



Memorandum

Overview

September and October have been busy with interim meetings and activities, while offering a sneak peek at how the 2022 Session might unfold. With less than three months to go before Session, interim committees are beginning to make recommendations and hint at requests for bills, while behind the scenes the state budget is being put together. This report details the latest on interim committee activities, SPARK Executive Committee actions, and the latest on state revenues, and education issues.

Big Picture

Latest on Emergency Management Act/SB 40

- The State Supreme Court will hear legal arguments for the case on October 26th. It is unclear if the Court plans to rule on the underlying constitutionality of the bill, or if it will just determine if the plaintiffs were harmed by the order. The specific issue concerning the Court is whether the plaintiffs challenged the Shawnee Mission School District's health order within 30 days of the order being issued. The district issued the health order in July 2020, but the plaintiffs did not challenge it until May 28th, 2021.
- If the court finds the plaintiffs did not have grounds to bring forth the case, confusion over the constitutionality may wait for additional legislative action during the 2022 session.

State Revenue Update

- State revenues continued their positive trend through September and into October. The State's total tax collections for September exceeded estimates by \$162.2 million.
- The breakdown of September's SGF receipts can be viewed here: https://governor.kansas.gov/wp-content/uploads/2021/10/03_September_Revenue_FY2022_10-01-2021_Final.pdf
- The state ended fiscal year 2021 over \$766.1 million above estimates.
- Next month, the Legislature will receive the Consensus Revenue Estimate (CRE), which they receive in April and November of each year. The CRE looks at the state's projected fiscal health for the following year and provides the latest estimates on ending balances, revenues, etc. The state's fiscal analysts have, however, hinted at challenges they face in putting together the estimates in November, due to delays in receipts, additional federal funding coming into the state, and the expanded child tax credit. These moving pieces will make it especially challenging for analysts to put together their estimates for next year.

Latest on SPARK Executive Committee

- Last month, the SPARK Executive Committee approved \$50 million in ARPA funds for premium pay for frontline healthcare workers in hospitals across the state. Out of the 122 eligible hospitals, 120 hospitals have confirmed they will request funds for this program.

Hospitals can apply for funds through October 29th, and hospitals should begin receiving funds around October 18th. Additionally, hospitals receiving these funds will complete monthly reports on the use of funds received.

- The allocations for each eligible hospital can be viewed here: <https://covid.ks.gov/wp-content/uploads/2021/10/FLHW-Allocations-10.7.21-Final.pdf>
- In September the SPARK Executive Committee sought to create four priority areas include Economic Revitalization, Health & Education, Connectivity, and Efficiency & Modernization.
- However, October the legislative and public members of the SPARK Executive Committee, a majority, rejected the Governor's recommendation and selected a very different group of working group members including three legislators on each group.
- It is most likely the spending priorities may shift dramatically now and any decisions may be delayed and made by the 2022 Legislature.

Quick Look Ahead to Interim Committees

- The next few weeks will be characterized by a particularly busy interim schedule, as committees, as well as their various work groups, continue meeting. Some of these include the Special Committee on Mental Health Modernization and Reform, the Joint Committee on Corrections and Juvenile Justice Oversight, and the Legislative Budget Committee.
- We also expect two new interim committees, the Special Committee on Education, as well as the Special Committee on Government Overreach and Impact of COVID-19 Mandates, to begin meeting soon. (More information on these committees below).

Two New Interims Announced

- Special Committee on Education (See Below):
- Special Committee on Government Overreach and Impact of COVID-19 Mandates: Legislative leadership recently appointed members to the committee created in response to recent federal action:
 - 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 first of five meeting dates are set for October 29 and 30th, and the 30th is a Saturday. The hearing is scheduled to include staff and legal briefings and input from invited guests. Saturday was just for public comment.
- Republican appointments include Senate President Ty Masterson, Renee Erickson (Chair), Mike Thompson, and Kellie Warren. Republican House members include Brenda Landwehr (Vice Chair), John Barker, Stephen Owens, and Sean Tarwater. Democrats appointments include Senator Pat Pettey and Representatives John Carmichael and Vic Miller.

Healthcare Related Issues

COVID-19 Related Matters

Divisiveness Continues

- Unsurprisingly, the heated debates over mask mandates, vaccinations, and other COVID-related policies continue to cause divisiveness at both state and local levels of government.
- A “Freedom Rally” last month in Lenexa may be a harbinger of what is to come during Session, in terms of debates about not only the COVID-19 vaccine and boosters, but other vaccinations, as well as where the authority lies for approving vaccinations.
 - More on last month’s rally here: <https://kansasreflector.com/2021/09/19/kansas-anti-vax-group-boasts-16-sponsors-ahead-of-freedom-rally-in-lenexa/>
- Additionally, COVID-19 has become a hot topic in local school board races, and many candidates have built their platforms solely on promises to reject vaccine, mask, and other public health practices that have been put in place to mitigate COVID-19.
- Some of that energy will find a favorable forum in the Legislature’s COVID Mandates Committee that will hold meetings October 29-30.

K-12 Vaccination and Testing Update

- At the latest Legislative Budget Committee meeting, KDHE provided an update on cases, vaccination rates, and what districts are doing to mitigate COVID-19 while keeping schools open.
- \$85 million in federal funds was earmarked for the state to use for testing supplies and support, technical assistance, and staff to support testing coordination in schools. Increased, regular testing has allowed kids to stay in school without having to quarantine and miss days of in-person learning.
- KDHE has approved 180 budget requests for funding, including for 166 public school districts and 14 private schools. So far, KDHE has approved \$49.7 million in funding requests.
- KDHE reported that schools have been administering 11,000 to 14,000 tests per week. The positivity rate each week has been around four to five percent. The agency testified that case numbers are decreasing after peaking around the second week of school.
- The agency discussed working with schools and local public health partners once the COVID vaccination is approved for five- to eleven-year-olds, but it appears federal guidance will focus on vaccinations in pediatric offices rather than mass vaccination sites.
- Lastly, KDHE provides a dashboard where cases per district, as well as vaccination rates per district, can be viewed.

- On the other hand during the October KanCare Oversight Committee, Secretary Norman was peppered with questions regarding the efficacy of Delta, “confusion about COVID versus the flu,” and assertions that persons infected with COVID had greater immunity than the vaccinated.

Interim Committee Updates

Special Committee on Mental Health Modernization & Reform

- The special committee held its first of several meetings at the end of September. Largely a review of the committee’s work last year, and where it left off, the committee also made a few adjustments and reshuffled its individual working groups. The three working groups include Telehealth; Services and Workforce; and System Capacity and Transformation.
- The work groups begin meeting this week and will report back to the full committee on October 28th and 29th.

Potential Behavioral Health Initiatives from Mental Health Modernization and Reform Committee.

- Mental Health Modernization and Reform Committee continues to meet in the second year of their interim work. On October 28th, the Committee received reports from the three working groups. Briefly, the main themes likely to become policy include the following. The full list can be found at this website:
http://www.kslegresearch.org/KLRD-web/Committees/Committees-Spc-MH-Modernization_Resources.html
 - Committee documents from meetings can be found here:
http://www.kslegislature.org/li/b2021_22/committees/ctte_spc_2021_ks_mental_health_modern_1/documents/
- Telemedicine Working Group (see below).
- System Capacity and Transformation Working Group.
 - A plan for involuntary capacity; 10-15 percent Medicaid rate increase; increase cellphone fees to fund 988 suicide hotline; integrate coding practices for mental health, SUD, and primary care to address co-occurring conditions; increase specialty courts; add behavioral health as a youth offender risk behavior.
- Services and Workforce Working Group.
 - Study to increase the number of psychiatrists, child and adolescent psychiatrists, and psychiatric nurses; state create a long-term investment plan in workforce; enhanced behavioral health training for kids in foster homes; increased frontline primary care training in behavioral health needs;

Joint Committee on Child Welfare Oversight

- The committee held its first set of meetings the first week of October, and heard from DCF, contractors, and other stakeholders on a variety of topics related to the state’s foster care system.
- The second round of hearings are scheduled for November 4th -5th and the agenda can be found here:
http://www.kslegislature.org/li/b2021_22/committees/ctte_jt_child_welfare_ovst_1/documents/agenda/weeklyinterim/20211103.pdf
- The first day of hearings was marked by a somewhat rocky start, following the Governor’s announcement of Executive Order 21-28 establishing the Division of the Child Advocate the day before. Legislative leaders were upset by the Governor’s decision to exercise her executive authority to issue an executive order and argued that the issue should have been resolved legislatively.
- As a reminder, the Legislature has debated establishing an Office of the Child Advocate modeled from a similar position in Missouri, for the last few years. Last Session, after passing with bipartisan support out of the House Children and Seniors Committee, the legislation was bogged down after the Senate attempted to establish the position within the Attorney General’s office, which was not well-received by the House and efforts to move the legislation forward failed.
- More on the new Division of the Child Advocate here:
<https://governor.kansas.gov/governor-laura-kelly-establishes-the-division-of-the-child-advocate-to-protect-kansas-children-and-families/>
- And more on the committee dynamics and discussion here:
 - <https://kansasreflector.com/2021/10/05/republicans-see-kansas-governors-order-creating-child-advocate-as-slap-in-the-face/>
 - And here: <https://kansasreflector.com/2021/10/07/child-welfare-panel-pushes-kansas-foster-care-agencies-to-look-inward-for-solutions/>
- One topic in particular worth noting was a follow-up discussion related to Adrian’s Law that was passed last year. HB 2158, among other things, established Adrian’s Law, which requires visual observation of an alleged victim of child abuse or neglect as part of an investigation. There was concern from some members that there are very few pediatric health professionals who are specifically trained and qualified in detecting abuse. A preliminary recommendation was made in regard to Adrian’s law that would require a child be examined by a pediatric physician that has the training to detect abuse.
 - DCF Secretary Howard noted there is a new pilot grant called “Safe Care Exam” program in Johnson and Wyandotte counties that is administered by Children’s Mercy Hospital for children age three and younger who are alleged to be victims of physical abuse/neglect.
 - This issue will be addressed during the November 4-5th Committee meetings.

- The committee held its third quarter meeting at the end of last month to hear from state agencies and stakeholders on a variety of topics ranging from behavioral health to maternal health supports and postpartum coverage.
 - Several stakeholder groups testified to the benefits of extending postpartum Medicaid coverage to 12 months postpartum (up from 60 days, though the federal government increased it to 12 months for as long as the public health emergency lasts). More on those efforts here: <https://kansasreflector.com/2021/09/26/advocates-spotlight-kansas-maternal-health-shortfalls-possible-remedies/>

Telemedicine

- Telemedicine legislation was introduced during the 2021 legislative session, but it stalled over the issue of payment parity. The utilization of telemedicine increased during the pandemic and providers sought efforts to sustain and support appropriate usage of telemedicine as well as consider payment parity for services delivered.
- The Kansas Mental Health Modernization and Reform Commission establish an ad hoc working group to explore potential telemedicine changes. Their final recommendations will likely become the preeminent telemedicine bill in 2022. Current discussion topics include:
 - Increased provider and patient education.
 - Possible compacts or waivers from BSRB for increased telemedicine flexibility.
 - Current Kansas Telemedicine Act definitions of for originating and distant sights are sufficient, and interstate compacts may need changes.
 - Examine unique needs of children in child welfare.
 - Payment parity will be discussed at the November 15 work group meeting.

Upcoming Activities

Friday and Saturday, October 29-30th

Special Committee on Government Overreach and Impact of COVID-19 Mandates.

Wednesday, November 3rd and 4th

Joint Committee on Child Welfare System Oversight.

Friday, November 5th

Legislative Budget Committee.

Monday, November 15th

Kansas Criminal Justice Reform Commission.

Wednesday, November 17

Mental Health Modernization and Reform Committee.

Tuesday and Wednesday, November 30—December 1st
Special Committee on Education.

Wrap Up

Let us know if you have any questions.

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