



Kansas Hospital
ASSOCIATION

2022 Legislative Preview

The 2022 session will begin as a carry-over year, and the bills introduced last session will continue to be debated in the upcoming session slated to start on Jan. 10. ([2021 Last Bill Tracker Report](#), [2021 Legislative Wrap-Up](#)).

Many of the major issues likely to receive attention during the 2022 session will be wrapped into the redistricting process that occurs every ten years in Kansas. This year, much of the attention in the redistricting process will be focused on the congressional district maps due to growth in the Northeast part of the state, and how that impacts the rest of the congressional districts.

The legislature will be operating during 2022, knowing that the House members and statewide offices will be up for re-election in November.

Kansas State Budget and Medicaid

Kansas State Budget

The 2021 legislature passed a budget for the state fiscal year beginning July 1, 2021, of \$21 billion, with \$7.4 billion in state expenditures. The approved budget anticipated an ending balance of \$547 million in the state coffers at the end of fiscal year 2022.

The November revised estimates of State General Fund receipts indicate that overall revenues for state FY 2022 are at \$8.87 billion and \$9.047 billion for FY 2023. The increase is 17.3 percent over the FY 2021. As a result, anticipated revenues are estimated to equate to an ending balance of \$2.89 billion, well over the statutorily required 7.5 percent ending balance.

KanCare Expansion

During the 2021 session, Governor Laura Kelly proposed a Medicaid expansion bill that would have coupled expansion with the legalization of medicinal marijuana. Unfortunately, the proposal didn't receive a hearing in either the House or the Senate.

Discussion on the topic during the 2022 session will likely focus on how expansion may be tied to workforce needs and move to a stand-alone expansion proposal.

Provider Assessment

In 2020, the Kansas Legislature approved language that allowed flexibilities in the provider assessment and directed Kansas hospitals to develop a self-sustaining program. Kansas hospitals continue to work with the state to comply with the legislation to maximize the non-State General Fund revenue

opportunities it offers. The Center for Medicare & Medicaid Services has not yet approved the program changes necessary to achieve the self-sustaining program directed by the legislature in 2020. During the CMS review period, KHA will continue to support budget language allowing the state to provide coverage for any shortfalls in the program pending CMS approval.

Food Sales Tax

In 2022, the Kansas Legislature will likely discuss eliminating or reducing the food sales tax on groceries in Kansas, as has been called for by both candidates for governor in Kansas. Similar legislation was introduced during 2021 to adjust the sales tax on food and food ingredients in [SB 171](#).

Expanding KanCare Coverage Options

The 2022 legislature will likely have conversations about expanding postpartum coverage for new mothers enrolled in KanCare from the current two months to 12 months. In addition, the legislature has expressed interest in addressing increases in reimbursement rates in the following areas: primary care for pediatric patients, certified nurse midwives and EMS services.

Family as Caregivers

The interim committees have expressed interest in the 2022 legislature consider allowing family members that serve as at-home caregivers to receive reimbursements for those services if the family member is certified and meets all the requirements to serve as an in-home health aide.

COVID-19 Response

Liability Protections and Regulatory Flexibility

During the 2021 session, the legislature passed [SB 283](#), allowing telemedicine flexibilities, temporary licensure and liability protections for health care providers and the business community through March 31, 2022. There may be a need for continued discussions on liability protections beyond March 2022.

Kansas Emergency Management Act

The Kansas Emergency Management Act that was put into place during the 2021 session has been held up in the State Supreme Court. Pending any ruling on [SB 14](#), there may be a need to re-visit the process that the state dictates for Kansas Emergency Management Act related to COVID-19 response efforts.

Limiting Powers

[HB 2449](#) concerns allowing a response to public health and state of disaster emergency powers of public officials in Kansas. The bill was introduced during the 2021 session and prohibits stay-at-home orders and curfews, prohibits certain public and private entities from requiring vaccinations, while requiring the capitol and legislative meetings to be open to the public, and changes the ability to make restrictions on places of worship and operation of private businesses.

Health

Telehealth

The Kansas Telemedicine Act will likely be discussed during the upcoming legislative session. Providers and patients have recognized the value in both the flexibility and safety it provides to patients. In addition, the United Methodist Health Ministry Fund has invested in a statewide telehealth survey program to evaluate the use of telemedicine by both patients and providers relating to efficacy, satisfaction and access. Changes to the Act relating to COVID response, establishing a provider-patient relationship for specialty services, coordination of care with primary providers, and payment parity will be critical issues this session.

Telepharmacy

The Kansas Board of Pharmacy is seeking to change the Telepharmacy Act during the 2022 session. The legislation will likely allow for maintenance and preservation of pharmacy access in rural areas.

Right to Prescribe Off Label

[SB 211](#) and is likely to continue to be discussed during the 2022 session. The legislation allows patients to be prescribed prescription drugs approved for "off-label use" with a liability waiver.

Insurance

Short Term, Limited-Duration Health Plans

Last year, the Senate passed [SB 199](#) amending the law to allow short-term insurance policies for periods of six or 12 months to be extended to a maximum policy period of 36 months in total duration.

Step Therapy Restrictions

[HB 2157](#) was proposed during the 2021 legislative session to establish restrictions on the use of step-therapy protocols by health insurance plans.

Establishing a Maximum Out-of-Pocket Cost for Insulin

[HB 2324](#) was introduced during the 2021 legislative session to establish a \$100 maximum out-of-pocket cost-share per month per covered person for prescription insulin drugs.

Coverage for PANS and PANDAS

[HB 2110](#) requires insurance coverage for Pediatric Acute-Onset Neuropsychiatric Syndrome (PANS) and Pediatric Autoimmune Neuropsychiatric Disorders associated with streptococcal infections (PANDAS) by the state health care benefits program. The legislation received a hearing in the House. The House requested an impact report be sent to the Kansas legislature.

Coverage for Diagnostic Exams for Breast Cancer

[SB 48](#) received a hearing during the 2021 session. The bill requires certain insurance coverage for diagnostic examinations for breast cancer.

Creating a Universal Single-Payer Guaranteed Healthcare Coverage Program

[HB 2459](#) creates a universal single-payer guaranteed healthcare coverage program. The bill would allow the establishment of eligibility and enrollment requirements and benefits, a board of trustees to oversee program standards, rules and regulations. The bill would establish the taxing mechanisms to pay for the program by establishing a Kansas health trust fund.

White Bagging

In 2022 legislation may be introduced to limit the practice of requiring patients to utilize specialty pharmacies to be able to access critically needed care.

Legal

Liability of County Hospital Debt

During prior legislative sessions, a bill has been introduced to absolve a county for any county hospital debts if that county hospital closes. Specifically, the proposed legislation stated, "the county shall not be liable for any debts of the county hospital other than general obligation bonds issued for the county hospital or any other debt obligation where the county specifically has agreed to be liable for such

debt." As cities and counties face concerns over the economic impact of COVID-19 on the communities, this issue may again become part of the local government funding discussion.

Involuntary Discharge or Transfer from an Adult Residential Facility

Legislation was introduced during the 2021 session to create a right to appeal an involuntary discharge or transfer from an adult residential care facility. [HB 2004](#) permits a resident of an adult residential care facility to file an appeal with the secretary of the Kansas Department for Aging and Disability Services within 15 days notice of a pending involuntary transfer or discharge.

Behavioral Health

Behavioral Health Care

Several interim committees dealing with mental health modernization have expressed support for the Kansas Department of Health and Environment to revise Medicaid codes allowing therapy billing codes for family therapy without the patient present.

There have been legislative efforts to lift the current moratorium on voluntary admissions at state hospitals. KDADS is expected to lift the moratorium in early 2022. KVC Hospitals and KDADS formed a new partnership and announced the availability of a 14-bed youth psychiatric hospital in Hays. This and other funding needs related to mental health reform are likely to be discussed by the state budget committees.

Mobile Crisis Teams and 988 Suicide Prevention Crisis Line

[HB 2281](#) was introduced during the 2021 session to provide a state funding mechanism for the federally enacted 988 Suicide Prevention and Mental Health Crisis Hotline in Kansas through mobile cell phone fees. The legislation would also allow for the expansion of mobile crisis teams to respond to calls. Funding for the program was provided through proviso language in the state budget for 2022; however, HB 2281 would need to be passed to provide a long-term funding source for the hotline.

Health Care Workforce

Temporary Nurse Assistant Training

The waiver to allow for the use of Temporary Nurse Aides during the COVID-19 response was seen as a success in helping to address immediate workforce needs. The legislature may look to codify the temporary nurse aide certification in state statute outside the COVID-19 public health emergency.

Increase in Instruction for Nurse Assistants

A proposal to address the pipeline for CNAs is being discussed. The legislation may broaden the definition of course instructor to include licensed practical nurses (LPNs) with a minimum of two years of experience, rather than just registered nurses (RN' 's), and eliminate the requirement that experience be specific to long-term care. It would also increase the student-to-faculty ratios and allow the use of simulation labs for up to 50 percent of clinical hours.

Assault of a Health Care Worker

Assault on health care providers at work continues to be a concern for Kansas hospitals. In 2020, legislation was introduced to increase the penalty for assault or battery of a health care provider. It created a felony for anyone convicted of aggravated assault of a health care provider and a misdemeanor for assault. Included in the definition of a health care provider was a person performing services for a medical care facility licensed under KSA 65-425 et seq., but who does not receive compensation, either directly or indirectly, for those services. Legislation introduced in 2022 may cover more individuals employed in the health care sector.

Staffing Agency

Legislation similar to what was proposed in 2020 in [HB 2629](#) is likely to be introduced during the 2022 session. The bill establishes licensing and compliance procedures for supplemental nursing services agencies to be overseen by KDADS and set registration fees. The bill also prohibits a supplemental nursing service agency providing services in an adult care home or hospital long-term care unit from charging a rate higher than 150 percent of the sum of the weighted average wage rate in any geographic area.

Health Care

Anesthesiologist Assistant Licensure Act

In 2021, a letter issued by the Kansas Board of Healing Arts that indicates an anesthesiologist assistant is allowed to practice under delegation of authority in Kansas. The letter also urges the legislature to address the matter in statute. In previous sessions, a bill creating the Anesthesiologist Assistant Licensure Act has been introduced. It requires anesthesiologist assistants to be licensed by the Kansas Board of Healing Arts. The bill included definitions of terms, established licensure requirements, maximum license fees, and causes for revoking, suspending, or limiting a license. In addition, the bill limited the number of anesthesiologist assistants an anesthesiologist could supervise to four. The bill also established the Anesthesiologist Assistant Council within the Board of Healing Arts to advise the board in carrying out the Act's provisions. The same or similar language will likely be brought before the 2022 legislature.

Licensure of Surgical Technologists

Legislation may be considered requiring the Kansas Board of Healing Arts to regulate health care professionals practicing as surgical technologists. In 2018, legislation was introduced defining and listing qualifications for surgical technologists and requiring the board to adopt rules and regulations establishing continuing education requirements for surgical technologists. The bill prohibits medical care facilities from employing surgical technologists who do not have specified qualifications. The bill also specifies the healing arts practice does not include surgical technologists.

Advanced Practice Registered Nurse Scope of Practice

During the last several sessions, bills were introduced making the following changes to the Nurse Practice Act:

- Any advanced practice registered nurse having less than 4,000 hours of licensed active practice under a collaborative relationship with a physician is required to complete a transition program consisting of 4,000 hours within three years while maintaining a collaborative relationship with a physician or a full practice APRN;
- APRN practice, when not in the transition program, is independent and no longer requires a collaborative agreement with a physician, and physician oversight is not required;
- Proof of national certification is required for APRN licensure and renewal;
- The Kansas State Board of Nursing is required to recognize and approve the national certifying organizations with certification standards equal to or greater than the board's standards;
- The Kansas State Board of Nursing has to include in rules and regulations the federal drug enforcement administration registration and monitor APRN compliance with this requirement;
- APRNs is able to prescribe medications independently; and
- APRNs is required to maintain malpractice insurance coverage through the Health Care Stabilization Fund.

Some or all of these provisions are likely to be brought before the 2022 legislature.

Miscellaneous

340B Drug Pricing Program

The 340B Drug Pricing Program has been in effect for more than 20 years. As part of the Affordable Care Act, other entities became eligible to participate in the program. Kansas has more than 85 hospitals participating in the 340B Drug Pricing Program. Some states have sought legislation to provide protections to participating entities to protect network participation and pricing. Similar legislation may be proposed in Kansas.

PBM Transparency

[HB 2383](#) was introduced in 2021 to regulate Pharmacy Benefit Managers that provide enhanced regulation and registration of such entities. With the informational hearing held on pharmaceutical supply chain issues that occurred last session, additional conversation on reform may occur in 2022.

Medical Cannabis

Medical cannabis has been a frequent topic of discussion at the statehouse. Last session, a bill to create the Kansas Medical Marijuana Regulation Act to define terms, amend criminal penalties, creating drug schedule re-programming passed the House in [House Sub for SB 158](#). The bill was ruled materially altered in the Senate but may see additional discussion in the 2022 session.

Anti-Vaccination Movement

During the 2021 Special Legislative Session, the legislature passed [HB 2001](#). This legislation creates avenues for employees to receive vaccine exemptions for religious or medical reasons and establishes the process for an employer to grant those exemptions. The bill also defines a grievance process for employees that do not receive exemptions as stated in law and allows employees to access State Unemployment Trust Funds. During the discussion, several other items related to limited vaccines were raised. Other bills sought included [SB 2](#), which prohibits businesses, including health care facilities, and governmental entities from refusing services due to vaccination status, including allowing for unrestricted visitation at health care facilities. It also restricts incentive programs for vaccines, sets out fines and penalties for violations, would allow for off-label prescription drug use at patient request, eliminate quarantines and mask requirements, would eliminate an employer's ability to require any vaccine or take any adverse actions against an employee who does not receive a vaccine, changes all public health orders to recommendations, limits the ability to add any immunizations to the schedule needed to attend educational or child care facilities.

In addition, many conferees referenced a need to pass [SB 212](#), which grants immunity for exposing another to an infectious disease, prohibits an employer for requiring any vaccine and taking adverse employment action based on an employee's immunization status. The bill also prohibits the secretary of KDHE from requiring additional immunizations to attend child care or school facilities.

Tobacco 21 Initiative

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

- Defines tobacco products to include current and future tobacco products, including e-cigarettes.
- Prohibits the sale of tobacco products to persons under the age of 21.
- Requires the tobacco retailer or their employee to verify the age of the purchaser before the sale.

- Requires tobacco retailers to post signs stating that sales to persons under the age of 21 are prohibited.
- Designates an enforcement agency and establishes a clear enforcement protocol.
- Creates a tobacco retail licensing program if the jurisdiction has the authority to do so under state law.
- Dedicates funding to fully cover enforcement costs, either through licensing fees or as a provision in a state statute or local ordinance.
- Provides authority for the state, county or municipality to inspect tobacco retailers for compliance with MLSA 21 and a mandated minimum number of annual compliance checks for every retail tobacco establishment.
- Provides penalties focused on the tobacco retailer or licensee rather than the youth purchaser or non-management employee. This would mean eliminating Purchase, Use and Possession penalties where they exist in current tobacco sales laws or policies.
- Establishes a civil-penalty structure for violations rather than a criminal-penalty structure to avoid unintended consequences that disproportionately impact marginalized communities and undermine the public health benefits of the policy.
- Where state legislation is pursued, ensures local jurisdictions have the authority to enact more stringent regulations for tobacco products than federal law.

Tobacco Tax Increase

Legislation to increase the cigarette tax has been proposed in many sessions. In 2021, the proposal was coupled with a food sales tax reduction in [HB 2428](#). Legislation to seek an increase in cigarette tax may be proposed in 2022.

Prior Authorization Bill

Legislation may be introduced to provide a gold card status, similar to Texas law, for providers meeting certain thresholds of approved prior authorizations not having to go through the prior authorization process.

Any Willing Provider

Similar to prior years, legislation may be introduced requiring health insurance carriers to allow health care providers to become members of the carrier's networks of providers if certain conditions are met.

Rural Opportunity Zone Program Expansion and Extension

In 2021, SB 47 extended the sunset on the Rural Opportunity Zone Student Loan Repayment Program until July 1, 2023. The bill also extended the sunset on the income tax credit for two years through tax year 2023 and extended eligible counties to 77 counties with a population less than or equal to 40,000. In 2022, there may be a desire to revamp the program. In 2021, a two-track program for technical education was also introduced in [HB 2431](#).

Disclosure of Medical Facility Fees

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

Antipsychotic Medications

Legislation has been considered in the past requiring a health care prescriber to obtain informed consent before administering an antipsychotic medication with a boxed warning under 21 CFR 201.57 to

an adult care home resident. Under the proposed legislation, prescribers are required to obtain written informed consent from the resident or, if the resident is incapacitated, a person acting on behalf of the resident on a form provided by KDADS. Previous bill versions have included an emergency clause sidestepping the written informed consent if the resident is at significant risk of physical or emotional harm or puts others at risk.

Mandatory Enrollment in the Prescription Monitoring Program

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

Requirements for Licensed Salons in Hospital and Nursing Home Settings

Following a proposed rules and regulations change by the Kansas Board of Cosmetology that was discouraged by the legislature, it is likely that the Board of Cosmetology will propose legislation similar to [HB 2616](#), to create new categories of licenses and extend a requirement for all hospitals and long-term care facilities to have licensed salons to provide services to patients.