

# Legislative Update

Date: March 11, 2018

## Overview

The week just concluded contained few hearings on health issues, but the coming week is busier. The second half of the session advances quickly and there are two weeks left for committee work and then we move to floor debates to pass or kill legislation.

## Big Picture Issues

Many big issues remain in the final weeks of committee work. The third-party study commissioned by the Legislature to determine the level of funding necessary to provide a suitable education for Kansas kids is set to be released next week. Deliberations on the budget for K-12 schools have been delayed until the results of the cost study. While budget talks may be delayed, a few education bills did make their way across the House floor this week. One bill, HB 2757, would restore due process protections for teachers. The protections were previously repealed by the Legislature during the school funding debate in 2014. The Senate on Thursday defeated an effort to have Kansas join the Convention of States; 27 votes are needed to pass the constitutional amendment and it only obtained 22 votes. The Convention, if ratified by 34 states, would meet to potentially amend the U.S. Constitution and is generally considered a means for conservative groups to address federal government power issues.

The House Tax committee this week passed to the House a bill that would impose sales tax on nearly all online purchases. If passed, the bill would require sales tax to be paid for online purchases of merchandise, digital music, and video downloads beginning in 2019. The requirement to charge the tax would apply to any online retailer that makes a minimum of \$50,000 in sales or does 100 transactions in a year. According to the Kansas Department of Revenue, individuals are supposed to remit sales tax on internet purchases now but only 1-2% of filers actually do. It's estimated the state could gain between \$70 million and \$130 million a year in revenue. House Tax Committee also heard a bill that would nearly double property taxes over the next three years. The increase would bring in more than \$600 million- the amount likely needed to fund a new school finance formula. The bill had no named sponsor and received no testimony in support. The bill does leave open the possibility at the end of the session that a property tax increase could be an option to address school funding.

## Health Issues

After the mid-point of the session, there was little committee or floor action on health legislation. Other than House Bill 2674 the telehealth bill, most health legislation is sitting and waiting because Medicaid expansion will arise as an issue. They are not ready for that conversation yet. In terms of health care funding, both the House Appropriations and Senate Ways and Means

subcommittees should finalize the KDHE and KDADS budgets this week. There likely will be language in both reports seeking a return to something like “health home style” program for some chronic health need populations. Additionally, there will be budget language that attempts to implement the provisions of Senate Bill 300. That bill that has passed Senate Ways and Means and awaiting action in the Senate, extends the current KanCare contracts for three years, allows the State to add MCOs, and allows changes for expanded access to mental health services. Clearly, the health care issues are as murky as school finance right now.

There are some new topics this week up for action, as well as very little change in some of these issues, which remain our outstanding health policy issues as we near the end of the session:

Behavioral health medication prior authorization.

- SB 438 removes prior authorization requirement for some Medicaid behavioral health medications in mental health and SUD facilities. Unless drugs on Medicaid Drug Utilization Review Board, there is no prior authorization. Hearing in Senate Health 3/14

Children’s behavioral health initiative.

- Senate Education Committee briefing 3/12 on 6 month to 2 year Attachment biobehavioral catch-up (ABC) assessment. Health foundations pilot program to identify early childhood risk.

Tobacco cessation treatment.

- Senate Health Committee on 3/13 will hear the second tobacco cessation treatment bill. They heard SB 316 earlier in the session and SB 436 is the same bill, incorporating the 4 time annual cap on medication treatments.

Tobacco Tax.

- House Tax will hear HB 2231 on Thursday, March 15. The health advocates bill increases \$1.50 per pack tax.

KanCare Renewal

- The Administration announced the termination of KanCare 2.0, but they report they are continuing the review of the RFP bids if or until the Legislature tells them to not review the bids. There are many questions about what comes next. The only bills that will shape the conclusion of KanCare.
- Senate Bill 300: The bills require KanCare to remain exactly like it is as of 1/1/17. Only changes approved by the Legislature can be made to the Medicaid system or to contracts with managed care companies. Any negotiations or renewals are only for one year with legislative approval.
  - Senate Ways and Means Committee passed out to the full Senate an amended version of the bill with two key amendments. The new bill includes the ability to

expand access to behavioral health services. It authorizes KDHE to continuing reviewing the RFP submissions and modify the current plan to expand behavioral health access and use telehealth.

- The bill is exempt and was not acted upon before the break, and it will likely remain in the Senate chamber awaiting action later in the session.
- House Bill 2591: Extends current KanCare contracts for three additional years. Medicaid services are continued as of 1/1/18 and any changes must have legislative approval. The bill is similar to Senate Bill 300 but with a three-year extension and without the behavioral health flexibility.
  - House Health Chairman Hawkins bill heard on 2/8. The bill remains in committee for action and could be acted on 2/19 so it can be on the House floor.
  - This plan, with legislative approval, amendments, and adjustments to the state plan, is the pro-current MCO bill. It does not exclude the State reviewing and using any of the new bids, but it does not require them to make use of any bids and can simply retain the current contractors.
  - On 2/19 the House Health Committee tabled the bill until May 6<sup>th</sup>, delaying any additional action, in large measure because the Committee is divided regarding how to proceed.

#### Medicaid Expansion

- Medicaid Expansion. Senate Bill 38.
  - Senate Public Health and Welfare Committee heard SB 38 on 2/14. The bill should advance to the Senate floor on 2/19 and remain there until the Senate is ready to address Medicaid expansion.
  - The bill would expand Medicaid eligibility in full by allowing those whose income does not exceed 133 percent of poverty. It is estimated to add approximately 120,000 to Medicaid coverage.
  - Same bill that passed the Legislature during 2017 and Governor vetoed.
  - The bill is exempt from deadlines and remains on the Senate floor awaiting action.

#### Telehealth

- Telehealth in House Health and Human Services Committee. House Bill 2674.
  - Generally the same bill as HB 2512 but includes specific language allowing professionals working under supervision of a physician. The bill creates coverage parity for insurance providers so that if a service is covered it is covered whether delivered in person or electronically.
  - Does not include pay parity, meaning the payment for services can be different if delivered in person or electronically.
  - Includes 42 CFR protections for SUD providers.

- Hearing in House Health on 2/12, passed committee on 2/19, passed House floor on 2/22 on a vote of 117-0. Awaiting action in Senate Health.

#### Suspend Medicaid eligibility

- Suspension rather than termination of Medicaid eligibility. Senate Bill 195/ House Bill 2508.
  - Bill will suspend Medicaid eligibility for members who enter prison, jail, or a state mental health hospital. The bill, discussed for over a decade, has passed out of Committee and is waiting action on the Senate floor.

#### Dental Therapy

- Dental Therapy. Senate Bill 312.
  - Other bills introduced but SB 312 is a negotiated agreement between the Kansas Dental Association, the Kansas Dental Hygienists Association. Agreement reached on parameters of direct supervision for dental hygienists who can practice as dental therapists and perform some additional procedures under supervision of a dentist.
  - The Senate passed the bill 39-0, hearing in House Health 3/14.

#### **Legislation of Interest**

Because we are in the second year of the biennial cycle, all bills not passed or killed during the 2017 session are available for action during the 2018 session. Bills from the 2017 session will not be included on this list unless they are subject to action or they are likely to be taken up again.

Bills that have been published and the bill history can be found on the Legislature's official website: [http://www.kslegislature.org/li/b2017\\_18/measures/bills/](http://www.kslegislature.org/li/b2017_18/measures/bills/)

#### **KanCare/Medicaid**

Prohibition against KanCare 2.0 without legislative approval. Senate Bill 300/ House Bill 2507

- Prohibiting KanCare 2.0 renewal without legislative consent.
- The bill requires KanCare exactly like is as of 1/1/17. Only changes approved by the Legislature can be made to the Medicaid system or to contracts with managed care companies. A one year extension of current contracts.
- Senate Bill 300 hearing in Senate Ways and Means Committee, 1/30-31. Bill was amended and passed to the full Senate with language allowing Medicaid changes for behavioral health access.
- Awaiting action on Senate floor.

Prohibition against KanCare 2.0 without legislative approval. House Bill 2507

- Prohibiting KanCare 2.0 renewal without legislative consent and extends current contracts with MCOs for three years.
- The bill requires KanCare exactly like is as of 1/1/18. Only changes approved by the Legislature can be made to the Medicaid system or to contracts with managed care companies.
- Hearing in House Health Committee. Bill remains in committee.

Extend current KanCare Contracts. House Bill 2591—House bill most likely to advance.

- Extends current KanCare Medicaid contracts for three additional years, allowing changes only with legislative approval.
- House Chair Dan Hawkins bill.
- Hearing in House Health 2/8. Bill will remain in Committee and on 2/19 the bill was tabled until May 6<sup>th</sup>.

Remove IDD services from KanCare. Senate Bill 332.

- Removes intellectual and developmental disabilities population from KanCare.
- Hearing in Senate Public Health and Welfare 2/9. Bill remains in Committee

Suspension of Medicaid eligibility. Senate Bill 195/ House Bill 2508.

- Bill from 2017 session, suspends rather than terminates eligibility when incarcerated or in state hospital.
- Would eliminate months of eligible member losing coverage and having to reenroll in Medicaid.
- House Bill 2508 unlike SB 195, eliminates the duty for state agencies to notify the State when an individual enters or leaves eligibility and requires KDHE to monitor and report
- Hearing in Senate Health and passed to full Senate with amendment from HB 2508. Awaiting action on Senate floor.

Require Medicaid coverage for smoking cessation. Senate Bill 316.

- For Medicaid eligible population, would require coverage of tobacco cessation treatment.
- No limits or caps on services and no pre-authorization allowed.
- Hearing in Senate Public Health and Welfare. 2/8. Bill remains in Committee.

Revised Require Medicaid coverage for smoking cessation. Senate Bill 436.

- For Medicaid eligible population, would require coverage of tobacco cessation treatment.
- No limits or caps on services, except for 4-time annual medication cap and no pre-authorization allowed.
- Hearing in Senate Public Health and Welfare 3/13.

Behavioral health medication prior authorization. Senate Bill 438.

- SB 438 removes prior authorization requirement for some Medicaid behavioral health medications in mental health and SUD facilities. Unless drugs on Medicaid Drug Utilization Review Board, there shall be no prior authorization.
- Hearing in Senate Health 3/14.

Tobacco tax to fund Medicaid expansion. House Bill 2768.

- Provisions similar to H 2231 \$1.50 per pack tobacco tax, with revenue used to fund Medicaid expansion.
- Bill is exempt and in House Appropriations with no hearing scheduled.

### **General Healthcare**

Establish the Kansas Telemedicine Act. House Bill 2674

- The bill creates coverage parity for insurance providers so that if a service is covered it is covered whether delivered in person or electronically.
- Does not include pay parity, meaning the payment for services can be different if delivered in person or electronically.
- There is strong focus on mental health telemedicine and physicians but bill does include mid-levels working under supervision.
- House Bill 2674 specifies professions working under supervision, removes the abortion provision, and adds 42 CFR protections for SUD providers.
- Hearing in House Health on 2/12, passed committee on 2/19, passed House floor on 2/22 on a vote of 117-0.
- Awaiting action in Senate Health Committee.

Dental Therapy. Senate Bill 312.

- Creates mid-level dental hygienists position to serve in safety net clinics and with Medicaid providers.
- Senate Bill 312 is the compromise bill that Dental Association supports.
- SB 312 hearing in Senate Health 2/1, 2/5 and passed out on 2/8.
- Compromise brokered by dental association and dental hygienists expands some procedures for hygienist with additional training, clarifies supervision on premises in out of office locations.
- Passed Senate 39-0. Hearing in House Health 3/14.

### **Children/Youth**

Immunity from civil liability for damage to motor vehicle related to rescue of person or animal. House Bill 2516/ SB 318.

- Civil immunity for person if locked motor vehicle with person or animal. Act must be in good faith with belief the person or animal is at risk. Required to notify law enforcement before entering.

- Hearing in House Judiciary 2/5. Passed committee, exempt bill awaiting action on House floor.

Student data privacy protection. Senate Bill 389.

- New unnumbered bill allowing parents/guardian to opt out of student surveys, provided the data is non-identifiable.
- Will allow greater data collection on youth activities based on non-identifiable data . Data in surveys such as Communities That Care will be used for grant reporting and scientific research.
- In Senate Education. Hearing on 2/15. Bill remains in committee.

Child placement agency discrimination. Senate Bill 401.

- Allows child placement agencies to refuse services or placements, and protects their license and contract if they discriminate.
- In Senate Federal and State Affairs. No hearing scheduled.

Emergency medical workers as mandatory reporters. House Bill 2530.

- Emergency medical personnel added to list of mandatory reporters for child abuse and neglect. Amended on floor to add abuse or neglect in a KDOC institution.
- Passed House Children and Seniors, passed House on 2/22 on a vote of 117 to 0. Awaiting action in the Senate.

Fingerprinting child care facility persons. House Bill 2639.

- Local and state law enforcement officers and agencies to assist KDHE in taking and processing fingerprints of persons residing, working or regularly volunteering in a child care facility. Allowed to charge fees for checks.
- Passed House Children and Seniors, passed House 2/22 on a vote of 111-6. Awaiting action in the Senate.

Creates task force on youth transitioning out of child welfare. House Bill 2745.

- Creates wide-ranged tax force to create rights and resources related to the transition of youth from the foster care system.
- In House Children and Seniors. No hearing scheduled but bill has been blessed and will be heard in the second half of the session.

Create office of child advocate for children's protection. House Bill 2751.

- Creates office in the Department of Administration, not Department of Children and Families, appointed by the Governor and Chief Justice of the Supreme Court and Senate confirmed.
- Monitor Children and Families and Corrections to monitor and advocate for children.

- In House Federal and State Affairs, no hearing scheduled.

Allowing child advocacy centers to conduct sexual assault exams. Hosue Bill 2706.

- Specifically includes child advocacy centers as locations where sexual assault examinations may be performed.
- Hearing in House Judiciary, passed out of committee, approved for action after turnaround.
- No additional hearing scheduled.

Criminal penalties for sexual conduct between minors. House Bill 2738.

- Currently, the crime is defined as engaging in certain sexual acts with a child who is between 14 and 16 years old, when the offender is less than 19 years old and the age difference of the two is less than four years.
- This bill would define the crime as acts with a child who is ten years old, but less than 19 years old, with no consideration to the age of the offender.
- Hearing in House Corrections and Juvenile Justice, bill is blessed awaiting action.

### **Revenue and tax policy**

Tobacco tax. Senate Bill 376.

- Advocates bill. \$1.50 per pack tobacco tax.
- In Senate Tax Committee. No hearing scheduled.

Tobacco Tax. House Bill 2231.

- Health care advocate bill includes a \$1.50 per pack cigarette tax increase with an equal tax on other tobacco products and \$5M in increased funding for tobacco prevention and cessation.
- Hearing in House Tax 3/15.

### **Next Week Activities**

The legislative schedule of hearings is updated regularly throughout the week can be found in the House and Senate calendars on the Legislature website at:

[http://www.kslegislature.org/li/b2017\\_18/chamber/calendars/](http://www.kslegislature.org/li/b2017_18/chamber/calendars/)

Additionally, virtually all hearings are now available on line. You can find those hearings on the Legislature website at: <http://sg001-harmony.sliq.net/00287/Harmony/en/View/Calendar/>

There will be no hearings until Wednesday, February 28<sup>th</sup> while the Legislature takes its mid-session break. As you can see, there are few hearings of interest during this short week.

*Monday, March 12.*

9:00 House Appropriations.

- HB 2688 creating behavioral health task force.
- KDADS budget recommendations.

*Tuesday, March 13.*

9:00 House Appropriations.

- Approve KDHE budget recommendations.

1:30 Senate Education.

- Presentation on Attachment Biobehavioral Catch- Up program.

*Wednesday, March 14.*

1:30 House Health and Human Services.

- SB 312 Dental therapy hearing.

*Thursday, March 15.*

10:30 Senate Ways and Means.

- Approve KDADS and KDHE budget recommendations.

3:30 House Taxation.

- HB 2231 increasing tobacco tax and adding expenditures for smoking cessation.

*Friday, March 16.*

### **Wrap Up**

Please let me know if you have questions.

Stuart J. Little, Ph.D.  
Little Government Relations, LLC  
800 SW Jackson, Ste. 1100  
Topeka, Kansas 66612  
785-235-8187 Office  
785-845-7265 Mobile  
[stuartjlittle@mac.com](mailto:stuartjlittle@mac.com)