

2020 KANSAS LEGISLATIVE PREVIEW

Medicaid expansion proposals await Legislature's return

2020 LEGISLATIVE PREVIEW

Introduction

The 2020 Kansas legislative session will begin on January 13, 2020. During the 2019 session more than 100 bills addressing Medicaid expansion, KanCare, controlled substances, scope of practice for providers, child welfare, insurance, firearms, and taxes on food were introduced. Because 2019 was the first year in a legislative biennium, or two-year cycle, all bills that were still under consideration when the Legislature adjourned in May 2019 are available for consideration in 2020.

Medicaid expansion will likely be on the table early in the session. After an expansion bill similar to one introduced by Gov. Laura Kelly in 2019 passed the House late in the session but did not receive a hearing in the Senate, the Governor's Council on Medicaid Expansion began meeting in September to study expansion models in other states. Two

interim committees also met this fall to review and discuss a Senate proposal for expansion that would differ significantly from the version that passed the House.

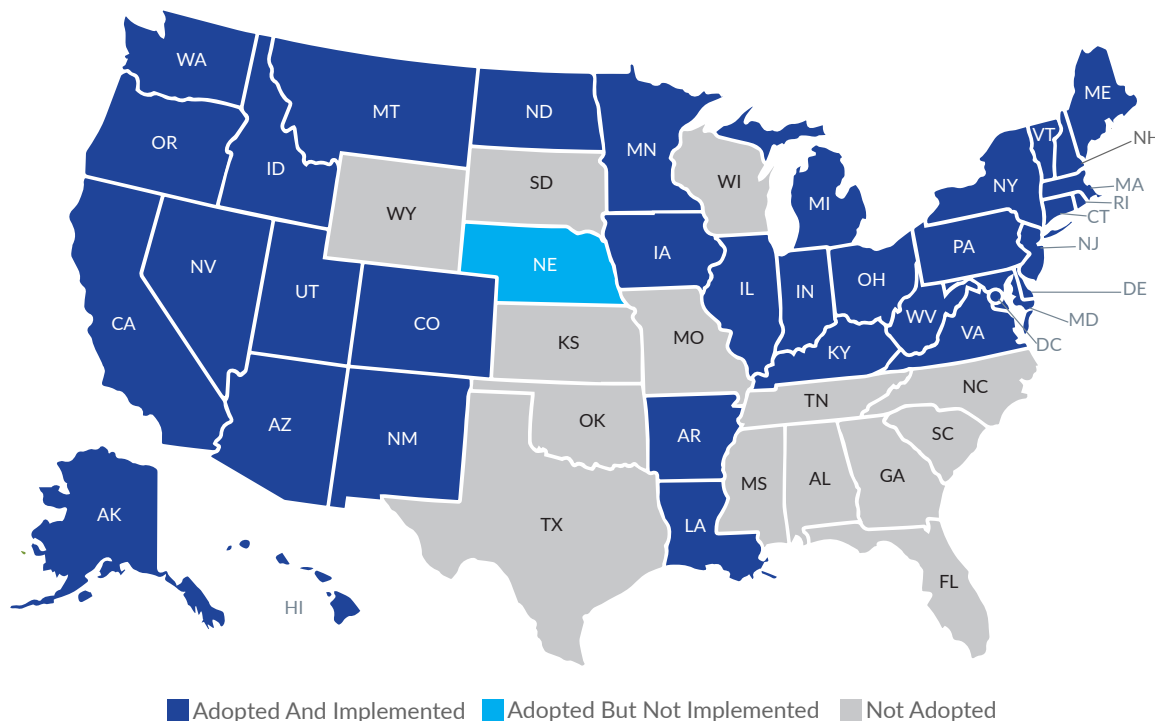
Other health-related issues that may be considered by legislators include medical marijuana, the availability of resources to address the behavioral health needs of Kansans, the cost of health care, private health insurance premiums and coverage options, and licensure/scope of practice for some types of providers.

Medicaid Expansion

Legislators likely will have multiple Medicaid expansion proposals to consider early in the 2020 session.

Gov. Kelly, who has repeatedly stated that expansion is one of her top priorities, announced the creation of the Governor's

Figure 1. Status of State Medicaid Expansion Decisions



Source: Kaiser Family Foundation. Accessed Jan. 8, 2020, from <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>

JANUARY

2020



Laura Kelly
Governor

Kansas Governor Laura Kelley announced the creation of the Governor's Council on Medicaid Expansion on Sept. 4, 2019. The Council is charged with "supporting legislative efforts to find the best version of Medicaid expansion for Kansas."

Council on Medicaid Expansion on September 4, 2019. The council, which includes legislators and individuals representing health care providers, health foundations, health advocates and managed care organizations, was charged with "supporting legislative efforts to find the best version of Medicaid expansion for Kansas" and was asked to study the costs and benefits of models in other states that have expanded Medicaid for adults age 19-64 with income up to 138 percent of the federal poverty level (FPL). The council met three times during 2019 and will be submitting a recommendation to the governor in support of expansion, along with suggestions that the state maintain as much policy authority as possible over the program and establish a system for evaluating the costs and operation of the program.

Although the House passed an expansion bill late in the 2019 session — House Bill (HB) 2066, which was similar to bills introduced by the governor — it received no vote in the Senate. At the end of the session Senate Majority Leader Jim Denning and other Republicans announced they would work on an expansion bill during the interim session that would be ready for debate early in the 2020 session. Two interim committees — the Senate Select Committee on Healthcare Access, chaired by Sen. Gene Suellentrop, and the Special Committee on Medicaid Expansion, chaired by Rep. Brenda Landwehr — met during October and November to receive testimony and study an expansion proposal crafted by Sen. Denning that could serve as the Senate proposal.

During the meeting of the Senate Select Committee on Healthcare Access on

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29 Republicans, 11 Democrats
Majority - Republicans

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Wichita



Jeff Longbine
Vice President
Emporia



Jim Denning
Majority Leader
Overland Park



Mike Petersen
Asst. Majority
Leader
Wichita



Elaine Bowers
Whip
Concordia

M I N O R I T Y



Anthony Hensley
Minority Leader
Topeka



Oletha Faust-Goudeau
Asst. Min. Leader
Wichita



Pat Pettey
Minority Whip
Kansas City



Marci Francisco
Agenda Chair
Lawrence



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C H A I R S



Bud Estes
Federal and
State Affairs
Dodge City



Rob Olson
Financial Institutions
and Insurance
Olathe



Gene Suellentrop
Public Health
and Welfare
Wichita



Carolyn McGinn
Ways
and Means
Sedgwick

October 23 and 24, members reviewed and revised a bill draft based on the proposal presented by Sen. Denning. At the conclusion of the meeting the committee requested that a copy of the revised bill draft and two memorandums — one comparing it to HB 2066, the bill passed by the House during the last session, and another comparing it to Senate Bill (SB) 54, a straightforward expansion bill introduced in the Senate last year — be delivered to the Special Committee on Medicaid Expansion. The revised bill draft, which would require the approval of a Section 1115 waiver application by the Centers for Medicare and Medicaid Services (CMS), proposes the state present three options for expansion in the following order for federal approval:

- (1) First, for adults age 19-64 with income up to 100 percent of FPL;
- 2) If that is not approved, then for adults age 19-64 with income up to 100 percent of FPL, with the option of Medicaid coverage or a marketplace plan offered to those with income from 100 percent of FPL up to 138 percent of FPL; and
- 3) If neither of those options are approved, then expansion for all adults age 19-64 with income up to 138 percent of FPL.

The draft bill revised by the Senate Select Committee also calls for the state to seek a Section 1332 innovation waiver to stabilize the private individual health insurance market by implementing a reinsurance program.

Following receipt of the report from the Senate Select Committee, the Special Committee on Medicaid Expansion elected not to forward or recommend any specific expansion bill but did include the draft bill revised by the Senate Select Committee as reference material supporting its recommendations, which focused primarily on gathering additional information related to expansion from conferees or requesting information to respond to questions raised during committee discussions.

Gov. Kelly has said Medicaid expansion and reinsurance for the private individual health insurance market are separate issues and do not need to be combined, as they are in the bill draft that emerged from the Senate Select Committee. On November 21, Senate Minority Leader Anthony Hensley released the minority response to the Senate Select Committee report. Both Sen. Hensley

and House Minority Leader Tom Sawyer have stated they believe the revised bill draft is more complicated and expensive than HB 2066 and will delay implementation of expansion. On December 3, Sen. Hensley pre-filed SB 246, a bill that is similar to HB 2066, as passed by the House.

KanCare Oversight

Eligibility Application Processing

In response to reports of delays in the processing and approval of Medicaid applications for older adults and people with disabilities by a state contractor, Maximus, the Kansas Department of Health and Environment (KDHE) announced in February 2019 that beginning on January 1, 2020, Maximus will process only family medical applications, which are primarily for children and pregnant women, and KDHE staff will process all other applications. During the 2019 session, legislators included additional funding requested by KDHE in the final budget bill for both fiscal year (FY) 2019 and FY 2020 to support both technological and staffing needs for the processing of applications.

During the 2019 legislative session, HB 2149, which would have required timeliness and performance standards, along with penalty provisions, in contracts between KDHE and contractors providing Medicaid services for determining eligibility, received a hearing in the Committee on Children and Seniors but failed to pass out of committee. Legislators likely will continue to monitor the progress made to improve the processing of Medicaid applications and may take further action if needed.

Managed Care Organization Performance

As of January 1, 2019, the three managed care organizations (MCO) providing services to KanCare beneficiaries are Sunflower State Health Plan, United Healthcare Midwest and Aetna Better Health of Kansas. Both Sunflower and United Healthcare have had contracts with the state to serve as MCOs since 2013, which were renewed in June 2018. Aetna Better Health, which replaced the third original MCO, Amerigroup Kansas, in January 2019, has struggled to meet compliance criteria under its contract but has been working with KDHE to resolve its performance issues, under the oversight of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight. Legislators likely will continue to monitor the progress made by Aetna to improve its performance.

Figure 2. Status of State Marijuana Legalization Decisions



Source: Governing. Accessed Dec. 12, 2019, from <http://www.governing.com/gov-data/safety-justice/state-marijuana-laws-map-medical-recreational.html>. (Does not include CBD/low THC state programs).

Behavioral Health

The final budget bill from the 2019 legislative session, House Sub. for SB 25, contained several provisions related to behavioral health that may result in action during the 2020 session.

The Mental Health Task Force (MHTF), established by the Legislature in 2017 and expanded in 2018, submitted its second report to the Legislature on January 14, 2019. A budget proviso based on a recommendation in the report directed KDHE to conduct a review of costs and reimbursement rates for behavioral health services during FY 2019 and FY 2020 and submit a report to the Legislature in January 2020. Depending on the results of this review, legislators may be asked to consider funding higher rates for mental health and substance use disorder services.

The budget bill also required the Kansas Department for Aging and Disability Services (KDADS) to submit a plan to the Legislature by January 13, 2020, to end the current freeze on voluntary admissions at Osawatimie State Hospital (OSH) and increase the number of staffed beds available for involuntary patients.

Medical Marijuana

With the approval of medical marijuana by Missouri voters in November 2018, Kansas is now bordered on three sides by states that have legalized either recreational or medical marijuana use. Gov. Kelly has stated she supports legalization of medical marijuana, provided it is well-regulated. Although legalization is opposed by some legislators, the Legislature considered a handful of marijuana-related bills during the 2019 session and ultimately passed two related to cannabidiol (CBD) and industrial hemp.

In October, the Special Committee on Federal and State Affairs met twice to receive testimony and discuss public policy implications concerning the legalization and regulation of medical marijuana. After the second meeting on October 30, the committee approved a recommendation that the judiciary committees of both chambers look at legislation that would provide an affirmative defense to residents of other states who legally obtain medical cannabis and are in possession of it while traveling through Kansas.

Electronic Cigarettes

With the rising use of electronic cigarettes (e-cigarettes), especially among middle and high school students, and the alarming reports of illness and death among users of some types of e-cigarettes, legislators may be asked to consider legislation this year to decrease or discourage the use of these products by Kansas youth. During the 2019 session, legislators received several informational briefings about e-cigarettes and their use. Over the summer and fall, the Kansas State Board of Education (KBOE) and public school officials from across the state discussed the use of e-cigarettes in schools and worked with KDHE officials to produce educational materials about e-cigarettes and the risks associated with their use for distribution at the beginning of the current school year to teachers, students and parents. KBOE members also reviewed e-cigarette laws and policies enacted in other states, and it is likely that legislators will get an opportunity to consider one or more bills related to e-cigarettes this year, including:

- Modifying the definition of smoking in the state Indoor Clean Air Act to include e-cigarettes; and
- Flavor bans.

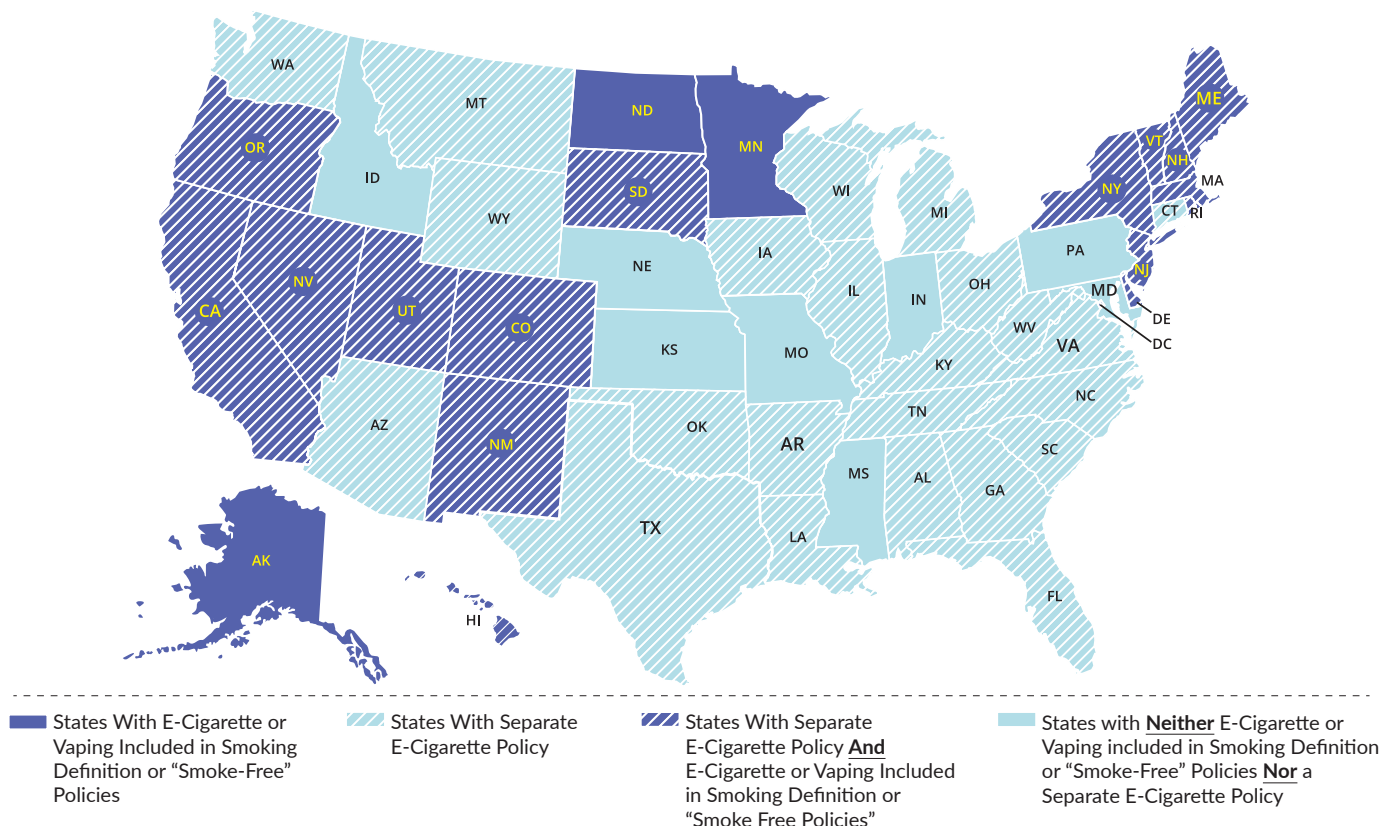
On December 19, 2019, the U.S. Senate passed a \$1.37 trillion spending package previously approved by the House of Representatives on December 17, which includes a provision to raise the legal age to buy tobacco products and e-cigarettes from 18 to 21. The new law, signed by President Trump on December 20, will take effect in the summer of 2020.

Private Health Insurance

Legislators may have multiple opportunities to consider legislation related to private health insurance during the 2020 session.

The Medicaid expansion bill draft considered by the Special Committee on Medicaid Expansion also includes a requirement that the commissioner of insurance submit a Section 1332 waiver to CMS for a reinsurance program designed to reduce premiums for health insurance plans offered on the Kansas Affordable Care Act (ACA) marketplace. Section 1332 reinsurance programs have been approved by CMS for a dozen states. Under the rules established for the submission of a Section 1332 waiver, lawmakers would need to enact legislation authorizing the governor and/or the commissioner of insurance to submit the waiver application to CMS.

Figure 3. States With E-Cigarettes or Vaping Included in Smoking Definition or “Smoke-Free” Policies, 2019



Source: KHI Analysis of State Laws and Regulations, September 15, 2019

In 2019, the Legislature approved HB 2209, which authorizes the Kansas Farm Bureau (KFB) to sell healthcare benefit coverage that does not comply with the requirements of the ACA, including the requirement to cover pre-existing conditions and essential health benefits, and that is not subject to the jurisdiction of the Kansas Insurance Department. Legislators may take another look at bills introduced during the 2019 session that provided non-ACA compliant coverage options, including short-term, limited duration insurance (STLDI) plans. In 2018, the Trump administration published a new regulation to expand the availability of STLDI plans by extending the coverage period allowed and the number of times they could be renewed. Companion bills HB 2053 and SB 35 would revise Kansas insurance law to adopt the new federal guidelines. STLDI plans,

which have been available in the insurance market for decades, were originally designed to provide gap coverage for individuals transitioning from one health plan to another — for example, when changing jobs or relocating. During the 2019 session both bills received a hearing but did not pass out of committee.

Finally, based on testimony received on September 12 by the Special Committee on Financial Institutions and Insurance, chaired by Sen. Rob Olson, legislators may continue to explore strategies for addressing the cost of health care and health insurance premiums.

Child Welfare System

In 2019 House Sub. for SB 25, lawmakers directed the Kansas Department for Children and Families

House Legislative Leadership

84 Republicans, 41 Democrats
Majority - Republicans

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Speaker of the House
Olathe



Blaine Finch
Speaker Pro Tem
Ottawa



Dan Hawkins
Majority Leader
Wichita



Les Mason
Asst. Majority Leader
McPherson



Blake Carpenter
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Health and Human Services
Wichita



Jene Vickrey
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Louisburg



Will Carpenter
Social Services Budget
El Dorado

(DCF) to convene two working groups to study issues related to crossover youth, defined as youth at risk of being placed in foster care due in whole or in part to conduct that has resulted or could result in juvenile offender allegations. The first working group was tasked with identifying risk factors associated with crossover youth and studying services offered to crossover youth. The second working group studied the effect on crossover youth of SB 367, enacted in 2016, which revised Kansas juvenile justice law and was projected to reduce the number of youths placed in “out-of-home” confinement over a five-year period.

After numerous meetings beginning in June 2019, the working group’s analyses and recommendations are being submitted to the 2020 Legislature. (<http://www.dcf.ks.gov/Agency/Pages/CrossoverYouth.aspx>)

Scope of Authority/Practice/Licensing

Multiple bills modifying health care provider licensure and scope of practice were introduced in the 2019 legislative session and are likely to be picked up again in the 2020 session, including bills focused on advanced practice registered nurses (APRN) and anesthesiologist assistants.

HB 2066, as originally introduced, would have allowed APRNs to have “full practice authority,” and eliminated the need for APRNs to have collaborative practice agreements with physicians. The bill was amended by the House Health and Human Services (HHS) Committee to: establish a supervised period before APRNs would be able to transition to full practice; require the Board of Nursing to create rules and regulations; and require APRNs to pay into the Health Care Stabilization Fund. However, the APRN bill text was ultimately removed from HB 2066 when language for the expansion of Medicaid was inserted by the House. A similar bill, HB 2412, which also would expand the scope of practice for APRNs, is currently in the HHS Committee and could be reconsidered in the 2020 session.

HB 2295, which would have established the licensure of anesthesiologist assistants, received a hearing in the House HHS Committee but did not receive a vote and was later referred to the Appropriations Committee. On October 21, 2019, the 2019 Special Committee on Health convened a roundtable to discuss the possible licensure of anesthesiologist assistants. Committee members heard differing

views on licensure from multiple parties, including the Kansas Association of Nurse Anesthetists and the Kansas Academy of Anesthesiologist Assistants. Chair Brenda Landwehr recommended that a compromise be negotiated by the involved parties ahead of the upcoming session.

Food Taxes

Legislators likely will consider proposals to reduce the state sales tax rate on food, which is currently the second highest in the country at 6.5 percent. During the 2019 session, several bills to reduce the tax rate or provide exemptions for food were introduced, but only one bill moved beyond the originating committee. HB 2033, which would have reduced the state sales tax on certain food items beginning in July 2020 was passed by legislators. However, the bill also contained provisions related to changes in the state individual income tax rules and tax cuts for individuals and was vetoed by Gov. Kelly in May 2019.

On September 9, 2019, the governor announced the creation of the Governor’s Council on Tax Reform, which is charged with conducting an 18-month, in-depth study of state and local taxes and making specific statutory recommendations to the Legislature. The Council met monthly beginning in September, and the sales tax on food was discussed at each meeting. At the December 3 meeting, the council voted on proposals to be forwarded to Gov. Kelly for consideration for her budget for the 2020 session. Among their proposals, the council suggested restoring the refundable Kansas individual tax deduction for sales tax on food, which

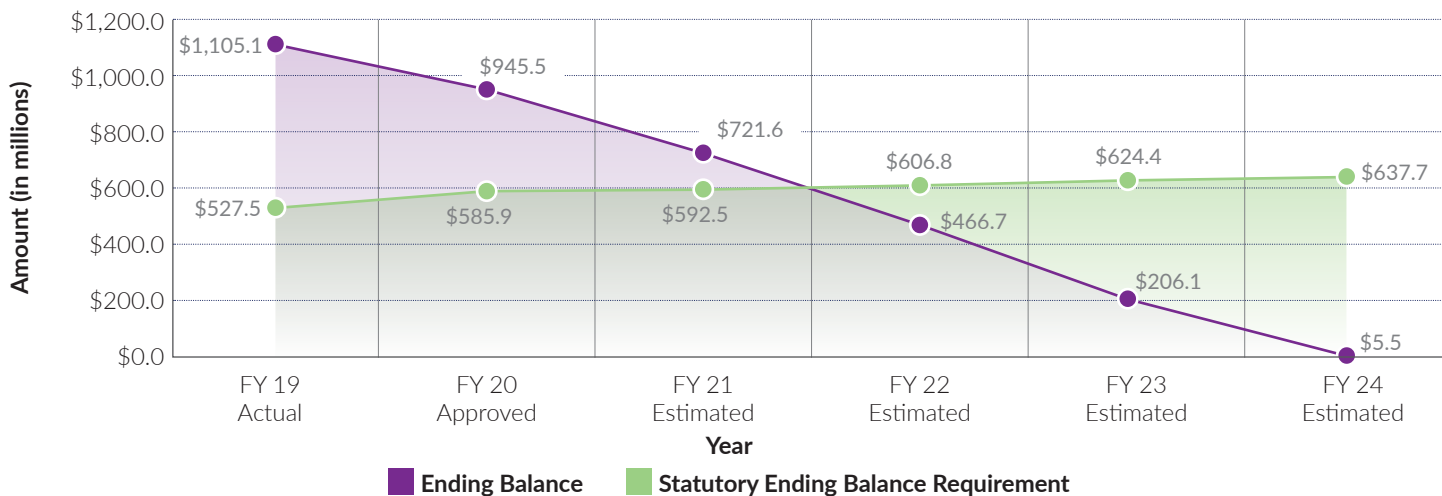
Figure 4. Selected Base State Food Sales Tax Rates

Kansas	6.5 percent
Oklahoma	4.5 percent
Missouri	1.225 percent
Arkansas	0.125 percent
Colorado	Exempt
Iowa	Exempt
Nebraska	Exempt
New Mexico	Exempt

Note: Rates shown apply to “groceries” or “food” often defined as any nutritious substance that people eat or drink in order to maintain life and growth and is intended for home consumption. Items such as candy, soda or prepared or nonessential food products are often excluded from the food sales tax rate and taxed at the general sales tax rate.

Sources: Loughhead, K. (2018). *Sales Taxes on Soda, Candy, and Other Groceries*, 2018. Washington, D.C.: Tax Foundation. Retrieved from <http://bit.ly/38FgvdB>; Lumatax. (2019). *Complete State-by-State Guide to Food and Beverage Sales Tax*. Retrieved from <http://bit.ly/2PMI90q>

Figure 5. State General Fund Ending Balance



Note: Statutory ending balance requirement was calculated by applying 7.5 percent, as cited in Kansas statute, to total adjusted expenditures. However, the Legislature frequently waives the requirement.
Source: KHI analysis of Legislative Research Department State General Fund Profile, December 2019.

was previously in place prior to 2012. The food sales tax refund program would allow qualifying residents to receive refunds based on the number of people in the family. According to the Kansas Department of Revenue, in the last year the refund was offered, more than 384,000 people claimed it, at a cost of about \$61 million.

Rural Broadband

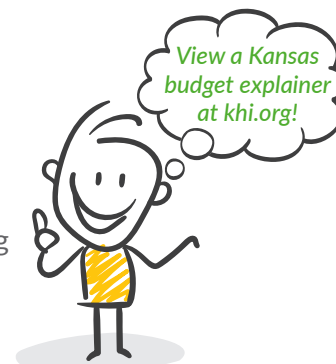
In the 2020 session, lawmakers will have the opportunity to consider funding for the expansion of broadband throughout Kansas.

In 2018, legislators established the Statewide Broadband Expansion Planning Task Force to address the lack of adequate access to the internet in rural parts of the state. The lack of broadband internet service can impact the ability of rural citizens to access resources such as doctors and emergency services. A subcommittee of the Task Force that met in September has proposed that legislators consider spending \$10 million a year to expand the access and speed of broadband availability in the state. The subcommittee report, which was reviewed by the full

Task Force on December 17, also proposes that the Kansas Department of Commerce administer the expansion of broadband, focusing first on areas of the state without internet service and then moving to areas with slow service. The Task Force will submit a final report to the Legislature on or before January 15, 2020.

Budget

Estimated ending balances for the State General Fund are projected to exceed the statutory minimum of 7.5 percent of expenditures in both FY 2020 and FY 2021. The projected balances set up a debate in 2020 over whether to cut taxes, increase spending for priorities — such as health care, corrections, child welfare and education — or enact a combination of both. In December, policymakers learned that current estimates also project ending balances to return to below the statutory minimum as early as FY 2022 (Figure 5).



ABOUT THE ISSUE BRIEF

This brief is based on work done by Linda J. Sheppard, J.D., Hina B. Shah, M.P.H., Sydney McClendon and Peter F.H. Barstad. It is available online at khi.org/policy/article/20-01.

KANSAS HEALTH INSTITUTE

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