

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2387**

As Agreed to March 31, 2022

**Brief\***

HB 2387 would create law related to the medical assistance program and amend law regarding the powers of the Governor in the Kansas Emergency Management Act (KEMA).

The bill would be effective upon publication in the *Kansas Register*.

***Medical Assistance Program***

The bill would create law stating that, on or before January 31, 2023, no state agency, including the Governor, shall:

- Issue a request for proposal for the administration and provision of benefits under the medical assistance program; or
- Enter into any new contract with managed care organizations for the administration and provision of benefits under the medical assistance program.

The bill would require, except to the extent prohibited by 42 USC § 1396u-2(a)(2) or other federal law, the Secretary of Health and Environment to continue to administer medical assistance benefits using managed care entities as described in 42 USC § 1396u-2.

These provisions would expire on January 31, 2023.

***Powers of the Governor In KEMA***

The bill would amend a statute in KEMA addressing the powers of the Governor to specify that continuing limits on the Governor's power regarding firearms or ammunition apply under KEMA or any other law. The bill also would state the Governor shall not have the power or authority under KEMA or any other law to prohibit attending or conducting any religious service or worship service in a church, synagogue, or place of worship.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/klrld>

## Conference Committee Action

As it entered conference, HB 2387 contained provisions regarding operating an aircraft under the influence. The Conference Committee on HB 2377 agreed to include these provisions in the Conference Committee Report for HB 2377.

The Second Conference Committee on HB 2387 agreed to remove its contents. The Second Conference Committee further agreed to insert:

- Language regarding the medical assistance program, modified from provisions contained in Sub. for HB 2463 and House Sub. for Sub. for SB 267, as amended by House Committee of the Whole; and
- Language regarding the powers of the Governor in KEMA, modified from provisions contained in SB 541, as amended by Senate Committee of the Whole.

## Background

### ***Sub. for HB 2463 (Prohibiting Changes to the Medical Assistance Program)***

The bill was introduced by Representative Arnberger. [*Note: In House Committee on Health and Human Services discussion, it was noted the bill, as introduced, was intended to be a House Committee bill.*]

#### *House Committee on Health and Human Services*

In the House Committee hearing on January 26, 2022, representatives of Kansas Hospital Association and Kansas Medical Society provided neutral testimony, stating concern the bill would preclude needed changes to KanCare, such as updating physician Medicaid fees that have been frozen since 2006 and ensuring the Health Care Access Improvement Program (HCAIP) is solvent.

Written-only neutral testimony was provided by a representative of the Association of Community Mental Health Centers of Kansas, Inc.

The State Medicaid Director (Director), on behalf of Kansas Department of Health and Environment (KDHE), and representatives of KanCare Advocates Network and Kansas Action for Children provided **opponent** testimony, stating concern about the breadth and vagueness of the bill and potential impact to the Medicaid program. The Director stated the bill could block fully implementing program improvements that are already in progress, including adding new drugs, treatments, and services to Medicaid and increasing provider reimbursement rates for certain services. The Director stated concern that the bill would significantly delay changes constituents have been asking for, including addressing the wait lists for Home and Community Based Services waivers. The Director stated the bill could prevent the State from making changes to the Medicaid program as required by federal laws and CMS rules, putting all of the State's annual federal Medicaid funding at risk. The Director noted the bill could also create issues in maintaining KanCare's federal authority. The Director stated concern that the bill would disturb the routine procurement process by providing current MCOs with two additional years

of State business without having to go through the competitive bidding process and would hinder the State's oversight power by not allowing the State to terminate an MCO contract, even in the case of egregious contract violations.

Written-only opponent testimony was provided by Community Care Network of Kansas, Kansas Department of Administration, Kansas Department for Aging and Disability Services (KDADS), Oral Health Kansas, and the United Methodist Health Ministry Fund.

No other testimony was provided.

On February 17, 2022, the House Committee discussed possible amendments to the bill to address the concerns of the Director. The Director provided comment that the amendments would decrease the amount of time the state agency would be blocked from making changes to KanCare by one year, but more urgent needs that need to be acted on quickly remain a concern, as they would require approval by the Legislature or LCC. The Director stated, because the bill would be in effect after publication in the *Kansas Register*, the state agency would have limited time to withdraw state plan amendments currently pending with CMS. The bill was tabled pending receipt of an opinion from the Attorney General.

On February 21, 2022, the House Committee voted to take the bill from the table and amended the bill to:

- Change dates, providing no changes could be made to KanCare prior to January 1, 2025, and maintaining the current KanCare system until December 31, 2024;
- Clarify the bill does not prevent any state agency from taking any action required by an act or appropriation act of the Legislature, federal law, or CMS; and
- Allow, prior to January 1, 2025, and when the Legislature is not in session, a state agency to submit to the LCC a request to make a substantive or material change to KanCare. The bill would allow the LCC to approve changes not otherwise prohibited by law.

The House Committee recommended a substitute bill be passed.

### ***House Sub. for Sub. for SB 267 (Appropriations—Provisos Regarding Managed Care Organizations Contracts)***

House Sub. for Sub. for SB 267 contains FY 2022 supplemental funding, FY 2023 funding for most state agencies, and FY 2023 capital improvement expenditures for certain state agencies. As passed by the House, the bill included language extending the KanCare managed care organization contracts through December 31, 2024, and requiring KDHE to submit a request for any change to the program to the Legislative Coordinating Council (LCC) and receive approval from the LCC.

### ***SB 541 (Powers of the Governor In KEMA)***

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Petersen, on behalf of Senator Warren.

As the bill was referred to the Senate Committee on Judiciary, it also contained provisions regarding compensation for property affected by governmental actions and property tax relief for businesses affected by governmental restrictions or shutdowns. On March 9, 2022, the Senate Committee removed these sections of the bill and inserted them into HB 2416, creating a substitute bill.

SB 541, as amended by the Senate Committee of the Whole, would create law regarding actions taken by a city related to contagious or infectious disease, COVID-19 vaccination passports, actions by governmental entities or public officials affecting worship services or activities, and face mask requirements. The bill also would amend law in KEMA and public health statutes related to contagious or infectious disease, remove the sunset provision in the COVID-19 Contact Tracing Privacy Act, and amend law related to student vaccination exemptions.

### *Senate Committee on Judiciary*

On March 3, 2022, the Senate Committee on Judiciary held an informational hearing on potential legislation regarding orders and actions by public officials relating to vaccine passports, face mask requirements, gathering limitations, business restrictions, and religious gathering limitations. In the informational hearing, 19 citizens provided testimony in support of such potential legislation; 36 citizens provided written-only testimony. One citizen provided neutral testimony.

In the Senate Committee hearing on March 7, 2022, an attorney, a representative of the Kansas Chamber of Commerce, and two citizens provided **proponent** testimony on the bill, stating various concerns over governmental actions taken during the COVID-19 pandemic. Written-only proponent testimony was provided by three citizens.

Representative Jacobs provided neutral testimony on the bill, expressing concern that the bill does not adequately protect the free exercise of religion guaranteed by the *U.S. Constitution*.

Representatives of Immunize Kansas Coalition, Kansas Association of Counties, and League of Kansas Municipalities, and one citizen testified as **opponents** to the bill, stating concerns the bill will hinder the ability of governmental actors to effectively respond to future emergencies. Written-only opponent testimony was provided by representatives of the Harvey County Health Department, Kansas Academy of Family Physicians, Kansas Association of Local Health Departments, Kansas Association of School Boards, Kansas National Education Association, Nurture KC, and the State Board of Education; a representative of the cities of Merriam, Mission, Prairie Village, and Westwood Hills; and three private citizens.

On March 9, 2022, the Senate Committee amended the bill to:

- Add language in KEMA to limit the powers of the Governor and local units of government during emergencies with respect to the free exercise of religion;
- Remove two sections governing compensation for property affected by governmental actions and property tax relief for businesses affected by governmental shutdowns or restrictions [*Note: the Senate Committee inserted these sections in HB 2416, creating a substitute bill*]; and

- Remove provisions pertaining to face mask requirements in schools and insert provisions prohibiting any governmental entity or public official from requiring face masks as a response to contagious or infectious disease.

### *Senate Committee of the Whole*

On March 22, 2022, the Senate Committee of the Whole amended the bill to add a section of law prohibiting governmental entities or public officials from restricting worship services or activities and to provide additional restrictions on actions of local health officers.

### **Fiscal Information**

#### ***HB 2463***

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDHE and KDADS were unable to estimate a fiscal effect. Both agencies note the bill does not define the phrase “substantive or material change” but could potentially prevent the State’s Medicaid program from complying with federal law and directives from the CMS and put federal funding at risk. Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor’s Budget Report*.

#### ***SB 541***

[*Note:* The fiscal note prepared by the Division of the Budget references some provisions regarding compensation and property tax relief now contained in Senate Sub. for HB 2416 and provisions not included in the Conference Committee Report on HB 2387.]

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDHE states that enactment of the bill would result in increased expenditures for the agency, if found by a district court in a civil action to be responsible for and directed to provide awards of compensation pertaining to and resulting from restrictions on use of property due to a governmental action related to a contagious or infectious disease, and issued or adopted by the state, county, or other political subdivision. A total fiscal effect could not be estimated.

The State Department of Education and the Office of the Governor state enactment of the bill would not have any fiscal effect on the operations of either agency. The State Board of Regents reports enactment of the bill would not have a fiscal effect on higher education.

The Office of the Attorney General reports that while enactment of the bill could reduce some of the State’s potential legal liability in future cases, certain provisions could be subject to legal challenge. The Office of the Attorney General states some litigation defense could be handled by the Office, but it is possible that specialized outside counsel would need to be hired by the State. The total fiscal effect could not be estimated.

The Department of Revenue states the effects of any future shutdowns or restrictions that would result in the State paying back a portion of a property owner’s property taxes cannot be estimated.

The Office of Judicial Administration (OJA) states enactment of the bill could increase the number of cases filed in district court, requiring more time spent by court personnel. The OJA estimates enactment of the bill could result in the collection of docket fees and fines assessed in those cases filed under the bill's provisions. According to OJA, a fiscal effect cannot be estimated.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

The Kansas Association of Counties and the League of Kansas Municipalities both state that enactment of the bill would increase costs for local governments related to the defense of potential litigation and would subject local governments to claims for compensation under the bill. A total fiscal effect could not be estimated by either organization.

Kansas Emergency Management Act; Governor; religious service or worship service; medical assistance program; contracts; managed care organizations

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