

Revised
SESSION OF 2016

**THIRD CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 402**

As Agreed to May 1, 2016

Brief*

House Sub. for SB 402 would make changes pertaining to eligibility for public assistance. Additionally, the bill would remove the prohibition from requiring a Medicaid recipient to use or fail with a drug usage or drug therapy prior to allowing the recipient to receive the product or therapy recommended by the recipient's physician (a practice commonly referred to as step therapy); provide for patient protections for individuals on a drug therapy commenced prior to the effective date of the bill including a 30-day trial limit on drug usage or drug therapy used for the treatment of multiple sclerosis; provide for a 72-hour expedited appeal process on a physician request for an override; require the Kansas Department of Health and Environment (KDHE) to study, review, and report to the Legislature on the use of step therapy in Medicaid and the savings under the program; provide for a step therapy exemption; and require any policy or rule and regulation related to the implementation of the program be reviewed and approved by the Medicaid Drug Utilization Review (DUR) Board prior to implementation by KDHE, with the additional requirement any policy or rule and regulation regarding any medication used to treat mental illness also be reviewed and approved by the Mental Health Medication Advisory Committee.

*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/kldr>

Public Assistance Eligibility

The bill would make changes to the Temporary Assistance for Needy Families (TANF) and other related public assistance programs as follows:

- Reduce the TANF benefit limit from 36 calendar months to 24 calendar months, with the possibility of a hardship extension allowing receipt of TANF benefits until the 36-month lifetime limit is reached (the current lifetime limit is 48 months);
- Reduce from 42 months to 18 months the TANF cash assistance lifetime limit for a recipient of a TANF diversion payment;
- Remove the limit on TANF cash assistance transactions for cash withdrawals from automated teller machines (ATMs) and remove the authority of the Secretary for Children and Families to raise or rescind the withdrawal limits;
- Require the Kansas Department for Children and Families (DCF) to monitor repeated requests for replacement of a Kansas Benefits Card and refer frequent replacements for fraud investigation;
- Change work participation requirements and exemptions for recipients of TANF, non-TANF child care, and food assistance (Supplemental Nutrition Assistance Program [SNAP]);
- Make TANF and Child Care Subsidy Program recipients ineligible for assistance for failure to cooperate with fraud investigations;
- Require verification of all adults in the assistance household;

- Require monthly reporting of persons with lottery winnings in excess of \$5,000 to determine any recipient's continued eligibility for public assistance as a result of such winnings; and
- Address the recovery of public assistance debt owed to the State.

TANF Eligibility

TANF Diversion Assistance Lifetime Limit

Any recipient who receives a one-time TANF diversion assistance payment would be limited to 18 months of TANF cash assistance in a lifetime.

TANF Lifetime Limits

A family group would not be eligible for TANF if at least one adult in the family group has received TANF (including federal TANF assistance received in another state) for 24 calendar months beginning on or after October 1, 1996, unless the Secretary for Children and Families determines a hardship exists and grants a TANF benefit extension until the 36-month lifetime limit is reached. No extension beyond 36 months would be granted. The hardship provision would apply to a recipient who is determined by the 24th month of assistance to have an extreme hardship other than those described in statute.

TANF Cash Withdrawals from ATMs

The \$25 per transaction per day limit on TANF cash assistance transactions for cash withdrawals from ATMs would be removed. The bill also would remove the authority

of the Secretary for Children and Families to raise or rescind the withdrawal limit.

TANF Work Participation

TANF work experience placements would be limited to 6 months per 24-month lifetime limit. *[Note: This section was updated to reflect language deleted in Conference Committee regarding the TANF work participation exemption for those caring for a child under three months of age.]*

Other Work Requirements and Exemptions

Non-TANF Child Care Recipient

The bill would exempt from the 20-hour per week minimum work requirement all non-TANF child care recipients participating in a SNAP Employment and Training Program (previously available only to mandatory SNAP Education and Training Program participants) or participating in an Early Head Start Child Care Partnership Program and working or in school or training.

SNAP Recipients

Each SNAP household member who is not exempt from work requirements would be required to register for work, participate in an employment and training program if assigned to such a program by DCF, accept a suitable employment offer, and not voluntarily quit a job of at least 30 hours per week. A recipient who fails to comply with the work requirements would be ineligible for SNAP for the following time periods and until compliance with the work requirements: three months of ineligibility for a first penalty, six months for a second penalty, and one year for a third and any subsequent penalty.

Fraud Investigations

Ineligibility for TANF for Failure to Cooperate

An individual who fails to cooperate with a fraud investigation would be ineligible to participate in the TANF cash assistance program and the child care subsidy program until determined by DCF to be cooperating with the fraud investigation. DCF would be required to maintain sufficient fraud investigative staff to allow for fraud investigations that are timely and in full compliance of state laws and DCF rules and regulations or policies.

Kansas Benefits Card Replacement

DCF would be required to monitor all recipient requests for Kansas benefits card replacement, send a notice on the fourth replacement request in a 12-month period alerting the recipient his or her account is being monitored for potential suspicious activity, and refer the investigation to DCF's fraud investigation unit if an additional request for replacement is made subsequent to the notice.

Verification of Identities

DCF would be required to verify the identity of all adults in the assistance household for TANF cash assistance, SNAP, and the Child Care Subsidy Program.

Verification of Lottery Winnings for Continued Eligibility

The Kansas Department of Administration would be required to provide monthly to DCF the Social Security numbers or alternate taxpayer identification numbers of all persons who claim a Kansas Lottery prize in excess of \$5,000 during the reported month. DCF would be required to

verify whether the lottery prize winners are receiving TANF cash assistance, SNAP, or assistance under the Child Care Subsidy Program and to take appropriate action. DCF would be allowed to use the data received only to determine if a recipient's eligibility for benefits has been affected by the lottery winnings and would be prohibited from publicly disclosing the identity of any lottery prize winners, including those recipients determined to have illegally received benefits.

State Recovery of Public Assistance Debt

Except as authorized in state and federal law, and DCF or KDHE rules and regulations and agency policy, the total amount of any assistance sold, transferred, or otherwise disposed of to others by a recipient or another person, or the total amount of any assistance knowingly purchased, acquired, or possessed by any person, would be considered a debt due the State. Such debt would be recoverable by the Secretary for Children and Families or the Secretary of Health and Environment during the life or upon the death of any recipient or person who sold, transferred, disposed, purchased, acquired, or possessed such assistance. The bill would allow the debt to be recovered as a fourth class claim from the estate of such individual or in an action brought while the recipient or person is living.

[Staff Note: Language in the "whereas" clause of SB 372, as amended by the Senate Committee of the Whole, naming the changes to public assistance eligibility requirements as the Kansas Hope, Opportunity, and Prosperity for Everyone (HOPE) Act was removed when the bill language was inserted into House Sub. for SB 402 by third Conference Committee action.]

Step Therapy

The bill would remove the prohibition on KDHE from requiring step therapy for a Medicaid recipient. A recipient would not be required to go through step therapy prior to being allowed to receive a physician-recommended product or drug therapy:

- If such drug usage or drug therapy commenced on or before July 1, 2016; or
- For a period longer than 30 days, if the drug usage or drug therapy is used for the treatment of multiple sclerosis.

Step Therapy Exemption

If KDHE utilizes the step therapy system outlined in this legislation, or any other system or program to require a recipient to utilize or fail with a drug usage or drug therapy prior to allowing the recipient to receive any product or therapy recommended by the recipient's physician, the bill would require KDHE to provide access for prescribing physicians to a clear and convenient process to request an override of such requirement. KDHE would be required to expeditiously grant such a request for an override if:

- The required drug usage or drug therapy is contraindicated for the patient or will likely cause an adverse reaction by or physical or mental harm to the patient;
- The required drug usage or therapy is expected to be ineffective based on the known relevant clinical characteristics of the patient and the known characteristics of the required drug usage or drug therapy;

- The patient has tried the required drug usage or drug therapy while under his or her current or previous health insurance or health benefit plan, and such use was discontinued due to lack of efficacy or effectiveness, diminished effect, or an adverse event. For purposes of the step therapy exemption, use of pharmacy drug samples would not constitute use and failure of such drug usage or drug therapy; or
- The patient has previously been found to be stable on a different drug usage or drug therapy selected by the patient's physician for treatment of the medical condition under consideration.

KDHE, or any managed care organization or other entity administering the step therapy system established under the bill, would be required to respond to and render a decision on a prescribing physician's request for an override as provided under this section within 72 hours of receiving a request.

***Step Therapy Policy Review and Approval by Medicaid
DUR Board***

Any policy or rule and regulation proposed by KDHE related to any use of the step therapy system established by this bill, or any other system or program to require that a recipient has utilized or failed with a drug usage or therapy prior to allowing the recipient to receive any product or therapy recommended by the recipient's physician, would have to be reviewed and approved by the Medicaid Drug Utilization Review Board, prior to implementation by KDHE. Any such KDHE-proposed policies or rule and regulation related to any medication used to treat mental illness would require review and approval by the Mental Health Medication Advisory Committee and the Medicaid Drug Utilization Review Board, prior to implementation by KDHE.

Report Requirement

The bill would require the Secretary of Health and Environment to study and review the use of step therapy in Medicaid; prepare a report detailing the total funds saved under the program and the percentage and amount of such savings returned to the State; and submit such report to the Senate Committee on Public Health and Welfare, the Senate Committee on Ways and Means, the House Committee on Appropriations, and the House Committee on Health and Human Services on or before January 9, 2017, and on or before the first day of each subsequent legislative session.

Conference Committee Action

The Third Conference Committee agreed to delete the contents of House Sub. for SB 402 (included in the Conference Committee report for HB 2615) and also agreed to the following:

- Insert the contents of SB 372 regarding the HOPE Act, as amended by the Senate Committee of the Whole, with these exceptions:
 - Delete language naming the act;
 - Remove the limit on the length of time any adult in a TANF assistance plan may have received TANF cash assistance and still qualify for the 3-month exemption from work participation activities for a parent or other adult caretaker providing care for a child under the age of 3 months [*Note: This information was updated to reflect language in the Conference Committee Report.*]; and
 - Remove the requirement unencumbered funds in the TANF Federal Fund Account in excess of \$25,000,000 as of September 30 of any year be returned to the federal government and prohibiting the transfer of

such funds to another special revenue fund.];
and

- Insert the contents of SB 341 regarding the removal of the prohibition on the use of step therapy in the Medicaid program, as amended by the Senate Committee of the Whole; add language regarding the granting of step therapy exemptions upon meeting specified requirements, including a 30-day trial limit on drug usage or drug therapy used for the treatment of multiple sclerosis; provide for a 72-hour expedited appeal process on a physician request for an override; and require the Medicaid DUR Board to review and approve any policy or rule and regulation related to Medicaid step therapy prior to implementation by KDHE, with any policy or rule and regulation related to mental health medications also requiring approval by the Mental Health Medication Advisory Committee prior to implementation by KDHE.

Background

The report of the Third Conference Committee would not include the contents of House Sub. for SB 402, but would add the contents of SB 341 and SB 372 (bill versions included in this report are noted in the Conference Committee action above). [Note: SB 402 addressed healthcare provider continuing education credits for gratuitous care and House Sub. for SB 402 addressed the licensure of nurse-midwives. The contents of House Sub. for SB 402 were included in the Third Conference Committee report on HB 2615, which also addressed health care provider continuing education credits for gratuitous care.]

Background information on House Sub. for SB 402 is available in the third Conference Committee Report Brief on HB 2615 and in the Supplemental Note on House Sub. for SB 402.

SB 341 Background

Step therapy is the practice of beginning drug therapy for a medical condition with the most cost-effective drug proven effective for most individuals with similar conditions before moving to a higher-cost drug for treatment or management of a medical condition.

At the Senate Committee on Public Health and Welfare hearing, Senator Denning and a representative of KDHE testified in favor of the bill, stating step therapy is used in commercial insurance, in Medicare, and with the dual-eligible population within KanCare. The proponents stated the use of step therapy for new prescriptions in Medicaid would control costs while effectively treating the patient's medical condition using evidence-based practice methods. Written testimony in favor of the bill was provided by a representative of America's Health Insurance Plans and by a physician.

Testimony in opposition to the bill was provided by Representative Boldra and representatives of the International Pain Foundation, Kansas Mental Health Association, Mental Health America of the Heartland, National Alliance on Mental Illness, National Multiple Sclerosis Society, Ryan White HIV Clinic, and Stormont-Vail Health. The opponents generally testified that removing the prohibition on step therapy would increase the workload and financial impact on health care providers, allow insurance companies rather than a patient's medical provider to be in control of medical decision-making, and place patients at risk of not receiving needed treatments, and it could result in an increase in costs if the step therapy medication is not effective. Several opponents expressed concern as to the applicability of step therapy to behavioral health drugs and whether the bill would require the use of step therapy for a patient currently being treated with an effective prescription regimen. Written testimony in opposition was submitted by representatives of the Arthritis Foundation, Black Health Care Coalition, the Epilepsy Foundation, Kansas Association of Osteopathic Medicine, Kansas Medical Society, Kansas

Rheumatology Alliance, Midwest Hemophilia Association, Pharmaceutical Research and Manufacturers of America, and State Pain Policy Advocacy Network; three physicians; and a registered nurse.

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

At the time of Senate Committee deliberation on the bill, written information was provided by the Secretary of Health and Environment clarifying the goals and implementation process for step therapy in the state's Medicaid program, KanCare. The information clarified any policy on step therapy for behavioral health medications first would be created and approved by the Mental Health Medication Advisory Committee and then approved by the DUR Board. The policy on step therapy for any other drug would have to go through the DUR process for evaluation and approval. Step therapy also would apply only to members receiving new prescriptions. According to the information provided, step therapy is the industry standard and aligns directly with evidence-based practice.

The Senate Committee amended the bill to not require step therapy prior to allowing a Medicaid recipient to receive a product or drug therapy recommended by the recipient's physician if the recommended drug usage or drug therapy commenced on or before July 1, 2016. (The Conference Committee report would retain this amendment.)

The Senate Committee of the Whole amended the bill to require the Secretary of Health and Environment to study and review the step therapy program in Medicaid and to prepare a report on the savings under the program to be provided to named Senate and House standing committees prior to the 2017 Legislative Session and prior to each subsequent regular session.

According to the fiscal note prepared by the Division of the Budget on the original bill, enactment of the bill would result in \$10.6 million in State General Fund (SGF) savings for the KDHE Division of Health Care Finance. The fiscal effect associated with the bill is included in *The FY 2017 Governor's Budget Report*.

SB 372 Background

At the Senate Committee on Public Health and Welfare hearing, a representative of DCF, an independent contractor with DCF, and a private individual testified in favor of the bill. The conferees generally stated the bill is a continuation of a comprehensive welfare system reform that began in 2015 to promote system integrity and ensure appropriate and responsible use of taxpayer dollars, while placing DCF policies in statute for legislative input and transparency. The conferees stated the policy changes have helped individuals return to work, helped them develop skills to maintain employment, and given them the tools needed to support their families. Written testimony in favor of the bill was provided by representatives of the Foundation for Government Accountability Action and the Salina Adult Education Center.

Opponent testimony was provided by representatives of the Kansas Action for Children and Kansas Appleseed. The conferees generally stated the bill creates additional barriers for children and families to access the state safety net and food assistance, penalizes multiple-adult families, and creates additional administrative costs. Opponent written testimony was provided by representatives of the Food Equality Initiative; the Kansas Association of Community Action Programs; KC Healthy Kids; Kids Need to Eat, Inc.; and United Community Services of Johnson County.

Neutral written testimony was provided by a representative of the Kansas Lottery and included recommendations for possible amendments to the bill.

The Senate Committee amended the bill to reduce the TANF and TANF diversion assistance lifetime benefit limits and to make changes with regard to the state agency responsible for the monthly report of Kansas Lottery winners, the agency to which the report would be provided, the identifying information reported, and the dollar amount of the lottery prize winnings to be reported.

The Senate Committee of the Whole amended the bill to require unencumbered funds in the TANF Federal Fund Account in excess of \$25,000,000 as of September 30 of any year be returned to the federal government and to prohibit the transfer of such funds to another special revenue fund [Note: the Third Conference Committee report does not include this provision]; remove the TANF cash assistance limits for cash withdrawals from ATMs and the authority of the Secretary for Children and Families to raise or rescind the limits; make additional changes to the TANF work participation requirements (including reducing to 12 months the period for which TANF benefits could be received and the beneficiary qualify for an exemption from the work requirement for caring for a child under the age of 3 months [Note: the Third Conference Committee removed the limit]); amend the title of the bill; and make a technical amendment.

According to the fiscal note prepared by the Division of the Budget on the original bill, DCF states there would be an estimated annual cost for identity verification of adult recipients who are not the case head in the TANF and SNAP programs of \$187,000, of which \$73,024 would be from the SGF. Additionally, the verification requirement and the requirement of cooperation with fraud investigations would need to be included in the automated eligibility process, requiring an estimated one-time development cost of incorporating these features into the automated eligibility system (Kansas Eligibility Enforcement System [KEES]) of \$98,200 each, of which \$19,660 for each feature would be from SGF. The estimated state fiscal effect for FY 2017 indicates expenditures of \$157,343 from SGF and \$1,171,545 from all funds.

DCF states the addition of SNAP Employment and Training participants to those eligible to receive child care assistance would make additional children eligible for child care assistance in 2017 and in 2018, but would have no impact on the SGF as the funding is federal.

DCF states the process of attachment of a debt due the State to a Medicaid beneficiary allowed under the bill would require a detailed investigation to document the dollar amount of the gain to the beneficiary, filing a lawsuit, winning a judgment to collect the debt, and efforts to execute debt collection. Federal financial participation rates of 75.0 percent are available for fraud, waste, and abuse activities. The federal share of any collection received would have to be returned to the federal government. Enhancement of this function in the KDHE Division of Health Care Finance would require at least one full-time equivalent employee to aggressively pursue cases and investigations and private attorney's fees for filing and prosecution. DCF estimates additional expenditures of \$180,000, including \$45,000 from the SGF in FY 2017. DCF is unable to estimate recovery revenue of the additional cases.

The original bill would have required the Kansas Lottery to provide DCF with a list of lottery winners over \$10,000 every month and prohibit DCF from publicly disclosing the identity of any prize winner. [Note: The bill as amended would require the Department of Administration to provide DCF with a list of lottery winners of more than \$5,000.] The Kansas Lottery states the bill would not affect revenues or expenditures, unless additional staff time, hardware, or information technology resources are needed to fulfill the bill's mandates. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*. The Third Conference Committee report would not include the contents of House Sub. for SB 402, but would add the contents of SB 341 and SB 372 (bill versions included in this report are noted in the Conference Committee action above). [Note: SB 402 addressed healthcare provider continuing education credits for gratuitous care and House Sub. for SB

402 addressed the licensure of nurse-midwives. The contents of House Sub. for SB 402 were included in the Third Conference Committee report on HB 2615, which also addressed health care provider continuing education credits for gratuitous care.]

Background information on House Sub. for SB 402 is available in the third Conference Committee Report Brief on HB 2615 and in the Supplemental Note on House Sub. for SB 402.

eligibility for public assistance; step therapy for prescription medications in Medicaid; HOPE Act

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