

SESSION OF 2022

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2281**

As Recommended by House Committee on
Health and Human Services

Brief*

Sub. for HB 2281 would create the Living, Investing in Values, and Ending Suicide (LIVES) Act (Act). The Act would implement the established 988 Suicide Prevention and Mental Health Crisis Hotline (Hotline) in Kansas. The bill would outline the responsibilities of the Kansas Department for Aging and Disability Services (KDADS), Hotline centers, and service providers. The bill would also impose the 988 fee on telecommunications and other voice service. The bill would establish the 988 Suicide Prevention and Mental Health Crisis Hotline Fund (Hotline Fund) and direct, in addition to the established 988 fees, State General Fund moneys to be transferred to the Hotline Fund. Additionally, the bill would provide certain protections from liability for service providers, prohibit the imposition of 988 fees other than those established by the bill, create the 988 Coordinating Council (Council), and require an annual report from the Council to select Legislative standing committees.

Definitions (Section 2)

The bill would define terms used in the Act, including:

- “Crisis-receiving and stabilization services” would mean short-term services with capacity for diagnosis, initial management, observation, crisis stabilization, and follow-up referral services;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Hotline” would mean the 988 Suicide Prevention and Mental Health Crisis Hotline or its successor maintained by the federal Assistant Secretary for Mental Health and Substance Use;
- “Hotline center” would mean a 988 Suicide Prevention and Mental Health Crisis Hotline center, designated by KDADS, participating in the National Suicide Prevention Lifeline network to respond to statewide or regional 988 calls;
- “Mobile crisis team” would mean a team of behavioral health professionals and peers that provide professional, community-based, crisis intervention services, including, but not limited to, de-escalation and stabilization for individuals who are experiencing a behavioral health crisis. Such services are separate and distinct from 911 emergency responses of emergency medical services or law enforcement; and
- “NSPL” would mean the National Suicide Prevention Lifeline, the national network of local, certified crisis centers that provide free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours per day, 7 days per week.

Responsibilities of KDADS, Hotline Centers, and Service Providers (Section 3)

KDADS

In accordance with provisions of 47 CFR §52.200, the bill would require KDADS, prior to July 16, 2022, to:

- Designate a Hotline center or network of centers to provide crisis intervention services and care

coordination to individuals accessing the Hotline 24 hours per day, 7 days per week;

- Create a system for information sharing and communication between crisis and emergency response systems and Hotline centers for the purpose of real-time crisis care coordination including, but not limited to, deployment of crisis and outgoing services specific to a crisis response of 911 emergency responders when necessary;
- Convene mobile crisis teams;
- Develop guidelines for deploying services, including mobile crisis teams, coordinating access to crisis-receiving and stabilization services or other local resources as appropriate, and providing referrals and follow-ups;
- Coordinate consistent public messaging regarding the Hotline with NSPL, KDADS, and the U.S. Department of Veterans Affairs (VA);
- Require training as established by NSPL for Hotline center staff for servicing, or transferring to appropriate specialized centers, high-risk and specialized populations identified by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA);
- Work with the Kansas Department of Health and Environment (KDHE) and KanCare managed care organizations (MCOs) to develop plans for payment for KanCare members and uninsured services;
- Create an advisory board to provide guidance to the Secretary for Aging and Disability Services (Secretary), gather feedback, and make recommendations for Hotline centers, local

counties, and municipalities regarding the planning and implementation of the Hotline;

- Hire a statewide suicide prevention coordinator; and
- Adopt rules and regulations to implement the provisions of the Act.

The bill would require KDADS, after July 16, 2022, to:

- Consult with the advisory board created by the bill to provide guidance to the Secretary, gather feedback, and make recommendations for Hotline centers, local counties, and municipalities regarding usage and services provided in response to calls to the Hotline centers;
- Fund any uninsured services provided in response to the Hotline if an individual receiving the services is uninsured or the services or facility are not covered by an individual's insurance; and
- At the beginning of each legislative session, submit an annual report of the Hotline's usage and services provided in response to calls to the Hotline centers to the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare, or any successor committees.

Hotline Centers

The bill would require the Hotline centers, prior to July 16, 2022, to:

- Establish an agreement with NSPL for participation within the network of crisis centers;

- Meet any training requirements for Hotline center staff established by NSPL or KDADS;
- Enter into memorandums of understanding with local service providers to be deployed according to KDADS guidelines;
- Coordinate access to crisis-receiving and stabilization services or other local resources as appropriate according to KDADS guidelines;
- Provide referrals and follow-ups according to KDADS guidelines;
- Work with the VA to route calls from self-designated veterans for the provision of Veterans Crisis Line (VCL) services; and
- Meet any Hotline center provisions required to be met after July 16, 2022, if the Hotline center has the capacity to meet such provisions prior to such date.

The bill would require Hotline centers, after July 16, 2022, to:

- Receive all calls initiated by a service user dialing 988 from service providers;
- Deploy crisis services, including mobile crisis teams, according to KDADS guidelines;
- Coordinate access to crisis-receiving and stabilization services or other local resources as appropriate according to KDADS guidelines;
- Provide referrals and follow-ups according to KDADS guidelines;
- Continue to meet training requirements established by NSPL and KDADS; and

- Continue to work with the VA to route calls from self-designated veterans for the provision of VCL services.

Service Providers

The bill would require service providers, on and after July 1, 2022, to collect fees and remit such fees to the Hotline Fund, established pursuant to Section 7 of the bill.

The bill would require service providers, prior to July 16, 2022, to:

- Establish 988 as the unique number for suicide prevention and mental health crisis;
- Transmit all calls initiated by a service user dialing 988 to the current toll-free access number for NSPL;
- Complete all changes necessary to implement the designation of the 988 dialing code; and
- Establish a system for collecting fees and remitting such fees to the Hotline Fund.

The bill would require service providers, after July 16, 2022, to direct all calls initiated by a user dialing 988 to Hotline centers.

Liability Protection (Section 4)

The bill would provide that each service provider and seller, and employees, agents, suppliers, and subcontractors of each service provider and seller, would not be liable for the payment of damages resulting directly or indirectly from the total or partial failure of any transmission to an emergency communication service or for damages resulting from the performance of installing, maintaining, or providing 988

service, except as provided by the Kansas Tort Claims Act and for action or inaction that constitutes gross negligence or willful and wanton misconduct.

Monthly Fee Per Subscriber Account (Section 5)

Fee Collection

The bill would create a 988 fee in the amount of \$0.20 per month per subscriber account of any of the following service providers:

- Exchange telecommunications service;
- Wireless telecommunications service;
- Voice over Internet Protocol (VoIP) service; or
- Other voice service capable of contacting a Hotline center.

The 988 fee described in this section of the bill would not be imposed on prepaid wireless service. [Note: See Section 6 for the fee imposed on prepaid wireless service.]

Billed service users would be liable for the 988 fee until paid to the service provider. The bill would require such service providers to collect the 988 fees. Such fees would be added to and could be separately stated in billings for the subscriber account. If such fee is separately stated in billings, the fee would be labeled “988 fee.” A service provider could combine the 988 fee with the 911 fee into a single fee to be collected from the consumer. If the fees were combined, they would have to be identified as the “911/988 fee” in billings for the subscriber account. If the service provider elects to collect one combined fee, such provider would be required to report to the Department of Revenue (Department) on a form prescribed by the Secretary of Revenue the respective amounts attributable to the 988 fee and the 911 fee.

The provider would be required to provide annually to the Department a list of the amount of uncollected fees and the names and addresses of service users that carry unpaid fee balances.

Fee Remittance

The bill would require the fees to be collected monthly and remitted to the Department not more than 15 days after the close of the calendar month. On or before the 15th day of each following calendar month, a provider would be required to file a return for the preceding month with the Department and deliver the return, with the fee remittance, to the Department. The provider would be required to maintain records of the amount of fees collected for a period of three years from the time of collection.

The Department would be required to remit the 988 fees for deposit to the credit of the Hotline Fund.

Limitation on 988 Fee

The bill would prohibit any 988 funding obligation other than that imposed by the bill with respect to service providers. The state, any political subdivision of the state, or any intergovernmental agency would be prohibited from imposing a tax, fee, surcharge, or other charge for 988 funding purposes on any provider or consumer with respect to the sale, purchase, use, or provision of exchange telecommunications service, wireless telecommunications service, VoIP service, or other voice service.

Prepaid Wireless 988 Fee (Section 6)

The bill would impose a prepaid wireless 988 fee of 0.4 percent per retail transaction for prepaid wireless service in Kansas. The prepaid wireless fee would be collected by the seller from the consumer. The bill would allow the amount of

the prepaid wireless fee to be separately stated on an invoice, receipt, or other similar document provided to the consumer. If such fee is stated separately on the documents provided to the consumer, the fee would have to be labeled "988 fee."

The bill would clarify:

- What retail transactions would be treated as occurring in Kansas;
- Consumer liability for the prepaid wireless fee;
- The sellers' options for collecting combined prepaid wireless 911 fees and prepaid 988 fees into a single fee identified to the consumer as the "911/988 fee" on the invoice, receipt, or similar document and reported to the Department so as to identify the respective amounts of each fee;
- Procedures concerning:
 - Payment and remittance of the prepaid wireless fees;
 - Department audits; and
 - Documentation for non-retail sales.

The Department would be required to remit the 988 fees for deposit to the credit of the Hotline Fund.

Limitation on Prepaid Wireless 988 Fee

The bill would require the prepaid wireless 988 fee imposed by this section of the bill to be the only 988 funding obligation imposed on prepaid wireless telecommunications service in this state. The State, any political subdivision of the State, or any intergovernmental agency would be prohibited from imposing a tax, fee, surcharge, or other charge for 988 funding purposes on any provider or consumer with respect

to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

Definitions Applicable to Section 6

The bill would define “consumer,” “prepaid wireless service,” “retail transaction,” and “seller” to mean the same as in KSA 2020 Supp. 12-5363, except “seller” would also include a marketplace facilitator, as defined in KSA 2021 Supp. 79-5601.

988 Suicide Prevention and Mental Health Crisis Hotline Fund (Section 7)

The bill would establish in the State Treasury the Hotline Fund to be administered by the Secretary for Aging and Disability Services (Secretary). The bill would require the Department to remit all 988 fees, which would be deposited to the credit of the Hotline Fund.

The bill would stipulate moneys from revenue generated from 988 fees and amounts received from any public or private entity for the purposes of the Hotline Fund would be credited to the Hotline Fund.

The bill would require, on or before the 10th of each month, the Director of Accounts and Reports to transfer from the State General Fund to the Hotline Fund interest earnings based on the average daily balance of moneys in the Hotline Fund for the preceding month and the net earnings rate of the Pooled Money Investment Portfolio for the preceding month.

The bill would require moneys credited to the Hotline Fund to be used only to pay expenses that are reasonably attributed to:

- Ensuring the efficient and effective routing of calls made to the Hotline to an appropriate crisis center; and

- Personnel, the provision of acute mental health, crisis outreach and stabilization services by directly responding to the Hotline, public promotion, data collection, and reporting.

The bill would mandate that moneys in the Hotline Fund would be used for the purposes set forth in the bill and for no other governmental purposes.

On July 1, 2022, and on each July 1 thereafter, the Director of Accounts and Reports would be required to transfer \$3.0 million from the State General Fund to the Hotline Fund. The transfers would be demand transfers from the State General Fund.

Annual Report to the Legislature (Section 8)

On or before the first day of each regular session of the Legislature, the Secretary would be required to submit a report to the House Committees on Appropriations; Energy, Utilities and Telecommunications; and Health and Human Services and the Senate Committees on Ways and Means; Utilities; and Public Health and Welfare, or any successor committees, detailing outcomes related to implementation of the Hotline in Kansas. The report would be required to include, but not be limited to, key performance indicators.

Hotline Number of Student Identification Cards (Section 9)

The bill would encourage each school district that issues student identification cards to students in grades 6 through 12 to include on such identification cards the 988 Hotline number, or if the Hotline is not in operation, then a local, state, or national suicide prevention hotline telephone number.

988 Coordinating Council (Section 10)

Purpose

The bill would create the 988 Coordinating Council (Council), which would monitor the delivery of 988 services, develop strategies for future enhancements to the 988 system, and distribute available grant funds to organizations providing services as National Suicide Prevention Lifeline Centers (NSPL Centers).

Membership

To the extent possible, the bill would require the Council to include individuals with technical expertise regarding mental health crisis delivery services, call center technology and services, and any other relevant subject matter.

The Council would consist of the following 15 voting members representing various entities, as indicated:

- Thirteen voting members appointed by the Governor, as follows:
 - Two members from each of the following:
 - Information technology personnel from government units, NSPL Centers located in counties with a population of fewer than 75,000, and NSPL Centers located in counties with a population greater than 75,000; and
 - One member each representing each of the following:
 - Kansas Sheriffs Association, Kansas Association of Chiefs of Police, Kansas Association of Community Mental Health Centers, InterHab, KDADS, Kansas Department for Children and Families, and one member recommended by the Kansas

Commission for the Deaf and Hard of Hearing;

- Two voting legislative members appointed by the Legislative Coordinating Council, as follows:
 - One member of the House Committee on Appropriations; and
 - One member of the Senate Committee on Ways and Means.

The Council would also include nine nonvoting members appointed by the Governor, with one member representing each of the following:

- Rural telecommunications companies recommended by the Kansas rural independent telephone companies;
- Incumbent local exchange carriers with over 50,000 access lines;
- Large wireless providers;
- VoIP providers;
- Recommendation from League of Kansas Municipalities;
- Recommendation from Kansas Association of Counties;
- Recommendation from Kansas Geographic Information Systems Policy Board;
- Recommendation from Kansas Office of Information Technology Services; and
- A Kansas resident recommended by the Mid-America Regional Council.

Terms

Except as otherwise indicated in the bill, each voting member would be appointed for a three-year term and until a successor is appointed and qualified. Of the 13 voting members appointed by the Governor, five would be appointed to an initial term of two years and five to an initial term of four years, as specified by the Governor.

A voting member would be limited to serving no longer than two successive three year terms, with a voting member appointed as a replacement allowed to finish the term of the predecessor and serve two additional successive terms.

Chairperson

The chairperson of the Council would be selected by, and serve at the pleasure of, the Governor. The chairperson would serve as the liaison between the Council and the SAMHSA. The chairperson would preside over all meetings of the Council and assist the Council in effectuating the Act.

Rules and Regulations

The Council would be allowed to adopt rules and regulations necessary to implement the provisions of this act, including, but not limited to:

- Creating a uniform reporting form designating how moneys, including 988 fees, have been spent by the NSPL Centers;
- Requiring service providers to submit contact information to the Council;
- Establishing standards for coordinating and purchasing equipment; and

- Recommending standards for general operations training of NSPL Center personnel.

The Council would be prohibited from adopting rules and regulations or imposing any requirements that create a mandatory certification program of NSPL Centers operations or emergency communications personnel.

Payment of Expenses

The bill would require all expenses related to the Council be paid from the Hotline Fund. Not more than 2.0 percent of the total receipts from the 988 fees would be used to pay for administrative expenses of the Council.

Member Compensation

The bill would allow members of the Council and other persons appointed to subcommittees by the Council to receive reimbursement for meals and travel expenses but would serve without compensation. Legislative members would be paid compensation, subsistence allowance, mileage and other expenses, as provided in KSA 75-3212, when attending meetings of the Council.

Service Provider Contact Information

The bill would require every service provider to submit its contact information to the Council, with wireless telecommunications service providers new to providing service in the state required to submit contact information within three months of first offering wireless telecommunications services in the state.

National Suicide Prevention Lifeline Center Annual Report

The bill would require each NSPL Center to submit an annual report to the Council prior to March 1, showing how it

has spent the moneys earned from the 988 fee during the preceding calendar year. The content and form of such report and any associated documentation that is required to finalize the report would be dictated by the Council. Failure to file and finalize such report within 60 days of notice of such failure by the Council would result in the withholding of 10.0 percent of each subsequent distribution of 988 fees to such NSPL Center until the report is submitted.

Civil Penalty and Appeal Rights

The bill would authorize the Council to impose a civil penalty not to exceed \$10,000 upon a finding that a service provider has violated any provision of this Act. The service provider would have the right to appeal such penalty within 15 days after receiving written order from the Council and receive a hearing conducted according to the Kansas Administrative Procedure Act. Any such Council action would be subject to review in accordance with the Kansas Judicial Review Act.

Civil penalties recovered would be required to be submitted to the State Treasurer for deposit to the credit of the Hotline Fund.

Annual Council Report

The bill would require the Council to submit an annual report to the House Committee on Energy, Utilities and Telecommunications and the Senate Committee on Utilities, or any successor committees, on or before the first day of each regular session of the Legislature. The report would include a detailed description of all expenditures made from 988 fees received by the NSPL Centers.

Background

The bill was introduced during the 2021 Legislative Session by the House Committee on Health and Human Services at the request of the Association of Community Mental Health Centers of Kansas, Inc.

[*Note:* This bill was a recommendation of the 2020 Special Committee on Kansas Mental Health Modernization and Reform. Funding of the Hotline was also included in the recommendations of the 2021 Special Committee on Kansas Mental Health Modernization and Reform.]

House Committee on Health and Human Services

In the House Committee hearing on February 22, 2021, representatives of the Association of Community Mental Health Centers of Kansas, CTIA, the Greater Kansas Chapter of the American Foundation for Suicide Prevention, KDADS, KDHE, Kansas Suicide Prevention HQ, the Kansas Chapter of the National Alliance on Mental Illness, a school counselor, and a private citizen provided **proponent** testimony.

The KDADS representative stated KDADS applied for and received a grant to assist the State in planning for the implementation of the Hotline. The National Suicide Hotline Designation Act of 2020 enabled the Hotline, established the authority of states to assess 988 fees on telephone services to fund hotline infrastructure, but did not provide federal funding to states to support those programs. The representative stated SAMHSA expects a significant increase in-call volume to the NSPL. According to the representative, KDADS highlighted the need for suicide prevention infrastructure development in its 2020-2025 State Suicide Prevention Plan. The representative noted a more robust crisis service delivery system, beginning with the Hotline, would help reduce suicide attempts and deaths.

Written-only proponent testimony was provided by a representative of Arcare, Inc.; a representative of the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, and the Kansas Sheriffs Association; a former middle school principal; a former member of the Kansas House of Representatives; a child and adolescent psychiatrist; and three private citizens.

Written-only neutral testimony was provided by the Kansas Youth Suicide Prevention Coordinator.

No **opponent** testimony was provided.

During the 2021 Legislative Session, the House Committee amended the bill to:

- Specify moneys credited to the Hotline Fund would also be required to be used to provide mobile crisis response services for persons with intellectual or developmental disability and behavioral health needs;
- Mandate moneys in the Hotline Fund be used for the purposes set forth in this section and for no other governmental purposes;
- Impose a prepaid wireless 988 fee of \$0.50 per retail transaction for prepaid wireless service in Kansas, clarify how the fee would be collected, and establish procedures related to the fee; and
- Establish the Certified Community Behavioral Health Clinics (CCBHC) Fund and require all moneys collected from payment of the prepaid wireless 988 fee to be used for the CCBHC Fund.

The bill was withdrawn from the House Calendar and referred to the House Committee on Appropriations on March 5, 2021. The bill was rereferred to the House Committee on Health and Human Services on January 12, 2022, and a second hearing was held.

In the House Committee hearing on February 15, 2022, **proponent** testimony was provided on the bill, as amended by the House Committee in 2021, by representatives of the Association of Community Mental Health Centers of Kansas, Inc., COMCARE, InterHab, Kansas Mental Health Coalition, Kansas Suicide Prevention HQ, NAMI Kansas, T-Mobile, and the Wichita Regional Chamber of Commerce. The proponents generally stated the need for the Hotline to address the mental health needs in the state and reduce the number of individuals impacted by suicide. Some proponent testimony referenced support for some forthcoming amendments reflecting a compromise reached on the per line fee.

Written-only proponent testimony was provided by representatives of the American Foundation for Suicide Prevention, Children's Alliance of Kansas, First Call, Health Forward Foundation; Johnson County Developmental Supports, Johnson County Mental Health Center, Kansas Coalition Against Sexual and Domestic Violence, Kansas Council on Developmental Disabilities, KDADS, Kansas Sheriff's Association, Office of the Attorney General of Kansas, Sunflower Foundation, and twelve private citizens.

No other testimony was provided.

On February 16, 2022, the House Committee recommended a substitute bill, incorporating the following amendments to the 2021 Committee bill:

- Remove language pertaining to the CCBHC Fund;
- Revise the 988 fee per subscriber account of service providers and the prepaid wireless 988 fee and clarify the process for collection, identification, remittance, and reporting of such fees;
- Prohibit the imposition of 988 fees other than those created by the bill;

- Direct the transfer of \$3.0 million from the State General Fund to the Hotline Fund on July 1, 2022, and on each July 1 thereafter;
- Amend how moneys credited to the Hotline Fund may be used;
- Provide liability protection for service providers, except for violation of the Kansas Tort Claims Act and action or inaction constituting gross negligence or willful and wanton misconduct;
- Create the 988 Coordinating Council;
- Require an annual report be submitted by the Secretary for Aging and Disability Services to select legislative standing committees; and
- Encourage inclusion of the 988 number on identification cards provided to students in grades 6 through 12 in school districts that issue such cards.

The House Committee also recommended the substitute bill be referred to the Committee on Energy, Utilities and Telecommunications.

Fiscal Information

According to the revised fiscal note prepared by the Division of the Budget on the bill, as introduced, KDADS indicates enactment of the bill would increase expenditures for salaries, fringe benefits, and operating costs by \$100,000 for 1.00 Program Manager FTE position. This position would be a 988 Program Manager to provide administrative and programmatic support to 988 Centers in Kansas. Based on the planning and start up needed prior to the federally required start date in July 2022, KDADS anticipates increased expenditures of approximately \$1.5 million from the State General Fund (SGF) in the second half of FY 2022 to increase the operational capacity of the current NSPL

Centers to meet the anticipated call volume of 988 with a minimum 90.0 percent in-state answer rate. This operational capacity cost would increase to \$3.1 million from the SGF in FY 2023.

KDHE states that it would be difficult to determine how much adding the requirement MCOs provide care coordination services for the uninsured would cost as KanCare members would not qualify as uninsured. The KanCare MCOs are already contractually obligated to provide a number of care coordination services for Medicaid and Children's Health Insurance Program beneficiaries and providing services to the uninsured would be an expansion of current Medicaid services to the uninsured. KDHE indicates the bill would have no fiscal effect on operations of the agency.

The Department of Revenue provided the fiscal effect on the agency based on a 988 fee of \$0.50; however, as the bill was recommended with a 988 fee of \$0.20, the revised fiscal note would not be accurate. An updated fiscal note was not immediately available. The Department estimates the total administrative effect on expenditures would be \$429,110 from the SGF in FY 2022. These expenditures would include \$3,290 for administrative costs, \$89,420 for systems testing, and \$336,400 for information technology development and management. The original fiscal note did not include the Department of Revenue estimates for revenue or expenditures.

[*Note:* The bill would direct the transfer of \$3.0 million from the State General Fund to the Hotline Fund on July 1, 2022, and each July 1 thereafter.]

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Living, Investing in Values, and Ending Suicide Act; 988 Suicide Prevention and Mental Health Crisis Hotline; 988 fees; funding; 988 Coordinating Council; demand transfers; State General Fund