to this section's listing of powers or any other executive authority;
- State, notwithstanding any provision of this section to the contrary and pursuant to the Governor's state of disaster emergency proclamation issued on May 26, 2020, the Governor shall not have the

power or authority to restrict businesses from operating or to restrict the movement or gathering of individuals. This provision expires on September 15, 2020;

- State the Governor shall not have the power under KEMA or any other law to alter or modify any provisions of the election laws of Kansas, including, but not limited to, the method by which elections are conducted or the timing of such elections;
- Require each order issued under the authority of this section to specify the provision or provisions by specific reference to each paragraph that confers the power under which the order was issued, and
- Allow the Board of County Commissioners of any county to issue an order relating to public health that contains provisions that are less stringent than the provisions of a statewide executive order issued by the Governor. Any Board of County Commissioners issuing such an order must make the following findings and include them in the order:
 - The Board has consulted with the local health officer or other local health officials regarding the Governor's executive order;
 - Following such consultation, implementation of the full scope of provisions in the Governor's executive order is not necessary to protect the public health and safety of the county; and
 - All other relevant findings to support the Board's decision.

Effective January 26, 2021, the bill returns this section to its previous version, removing the above amendments.

The bill amends the KEMA section making violation of KEMA, any rule and regulation, or any lawful order or proclamation made pursuant to it a class A misdemeanor to:

- Replace a "knowing and willful" intent requirement with "intentionally violates;"
- Change the penalty from a class A misdemeanor to a civil penalty of up to \$2,500 per violation, which may be assessed in addition to any other penalty provided by law;
- Direct enforcement of the section through an action brought under Chapter 60 of the *Kansas Statutes Annotated*, by the Attorney General or the county or district attorney in the county in which the violation took place, with any civil penalties recovered by a county or district attorney to be paid into the general fund of the county where the proceedings were instigated; and
- Allow the Attorney General or any county or district attorney to bring an action to enjoin, or to obtain a restraining order, against a person who has violated, is violating, or is otherwise likely to violate KEMA.

Authority of Local Officials (Sections 25, 35, 37-38)

The bill amends a statute governing states of local disaster emergency to allow any state of local disaster emergency declaration to be reviewed, amended, or revoked by the Board of County Commissioners or the governing body of the city, respectively, at a meeting of the governing body.

The bill amends statutes regarding county boards of health and local health officers to clarify and standardize phrasing and to allow any order issued by the county health officer, including orders issued as a result of an executive order of the Governor, and orders on behalf of a county regarding the remediation of any infectious disease, to be reviewed, amended, or revoked by the Board of County Commissioners of the county affected by such order at a meeting of the board. Any order reviewed or amended by the board must include an expiration date set by the Board of County Commissioners and may be amended or

revoked at an earlier date by a majority vote of the board. The bill removes provisions requiring payment of compensation out of the county treasury and allowing removal of the local health officer by the Secretary of Health and Environment (Secretary). The bill amends a statute governing home rule powers to prohibit counties from exempting from or effecting changes in these statutes.

School Closure (Section 7)

The bill creates a section of law providing that no executive order issued by the Governor pursuant to KEMA that has the effect of closing public or private school attendance centers in Kansas shall be effective unless and until the order is affirmed by the State Board of Education (SBE) by adoption of a resolution by a majority of the SBE's members. The Governor must submit the proposed executive order to the SBE before issuing the order and, upon receipt, the SBE must meet as soon as reasonably possible to review the order and, if a majority of the SBE's members determine the order is in the best interests of the students in Kansas, to adopt a resolution affirming the order.

COVID-19 Response and Reopening for Business Liability Protection Act

The bill creates the COVID-19 Response and Reopening for Business Liability Protection Act (Liability Protection Act), as follows.

Definitions (Section 9)

The bill defines the following terms: "adult care facility," "COVID-19," "COVID-19 claim," "COVID-19 public health emergency," "disinfecting or cleaning supplies," "healthcare provider," "person," "personal protective equipment," "product liability claim," "public health directives," and "qualified product."

Healthcare Provider Immunity (Section 10)

The bill states, notwithstanding any other provision of law except within this section, a healthcare provider is immune from civil liability for damages, administrative fines, or penalties for acts, omissions, healthcare decisions, or the rendering of or the failure to render healthcare services, including services that are altered, delayed, or withheld, as a direct response to any COVID-19 state of disaster emergency under KEMA.

This immunity applies to any claims for damages or liability arising out of or relating to acts, omissions, or healthcare decisions occurring during any state of disaster emergency pursuant to KEMA, related to COVID-19.

This immunity does not apply to civil liability when it is established that the act, omission, or healthcare decision constituted gross negligence or willful, wanton, or reckless conduct. This immunity also does not apply to healthcare services not related to COVID-19 that have not been altered, delayed, or withheld because of the COVID-19 public health emergency. The bill (Section 15) states this provision applies retroactively to any cause of action accruing on or after March 12, 2020, and prior to the termination of the COVID-19 state of disaster emergency declared pursuant to KEMA.

Business Liability (Section 11)

The bill states that, notwithstanding any other provision of law, a person (or agent of such person) conducting business in Kansas shall be immune from liability in a civil action for a COVID-19 claim if such

person was acting pursuant to and in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued.

This section expires on January 26, 2021, and the bill (Section 15) states this provision applies retroactively to any cause of action accruing on or after March 12, 2020.

Product Liability (Section 12)

The bill states that, notwithstanding any other provision of law, a person who designs, manufactures, labels, sells, distributes, provides, or donates a qualified product in response to the COVID-19 public health emergency shall be immune from liability in a civil action alleging a product liability claim involving the product if any of the above actions were taken at the specific request of or in response to a written order or other directive finding a public need for a qualified product, issued by the Governor, Adjutant General, or Division of Emergency Management, and the damages are not occasioned by willful, wanton, or reckless disregard of a known, substantial, and unnecessary risk that the product would cause serious injury to others. The bill (Section 15) states this provision applies retroactively to any cause of action accruing on or after March 12, 2020.

Adult Care Facilities (Section 13)

The bill states that, notwithstanding any other provision of law, an adult care facility shall have an affirmative defense in a civil action for damages, administrative fines, or penalties for a COVID-19 claim if such facility is acting pursuant to and in substantial compliance with public health directives and the facility:

- Was caused, by the facility's compliance with a statute or rule and regulation, to reaccept a resident who had been removed from the facility for treatment of COVID-19; or
- Treats a resident who has tested positive for COVID-19 in such facility in compliance with a statute or rule and regulation.

This section defines "public health directives." The bill (Section 15) states this provision applies retroactively to any cause of action accruing on or after March 12, 2020, and prior to the termination of the COVID-19 state of disaster emergency declared pursuant to KEMA.

Other Provisions (Section 14)

The bill states that nothing in the Liability Protection Act creates, recognizes, or ratifies a claim or cause of action of any kind; eliminates a required element of any claim; affects workers' compensation law, including the exclusive application of such law; or amends, repeals, alters, or affects any other immunity or limitation of liability. The bill (Section 15) states this provision applies retroactively to any cause of action accruing on or after March 12, 2020.

COVID-19 Contact Tracing Privacy Act (Section 16)

The bill creates the COVID-19 Contact Tracing Privacy Act (Privacy Act), as follows.

The bill states the purpose of the Privacy Act is to protect the privacy of persons whose information is collected through contact tracing and the confidentiality of contact data. "Contact tracing" is defined by the Privacy Act to mean identifying persons who may have been exposed to an infected person for the purpose

of containing the spread of COVID-19 by notifying the contact that the contact may have been exposed, should be tested, and should self-quarantine. The Privacy Act also defines “contact,” “contact tracer,” “COVID-19,” “contact data,” “infected person,” “local health officer,” “municipality,” “Secretary,” and “state” for this purpose.

The bill prohibits the State or any municipality, or any officer or official or agent thereof, from conducting or authorizing contact tracing, except whenever the Secretary or a local health officer determines contact tracing is necessary to perform a public health duty assigned by statute to the official, the Secretary or local health officer may conduct or authorize contact tracing, as provided in the section.

Subject to the availability of appropriations, the Secretary or local health officer may employ, contract for, or engage contact tracers, and persons acting as contact tracers under this authority must meet the qualifications and training prescribed by rules and regulations adopted by the Secretary pursuant to authority provided by the Privacy Act. Until such rules and regulations are adopted, but not later than August 1, 2020, persons acting as contact tracers may act under the supervision of the Secretary and in compliance with the other provisions of the Privacy Act.

The bill requires each person acting as a contact tracer, before collecting any contact data, to execute under oath, on a form prescribed by rules and regulations of the Secretary, an acknowledgment of familiarity with the Privacy Act and the duties it imposes, including the duty of confidentiality. The state or municipal entity hiring, contracting with, or engaging the contact tracer must maintain a copy of the executed form for not less than one year after the person’s duties as a contact tracer end, or pursuant to applicable records retention schedule, whichever is later.

The bill deems a contact tracer employed, contracted, or engaged by the Secretary a state employee under the Kansas Tort Claims Act and a contact tracer employed, contracted, or engaged by a local health officer an employee of the county under the Kansas Tort Claims Act.

The bill prohibits a contact tracer from disclosing the identity of an infected person to a contact, and only contact data specifically authorized by the Secretary pursuant to rules and regulations may be collected as a part of contact tracing. The Secretary, a local health officer, or a contact tracer is prohibited from producing data pursuant to a subpoena unless the subpoena is issued by a court and is accompanied by a valid protective order preventing further disclosure of such information.

The bill requires contact data to be:

- Used only for the purposes of contact tracing and not for any other purpose;
- Confidential and not disclosed, produced in response to any Kansas Open Records Act (KORA) request, or made public, unless the disclosure is necessary to conduct contact tracing; and
- Safely and securely destroyed when no longer necessary for contact tracing, pursuant to rules and regulations of the Secretary.

The bill states participation in contact tracing shall be voluntary, and no contact or infected person shall be compelled to participate in, nor be prohibited from participating in, contact tracing. Any contact or infected person who in good faith discloses to a contact tracer information requested by the contact tracer under authority of the bill is immune from civil, criminal, and administrative liability for such disclosure. No criminal, civil, or administrative liability shall arise against a contact or infected person solely due to the person’s failure to cooperate in contact tracing conducted under the bill.

The bill prohibits contact tracing from being conducted through the use of any service or means that uses cellphone location data to identify or track, directly or indirectly, the movement of persons.

The bill states no third party shall be required to collect or maintain data regarding infected persons or contacts for the purpose of contact tracing. Contact tracers are prohibited from obtaining contact data related to an infected person or contact from any third party, except that contact data voluntarily collected or maintained by a third party may be obtained by a contact tracer only if the third party provides such information voluntarily and with the consent of the infected person or contact whose information is disclosed, or such information is provided pursuant to a valid warrant.

The bill permits a person to bring a civil action to enjoin violations of the Privacy Act, and a knowing violation of the Privacy Act is a class C nonperson misdemeanor. The bill deems contact data to be “personal information” within the meaning of the Kansas Consumer Protection Act statute governing requirements for holders of personal information. These remedies are in addition to each other and to any other available civil or criminal remedies.

The bill requires the Secretary to promulgate rules and regulations to implement, administer, and enforce the provisions of the Privacy Act prior to August 1, 2020.

The provisions of the Privacy Act expire on May 1, 2021.

Validity of Notarial Acts (Section 17)

The bill creates a section of law stating that notarial acts performed by a Kansas notary public while the personal appearance requirements are suspended pursuant to an executive order or other state law shall be valid as if the individual had met the personal appearance requirement, even if the individual failed to do so, as long as the notarial act fulfills all requirements prescribed by the executive order or other state law and all other requirements not relating to personal appearance.

First Responder Notifications (Section 18)

The bill creates a section requiring, during a COVID-19-related state of disaster emergency declared under KEMA, each local health officer to work with first responder agencies operating in the county to share information indicating where a person testing positive for, or under quarantine or isolation due to, COVID-19 resides or can be expected to be present. The bill requires the information to include the person’s address and duration of any quarantine, isolation, or expected recovery period, as determined by the local health officer, and only be used for the purpose of allowing the first responders to be alert to the need for utilizing appropriate personal protective equipment during the response activity.

The bill requires the above information to be provided to the 911 call center serving the address provided and limits the 911 call center to disseminating the information only to first responders responding to the listed address.

The information shall not be a public record and is not subject to KORA. This records provision will expire on July 1, 2025, unless the Legislature reviews and reenacts the provision pursuant to the applicable section of KORA.

Adult Care Homes (Section 19)

The bill creates a section of law requiring the Kansas Department for Aging and Disability Services (KDADS) to take the following actions with regard to adult care homes:

- Promptly, and no later than 90 days following the effective date of the bill, make or cause to be made infection control inspections;
- Provide the necessary personal protective equipment, sanitizing supplies, and testing kits appropriate to the needs of each facility on an ongoing basis, based upon:
 - Current number of residents;
 - Current number of full-time and part-time staff members;
 - Number of residents and staff who have tested positive for COVID-19 in the last 14 days;
 - Ability to separate residents with COVID-19 from non-COVID-19 residents; and
 - Any other factors deemed relevant by the Secretary for Aging and Disability Services; and
- Ensure that infection prevention and control best practices and recommendations based upon guidance from the U.S. Centers for Disease Control and Prevention and the Kansas Department of Health and Environment (KDHE) are adopted and made available publicly.

Telemedicine (Section 20)

The bill creates a section of law addressing telemedicine, including the following provisions.

The bill allows a physician to issue a prescription or order administration of medication, including a controlled substance, for a patient, without conducting an in-person examination of the patient.

A physician under quarantine, including self-imposed quarantine, may practice telemedicine.

A physician licensed in another state may practice telemedicine to treat patients in Kansas, if the physician advises the Board of Healing Arts (Board) of such practice in writing and in a manner determined by the Board and the physician holds an unrestricted license to practice medicine and surgery in the other state and is not the subject of any investigation or disciplinary action by the licensing agency. The Board may extend this provision to other healthcare professionals licensed and regulated by the Board as deemed necessary by the Board to address the impacts of COVID-19 and consistent with ensuring patient safety.

The bill requires a physician practicing telemedicine under this section to conduct an appropriate assessment and evaluation of the patient's current condition and document the appropriate medical indication for any prescription issued.

The bill specifies this section shall not supersede or otherwise affect the provisions of statutes governing performance of abortions or prohibition of abortions delivered *via* telemedicine.

The section defines "physician" and "telemedicine." The section expires on January 26, 2021.

Hospitals and Medical Care Facilities (Section 21)

The bill creates a section of law regarding hospital and medical care facility usage, including the following provisions.

The section allows a hospital to admit patients in excess of its number of licensed beds or inconsistent with its licensed classification of beds, to the extent the hospital determines is necessary to treat COVID-19 patients and to separate COVID-19 patients and non-COVID-19 patients. A hospital admitting patients in this manner must notify KDHE as soon as practicable, but prior authorization is not required.

The section allows a hospital to use non-hospital space, including off-campus space, to perform COVID-19 testing, triage, quarantine, or patient care, to the extent the hospital determines is necessary to treat COVID-19 patients and to separate COVID-19 patients and non-COVID-19 patients. The KDHE may impose reasonable safety requirements on such use to maximize the availability of patient care, and non-hospital space used in this manner is deemed to meet the requirements of a statute governing provision of services by a hospital consisting of more than one establishment. A hospital using non-hospital space in this manner must notify KDHE as soon as practicable, but prior authorization is not required.

The section allows a medical care facility to permit healthcare providers authorized to provide healthcare services in Kansas to provide healthcare services at such medical facility without becoming a member of the facility's medical staff.

"Hospital" and "medical care facility" have the same meanings as in statutes governing hospital and related facility licensing, inspection, and regulation.

The section will expire 120 calendar days after the expiration or termination of the state of disaster emergency proclamation issued by the Governor in response to the COVID-19 public health emergency, or any extension thereof.

Temporary Emergency License (Section 22)

The bill creates a section of law allowing the Board to grant a temporary emergency license to practice any profession licensed, certified, registered, or regulated by the Board to an applicant with qualifications the Board deems sufficient to protect public safety and welfare, within the scope of professional practice authorized by the temporary emergency license, for the purpose of preparing for, responding to, or mitigating any effect of COVID-19.

The section expires on January 26, 2021.

Temporary Licensure Measures for Additional Healthcare Providers (Section 23)

The bill creates a section of law, notwithstanding any applicable law to the contrary, allowing physician assistants (PAs) to provide healthcare services appropriate to such provider's education, training, and experience within a designated healthcare facility at which the PA is employed or contracted to work as necessary to support the facility's response to the COVID-19 pandemic without a written agreement with a supervising physician and the PA shall not be liable in any criminal prosecution, civil action, or administrative proceeding arising out of the lack of such written agreement.

The bill also allows advanced practice registered nurses (APRNs) and nurse anesthetists to provide healthcare services appropriate to each provider's education, training, and experience within a designated healthcare facility at which the provider is employed or contracted to work as necessary to support the facility's response to the COVID-19 pandemic without direction and supervision from a responsible physician. APRNs and nurse anesthetists providing health care under the provisions of this section shall not

be liable in any criminal prosecution, civil action, or administrative proceeding arising out of a lack of direction and supervision from a responsible physician.

Licensed practical nurses (LPNs) are allowed to provide healthcare services appropriate to such provider's education, training, and experience within a designated healthcare facility at which the LPN is employed or contracted to work as necessary to support the facility's response to the COVID-19 pandemic without direction from a registered professional nurse (RN), and the LPN shall not be liable in any criminal prosecution, civil action, or administrative proceeding arising out of such LPN's lack of supervision from an RN. The bill allows an RN or LPN to order the collection of throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19 for purposes of testing.

The bill allows licensed pharmacists to provide care for routine health maintenance, chronic disease states, or similar conditions appropriate to such pharmacist's education, training, and experience within a designated healthcare facility at which the pharmacist is employed or contracted to work as necessary to support the facility's response to the COVID-19 pandemic without a collaborative practice agreement with a physician, and the pharmacist shall not be liable in any criminal prosecution, civil action, or administrative proceeding arising out of such pharmacist's lack of collaborative practice agreement with a physician.

The bill allows a RN or LPN who holds a license that is exempt, inactive, or has lapsed within the past five years from the effective date of the bill to provide healthcare services appropriate to the nurse's education, training, and experience, and the RN or LPN shall not be liable in any criminal prosecution, civil action, or administrative proceeding arising out of such nurse's exempt, inactive, or lapsed license.

The bill authorizes a designated healthcare facility, as necessary to support the facility's response to the COVID-19 pandemic, to:

- Allow a student who is enrolled in a program to become a licensed, registered, or certified healthcare professional to volunteer for work within such facility in roles that are appropriate to such student's education, training, and experience;
- Allow a licensed, registered, or certified healthcare professional or emergency medical personnel serving in the military in any duty status to volunteer or work within such facility in roles that are appropriate to such military service member's education, training, and experience; and
- Allow a medical student, physical therapist, or emergency medical services provider to volunteer or work within such facility as a respiratory therapist extender under the supervision of a physician, respiratory therapist, or APRN. Such respiratory therapist extender is allowed to assist respiratory therapists and other healthcare professionals in the operation of ventilators and related devices and provide other healthcare services appropriate to such provider's education, training, and experience, as determined by the facility in consultation with such facility's medical leadership.

The bill allows a healthcare professional licensed and in good standing in another state to practice such profession in the state of Kansas. A license that has been suspended or revoked or a licensee who is subject to pending license-related disciplinary action is not considered to be in good standing. Any license that is subject to limitation in another state will be subject to the same limitation in the state of Kansas. Such healthcare professional shall not be liable in any criminal prosecution, civil action, or administrative proceeding arising out of such healthcare professional's lack of licensure in the state of Kansas.

The bill allows, subject to any terms and conditions established by the Secretary, a designated healthcare facility to use a qualified volunteer or qualified personnel affiliated with any other designated healthcare facility as if such volunteer or personnel was affiliated with the facility using such volunteer or personnel.

The bill allows a healthcare professional to be licensed, certified, or registered or to have such license, certification, or registration reinstated within five years of lapse or renewed by the applicable licensing agency of the state of Kansas without satisfying the following conditions of licensure, certification, or registration:

- An examination, if such examination's administration has been canceled while the state of disaster emergency proclamation issued by the Governor in response to the COVID-19 pandemic is in effect;
- Fingerprinting;
- Continuing education; and
- Payment of a fee.

The bill provides that a professional certification in basic life support, advanced cardiac life support, or first aid shall remain valid if such professional certification is due to expire or be canceled while the state of disaster emergency proclamation issued by the Governor in response to the COVID-19 pandemic is in effect.

Fingerprinting of individuals is not required as a condition of licensure and certification for any hospital, adult care home, county medical care facility, or psychiatric hospital.

The bill states "appropriate to such professional's education, training and experience," or words of like effect, shall be determined by the designated healthcare facility in consultation with such facility's medical leadership and defines "designated healthcare facility." The provisions of the section expire on January 26, 2021.

Critical Access Hospitals (Section 39)

The bill amends the definition of "critical access hospital" in a statute governing rural health networks to add a provision stating that, prior to June 30, 2021, to the extent a critical access hospital determines it is necessary to treat COVID-19 patients or to separate COVID-19 patients and non-COVID-19 patients, the hospital is not limited to 25 beds, and a facility with an approved swing bed agreement is not limited to a combined total of 25 extended care and acute care beds or limited to providing acute inpatient care for a period of time that does not exceed, on an annual average basis, 96 hours per patient.

Court Videoconferencing (Section 24)

The bill amends a provision enacted in 2020 House Sub. for SB 102 that allows the Chief Justice of the Kansas Supreme Court to issue an order authorizing the use of two-way electronic audio-visual communication (videoconferencing) in any court proceeding, when the Chief Justice determines such action is necessary to secure the health and safety of court users, staff, and judicial officers, by removing language limiting application of this provision to periods during any state of disaster emergency under KEMA. [*Note: Under continuing law, the provisions of this section expire on March 31, 2021.*]

Sale of Alcoholic Liquor (Section 26)

The bill amends the statute governing removal of unconsumed alcoholic liquor from premises of a club or drinking establishment to allow legal patrons to remove from the licensed premises one or more containers of alcoholic liquor not in the original container, subject to the following conditions:

- It must be legal for the licensee to sell the alcoholic liquor;
- Each container of alcoholic liquor must have been purchased by a patron on the licensed premises;
- The licensee or the licensee's employee must provide the patron with a dated receipt for the alcoholic liquor; and
- Before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must place the container in a transparent bag that is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened.

These provisions expire on January 26, 2021.

Unemployment Compensation (Sections 27 through 31)

The bill makes a number of temporary changes to the state unemployment compensation system in response to the COVID-19 pandemic.

The bill includes a policy statement that Kansas is committed to maintaining and strengthening access to its unemployment compensation system.

The bill provides that a claimant is not ineligible for benefits on the basis of not actively seeking work during a disaster emergency proclaimed by the Governor and in response to the spread of COVID-19 and the State has temporarily waived the work search requirement in compliance with the Families First Act.

Additionally, the bill waives the waiting week requirement for new claims filed from April 5, 2020, through December 26, 2020, in accordance with the Families First Act and the CARES Act.

The bill requires employers to provide any notifications to individuals in the service of the employer as required by the Secretary of Labor pursuant to the Families First Act.

For calendar year 2021, the bill limits unemployment contribution rates for employers to the standard rate schedule and prohibits an additional solvency adjustment.

The bill provides that benefits paid as a result of employees being discharged by an employer directly impacted by COVID-19 in accordance with the Families First Act will not be charged to the account of the contributing employer.

Under the bill, payments of unemployment compensation that are wholly reimbursed to a reimbursing employer by the federal government shall be charged for the purpose of such reimbursement under the CARES Act.

The bill also eliminates provisions prohibiting negative account employers from participating in shared work plans, but provides that shared work plans may be approved only if the Secretary of Labor

determines the contributing employer does not adversely impact the State’s eligibility under Section 2108 of the CARES Act, which provides for federal reimbursement of certain shared work plan payments.

Severability Clause (Section 40)

The bill includes a severability provision stating if any portion of the act or application thereof to any person or circumstance is declared unconstitutional or invalid, such invalidity shall not affect other portions that can be given effect without the invalid portion or application, and such other portions shall remain valid and enforceable.

Effective Date

The bill is effective upon publication in the *Kansas Register*.

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**Legislation
Not Passed**
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SB 252 – KanCare Expansion

SB 252 would have established the Kansas Innovative Solution for Affordable Healthcare Act to expand eligibility of medical assistance benefits. The Kansas Department of Health and Environment (KDHE) and the Kansas Insurance Department would be required to submit to the U.S. Centers for Medicare and Medicaid Services (CMS) and the U.S. Department of the Treasury any state plan amendment, waiver request or other approval request to implement the Act. Upon approval from CMS, Medicaid services would be expanded on or after January 1, 2021 to any adult applicants under 65 years of age who are not pregnant and whose income does not exceed 138.0 percent of the federal poverty level (FPL) to the extent allowed under the federal Social Security Act and subject to the 90.0 percent Federal Medical Assistance Percentage (FMAP).

Upon approval from the State Finance Council, the Kansas Insurance Department would submit to CMS a waiver request under Section 1332 of the Federal Patient Protection and Affordable Care Act to establish the Health Insurance Plan Reinsurance Program, a reinsurance program for health insurance plans sold in the Kansas individual market. Additionally, KDHE would submit to CMS a waiver request under Section 1115 of the federal Social Security Act to provide Medicaid services to any adult applicants under 65 years of age who are not pregnant and whose income does not exceed 100.0 percent FPL. The Section 1115 waiver would also request to transition adult applicants under 65 years of age who are not pregnant and whose income is greater than 100.0 percent FPL but does not exceed 138.0 percent FPL to health insurance plans on the health benefit exchange in Kansas. The Kansas Insurance Department would be required to design the reinsurance program in coordination with KDHE to offset any costs related to the Section 1115

waiver. The reinsurance program and the Medicaid eligibility requirements in the Section 1115 waiver would begin on January 1, 2022, subject to approval by CMS and the U.S. Department of the Treasury. If the State Finance Council does not approve submitting the reinsurance program waiver, or if CMS or the U.S. Department of the Treasury do not approve the reinsurance program waiver or the Section 1115 waiver, then Medicaid expansion up to 138.0 percent FPL in effect on or after January 1, 2021 would continue.

The bill would have required a \$25 monthly fee to be charged to each person enrolled in the program, not to exceed \$100 per month per family. KDHE could grant hardship exemptions, as determined by the Secretary of Health and Environment. The state's share of revenue collected from the monthly fee would be credited to the State General Fund. KDHE would be allowed to use the Debt Setoff Program administered by the Department of Administration for any covered individual who is delinquent by 60 days or more. Also, KDHE could require managed care organizations to collect the monthly fee.

KDHE would be authorized to establish a health insurance coverage premium assistance program for individuals whose income is greater than 100.0 percent FPL but does not exceed 138.0 percent FPL who are eligible for employer health insurance coverage but cannot afford the premiums. An individual's payment for a health insurance coverage premium cannot exceed 2.0 percent of the individual's modified adjusted gross annual income. Also, total premium payments cannot exceed 2.0 percent of a household's modified adjusted gross income for all members of the household who participate in the premium assistance program.

The bill would have required KDHE to refer all non-disabled adults receiving benefits from the Act and who are unemployed or working less than 20 hour a week to the KansasWorks program administered by the Department of Commerce. The Department of Commerce would be required to track employment outcomes for Kansas Innovative Solution for Affordable Healthcare Act participants. Full-time postsecondary education institution or technical school students would be exempt from the referral program.

If at any point the FMAP became lower than 90.0 percent, KDHE would terminate coverage under the Act over a 12-month period beginning on the first day the percentage becomes lower than 90.0 percent.

The bill would have created the Medicaid Expansion Privilege Fee Fund in the state treasury. Revenues resulting from Kansas Innovative Solution for Affordable Healthcare Act members would be deposited in the new fund and could only be spent on assistance payments for members. All revenues from drug rebates associated with current and expanded medical assistance members would be credited to the State General Fund. Under current law, revenues from drug rebates are remitted to the Medical Programs Fee Fund in KDHE. KDHE would be required to certify to the Director of Legislative Research and the Director of the Budget the amount of monies received from drug rebates. "Drug rebates" would be added as a separate line on State General Fund receipt reports produced by the Legislative Research Department and the Division of the Budget.

The bill would have created the Hospital Medicaid Expansion Support Surcharge Fund. Revenues from the fund would be used to offset costs related to Medicaid expansion. The surcharge would equal to the number of unduplicated Medicaid expansion enrollees multiplied by \$233 and be imposed on each hospital provider proportionally as determined by the Healthcare Access Improvement Panel. However, the total amount received from the surcharge cannot exceed \$35.0 million in any calendar year and the surcharge would discontinue if the FMAP falls below 90.0 percent. SB 252 outlines the procedures for KDHE and the Healthcare Access Improvement Panel to collect the surcharge annually. On July 1 of each fiscal year, the Director of Accounts and Report in the Department of Administration would record a debit against Hospital

Medicaid Expansion Support Surcharge Fund receivables and a corresponding credit to the fund equal to 100.0 percent of revenues estimated by the Director of the Budget.

The bill would have also created the Federal Medical Assistance Percentage Stabilization Fund. The fund would be financed by any monies recovered by the Office of the Attorney General on behalf of Kansas in the civil action *Texas v. United States*. If the state's share of Medicaid costs increases as a result of a change to the FMAP, funds would be transferred from the Federal Medical Assistance Percentage Stabilization Fund to the State General Fund to cover the costs. Conversely, if the state's share of Medicaid costs decreases because of a FMAP change, funds would be transferred from the State General Fund to the Federal Medical Assistance Percentage Stabilization Fund. The Director of Legislative Research and the Director of the Budget must certify any Medicaid cost increases or decreases.

SB 252 would have required the Department of Corrections to coordinate with county sheriffs who request assistance in facilitating Medicaid coverage for any state or county inmate incarcerated in a Kansas prison or jail.

The bill would have created the Rural Hospital Advisory Committee to manage the new Rural Hospital Transformation Program. The advisory committee would include KDHE; the Department of Labor; the Board of Regents; the Kansas Hospital Association; the Kansas Medical Society; the Community Care Network of Kansas; the Association of Community Mental Health Centers of Kansas; the Board of Healing Arts; the Kansas Farm Bureau; the Emergency Medical Services Board; and other public and private stakeholders. The advisory committee would identify one or more consulting firms to work with target hospitals, as defined in the bill, to develop transformation plans as part of the Rural Primary Health Center Pilot Initiative.

The Kansas Insurance Department would be required to study and prepare a report on any risks associated with converting the health benefit exchange operated in Kansas under the federal Patient Protection and Affordable Care Act from a federally facilitated exchange to a state-based exchange. The study must be submitted to the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare on or before January 11, 2021. In coordination with the Kansas Hospital Association, Kansas Medical Society, Community Care Network of Kansas and other private and public stakeholders, KDHE would be required to establish a task force to develop a plan to measure and report uncompensated care provided by healthcare providers and hospitals in Kansas. A report must be submitted to the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare on or before January 10, 2022.

The bill would have authorized the Kansas Insurance Department to make expenditures from the Insurance Department Service Regulation Fund for FY 2021 and FY 2022 for costs related to studying converting from a federally facilitated health benefit exchange to a state based exchange; preparing the Section 1332 waiver request for the reinsurance program; determining the extent to which a \$35.0 million annual appropriation for the reinsurance program would decrease health insurance premiums on the health benefit exchange in Kansas; and submitting the waiver request and actuarial analysis to the State Finance Council for approval no later than 150 days after the effective date of the Act.

The bill would have authorized KDHE to make expenditures from the State General Fund or any special revenue fund for FY 2020 and FY 2021 to submit a waiver request to CMS to allow for Medicaid reimbursement for inpatient psychiatric acute care. The bill would appropriate \$35.0 million from the Health Insurance Plan Reinsurance account of the State General Fund to the State Finance Council for FY

2022. The funds would be used to implement the Health Insurance Plan Reinsurance Program beginning January 1, 2022 upon approval of the State Finance Council.

During calendar year 2021 and calendar year 2022, the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight would meet for an additional day per meeting in order to monitor the implementation of the Kansas Innovative Solution for Affordable Healthcare Act.

The bill would have required the following other reports to the Legislature on the Kansas Innovative Solution for Affordable Healthcare Act:

1. KDHE, in coordination with the Department of Commerce, must submit a report annually to the Legislature regarding the employment outcomes of individuals covered under the Act.
2. In January of each year, KDHE must submit a report on revenues received from the monthly fees.
3. On or before January 10, 2022, and on or before the first day of the regular session of the Legislature annually thereafter, KDHE must submit a report on Medicaid Expansion Privilege Fee Fund revenues.
4. On or before January 10, 2022, and on or before the first day of the regular session of the Legislature annually thereafter, KDHE must submit a report on the cost savings from the movement of individuals to the higher FMAP rate.
5. On or before January 10, 2022, and on or before the first day of the regular session of the Legislature annually thereafter, the Secretary of Corrections must deliver a report that identifies cost savings from receiving Medicaid reimbursement for inmate inpatient hospitalization.
6. On or before February 15 of each year, the Secretary of Health and Environment must present a report to the House Committee on Appropriations and the Senate Committee on Ways and Means on the costs, cost savings and additional revenues generated during the preceding fiscal year.
7. On or before September 1 of each year, KDHE must submit a report on the FMAP and all amounts transferred in and out of the Federal Medical Assistance Percentage Stabilization Fund.
8. On or before January 10, 2022, and on or before the first day of the regular session of the Legislature annually thereafter, the Kansas Insurance Department must submit a report on any cost shifting from hospitals to commercial health insurance plans as a result of implementing the Act.

SB 493 – Health Care Stabilization Fund

SB 493 would have increased the required minimum medical malpractice liability insurance coverage from \$200,000 per claim/\$600,000 per year aggregate to \$500,000 per claim/\$1,500,000 per year aggregate beginning on January 1, 2021. The bill would have also reduced from three to two the number of options for levels of coverage.

If the Kansas Supreme Court overturned the medical malpractice damages cap statute, all medical malpractice liability insurance requirements under current Kansas law would become null and void as of July 1 following the Supreme Court decision. If the elimination of the liability insurance requirement is triggered, medical doctors, doctors of osteopathy, doctors of chiropractic, doctors of podiatric medicine, physician assistants, and advanced practice registered nurses would no longer be required to carry malpractice insurance. However, other classifications of practitioners licensed by the Board of Healing Arts, such as physical therapists and acupuncturists, would still be required to carry liability insurance. Additionally, the Health Care Stabilization Fund would be subject to elimination through a delinquency/liquidation proceeding initiated by the Commissioner of Insurance.

HB 2412 – APRN Expanded Scope of Practice without Collaborative Practice Agreement

HB 2412 would have made the following changes to the Nurse Practice Act:

1. Any Advanced Practice Registered Nurse (APRN) who has less than 4,000 hours of licensed active practice under a collaborative relationship with a physician would be required to complete a transition program that consists of 4,000 hours within a three-year period while maintaining a collaborative relationship with a physician or a full practice APRN;
2. APRN practice, when not in the transition program, would be independent and no longer require a collaborative agreement with a physician and there would be no physician oversight;
3. Proof of national certification would be required for APRN licensure and renewal;
4. The Board of Nursing would have to recognize and approve the national certifying organizations with certification standards that are equal to or greater than the Board's standards;
5. The Board of Nursing would have to include in rules and regulations the federal drug enforcement administration registration and monitor APRN compliance with this requirement;
6. APRNs would be able to prescribe medications independently; and
7. APRN would have to maintain malpractice insurance coverage through the Health Care Stabilization Fund.

HB 2563 – Increasing the Age to Purchase or Possess Cigarettes, E-cigarettes, & Tobacco Products

HB 2563 would have increased the minimum age to purchase or possess cigarettes, electronic cigarettes, and tobacco products from 18 years of age to 21 years of age. The bill would not allow vending machines or self-service displays to sell cigarettes beginning on July 1, 2020. The bill would add electronic cigarettes to the requirements of the current Clean Indoor Air Act. Under current law, the use of tobacco products is prohibited in school buildings. The bill clarifies that this prohibition also includes cigarettes, e-cigarettes, and consumable material. The bill would allow electronic cigarettes and consumable material to be regulated under the Cigarette and Tobacco Products Act and definitions in this Act would be updated to include electronic cigarettes and consumable material. The bill would prohibit any person from selling electronic cigarettes with flavored consumable material other than menthol flavored.

The bill would have increased the retail dealer's license fee from \$25 to \$100, and would increase the minimum age to obtain this license from 18 years of age to 21 years of age. The bill would eliminate the specific license for retailer's license on railroad or sleeping cars; the show, carnival, or catering license; the resident retail dealer's temporary license; vending machine distributor license; and vending machine operator's license. The bill would also eliminate the vending machine permit.

Under current law, it is a class B person misdemeanor to sell or furnish cigarettes or tobacco products to persons under the age of 18 years of age, or allow persons under the age of 18 years of age to purchase these products that is punishable with a fine of \$200. The bill would add electronic cigarettes and consumable materials to this misdemeanor; increase the age to 21 years of age; and increase the fine to a minimum of \$500 for the first violation, a minimum fine of \$750 for a second violation within a three-year period, and a minimum fine of \$1,000 for a third or subsequent violation within a three-year period. The bill requires the Kansas Department of Health and Environment (KDHE) to create or approve training materials for those caught selling tobacco products to people under the age of 21. The bill also updates the "controlled buys" procedures that allows the Department of Revenue to perform compliance checks to make sure retailers comply the age requirements for the sale of cigarettes, electronic cigarettes, and tobacco products.

While some cities and counties in Kansas have already increased the age to purchase cigarettes, electronic cigarettes, and tobacco products from 18 to 21 years of age, the effect is unknown to the Department. To formulate these estimates, the Department of Revenue reviewed data from the Centers for Disease Control and Prevention that show an estimated 17,662 smokers aged 18-20 in Kansas (14.1 percent of that particular population are smokers), which represents approximately 4.66 percent of all adult smokers in Kansas. The Department reported annual cigarette stamp revenue of \$116.7 million in 2019 and reducing consumption by 4.66 percent would result in a reduction of approximately \$5.4 million in cigarette stamp revenue that goes to the State General Fund. There would also be a loss of an additional \$1.6 million in sales tax revenue (\$1.4 million to the State General Fund and \$265,337 to the State Highway Fund). The Department estimates that the \$5.4 million cigarette stamp revenue represents approximately 4.2 million packs of cigarettes no longer being sold in Kansas.

The bill would also increase the biennial retail dealer's license fee from \$25 to \$100. With that change, the Department would see an increase every other year of \$195,000 to the Cigarette and Tobacco Enforcement Fund. The Department indicates that 2,600 dealers would see a fee increase of \$75 every other year. This bill would also increase the fees for violations of the Cigarette and Tobacco Products Act; however, it is unknown what the effect on revenue collected from these increased fines.

HB 2570 – Limiting Certain Opioid Prescriptions to Seven-Day Supply

HB 2570 would have limit prescribers from prescribing a schedule II, III, or IV opioid for initial treatment of acute pain in a quantity that exceeds a seven-day supply and would prohibit refills for such prescriptions. For treatment of acute pain, a subsequent subscription for the same medication could be filled during the same month. Prescriptions for substance use disorder would be exempt from the prescribing limitation. The bill would provide protection for pharmacists for refusing to dispense in accordance with the limitation. The bill would require prescribers to complete any necessary prior authorization steps and would create a Medicaid rule for follow-up prescriptions.

HB 2601 – Restricting Authority of KDHE to Specify School Immunization Requirements

HB 2601 would have amended current law to specify certain required immunizations for children in licensed childcare facilities and schools. The required immunization list would include the following: diphtheria, hepatitis A, hepatitis B, measles (rubeola), meningitis, mumps, whooping cough, poliomyelitis, rubella (German measles), tetanus, and varicella (chicken pox). Under current law, a list of required immunizations is found in rules and regulations for the Kansas Department of Health and Environment (KDHE).

In addition, the bill would provide that the Secretary of KDHE could deem a required immunization not specified in this list if it is found that there is an imminent hazard to public safety. This designation would be required to be adopted through rules and regulations and would expire on July 1 of the following calendar year after adoption. Finally, the bill would make technical changes to the immunization statutes.

Note: Bill descriptions provided by the Kansas Legislative Research Department and Office of the Governor's Budget