



**Kansas Hospital**  
ASSOCIATION

To: Members of the Kansas Congressional Delegation  
From: Chad Austin, President and CEO  
Audrey Dunkel, Vice President of Government Relations  
Date: January 27, 2021  
Re: KHA Legislative Priorities for the 117<sup>th</sup> Congress

As the 117<sup>th</sup> Session of Congress begins ramping up and newly inaugurated President Joe Biden takes the executive branch's reigns, we at the Kansas Hospital Association are writing to you to share our priorities for the upcoming year. While the ongoing COVID-19 pandemic colors every current issue in health care, the scope of challenges faced by our state's hospitals will not end when vaccines provide for herd immunity. Below is a list of both COVID and non-COVID related items that we look forward to working to address with you throughout the year.

**Fifth COVID Relief Bill:** We are grateful for the delegation's support of previous COVID relief bills, and as President Biden pursues his top legislative priority—the passage of a fifth COVID relief bill—we believe that there are many matters that need to be addressed in this package that were either overlooked or emerged because of provisions in previous relief bills.

- President Biden's proposal includes many items desperately needed by the health care community, particularly the increase in funding and administration for vaccine distribution. We look forward to working with you on ensuring that any vaccine allocation plan does not disadvantage Kansas.
- However, this proposal includes no additional funding for the Provider Relief Fund. Hospitals are under extraordinary financial pressure as COVID patients take up a higher percentage of beds, and adding funding to the PRF is absolutely vital.
- This proposal also does not contain language that provides a liability shield for providers. As you know, doctors and hospital staff have worked tirelessly under unique circumstances for almost a year now, and providers should be allowed to do their job without fear of litigation except in instances of malfeasance or gross neglect.

- The COVID relief bill passed in the final days of the 116<sup>th</sup> Congress provided much-needed relief to rural hospitals by allowing them to elect to transition to Rural Emergency Hospitals. However, this bill inadvertently capped the Medicare reimbursement rates to Rural Health Clinics created in 2020 to \$100 per visit. This is out of line with both the REH model and the tradition of cost-basis reimbursement for health care providers in rural areas. We request that a technical correction be made so that RHCs opened in 2020 are not subject to an arbitrary per-visit cap.
- CARES Act reporting requirements have been ever-shifting since the law went into effect in the 2<sup>nd</sup> quarter of 2020. We would request that Congress review these in consultation with provider groups to ensure that such reporting requirements make sense. Historical evidence suggests that such an approach can work: the late-2020 COVID relief bill contained a provision that hospitals could calculate their lost revenue in 2020 according to "any reasonable method" rather than the year-over-year model being pushed at the time by HHS.

**Kansas Medicaid Provider Assessment Approval:** The Kansas Legislature passed bills in 2019 and 2020 that enable the state to increase its provider assessment from its current rate of 1.83% to a rate up to 3%. The assessment is paid by all non-critical access hospitals, collected by KDHE, matched with federal funds, and distributed to all providers who see Medicaid patients. Historically, 'Kansas' rate is low nationwide, and even if it were to be increased to 3%, it would still be in the lower half of state rates. Typically, this process is approved by CMS as long as the state has appropriate management processes in place (Kansas does). However, CMS has been slow to approve Kansas' rate increase because they worry that it would increase the amount of federal funding available to KanCare, the 'State's Medicaid managed care system. KDHE submitted a technical correction last fall that would allow for some room within the KanCare budget cap, and 'Kansas' providers are still waiting on 'CMS' decision on this matter. We would ask for your help and support to see the technical correction accepted and the provider assessment receive final approval.

**340B Drug Reimbursement Program:** For over two years, drugmakers have been very aggressive in their attempts to dismantle the 340B drug reimbursement program, a program designed to help low-income Americans pay for their prescription drugs without using any government funding. Generally speaking, pharmaceutical companies are required by law to provide certain drugs at discounted rates to hospitals and other providers so that they can pass the savings on to uninsured or underinsured low-income Americans. In 2019 and 2020, the Trump Administration lowered the reimbursement rates for certain drugs. Following the 'government's legal victories in the appellate court, drugmakers moved to restrict the types of drugs available and the number of pharmacies that each provider could contract with for 340B discounts. This program is of tremendous importance to hospitals that provide care to many low-income and

Medicaid-eligible individuals, and we ask for your help in making 340B consistent and reliable again.

**Sequestration and Disproportional Share Hospital Cuts:** While sequestration and DSH cuts historically descend from different bills, both loom as potentially devastating if they are allowed to go forward unchanged. Currently, sequestration cuts have been delayed until March 31, 2021, while DSH cuts have been delayed until October 1, 2023. The 2% cut to Medicare reimbursements that are part of sequestration makes the financial situation difficult for hospitals that serve a high proportion of Medicare patients. The DSH cuts hurt hospitals that serve a high proportion of low-income and Medicaid-eligible individuals. Addressing both of these looming cuts would provide funding stability to 'Kansas' hospitals already hurt by COVID-related financial strains.

While there are likely to be new issues that arise, these are the matters that we are looking to address during the 117<sup>th</sup> Congress. We look forward to working with you as we find our way together through the end of the COVID-19 pandemic and on to strengthening our ' 'nation's and our ' 'state's health care system.