Memorandum

Date: September 17, 2021
Re: September Interim Legislative and Policy Report

Overview

Interim meetings and activities are picking up as summer ends and lawmakers begin preparing for the 2022 Session in less than four months. State revenues, Kansas Emergency Management Act (KEMA), and the ongoing pandemic continue to be the major topics of conversation among policymakers and stakeholders. Campaigning for elections in 2022—from the Governor to the Attorney General and Treasurer to all Kansas House members—is also already well underway. As we’ve said before, between the continuing pandemic, the various elections in 2022, and redistricting, the 2022 Session will be extraordinarily busy.

Big Picture

Legislative Leadership Preparations for 2022

On September 15, the Legislative Coordinating Council, comprised of legislative leadership, sent their legal counsel to work on several projects in preparation for the 2022 session. The assignment is to analyze and make recommendations for legislation to address:

- Federal employee vaccination requirements.
- OSHA rules regarding vaccine requirements or testing for employers with over 100 employees.
  - (As a note, the OSHA rules do not apply to Kansas local units of government, including unified school districts.)
- Vaccine requirements or testing requirements for providers serving Medicaid and Medicare recipients.

The House Speaker noted the state’s ability to respond to federal action may be limited. Experience suggests the Legislature in 2022 will try to restrict federal policy to gain political appeal but the search will confront the historical supremacy of federal policy over state policy. Most of these issues will be litigated. Nonetheless, they will be a large focus of the 2022 session.

Latest News on Emergency Management Act/SB 40

- As reported for the last two months, the constitutionality of SB 40 is still up in the air. On August 24th, the State Supreme Court issued a stay of the District Court’s ruling that found SB 40 unconstitutional, effectively allowing, at least for now, SB 40 to operate.
- Though SB 40 is currently in effect, some of the provisions, including the ability to file a grievance with a school district for actions taken to stop the spread of COVID, are not valid because they were also tied to the state of disaster, which expired in June.
- Again, the Court is likely to make its decision on the issue sometime later this fall.
State Revenue Update

- In short, over the last several months, the state has continued to consistently rebound from economic challenges posed by the ongoing pandemic. The state ended the fiscal year with a $2.1 billion ending balance, double the amount of the highest ending balance since 1996, according to legislative research. The $2.1 billion ending balance is well above the constitutionally required ending balance of 7.5% of total expenditures.
- For Fiscal Year 2022, the state is anticipated to have a roughly $1.3 billion ending balance, which equates to an ending balance 15.6% of total expenditures.
- The Consensus Revenue Estimate in November will provide even further fiscal updates and updated information for the next 18 months on projected revenues, expenditures, and ending balances.
- The Legislative Research Department’s summary of Fiscal Year 2021 receipts can be found here: http://www.kslegislature.org/li/b2021_22committees/ctte_leg_budget_1/documents/testimony/20210831_23.pdf
- Tax revenues for this August alone were $85.5 million over August 2020, totaling $629 million.
- A more in-depth breakdown of last month’s receipts can be viewed here: https://governor.kansas.gov/wp-content/uploads/2021/09/02_August_Revenue_FY2022_09-01-2021_Final.pdf

Quick Look Ahead

- Over the next several weeks, various interim and special committees will meet, including the Criminal Justice Reform Commission, KanCare Oversight Committee, Joint Committee on Child Welfare System Oversight, and the Legislative Budget Committee, among others.
- The SPARK Executive Committee continues to meet, and while previously off to a slow start, may begin meeting more frequently as decisions around structure and procedure were hammered out last week, as detailed briefly below.

Latest on SPARK Executive Committee

- On September 8th, the SPARK Executive Committee approved changes to its structure, including the following:
  - The four priority areas include Economic Revitalization, Health & Education, Connectivity, and Efficiency & Modernization. (The Health & Education priority area is to include topics such as behavior health and early childhood education).
  - Advisory panels for each priority areas will consist of 8-10 experts selected by the Executive Committee.
- The Executive Committee also decided on the following proposed timeline for allocation of funds:
  - Round I: Allocate up to $500 million by 12/31/21.
  - Round II: Allocate the remaining $834 million (minus the portion reserved for the unemployment insurance trust fund) by 7/31/22.
  - Round III (As needed): Allocate, or reallocate any remaining or additional funds by 12/31/22.
On September 10th, the Executive Committee approved $50 million in federal ARPA funds for premium pay for frontline nurses and healthcare workers across the state.

Healthcare Related Issues

COVID-19 Related Matters
Governor’s August Press Conference on COVID-19 Situation
  - On August 20th the Governor held a press conference with pediatric providers to discuss the issue of ICU beds rapidly filling up with COVID patients across the state. Physicians also discussed the increase in pregnant patients and newborns with COVID-19.
  - A recap of the press conference can be found here: https://kansasreflector.com/2021/08/20/icu-doctors-make-emotional-plea-for-public-to-get-vaccinated-against-delta-variant/

Impact of Federal Vaccine Policy Issues
  - While various states have taken different paths to address COVID, Delta, and vaccination and employment issues, federal government action in the last weeks as shifted some of the emphasis.
  - Federal action requiring vaccinations or regular testing for Medicaid and Medicare funded provider, as well as OSHA.
  - As noted, some in the Legislature are exploring methods to respond to these proposals, and litigation is assured. A primary concern for healthcare providers, and employers in general, are efforts in 2022 to restrict the ability to manage workforce and patient safety.

Governor’s Safer Classrooms Workgroup
  - In response to the rise of the Delta variant, Governor Kelly at the beginning of September announced the Safer Classrooms Workgroup. The workgroup consists of healthcare and education professionals tasked with meeting weekly and providing a weekly report detailing policies and practices in schools to reduce the spread of COVID; vaccination and testing events, and other data.
  - List of workgroup members:
    - G.A. Buie, Executive Director, United School Administrators of Kansas
    - Jennifer Bacani McKenney, MD, Health Officer, Wilson County
    - Jen Brull, MD, Family Physician, Post Rock Family Medicine
    - Lindsay Byrnes, MD, MPH, Medical Director, KUSM-Wichita, Wesley Children’s Hospital
    - Kristie Clark, MD, Pediatrician, Rural Health Clinic
    - Allen Greiner, MD, Family Physician, Wyandotte County Health
    - Dena Hubbard, MD, Kansas American Academy of Pediatrics
Rhonda Hutchinson, BSN, RN, President, Kansas School Nurse Organization
Kimber Kasitz, BSN, RN, Director of Health, Homebound, and Section 504 Services, USD 259
Stephanie Kuhlmann, DO, Pediatric Hospitalist Division Director and Pediatric Medical Director, KUSM-W, Wesley Children’s Hospital
Vernon Mills, MD, Pediatrician, retired
Kelli Netson, PhD, Neuropsychologist, KUSM-W Department of Psychiatry and Behavioral Sciences
Kevin Riemann, Executive Director, Kansas National Education Association
Manuel Solano, MD, Physician and program director, Community Health Center of Wyandotte County
Margaret Thompson, RN, ARNP, Nurse Anesthetist, Kansas Black Nurses Association
Randy Watson, Ed.D, Commissioner, Kansas State Department of Education

SPARK Proposal for Frontline Nurses and Healthcare Workers

- The State Finance Council (SFC), made up of legislative leadership and the Governor, recently approved $50 million in ARPA funds to be used for premium pay for frontline nurses and support staff in hospitals. Essentially, under ARPA guidelines, this can amount to a premium pay increase of up to $13/hour, capped at $5,000 within a six-month period from September 1st, 2021, through February 28th, 2022. The SPARK Executive Committee was then tasked with determining how exactly the distribution and reporting process would work.

- After multiple rounds of debate, the committee settled on the following process for distribution of the funds to recipient hospitals:
  - Initially $30 million of the $50 million will be made available. The remaining $20 million will be made available post-SPARK review of implementation reports from recipients.
  - Hospitals can use these dollars for premium pay as outlined in ARPA guidance, or they can determine their own retention program, as long as that is done in conjunction with the Office of Recovery.
  - The committee acknowledged it did not want to see healthcare workers from other organizations leave to come to hospitals. Thus, the committee specified these dollars are to be used to retain existing staff, rehire retirees, and to hire new support nurses or frontline care employees who are getting their first full time nursing job in a Kansas facility.


Legislative Post Audit (LPA) Audit on Substance Use Disorder Treatment Programs

- Late last month, LPA released its SUD-related audit: “Evaluating Mental Health and Substance Abuse Initiatives to Improve Outcomes.”
- The report, report summary, and a narrated summary can be found here: https://www.kslpa.org/audit-report-library/evaluating-mental-health-and-substance-abuse-initiatives-to-improve-outcomes/
The audit examined two questions: What practices do providers report using and how well do they work? And how do these practices and programs compare to other states?

23 providers reported 95 different programs and LPA evaluated the top 11 reported. The report found that eight of these 11 programs had moderate to strong support for its effectiveness; seven had moderate support; and the remaining three were found either weak or inconclusive in their effectiveness.

Medicaid Saves Lives Act

The Medicaid Saves Lives Act, introduced in Congress in July, would create a federal Medicaid look-alike program for individuals in states that have not expanded Medicaid.

On September 2nd, Governor Kelly sent a letter of support for the legislation to Congressional Leadership.


Upcoming Activities

Wednesday & Thursday, September 22nd-23rd
KanCare Oversight.

Tuesday, September 28th
Legislative Budget Committee.

Tuesday, September 28th
Special Committee on Kansas Mental Health Modernization and Reform.

Wednesday, October 5th-6th
Joint Committee on Child Welfare System Oversight.