Memorandum

April 17, 2020

General Overview

- The 2020 Session clearly has been unlike any other Session we’ve experienced. As we’ve previously reported, COVID-19 quickly derailed the 2020 Session by mid-March, leaving unresolved many of the issues we’ve been following. This report provides both a brief recap of what has happened since the Legislature adjourned on March 19th as well as offers our best understanding for what may come next in the midst of such uncertainty.

- Executive Orders (EOs): In the past several weeks, the Governor has issued multiple Executive Orders in response to the COVID-19 pandemic, ranging from unemployment insurance and benefits to social distancing guidelines and restrictions on mass gatherings.

- Politics vs. Pandemic: The Governor’s Executive Orders (EOs) sailed along for several weeks without the Legislative Coordinating Council (LCC) batting an eye. That changed on Wednesday, April 8th, when the Governor issued an EO strengthening the exemption on mass gatherings for churches and funerals, in response to a handful of instances where church gatherings resulted in clusters of the coronavirus in several counties. The LCC then revoked that EO (20-18), and the Governor then filed suit against the LCC, arguing they did not have the authority to revoke her EO. Two days later, the Supreme Court ruled in the Governor’s favor, upholding the mass gathering guidelines and clarifying the LCC does not have the authority to revoke the Governor’s EOs.

- What’s Next If the Legislature Returns? We can’t say for sure, but we are nearly certain the Legislature will not return on Monday, April 27th, when Veto Session is supposed to begin. Additionally, just yesterday the Governor extended the statewide Stay Home order until May 3rd. We expect a couple of things could happen when the Legislature is returning to Topeka, (keeping in mind of course nearly everything about this pandemic is unpredictable):

- Pre-session Activities:
  - Historically and traditionally, consensus revenue estimating process occurs around April 20th, following the April 15th state and federal tax filings. The State and federal government have delayed tax April 15th deadline to July 15th due to the pandemic. Clearly, these changes will make more complex the calculation of revenue collections and projections for the next eighteen months.
  - Additionally, the House Appropriations and Senate Ways and Means Committees meet in the week prior to the beginning of the Veto Session. They review the status of revenue projections, review and take action on any Governor’s budget amendments, and prepare the final budget bill as needed to incorporate any final budget changes. Of course, the COVID-19 response will impact whether any of these meetings take place. If the Legislature does reconvene, these budget hearings will take place.
Depending on how the pandemic progresses in Kansas and if the statewide stay-at-home order is extended even further beyond May 3rd, it is possible the Legislature would not reconvene. Having passed the budget in March, they are not required to come back. Instead, the Governor could call a special session for later in the Summer to address unresolved issues, most likely related to the COVID-19 and response. (The Legislature can force the Governor to call a special session with a 2/3 petition signed by both chambers.) It must be noted if a special session does convene, all bills from the 2019-2020 session are dead. Any action will require new bills that begin the legislative process again.

It is possible the Legislature may return early to mid-May, depending on the spread of the virus in Kansas, but before May 21st, the date set for sine die, or the formal end of Session. The Legislature may confront only COVID response-related issues, or, they may debate other issues, specifically Medicaid Expansion and the Value them Both constitutional amendment on abortion. As it is an election year, there are many lawmakers unwilling to adjourn the 2020 Session before another vote is taken on the amendment. If the issue does in fact come up, the proposal will likely involve the issue being placed on the November ballot instead of the August ballot—the main reason why the issue did not pass the House earlier in Session. If the Legislature reconvenes, lawmakers may also take up tax issues, specifically including restoring itemization, reducing the food sales tax, internet sales tax, property tax transparency, and GILTI. Another issue the Legislature, and Governor, are keen to pass is sports betting, which has passed the Senate but is awaiting action in the House.

It is important to note that sine die, set for May 21st, cannot be changed or extended unless the Legislature reconvenes and changes the date. Therefore, any return of the Legislature must happen before May 21st.

Relief

- CARES Act relief to local units—counties, cities, other local taxing units, and $13.5 billion for schools. *Kansas education portion is $84 million ($74 million for Title 1 schools and $10 million for special education.
  - https://home.treasury.gov/policy-issues/cares
  - Anticipate guidelines from the federal government for use and distribution of funds this week and the money to become available about April 24th.
  - State will get $688 million and Johnson and Sedgwick counties will get $563 million directly from the federal government.

- Paycheck Protection Program Act. (Not for local government but for private employers.)
  - All $350 billion in federal funds have been awarded. There is speculation the fourth relief package may include additional funding.
• Some ongoing discussion regarding what will be included in the next, fourth recovery package, but there are no specifics yet.

• At the State level—we have no information as to if or how the $65 million in COVID-19 relief funding is being spent. These funds were included in the budget bill.

Crisis management
• Statewide mass gatherings order included in EO-18 remains in place until May 1, 2020.
• On April 15th the Governor extended the statewide Stay Home order until May 3, 2020.
• Cannot underestimate politics and, particularly among Republicans, who are positioning for House, Senate leadership as well as the opportunity to run for Governor in two years.
• It remains unclear if there may be consideration of budget reductions before for the 2021 fiscal year begins on July 1.

Children’s Issues
DCF has relaxed several requirements related to childcare and food assistance in response to COVID-19. The following provides a brief timeline for the agency’s response to the crisis:

• Prevention & Protection Services: On March 24th the agency issued special guidelines for child welfare contractors in order to protect the health and safety of case management providers. Additionally, the agency announced a shift toward more virtual parent-child interactions and worker-child visits. The bulletin can be found here: [http://www.dcf.ks.gov/COVID19/Documents/COVID-19_PPS_Guidance.pdf](http://www.dcf.ks.gov/COVID19/Documents/COVID-19_PPS_Guidance.pdf)
• TANF: On March 27th the agency announced changes to the TANF application process, allowing the process to be done virtually rather than in person. The bulletin can be found here: [http://www.dcf.ks.gov/COVID19/Documents/COVID-19_EES_FAQ.pdf](http://www.dcf.ks.gov/COVID19/Documents/COVID-19_EES_FAQ.pdf)
• Childcare Assistance: On March 30th the agency announced special guidelines related to childcare assistance, including the authorization for additional childcare hours if a parent is working extra hours during the crisis. The agency also announced an additional 12-month eligibility period at the same benefit level for families whose childcare assistance is due for review anytime during April through July. Bulletin here: [http://www.dcf.ks.gov/COVID19/Documents/COVID-19_ChildCareGuidanceforFamilies.pdf](http://www.dcf.ks.gov/COVID19/Documents/COVID-19_ChildCareGuidanceforFamilies.pdf)
• On April 8th, the agency announced relaxed food assistance work requirements for able-bodied adults, including waiving face-to-face interviews for both applications and reviews, and relaxing the number of hours for continued eligibility.
• Most recently, DCF issued a press release on April 15th announcing an emergency food assistance benefit for current program households as part of the Families First Coronavirus Response Act. The emergency benefit “increases a household’s monthly benefit to the maximum allowed for the size of the family.” The agency says April emergency benefits will be distributed in mid to late May.
• On April 17th the Governor announced a new program to help frontline workers and their families, called the Hero Relief Program through DCF. It expands childcare assistance subsidies to families and provides stipends and grants directly to childcare providers. To apply go to, [ksherorelief.com](http://ksherorelief.com)
**Healthcare Issues**
Governor’s Daily Press Briefings

- In her daily press conferences, the Governor highlights the most pressing issues facing Kansas during the crisis, especially those faced by the healthcare field.
- Like most states, Kansas has been forced to come up with creative ways to secure PPE. While the state did receive 90% of its share of PPE from the Strategic National Stockpile (SNS), there is still an extreme shortage of PPE for healthcare and other essential workers. Kansas will not receive the remaining 10% allocation of PPE from SNS, but has appealed to other sources, including FEMA and the private market, in order to obtain face masks, face shields, gloves, ventilators, etc. The Governor has made seven requests to FEMA for PPE and support but to date none of those requests have been fulfilled. Unfortunately, the cost of PPE has increased dramatically due to states competing in the private market for PPE.
- Additionally, in order to be proactive and prepare for the worst, state leaders are looking at additional ways to help hospitals cope in the event they reach capacity. This includes looking for alternative treatment sites, such as dormitories.
- The state hospitals and prisons are also on the front lines of the COVID crisis, as they are facing increasing infectivity rates among patients and inmates, as well as staff.
- **Social distancing scorecard**: Take a look at this interactive map to see how your county scores when it comes to social distancing. [https://www.unacast.com/covid19/social-distancing-scoreboard#scoreboard](https://www.unacast.com/covid19/social-distancing-scoreboard#scoreboard)

Private Insurance Response to COVID Crisis

- In her daily press briefing on April 3rd, the Governor announced Blue Cross Blue Shield’s decision to waive cost sharing, including copays and deductibles, for COVID treatment for the next 60 days. This includes testing and treatment in the emergency room, doctor’s office, urgent care, and inpatient hospital stays. This is applicable to fully insured members as well as those with Medicare advantage plans. BCBS is also allowing its members to refill their prescriptions before they are due. BCBS has also said they will work with self-funded customers.

New KDHE Websites

- KDHE launched their new website on April 13th. KDHE Secretary Dr. Lee Norman said the new website is “more intuitive” and contains new content, including new data on COVID-19 such as a racial and ethnic breakdown for COVID cases.

**Veto Session: Health Care Legislation**
• Again, if the Legislature does return, they may decide to tackle a couple of healthcare-related issues, potentially Medicaid Expansion as well as appropriating more funding for COVID relief.
• You have seen this list of bills and issues that remain unresolved. If the Legislature takes up policy issues during the Veto Session, all of these issues are alive, but most will not see action.
• We expect, if they return, the Legislature will be targeted in the work they do.
• Bills that have been published and the bill history can be found on the Legislature’s official website: http://www.kslegislature.org/li/b2019_20/measures/bills/

Budget bill funding for COVID-19

• The budget bill the Governor signed included emergency funding for responses to the coronavirus. It is unclear how these funds will be spent but they are intended to help provide services.
  o Add $50.0 million State General Fund, for the coronavirus response,
  o Add $15.0 million State General Fund, for the coronavirus response, to the Kansas Division of Emergency Management
  o Add language transferring the $17.5 million allocated for Medicaid expansion to the Coronavirus Prevention Fund of the State Finance Council if Medicaid expansion is not passed into law.

Public Health
• SB 252: Compromise Medicaid Expansion:
  o SB 252 is not exempt, was not approved for action in the second half of the session, and is dead, although the issue is not, but may see action during Veto Session.
• HB 2631: Prohibiting disparate treatment by PBMs of certain pharmacies and pharmaceutical services providers.
  o Bill was blessed but unlikely to see action during the Veto Session.
• HB 2563: Tobacco 21/Flavor Ban.
  o The bill was amended to follow federal guidelines, essentially allowing for the menthol exemption to be put in statute.
  o Exempt and alive for Veto Session.
• HB 2582: Creating the behavioral health intervention weighting as part of the Kansas school equity and enhancement act.
  o New school finance formula to fund school positions and pay community mental health centers.
  o Includes funding of $12.5 million.
  o Discussion to continue at Omnibus.
• HB 2673: Conferring original jurisdiction to the Supreme Court to hear certain actions related to healthcare provider insurance availability act, healthcare stabilization fund and claims for noneconomic loss in medical malpractice liability actions.
  o Potential action during Veto Session.

Scope for practice/regulatory
• HB 2412: APRN scope of practice.
Allows independent practice, prescription writing authority, but regulated by Board of Nursing not the Board of Healing Arts.
Exempt and still alive.

- **HB 2603: Amending BSRB professional licensing requirements.**
  - Makes supervision standards for all licensed professions equal to social workers, 3,000 and 150 hours.
  - Bill was blessed and still alive.

- **HB 2630: Updating certain provisions of the Kansas dental practice act.**
  - Bill was blessed and still alive.

### Rural Hospitals & Health
- **HB 2677: Establishing a primary health center and enacting the primary health center pilot program act contingent upon state acceptance into a demonstration program under CMS.**
  - Bill was blessed and awaits action.
- **HB 2522: Establishing the rural hospital innovation grant program.**
  - Grants can be used for market studies of community healthcare needs, new technology and infrastructure including telemedicine delivery methods, and additional medical personnel.
  - House Appropriations passed the bill as amended Thursday, 3/12.
    - Clarifying amendments including amendment allowing for counties to enter into MOUs and other necessary agreements with private stakeholders and other eligible counties.

### Children’s Issues
- **HB 2187: Establishing the office of the child advocate.**
  - Bill was blessed and is still alive.
- **SB 484: Authorizing DCF Secretary to request a waiver from certain limitations under the food assistance program.**
  - Contained in a proviso within the budget.
- **SB 485: Providing additional option to fulfill work participation requirements under the cash assistance program.**
  - Would allow additional option to fulfill work participation requirements under the cash assistance program. Would allow a single parent of a child who is between 3 and 12 months to fulfill work requirements by engaging in in-home parenting skills training.
  - Contained in a proviso within the budget.

### Upcoming Activities
- The legislative schedule of hearings can be found in the House and Senate calendars on the Legislature’s website at:
• Additionally, all hearings are now available on-line live and archived by the end of each day. You can find those hearings on the Legislature website at: http://sg001-harmony.sliq.net/00287/Harmony/en/View/Calendar/

• Link to House and Senate live video: https://www.youtube.com/channel/UC_0NO-Pb96CFABYxDwXAq8A