

STATE OF KANSAS



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GOVERNOR LAURA KELLY

MESSAGE FROM THE GOVERNOR

REGARDING VETO OF HOUSE BILL 2387

Having a transparent, competitive bidding process is key to ensuring that our state contracts provide the most value to Kansas taxpayers while using the latest technology and best practices. This is not only good for the State of Kansas, but also for our current MCOs and the people they serve.

The language included in HB 2387 regarding the current MCO contracts is a product of closed-door dealings to push legislation that did not have a single proponent. There is little question that this effort is fraught with legal issues and jeopardizes our Medicaid program. HB 2387 prohibits the state Medicaid agency from pursuing the state's independent procurement process and, by doing so, functionally provides the current MCOs with a no-bid, multi-billion-dollar contract.

We must favor transparency and fair competition over attempts to re-insert corruption into the state contracting process.

Therefore, under Article 2, Section 14(a) of the Constitution, I hereby veto HB 2387.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR

A handwritten signature in blue ink that reads "Laura Kelly".

DATED

May 13, 2022

HOUSE BILL No. 2387

AN ACT concerning the executive branch; relating to actions by state agencies and the governor; prohibiting the issuance of a request for proposal or entering into a new contract for the administration and provision of benefits under the medical assistance program; relating to the Kansas emergency management act; removing the authority of the governor to prohibit attending or conducting certain religious services and worship services; amending K.S.A. 2021 Supp. 48-925 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) On or before January 31, 2023, no state agency, including the governor, shall:

(1) Issue a request for proposal for the administration and provision of benefits under the medical assistance program; or

(2) enter into any new contract with managed care organizations for the administration and provision of benefits under the medical assistance program.

(b) Except to the extent prohibited by 42 U.S.C. § 1396u-2(a)(2) or other federal law, the secretary of health and environment shall continue to administer medical assistance benefits using managed care entities as described in 42 U.S.C. § 1396u-2.

(c) This section shall expire on January 31, 2023.

Sec. 2. K.S.A. 2021 Supp. 48-925 is hereby amended to read as follows: 48-925. (a) During any state of disaster emergency declared under K.S.A. 48-924, and amendments thereto, the governor shall be commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement, embodied in appropriate executive orders or in rules and regulations of the adjutant general, but nothing shall restrict the authority of the governor to do so by executive orders issued at the time of a disaster.

(b) Under the provisions of this act and for the implementation of this act, the governor may issue executive orders to exercise the powers conferred by subsection (c) that have the force and effect of law during the period of a state of disaster emergency declared under K.S.A. 48-924(b), and amendments thereto, or as provided in K.S.A. 2021 Supp. 48-924b, and amendments thereto. The chairperson of the legislative coordinating council shall call a meeting of the council to occur within 24 hours of the issuance of an executive order issued pursuant to this section for the purposes of reviewing such order. Such executive orders shall be null and void after the period of a state of disaster emergency has ended. Such executive orders may be revoked at any time by concurrent resolution of the legislature or, when the legislature is not in session or is adjourned during session for three or more days, such orders may be revoked by the legislative coordinating council with the affirmative vote of five members thereof.

(c) Except as provided in K.S.A. 2021 Supp. 48-924b, and amendments thereto, during a state of disaster emergency declared under K.S.A. 48-924, and amendments thereto, in addition to any other powers conferred upon the governor by law and subject to the provisions of ~~subsections subsection (d) and (e)~~, the governor may:

(1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules and regulations of any state agency which implements such statute, if strict compliance with the provisions of such statute, order or rule and regulation would prevent, hinder or delay in any way necessary action in coping with the disaster;

(2) utilize all available resources of the state government and of each political subdivision as reasonably necessary to cope with the disaster;

(3) transfer the supervision, personnel or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities;

(4) subject to any applicable requirements for compensation under K.S.A. 48-933, and amendments thereto, commandeer or utilize any private property if the governor finds such action necessary to cope with the disaster;

(5) direct and compel the evacuation of all or part of the population from any area of the state stricken or threatened by a disaster, if the governor deems this action necessary for the preservation of life or other disaster mitigation, response or recovery;

(6) prescribe routes, modes of transportation and destinations in connection with such evacuation;

(7) control ingress and egress of persons and animals to and from a disaster area, the movement of persons and animals within the area and the occupancy by persons and animals of premises therein;

(8) suspend or limit the sale, dispensing or transportation of alcoholic beverages, explosives and combustibles;

(9) make provision for the availability and use of temporary emergency housing;

(10) require and direct the cooperation and assistance of state and local governmental agencies and officials; and

(11) perform and exercise such other functions, powers and duties in conformity with the constitution and the bill of rights of the state of Kansas and with the statutes of the state of Kansas, except any regulatory statute specifically suspended under the authority of subsection (c)(1), as are necessary to promote and secure the safety and protection of the civilian population.

(d) The governor shall not have the power or authority *under the provisions of the Kansas emergency management act or any other law* to:

(1) Limit or otherwise restrict the sale, purchase, transfer, ownership, storage, carrying or transporting of firearms or ammunition, or any component or combination thereof, including any components or combination thereof used in the manufacture of firearms or ammunition, or seize or authorize the seizure of any firearms or ammunition, or any component or combination thereto, except as otherwise permitted by state or federal law pursuant to subsection (c) (8) or any other executive authority-

~~(e) The governor shall not have the power under the provisions of the Kansas emergency management act or the provisions of any other law to;~~

(2) alter or modify any provisions of the election laws of the state including, but not limited to, the method by which elections are conducted or the timing of such elections; or

(3) *prohibit attending or conducting any religious service or worship service in a church, synagogue or place of worship.*

~~(e)~~(e) The governor shall exercise the powers conferred by subsection (c) by issuance of executive orders under subsection (b). Each executive order issued pursuant to the authority granted by subsection (b) shall specify the provision or provisions of subsection (c) by specific reference to each paragraph of subsection (c) that confers the power under which the executive order was issued. The adjutant general, subject to the direction of the governor, shall administer such executive orders.

~~(e)~~(f) (1) Any party aggrieved by an executive order issued pursuant to this section that has the effect of substantially burdening or inhibiting the gathering or movement of individuals or the operation of any religious, civic, business or commercial activity, whether for-profit or not-for-profit, may file a civil action in the district court of the county in which such party resides or in the district court of Shawnee county, Kansas, within 30 days after the issuance of such executive order. Notwithstanding any order issued pursuant to K.S.A. 2021 Supp. 20-172(a), and amendments thereto, the court shall conduct a hearing

within 72 hours after receipt of a petition in any such action. The court shall grant the request for relief unless the court finds such executive order is narrowly tailored to respond to the state of disaster emergency and uses the least restrictive means to achieve such purpose. The court shall issue an order on such petition within seven days after the hearing is conducted. If the court does not issue an order on such petition within seven days, the relief requested in the petition shall be granted.

(2) Relief under this section shall not include a stay or injunction concerning the contested executive order that applies beyond the county in which the petition was filed.

(3) The supreme court may adopt emergency rules of procedure to facilitate the efficient adjudication of any hearing requested under this subsection, including, but not limited to, rules for consolidation of similar hearings.

~~(h)~~(g) (1) The board of county commissioners of any county may issue an order relating to public health that includes provisions that are less stringent than the provisions of an executive order effective statewide issued by the governor. Any board of county commissioners issuing such an order must make the following findings and include such findings in the order:

(A) The board has consulted with the local health officer or other local health officials regarding the governor's executive order;

(B) following such consultation, implementation of the full scope of the provisions in the governor's executive order are not necessary to protect the public health and safety of the county; and

(C) all other relevant findings to support the board's decision.

(2) If the board of county commissioners of a county issues an order pursuant to paragraph (1), such order shall operate in the county in lieu of the governor's executive order.

Sec. 3. K.S.A. 2021 Supp. 48-925 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.