

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 38

As Amended by Senate Committee on Public
Health and Welfare

Brief*

SB 38, as amended, would establish the KanCare Bridge to a Healthy Kansas Program (Program). The Kansas Department of Health and Environment (KDHE) would be required to administer and promote the Program and provide information to potential eligible individuals who live in medically underserved areas of Kansas. The bill would modify the eligibility requirements for the Kansas Medical Assistance Program, on or after January 1, 2019, to include any non-pregnant adult under 65 years of age, whose income does not exceed 133 percent of the federal poverty level (FPL), to the extent allowed under the federal Social Security Act as it exists on the effective date of the bill, and subject to the requirements of the Program. The bill would require referral to workforce training programs, create a Program Drug Rebate Fund and a Program Privilege Fee Fund, create a health insurance coverage premium assistance program, address federal denial and approval of financial participation, require submission of a waiver request to the federal government, require various Program reports to the Legislature, and create a Program Working Group.

Workforce Training Program Referral

The bill would include provisions for the referral of certain non-disabled adults to the state's existing workforce training programs and work search resources, as outlined in the bill. The bill would provide exemptions from the referral for the following:

*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>

- Full-time students for each year they are enrolled in a postsecondary education institution or technical school; and
- Parents with minor children in the home, at the discretion of KDHE.

Program Application

The bill would require the Program application to screen applicants for education status and employment status, and require applicants to acknowledge KDHE referrals to workforce training programs and work search resources.

Health Insurance Coverage Premium Assistance Program

The bill would allow KDHE to establish a health insurance coverage premium assistance program for individuals with an annual household income of not more than 133 percent of FPL or for individuals eligible for health insurance coverage through an employer but cannot afford the premiums.

A premium assistance program would be required to contain eligibility requirements similar to those for the Program and provide that an individual's payment for a health insurance coverage premium could not exceed 2 percent of the individual's annual income.

Federal Denial of Approval and Financial Participation

If a denial of federal approval and federal financial participation that applies to any part of the Program would occur, KDHE would not be prohibited from implementing any other part of the program that is federally approved for federal financial participation or does not require federal approval or federal financial participation—except, if at any point the

federal match for non-pregnant adults under 65 years of age and with income not exceeding 133 percent of FPL is less than the enhanced federal match rate under the federal Health Care and Education Reconciliation Act of 2010, as it exists on the effective date of this bill, KDHE would be required to terminate the Program over a 12-month period, beginning on the first day the federal medical assistance percentage falls below such amount.

KDHE would be allowed to make changes to the Program if required by the U.S. Department of Health and Human Services (HHS) or federal statute or regulation.

Waiver Request

KDHE would be required to produce and submit a waiver request to HHS to implement the Program with services to begin on or before January 1, 2019.

Program Drug Rebate Fund

The bill would create the KanCare Bridge to a Healthy Kansas Program Drug Rebate Fund (Rebate Fund) as a reappropriating fund. All moneys collected or received by the Secretary of Health and Environment (Secretary) from drug rebates connected to Program beneficiaries would be required to be deposited in the Rebate Fund and such funds would be required to be expended for the sole purpose of Medicaid medical assistance payments for Program beneficiaries. The bill would require the Rebate Fund remain intact and inviolate and would not be subject to transfers and allotments. The bill would provide for the monthly transfer of interest earnings, as outlined in the bill, from the State General Fund (SGF) to the Rebate Fund.

Rebate Fund Report to Legislature

On or before January 14, 2019, and on or before the first day of the regular legislative session each year thereafter, the Secretary would be required to prepare and deliver a report to the Legislature summarizing all expenditures from the Rebate Fund, Rebate Fund revenues, and recommendations regarding the adequacy of the Rebate Fund to support necessary Program expenditures.

Program Privilege Fee Fund

The bill would create the KanCare Bridge to a Healthy Kansas Program Privilege Fee Fund (Privilege Fee Fund) as a reappropriating fund. All moneys collected or received by the Secretary from privilege fees connected to Program beneficiaries would be required to be deposited in the Privilege Fee Fund and such funds would be required to be expended for the sole purpose of Medicaid medical assistance payments for Program beneficiaries. The bill would require the Privilege Fee Fund to remain intact and inviolate and would not be subject to transfers and allotments. The bill would provide for the monthly transfer of interest earnings, as outlined in the bill, from the SGF to the Privilege Fee Fund.

Privilege Fee Fund Report to Legislature

On or before January 14, 2019, and on or before the first day of the regular legislative session each year thereafter, the Secretary would be required to prepare and deliver a report to the Legislature summarizing all expenditures from the Privilege Fee Fund, Privilege Fee Fund revenues, and recommendations regarding the adequacy of the Privilege Fee Fund to support necessary Program expenditures.

Program Cost Savings Report to the Legislature

On or before January 14, 2019, and on or before the first day of the regular legislative session each year thereafter, the Secretary would be required to prepare and deliver a report to the Legislature summarizing the cost savings achieved by the State from the movement of beneficiaries from the KanCare program to the Program, including, but not limited to, the MediKan program, the medically needy spend-down program, and the breast and cervical cancer program. The bill would provide the method for calculating the cost savings.

Inmate Inpatient Hospitalization Cost Savings Report to the Legislature

On or before January 14, 2019, and on or before the first day of the regular legislative session each year thereafter, the Secretary of Corrections would be required to prepare and deliver a report to the Legislature identifying the cost savings achieved by the State from the use of the Program to cover inmate inpatient hospitalization.

KDHE Annual Report to Legislative Committees

On or before February 15 of each year, the Secretary would be required to present a report to the House Committee on Appropriations and the Senate Committee on Ways and Means summarizing the costs for the Program and the cost savings and additional savings identified in previously mentioned annual reports to the Legislature on the Drug Rebate Fund and the Privilege Fee Fund and the report on Program cost savings.

Program Working Group

The bill would establish the KanCare Bridge to a Healthy Kansas Working Group (Program Working Group) that would

be charged with identifying non-SGF sources to fund any Program shortfall identified by the Secretary in the annual report to the legislative committees.

The Program Working Group would have the following membership:

- Two House members appointed by the Speaker of the House of Representatives;
- One House member appointed by the Minority Leader of the House of Representatives;
- Two Senate members appointed by the President of the Senate;
- One Senate member appointed by the Minority Leader of the Senate;
- One representative from each of the following:
 - Kansas Hospital Association;
 - Kansas Medical Society;
 - Kansas Association for the Medically Underserved;
 - Kansas Academy of Family Physicians;
 - Association of Community Mental Health Centers of Kansas;
 - Kansas Dental Association;
 - Kansas Emergency Medical Services Association;
 - Kansas Optometric Association; and
 - Kansas Pharmacists Association; and
- One representative of Program consumers from Alliance for a Healthy Kansas.

The members of the Program Working Group would elect the chairperson from members of the Program Working Group who are members of the House of Representatives in even-numbered years and from members of the Program Working Group who are members of the Senate in odd-numbered years.

Kansas Legislative Research Department staff would be required to provide assistance as requested by the Program Working Group.

Legislative members of the Program Working Group would receive compensation and travel expenses and subsistence expenses or allowances, as provided by KSA 75-3212, for attending a meeting of the Program Working Group or a subcommittee meeting thereof. Non-legislative members would not receive compensation, subsistence allowance, mileage, or associated expenses from the State for attending a meeting or subcommittee meeting of the Program Working Group.

The Program Working Group would be required to meet no less than two times in a calendar year. Nine members would constitute a quorum, of which the bill would require at least four to be legislative members of the Program Working Group. Additionally, on or before March 15 of each year, the Program Working Group would be required to report to the Legislature recommendations for funding the Program, as necessary.

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

Background

The bill was introduced during the 2017 Session by the Senate Committee on Ways and Means. On February 14, 2018, in the Senate Committee on Public Health and Welfare hearing, proponent testimony was provided by a private

citizen and representatives of the Alliance for a Healthy Kansas, the Salina Family Healthcare Center, and Stormont Vail Health. The proponents generally stated the bill would provide better health care for more than 150,000 Kansans, bring businesses and jobs to communities, provide funding to struggling hospitals, and bring millions of federal tax dollars back to Kansas. Written-only proponent testimony was provided by Representative Bishop and nearly 140 proponents from business, community, and economic development interests; health foundations, policy, and advocacy organizations; hospitals; community support agencies; health care providers; community health centers; and private citizens.

Neutral testimony was provided by a representative of the Kansas Health Institute (KHI) who stated KHI projects that a KanCare expansion under the existing terms of the Affordable Care Act would add 145,000 beneficiaries, including 95,000 adults ages 19-64 and nearly 50,000 children. The representative also stated, of the 95,000 adults projected to newly enroll in KanCare if expanded, 64,000 were employed at some point in the previous 12 months. Written-only neutral testimony was provided by the Kansas Department for Children and Families (DCF).

Opponent testimony was provided by representatives of Americans for Prosperity, the Foundation for Government Accountability, KDHE, and the Kansas Policy Institute. The opponents generally stated the states that expanded Medicaid could not accurately predict Medicaid enrollment, expansion in Kansas would be costly, it is uncertain whether the Affordable Care Act (ACA) will be dismantled and whether the federal government will continue to provide federal funds at an increased matching rate, the vast majority of increased funding in Medicaid would go to big city hospitals and not to rural communities, and resources would be prioritized so the new enrollment group would access care before participants who are disabled or elderly. Written-only opponent testimony was provided by a representative of HSA Benefits Consulting.

The Senate Committee amended the bill by changing 2018 date references to 2019.

According to the February 14, 2018, revised fiscal note prepared by the Division of the Budget, and available when the Senate Committee worked the bill on February 19, 2018, enactment of the bill, assuming an effective date of January 1, 2019, would have the following effect.

The expanded Medicaid eligibility in the bill would take effect on January 1, 2019. As a result, the fiscal effect estimates are for one-half of FY 2019. KDHE indicates enactment of the bill would assume costs and offsets associated with an additional 150,000 individuals becoming eligible for Medicaid coverage. Any savings to the State would be realized through a higher federal match rate for certain populations within Medicaid. KDHE indicates additional revenues would not fully offset the Medicaid expansion costs over time. KDHE estimates the cost of care for the newly eligible beneficiaries would be \$461.4 million in FY 2019. The state share at 7.0 percent would be \$34.7 million. The cost of care for the newly eligible beneficiaries in FY 2020 would be \$1,004.8 million, including the state share at 10.0 percent of \$100.5 million. If the ACA-enhanced federal match for Medicaid expansion was not available and Kansas' regular state share of approximately 45.0 percent was required for these new beneficiaries, the additional cost to the SGF would be \$223.3 million in FY 2019 and \$452.1 million in FY 2020.

KDHE estimates additional revenue of \$2.1 million in FY 2019 and \$4.4 million in FY 2020 from increased drug rebates. This additional revenue would be used to meet state share requirements. The KDHE estimates additional revenue of \$28.6 million in FY 2019 and \$57.6 million in FY 2020 from a 5.77 percent privilege fee. The additional revenue would also be used to meet state share requirements. Health care cost savings that would be realized for certain populations are also included in the estimate. These savings total \$14.1 million in FY 2019 and \$25.9 million in FY 2020.

KDHE states because it cannot estimate how many of the newly eligible beneficiaries would also be eligible for the premium assistance program in the bill and because the provision is permissive, an estimate for a premium assistance program has not been provided. KDHE also states because new tracking systems would have to be developed and maintained for such a program, the additional administrative costs would likely be substantial.

Enactment of the bill would also result in increased administrative costs. KDHE would require the addition of 115.0 FTE positions, the majority of which would be eligibility staff and support staff. The cost of the three Medicaid support contracts would also increase total additional administrative costs, estimated at \$11.5 million in FY 2019 and \$18.6 million in FY 2020. The state share of those administration expenditures is approximately \$5.7 million for FY 2019 and \$9.3 million for FY 2020.

The Department of Corrections (DOC) states, when an inmate is hospitalized for longer than 24 hours, the Medicaid inmate exclusion rule does not apply. Therefore, some of these inmates could be Medicaid eligible on a fee-for-service basis. The DOC currently estimates approximately \$2.0 million in SGF expenditures for these hospitalizations in FY 2019. If half of those inmates were Medicaid eligible under the provisions of the bill, the DOC would realize savings of approximately \$930,000 from the SGF in FY 2019 and \$900,000 in FY 2020 and FY 2021. This estimate equates to the enhanced federal match that could be drawn down. These savings would be reduced over time as the enhanced federal match is reduced. The DOC would have increased administrative costs that would reduce the savings. The DOC would also need additional FTE positions to determine eligibility and process claims. The current estimate for increased administration is \$300,000, which would include \$150,000 from the SGF and 3.0 additional FTE positions.

The DCF states enactment of the bill would result in additional costs through increased referrals to its Generating

Opportunities to Attain Lifelong Success Program (GOALS). The GOALS Program is a time-limited, federally funded program scheduled to end in January 2019. The grant was awarded based on an established caseload. Referrals resulting from enactment of the bill would increase the number of participants beyond the budgeted amount. Following completion of the pilot program, results from Kansas and other states will be evaluated and continuing federal funding is not certain. DCF assumes, for purposes of the fiscal note, no federal funding will be available and any additional costs would be funded through the SGF.

Based on KDHE estimates for additional Medicaid recipients and assumptions regarding the bill's requirements for referral to the GOALS Program, DCF estimates at least 1,372 additional program participants in FY 2019, 3,026 in FY 2020, and 3,336 in FY 2021. Assistance costs for these new participants are estimated at \$235,256 in FY 2019, \$1,089,834 in FY 2020, and \$1,261,295 in FY 2021. Also, to meet the needs of the increased caseload, DCF would require 29.0 additional FTE positions in FY 2019 and 64.0 additional FTE positions in FY 2020 and subsequent years. Salaries, benefits, and other operating costs to support the additional FTE are estimated at \$1,145,582 in FY 2019, \$3,949,698 in FY 2020, and \$3,974,201 in FY 2021. Therefore, the total estimated fiscal effect for DCF would be \$1,380,836 in FY 2019, \$5,039,532 in FY 2020, and \$5,235,496 in FY 2021.

Kansas Legislative Administrative Services (LAS) estimates legislative compensation, subsistence, and travel costs would total \$6,815 from the SGF for FY 2019 for the legislative working group. The Department of Commerce states it anticipates no fiscal effect for the agency from enactment of the bill.

Finally, the fiscal note estimates the SGF fiscal effect for KDHE, DCF, DOC, and LAS resulting from enactment of the bill would be an expenditure reduction of \$4.0 Million in FY 2019. For FY 2020, the SGF expenditures would be

increased by \$26.0 million. Additional SGF expenditures would continue to increase in the out years. The Division of the Budget notes, over the period of FY 2019 through FY 2023, enactment of the bill would increase SGF expenditures by \$103.9 million. Any fiscal effect associated with enactment of the bill, as introduced, is not reflected in *The FY 2019 Governor's Budget Report*.