

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 175

As Amended by House Committee on Health
and Human Services

Brief*

SB 175, as amended, would enact the Rural Emergency Hospital Act (Act) and create a category of licensure to enable certain Kansas hospitals to receive federal health care reimbursement as rural emergency hospitals. The bill would establish the Rural Hospital Innovation Grant Program (Program) and the Rural Hospital Innovation Grant Fund (Fund). The bill would also appropriate \$10.0 million from the State General Fund (SGF) to the Fund on July 1, 2021.

The bill would require benefits coverage for services provided by rural emergency hospitals if covered when performed by a general hospital or critical access hospital. The bill would define applicable terms, including “rural emergency hospital” in the Act, and reference the definition in the Kansas Medical Facilities Survey and Construction Act.

The bill would also establish eligibility and application requirements for licensure as a rural emergency hospital, and the bill would require the Secretary of Health and Environment (Secretary) to adopt rules and regulations establishing minimum standards for the establishment and operations of rural emergency hospitals in accordance with the Act.

Further, the bill would require the Secretary, in formulating rules and regulations under the Kansas Medical Facilities Survey and Construction Act, to give due

*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>

consideration to the requirements for receipt of federal reimbursement for the particular type of medical care facility.

Rural Emergency Hospital Act (Sections 1-8)

Definitions (Sections 3 and Section 9 [Amending the Kansas Medical Facilities Survey and Construction Act])

The bill would define multiple terms, including the following:

- “Rural emergency hospital” would mean an establishment that:
 - Meets the eligibility requirements described in Section 4;
 - Provides rural emergency hospital services;
 - Provides rural emergency hospital services in the facility 24 hours per day by maintaining an emergency medical department that is staffed 24 hours per day, 7 days per week, with a physician, nurse practitioner, clinical nurse specialist, or physician assistant;
 - Has a transfer agreement with a level I or level II trauma center; and
 - Meets such other requirements as the Kansas Department of Health and Environment (KDHE) finds necessary in the interest of the health and safety of individuals who are provided rural emergency hospital services and to implement state licensure that satisfies requirements for reimbursement by federal health care programs as a rural emergency hospital; and
- “Rural emergency hospital services” would mean the following services, provided by a rural emergency hospital, that do not require in excess

of an annual per-patient average of 24 hours in such rural emergency hospital:

- Emergency department services and observation care; and
- At the election of the rural emergency hospital, for services provided on an outpatient basis, other medical and health services as specified in regulations adopted by the U.S. Secretary of Health and Human Services and authorized by KDHE.

State Policy (Section 2)

The bill would outline how the Kansas Legislature seeks to address the provision and regulation of a structured and integrated system of health care services. The bill would declare the State's policy is to create a category of licensure to enable certain hospitals to receive federal health care reimbursement as rural emergency hospitals, and the implementation of the Act facilitates such policy.

Eligibility for Licensure (Section 4)

The bill would provide that a facility would be eligible to apply for a rural emergency hospital license if such a facility, as of December 27, 2020, was a:

- Licensed critical access hospital;
- General hospital with not more than 50 licensed beds located in a county in a rural area as defined in Section 1886(d)(2)(D) of the federal Social Security Act; or
- General hospital with not more than 50 licensed beds that is deemed as being located in a rural area pursuant to Section 1886(d)(8)(E) of the Social Security Act.

The bill would require a facility applying for licensure as a rural emergency hospital to include the following with the licensure application:

- An action plan for initiating rural emergency hospital services, including a detailed transition plan listing the specific services the facility will retain, modify, add, and discontinue;
- A description of services the facility intends to provide on an outpatient basis; and
- Such other information as required by rules and regulations adopted by KDHE.

The bill would outline additional prohibitions and requirements for rural emergency hospital licensure as follows:

- Inpatient beds would be prohibited, except a distinct unit that is part of the hospital and licensed as a skilled nursing facility could provide post-hospital extended care services;
- A rural emergency hospital would be allowed to own and operate an entity that provides ambulance services; and
- A licensed general hospital or critical access hospital that applies for and receives licensure as a rural emergency hospital and elects to operate as a rural emergency hospital would retain its original license as a general hospital or critical access hospital. The original license would remain inactive while the rural emergency hospital license is in effect.

*Authority to Enter into Contracts for Federal Reimbursement
(Section 5)*

The bill would authorize all rural emergency hospitals, including city, county, hospital district, or other governmental or quasi-governmental hospitals to enter into any contracts required to be eligible for federal reimbursement as a rural emergency hospital.

Protections Provided (Section 6)

In addition to the limited liability protections provided in KSA 65-4909 when acting in good faith and without malice, the bill would provide that entities engaging in activities and entering into contracts required to meet the requirements for licensure as a rural emergency hospital, and officers, agents, representatives, employees and directors of such entities, would be considered to be acting pursuant to clearly expressed state policy as established in the Act under the supervision of the State. Such entities would not be subject to state or federal antitrust laws while acting in this manner.

Rules and Regulations Authority (Section 7)

The bill would require the Secretary to adopt rules and regulations establishing minimum standards for the establishment, operation, and licensure of rural emergency hospitals in accordance with the Act.

Required Service Coverage (Section 8)

The bill would require benefits for services performed by a rural emergency hospital to be covered if such services would be covered under the following policies, contracts, or coverage, if performed by a general hospital:

- Each individual and group policy of accident and sickness insurance;

- Each contract issued by a health maintenance organization; and
- All coverage maintained by an entity authorized under KSA 40-2222 (those entities providing coverage in Kansas for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, that are presumed to be subject to the jurisdiction of the Commissioner of Insurance, unless the entities fall under the listed exemptions) or by a municipal group-funded pool authorized under KSA 12-2618.

Rural Hospital Innovation Grant Program and Fund (New Section 9)

Definitions

The bill would define the following terms:

- “Eligible county” would mean a county in Kansas other than Douglas, Johnson, Sedgwick, Shawnee, or Wyandotte county;
- “Hospital” would mean the same as in KSA 65-425, in the Kansas Medical Facilities Survey and Construction Act; and
- “Transitional assistance” would mean any assistance related to changing a hospital’s current health care delivery model to a model more appropriate for the community the hospital serves, including, but not limited to:

- Conducting a market study of health care services needed and provided in the community;
- Acquiring and implementing new technological tools and infrastructure, including, but not limited to, telemedicine delivery methods; and
- Acquiring the services of appropriate personnel, including, but not limited to, additional medical residents or individuals trained to be needed health care professionals.

Rural Hospital Innovation Grant Program

The bill would establish the Program, which would be administered by the Secretary, for the purpose of strengthening and improving the health care system and increasing access to health care services in eligible counties, helping communities in those counties achieve and maintain optimal health by providing transitional assistance to hospitals. The Secretary could award a Rural Hospital Innovation Grant (grant) to a county that applies in accordance with the provisions of the bill.

The board of county commissioners of an eligible county, or the board's designee, could apply to the Secretary for a grant in the form and manner determined by the Secretary. The bill would require the application to include:

- A description of the hospital for which the money would be expended, including the name and location of the hospital;
- The amount of money requested;
- A description of the needs of the hospital, the type of transitional assistance the grant would fund, and

how the grant would support the hospital in meeting its needs; and

- Any other information the Secretary deems necessary.

The bill would require that, before grant moneys are awarded, the Secretary would enter into a written agreement with the county, requiring the county to:

- Expend the grant moneys to provide transitional assistance to a hospital, as approved by the Secretary;
- Report to the Secretary within one year after the grant moneys are awarded, detailing the effect of the grant on the health and other outcomes in the county and affected community;
- Repay all awarded grant moneys to the Secretary if the county fails to satisfy any term or condition of the grant agreement; and
- Any other terms and conditions the Secretary deems necessary.

The bill would allow any eligible county to enter into memorandums of understanding and other necessary agreements with private stakeholders and other eligible counties.

Private Stakeholders

The bill would allow the Secretary to award a grant only if the state moneys to be awarded in the grant have been matched by private stakeholders, including hospital foundations or other organizations, on a basis of \$2 of private stakeholder moneys for every \$1 of state moneys.

Under the bill, the Secretary could receive moneys by bequest, donation, or gift to fulfill the public-private match of moneys required by the bill. Any received moneys would be remitted to the State Treasurer and deposited in the State Treasury to the credit of the Fund.

The bill would allow a private stakeholder to certify to the Secretary that an amount of money is dedicated to the Program, but allow the certified dedicated moneys to remain with the private stakeholder until the grant is awarded. The bill would require the Secretary to count such moneys to fulfill the public-private match required by the bill.

In addition, the bill would allow a private stakeholder to specify a certain county to receive a grant using the private stakeholder's moneys. If the Secretary does not award a grant to the specified county in the same fiscal year as the request, the bill would require the Secretary to return the amount of contributed moneys to the private stakeholder, and the certification would lapse.

Rural Hospital Innovation Grant Fund; Appropriation

The bill would establish the Fund, which would be administered by the Secretary. The bill would require moneys credited to the Fund to be used only for purposes related to the Program, and all expenditures from the Fund would be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports pursuant to vouchers approved by the Secretary, or the Secretary's designee.

The bill would require the Director of Accounts and Reports to transfer \$10.0 million from the SGF to the Fund on July 1, 2021.

Rules and Regulations

The Secretary would be required to adopt rules and regulations as necessary to implement the Program.

Reporting Requirements

The bill would require, on or before October 1 of each year, a county to prepare and submit a report to the Secretary on each grant awarded, describing the amount and purposes of any grant moneys, the fulfillment of the terms and conditions of the grant agreement, and the transitional assistance upon which the moneys have been spent.

The bill would also require, on or before February 1 of each year, the Secretary to compile the information received and submit a report to the Governor and Legislature, including the received information and a description of and reasoning for any grant applications that were denied.

Sunset

The Program would sunset July 1, 2025, at which time:

- All moneys in the Fund would be transferred to the SGF;
- All liabilities of the Fund would be transferred to and imposed on the SGF; and
- The Fund would be abolished.

Kansas Medical Facilities Survey and Construction Act (Sections 10 and 11)

The bill would define “rural emergency hospital” in Section 10 by referencing the definition in Section 2 of the bill.

Rules and Regulations (Section 11)

The bill would amend the Kansas Medical Facilities Survey and Construction Act by adding that, in formulating rules and regulations with respect to different types of

medical care facilities to be licensed under such act, KDHE would be required to give due consideration to the requirements for the receipt of medical reimbursement for the type of medical facility. The bill would also provide that a rural emergency hospital would be deemed to satisfy the rules and regulations requirements for a hospital consisting of more than one establishment if such rural emergency hospital meets its licensing requirements established by the licensing agency.

Background

SB 175 was introduced by the Senate Committee on Public Health and Welfare at the request of the Kansas Hospital Association (KHA). As amended by the House Committee on Health and Human Services, SB 175 also contains the language of HB 2174.

[*Note:* A companion bill to SB 175, HB 2261, was introduced in the House but was stricken from the House Calendar on March 5, 2021, by House Rule 1507.]

SB 175 (Rural Emergency Hospitals)

Senate Committee on Public Health and Welfare

In the Senate Committee hearing on SB 175, **proponent** testimony was provided by representatives of KHA and representatives of Lindsborg Community Hospital and Wilson Medical Center.

The KHA representatives stated the rural emergency hospital model would allow Kansas hospitals the option to take advantage of action taken in December 2020 at the federal level, which was similar to an alternative rural health model that KHA has been working on since 2012. The KHA representatives noted Kansas needs to update its licensure categories to include the new facility type to allow critical

access hospitals and prospective payment system hospitals the option to convert to the new model if it best fits the hospitals' needs. The KHA representatives stated the rural emergency hospital model would help rural hospitals focus their efforts on the primary care needs of the community, chronic disease management, and emergency services most needed but would allow the flexibility to add other services as determined by the facility and the community the hospital services. The KHA representatives stated, while still being finalized, the Medicare payment methodology for rural emergency hospitals is expected to help stabilize the financial situation of rural communities.

The Lindsborg Community Hospital representative stated the rural emergency hospital model would assist hospitals that cannot financially sustain acute inpatient beds by allowing the hospitals to sustain and meet the needs of the population in rural communities.

Written-only proponent testimony was provided by the Kansas Association of Counties, the Kansas Association of Osteopathic Medicine, the Kansas Bankers Association, the Kansas Farm Bureau, the Kansas Medical Society, the League of Kansas Municipalities, the United Methodist Health Ministry Fund, U.S. Senator Jerry Moran, and U.S. Senator Roger Marshall.

No other testimony was provided.

The Senate Committee amended SB 175 to:

- Remove managed care contracts for the state program of medical assistance and the Children's Health Insurance Program as required benefit providers for services performed by a rural emergency hospital if such services would be covered under such contracts if performed by a general hospital;

- Require all coverage maintained by entities authorized under KSA 40-2222 to provide benefits for services when performed by a rural emergency hospital if such services would be covered under such contracts if performed by a general hospital; and
- Remove critical access hospital as an institution whose qualified services would be covered by the entities authorized in KSA 40-2222.

House Committee on Health and Human Services

The House Committee did not hold a hearing on SB 175. SB 175 contains language similar to that in HB 2261. The House Committee held a hearing on HB 2261 on February 16, 2021, and recommended the bill favorably for passage. Additional details on HB 2261 may be found in the supplemental note on the bill. HB 2261 was stricken from the House Calendar on March 5, 2021, by Rule 1507.

The House Committee amended SB 175 to add the language of HB 2174.

HB 2174 (Rural Hospital Innovation Grant Program)

House Committee on Health and Human Services

In the House Committee hearing on HB 2174, representatives of KHA and the League of Kansas Municipalities provided **proponent** testimony, stating the bill has the potential to be a tool to assist rural hospitals in analyzing options for more sustainable business models and implementing alternative rural health care delivery models that better serve the health care service needs in rural communities. The representative of the League of Kansas Municipalities proposed amendments to allow city-supported and city-owned hospitals to participate in the Program.

Written-only proponent testimony was provided by representatives of the Kansas Medical Society and Kansas Farm Bureau.

No other testimony was provided.

Fiscal Information

SB 175 (Rural Emergency Hospitals)

According to the fiscal note prepared by the Division of the Budget on SB 175, as introduced, KDHE estimates enactment of the bill would require additional expenditures of \$183,680 from the SGF and 2.0 FTE positions for FY 2022. The amount includes \$129,000 for salary and wages (\$64,500 for each position); \$40,600 for two vehicles; \$10,000 for travel; \$2,520 for computers and data; and \$1,560 for communications. One position would be needed to develop state licensure regulations and collaborate with the Centers for Medicare and Medicaid Services. The other position would conduct the initial licensure surveys of rural emergency hospitals. This would require traveling to facilities; conducting observations, interviews, and record reviews; writing reports; and following up with facilities not found in compliance. KDHE indicates it is possible that a portion of the expenditures could be paid with federal funds, but the amount or percentage is currently unknown. Additionally, no estimate is available at this time for revenues, as licensure fees have not been determined.

The Kansas Association of Counties and the League of Kansas Municipalities note that allowing certain hospitals to receive federal reimbursement as rural emergency hospitals could result in improvements to rural health care that would benefit cities and counties. However, the fiscal effect on local governments is unknown. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2174 (Rural Hospital Innovation Grant Program)

According to the fiscal note prepared by the Division of the Budget on HB 2174, KDHE estimates enactment of the bill would require \$100,000 in additional expenditures from the SGF for FY 2022. The amount includes salaries and wages expenses of \$65,000 for 1.0 new FTE program manager position and other operating expenditures of \$10,000, which includes office rent, supplies, communications, travel, and computer leasing. The amount also includes \$25,000 from an existing supervisor's salaries and wages expenses currently funded from federal funds that would instead require SGF moneys. KDHE indicates time spent by the supervisor on work related to the bill could not be funded by federal moneys.

The Kansas Association of Counties notes it is possible grant funds could offset county funds that otherwise would have been used to support a rural hospital. However, the fiscal effect is unknown.

Any fiscal effect associated with enactment of HB 2174 is not reflected in *The FY 2022 Governor's Budget Report*.

Health; hospitals and health-related facilities; rural emergency hospitals; Rural Emergency Hospital Act; rules and regulations; licensure; Kansas Medical Facilities Survey and Construction Act; Rural Hospital Innovation Grant Program; Rural Hospital Innovation Grant Fund; appropriation; reporting requirements; sunset