



## Memorandum

Date: April 30<sup>th</sup>, 2021

Re: Wrap Up Session Legislative and Policy Update

### Overview

The 2021 regular Session concluded April 9<sup>th</sup>, but there is still considerable work to be done when the Legislature returns May 3<sup>rd</sup> for the Wrap-up or Veto Session. There are some significant differences yet to be worked out, including funding for K-12 education that is not currently included in the state budget. The influx of nearly \$5 billion in federal American Rescue Plan Act (ARPA) funds further complicates the wrap-up process, and the state has yet to receive specific guidance on how those funds can be spent. Thus, we may be looking at a slightly longer Veto Session than in recent years. This report will examine where we left off when the Legislature adjourned April 9<sup>th</sup>, the Governor's vetoes over the last couple of weeks, and all of the issues that remain unresolved going into the Veto Session beginning May 3<sup>rd</sup>.

- A comprehensive overview detailing ARPA funds coming to Kansas can be found here: <http://www.kslegresearch.org/KLRD-web/Publications/AppropriationsRevenue/federal-relief-americanrescueplan-2021.pdf>

**Vetoes:** Since the Legislature adjourned April 9<sup>th</sup>, the Governor has vetoed several key pieces of legislation, including the major income tax cut bill, SB 50, which passed the Senate 30-10 and the House 81-43. As a reminder, to reach the 2/3 majority necessary in both chambers to override a veto, the Senate requires 27 affirmative votes and 84 in the House. It is very likely the House will pick up the three votes necessary to override the veto of SB 50.

Other significant vetoes include:

- SB 55. The transgender women in sports bill requires female student athletic teams only include members who are biologically female. This passed the Senate 26-11 and the House 76-43. It is unlikely, especially in the House, that there would be enough votes for a veto override, so this issue is likely dead.
- The Governor vetoed a couple of education bills: One mandated students must pass a civics test and a financial literacy course, as well as a bill that required local school boards who chose to offer gun safety education courses to use specified programs including the National Rifle Association and the Kansas Department of Wildlife and Parks. The veto of the civics/financial literacy bill likely holds, but the "Eddie Eagle" gun safety education veto may be overridden.
- HB 2058 Lowering the conceal carry age from 21 to 18. This passed the Senate 30-8 and the House 80-43, so only 4 votes are needed in the House for an override.
- It is worth noting that the Governor has vetoed the most bills this Session than in the past 17 years, highlighting the especially partisan environment at the Statehouse right now.

**State Budget:** The Governor approved the State Budget on April 26<sup>th</sup>, while line-item vetoing 18 individual provisions. More on the specific line-item vetoes here:

<https://governor.kansas.gov/governor-laura-kelly-signs-budget-removes-certain-provisos/>

Looking Ahead: The Legislature will reconvene Monday to wrap up and address outstanding issues, continue adjusting the budget, funding for K-12 education, and attempt to override vetoes. We expect both budget committees to resume work Monday on their respective Omnibus budget bills. Additionally, lawmakers will likely address some unresolved COVID relief policies including property tax reimbursements for businesses impacted by shutdowns or capacity limitations. The late infusion of \$4.9 billion in federal COVID relief aid will contribute to a lengthier wrap up as well. While the Legislature does not typically go on General Orders to debate bills during the Wrap-Up Session, there is some indication they may do so to debate some of the issues previously mentioned. As next week begins, the coming days are unclear.

### **Current Healthcare Issues**

Bills that have been published and the bill history can be found on the Legislature's official website: [http://www.kslegislature.org/li/b2021\\_22/measures/bills/](http://www.kslegislature.org/li/b2021_22/measures/bills/)

### **Vetoed Issues**

The Governor has vetoed a significant number of bills and eighteen parts of the state budget. In all matters, a legislative override of a veto requires a 2/3 majority in both chambers, 27 affirmative in the Senate and 84 affirmative in the House.

- SB 55 (contains original SB 208) requires gender confirmation for transgender athletes who wish to participate in female sporting events. Amended to remove physical examination and relies on KSHSAA policy.
  - *The Governor vetoed SB 55. The bill passed the Senate 26-11 and the House 76-43. A legislative override of the veto requires 27 affirmative in the Senate and 84 affirmative in the House.*
- HB 2089: Bill passed out of committee without a hearing that will allow (not mandate) USDs to provide gun training in schools utilizing a (mandated) National Rifle Association education program.
  - *The Governor vetoed the bill. The Senate passed the bill 31-7 and the House passed the bill 79-44. A legislative override of the veto requires 27 affirmative in the Senate and 84 affirmative in the House.*
- HB 2058: Reciprocity for out of state conceal carry permit holders. Also authorizes the AG to issue an alternative license to carry a concealed handgun to qualified applicants during a declared state of disaster emergency.
  - Amended to create a provisional conceal carry license for 18-20 year-olds.
  - Amended in Senate Fed & State to insert SB 190: Creating the Kansas protection of firearm rights act to restore the right to possess a firearm upon expungement of certain convictions.
  - *The Governor vetoed the bill. The Senate passed the bill 30-8 and the House passed the bill 80-43. A legislative override of the veto requires 27 affirmative in the Senate and 84 affirmative in the House.*
- Budget Bill Issue. One of the eighteen provisions of the State budget bill (HB 2007) the Governor vetoed includes the provision that removed the Governor's authority to make

final determinations regarding the distribution of the federal COVID relief funds. Currently, the Governor's established SPARK committee manages compliance and the distribution of federal relief with State Finance Council oversight. The budget proviso would have removed those processes and placed all funding distribution in the hands of the Legislative Coordinating Council that includes only legislative membership.

There will be numerous debates about the Governor's vetoes and efforts to override the vetoes during the wrap up session.

### Healthcare Bills Signed

- Senate Sub. for HB 2208: Certified community behavioral health clinics creation; enacting the rural emergency hospital act to provide for the licensure of rural emergency hospitals; telemedicine waivers for out-of-state healthcare providers; reducing certain requirements for licensure by the behavioral sciences regulatory board and expanding out-of-state temporary permits to practice behavioral sciences professions.
  - Governor signed.
- HB 2066: Expanding the military spouse and servicemember's expedited licensure law to all applicants intending to establish residency in Kansas. Is not mandatory or permissive for regulatory bodies.
  - Governor signed.

### COVID-Related Relief

- You can see on the attached American Rescue Program Act document the overall ad healthcare-related federal funds. This is the latest package of federal relief funding that totals approximately \$5.9 billion. The social services and healthcare funding can be found on pages 7-14. <http://www.kslegresearch.org/KLRD-web/Publications/AppropriationsRevenue/federal-relief-americanrescueplan-2021.pdf>
- Includes increased block grant funding about which we were aware, and additional funding to community mental health centers, and community health clinics.
- Remains unclear what other direct funding or funding funneled through KDHE or KDADS may become available.
- In general, the ARPA funds are available until the end of 2024 and can be used for a broader range of uses.
- The Legislature and the Governor's office will battle and resolve who controls those funds during the wrap up session. The Governor vetoed a budget provision that gave all authority to the Legislature to manage federal relief funds, and there will be vigorous debate about an override during the wrap-up session.

### Budget Issues

- The Governor signed HB 2007, the main budget bill the Legislature sent her at the conclusion of the regular session. She vetoed eighteen provisions of the bill but no directly health-care related provisions.
- The final omnibus budget bill that will be crafted and debated in the next week will include several related possible funding additions:
  - 988 Suicide Prevention hotline.

- Approximately \$1.1 million for CCBHC certification.
- Addition of \$19 million State funds originally budgeted for Medicaid expansion to fund new federal child health insurance costs under CHIP.

### Other Topics That Could Arise

- Conference Committee Report on HB 2079 (includes SB 264): Enacting the Kansas Fights Addiction Act to address opioid settlement funds.
- Medical marijuana. HB 2184: Medical Marijuana. Has not passed either chamber but a bill has been worked and completed in House Federal and State Affairs Committee.
- Telemedicine provisions, see detailed summary below.

### **Outstanding Legislation & Recap**

#### Children's Issues

- Sub for HB 2153 (Formerly SB 301): Establishing the Office of the Child Advocate within the AG's office and establishing the Joint Committee on Child Welfare System Oversight.
  - Hearing and action in Senate Judiciary but the bill is significantly different from the House version that is no longer alive.
  - The bill was amended in committee to clarify the definition of child, change how the Office of the Child Advocate is appointed when the office is vacant, clarifies who is eligible for the position, and strikes some language concerning subpoena power.
  - Also establishes the Joint Committee on Child Welfare Oversight.
  - Senate Health and Children & Seniors Conference Committee did not come to an agreement on the bill.
  - Awaiting action during wrap up.

#### CCBHC/Behavioral Sciences Regulatory Board Supervision/Board of Health Arts Telemedicine

The health conference committee combined the following several bills into one bundled health bill, Senate Sub for HB 2208 and the Governor signed.

- SB 175 & HB 2174: Establishing the rural hospital innovation grant program to assist rural hospitals in serving rural communities.
  - Also includes SB 175, that enacts the rural emergency hospital act to provide for the licensure of rural emergency hospitals.
- SB 238: Establishing certification for certified community behavioral health clinics (CCBHCs); Includes the BSRB licensure components in the original bill; out of state telemedicine waiver.
  - Senate amended the bill to change the implementation date for the CCBHCs from July 2022 to January 2022.
  - SB 238 passed the Senate 38-1.
  - House Health passed the bill out of committee on 3/16 with two amendments:
    - No longer requires KDHE to establish a prospective payment system under Medicaid or submit approval to CMS for that funding mechanism.

- Replaces January 1, 2022, implementation date with a staggered implementation schedule requiring specific numbers of certifications by set dates.
- Senate Sub for HB 2208: telemedicine waivers for out-of-state healthcare providers; reducing supervision requirements for licensure by the BSRB and expanding out-of-state temporary permits to practice behavioral sciences professions.
  - Almost the same bill as SB 238.
  - Passed the Senate 38-2.

#### Behavioral Health

- HB 2281: Establishing and implementing 988 National Suicide Prevention Lifeline in Kansas.
  - Hearing in House Health, Monday, 2/22.
  - The committee made the following amendments to the bill:
    - Clarifying language to reinforce the monies in the 988 fund is to be used solely for the purposes outlined in the bill.
    - Imposes a prepaid wireless 988 fee of .50 per retail transaction for prepaid wireless service.
    - Including mobile crisis response services for IDD and mobile crisis response services for Behavioral Health in the services that can be paid for from the 988 fund.
  - \$3 million for operational costs to implement the hotline was not included in the budget bill.
  - Senate Ways and Means added \$3 million SGF to fund start up and the House added \$7 million in federal COVID relief to fund start up and some operational costs.
- SB 264: Enacting the Kansas Fights Addiction Act to address opioid settlement funds.
  - Brought by the Attorney General and it establishes a grant program for the purpose of preventing, reducing, treating, and mitigating the effects of SUD and addiction.
  - Attempt to establish process to manage opioid settlement agreements, after Kansas received the first instalment in January 2021.
  - HB 2412 Hearing in House Judiciary 3/22 and SB 264 in Senate Judiciary on 3/24.
  - House Judiciary worked the bill and amended it to create two separate funds: the Kansas Fights Addiction Fund and Municipalities Fight Addiction Fund. 75% of settlement funds will go to the Kansas Fights Addiction Fund and 25% will go to the Municipalities fund for local mitigation efforts.
  - HB 2412 passed the House 81-43.
  - Senate Ways and Means passed the bill out of committee on 3/30 with similar amendments as the House Committee.
  - House agreed to Senate version in conference, which is identical, except for funding for K-TRACS allocated in the Senate version. In conference committee report on HB 2079, but has not passed either chamber.

## Issues Still Alive

### Telemedicine—Unlikely to advance.

- Other than the Conference Committee Report on HB 2208 that implemented a few telemedicine changes for out of state provider and physicians, we do not anticipate any additional action on telemedicine.
- As Kansas and the nation transition through the pandemic, providers in the publicly funded system will follow current policy related to Medicaid and federal block grant funding.
- There will be no change for Medicaid funded services until they are “specifically rescinded” and providers will be given 60-days notice.
- Other federal funding sources authority to make changes sits with the federal public health emergency declaration that guides SAMHSA. That public health emergency remains in effect, and the Biden administration has indicated it may run through the calendar year.
- The commercial insurance market will have their flexibility to make changes. For example, BCBS of Kansas has announced they will continue to provide telehealth services at parity through June 30<sup>th</sup>.

### Vaccinations.

- SB 212 giving legislative control over vaccination schedules and SB 213 prohibit employers from making personnel decision based on employee vaccination status were combined and advanced out of committee on 3/25.
  - An amendment was added that provides immunity for individuals including businesses from civil liability for exposing someone to an infectious disease.
  - This controversial bill is on Senate general orders awaiting action.
  - An attempt was made on the Senate floor to amend SB 212—the portion giving legislative control over the vaccination schedule—in to another healthcare related bill, but the amendment failed 17-18.

### HB 2184: Medical Marijuana.

- Hearing in House Fed & State and narrowly passed out of committee 11-10 on 3/29 with several amendments. The bill has been re-referred back to the Committee.
- A summary of the bill can be found at:  
[http://www.kslegislature.org/li/b2021\\_22/measures/documents/supp\\_note\\_sb158\\_02\\_0000.pdf](http://www.kslegislature.org/li/b2021_22/measures/documents/supp_note_sb158_02_0000.pdf)
- Has not passed the House.

## Child Welfare/Child Safety

- Sub for HB 2153 (Formerly SB 301): Establishing the Office of the Child Advocate (OCA) within the AG’s office and establishing the Joint Committee on Child Welfare System Oversight.
  - Did not advance out of conference committee.

- The following three bills were bundled together in conference into HB 2158 and advanced:
  - HB 2448: Permitting the Secretary for DCF to license certain family foster homes where a former foster care youth with juvenile adjudications resides.
  - This is a narrower version of HB 2149, which was stricken from the calendar after passing out of committee. This version just addresses children who have been in foster care, who have previous juvenile adjudication and have achieved permanency with a family wanting to continue fostering. Unlike HB 2149, this bill does not address caregivers who wish to have an exception for a prohibited offense.
  - Senate Public Health and House Children & Seniors Conference, at the request of the Senate, added a time frame of 6 months post adjudication before a new child could enter that home. The committee also agreed that DCF would report on this issue to the Joint Committee on Child Welfare System Oversight.
  - HB 2115: Establishing the Joint Committee on Child Welfare System Oversight.
  - The House committee amended the bill to add two members to the joint committee and modify the time frame during which the joint committee is required to meet.
  - HB 2116: Exempting the caregiver of a child in state out-of-home placement from the childcare assistance 20-hour-per-week work requirement.
  - HB 2088 Adrian's Law in the package of bills.