

2022 KANSAS LEGISLATIVE PREVIEW

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JANUARY

2022

Introduction

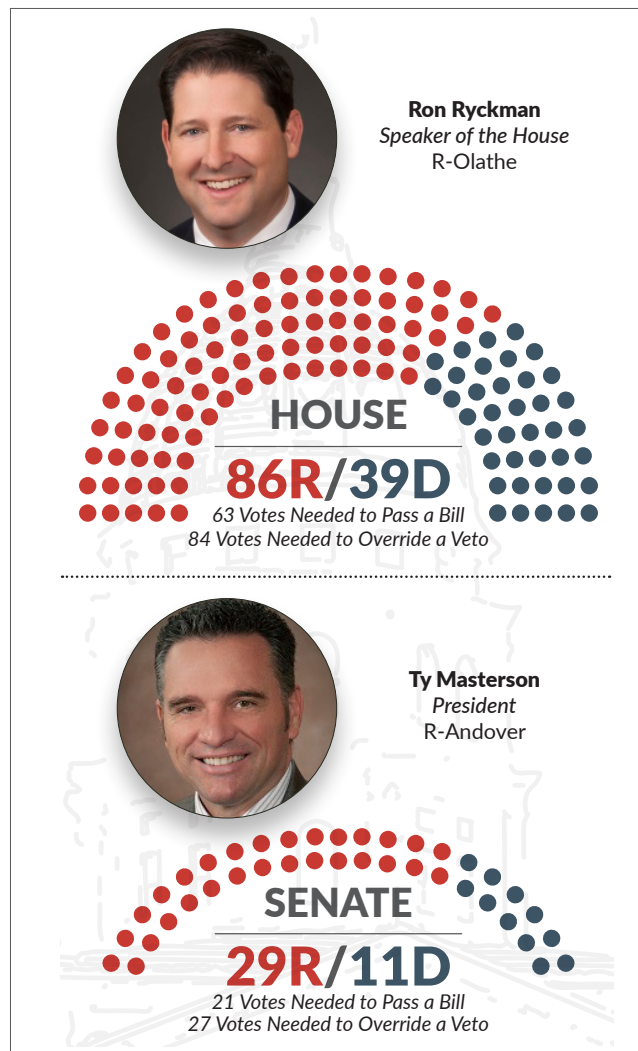
The 2022 Kansas legislative session will begin on Monday, January 10. Because 2021 was the first year in a legislative biennium, or two-year cycle, many health-related bills from that session are active and remain on the calendar for 2022.

During 2021, six new legislators were sworn in to fill vacant positions. Republicans continue to hold majorities in both chambers with 29 Republicans and 11 Democrats in the Senate and 86 Republicans and 39 Democrats in the House.

Medical marijuana could be on the table early in the session. During 2021, the House Federal and State Committee spent five days working House Bill (HB) 2184, which would create the Kansas Medical Marijuana Regulation Act, and ultimately became H. Substitute for Senate Bill (SB) 158. After the House passed the substitute bill on May 6, the Senate introduced its own bill, Senate Bill 315, the next day. Both bills are available to be worked by legislators in 2022.

Following the end of the 2021 session, 30 interim committees met during July through December, including seven health-related committees. Legislators also returned to Topeka on November 22, 2021, for a special session focused on COVID-19 mandates and passed Special Session House Bill (HB) 2001 related to employer COVID-19 vaccine requirements and

Figure 1. 2022 Kansas Legislative Makeup



exemptions. The 2022 Legislature will likely consider several issues or recommendations from the interim committees and also may continue working on COVID-19 related issues that arose during the Special Session.

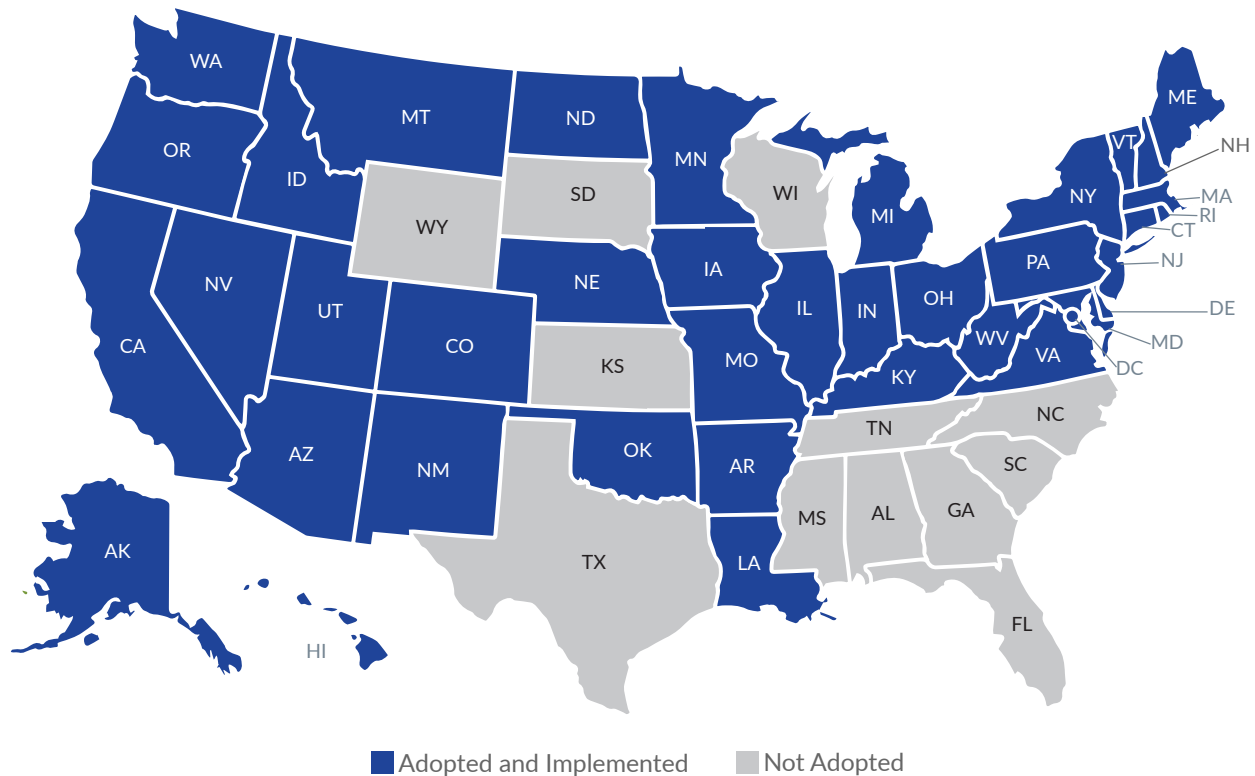
KEY POINTS

- ✓ Redistricting will be a priority for legislators during the 2022 session after Senate and House Committees held nearly 20 joint meetings last year to receive public comments on reapportionment.
- ✓ The federal American Rescue Plan Act of 2021 includes a new financial incentive for states that have not expanded Medicaid.
- ✓ Legislators will be presented with new recommendations for improvement of the

Kansas behavioral health system from the Special Committee on Kansas Mental Health Modernization and Reform.

- ✓ Two bills to create the Kansas Medical Marijuana Regulation Program, including one passed by the House at the end of the 2021 session, are available for action in 2022.
- ✓ Legislators may take another look at legislation focused on the operation of pharmacy benefit managers.

Figure 2. Status of State Medicaid Expansion



Source: Kaiser Family Foundation, <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>, accessed November 30, 2021.

Legislators also will continue their work on redistricting. During the week of August 9, 2021, the Senate and House Committees on Redistricting held 14 joint public meetings to receive public comments on reapportionment. Four additional virtual meetings were held on November 22-23 and November 29-30. Preliminary U.S. Census population data needed to determine how Kansas House and Senate districts will be redrawn was released on August 12, showing a population of 2,937,880. A district-by-district count was released on August 20. While Kansas will retain its four current U.S. Congressional districts, population changes mean lines will need to be redrawn for each of the Congressional districts as well as the 40 state Senate and 125 House districts.

Medicaid Expansion

To date, 39 states (including Washington, D.C.) have adopted Medicaid expansion and 12 states, including Kansas, have not adopted the Affordable Care Act (ACA) provision to expand Medicaid coverage for adults with incomes up to 138 percent of the federal poverty level (FPL). During the 2021 session, Medicaid expansion briefly appeared but failed to gain traction. Companion bills introduced in March 2021 — HB 2436 and Senate Bill (SB) 287

— would have expanded Medicaid and enacted the Kansas Medical Marijuana Regulation Act but failed to receive a hearing.

Although there was little activity related to expansion during the 2021 session, legislators may be open to considering expansion in 2022 in response to financial incentives included in the federal American Rescue Plan Act (ARPA) signed into law on March 11, 2021. In addition to the 90 percent federal matching funds already available through the ACA for medical services for newly eligible Medicaid expansion enrollees, states that have not expanded Medicaid are eligible under ARPA for a five-percentage point increase in their current federal matching funds, for a period of two years, which applies to services provided to children, non-expansion adults, seniors and people with disabilities.

KanCare

Issues addressed during the 2021 session through the budget process may be revisited in 2022, including reimbursement rates for KanCare providers and the Protected Income Limit (PIL). Income above the PIL must be applied towards the cost of a person's care. The 2021 Omnibus Appropriations bill (SB 159) extended increased

nursing facility reimbursement rates through June 30, 2021, and increased reimbursement rates for the Technology Assisted waiver for in-home registered nurses and licensed practical nursing services during Fiscal Year (FY) 2022. The bill also raised the PIL for FY 2022 from 150 percent of the 2019 federal Supplemental Security Income (SSI) limit (150 percent = \$1,157/month) to 300 percent (\$2,383/month) of the current SSI limit for Home and Community Based Services (HCBS) waivers and the Program of All Inclusive Care for the Elderly (PACE).

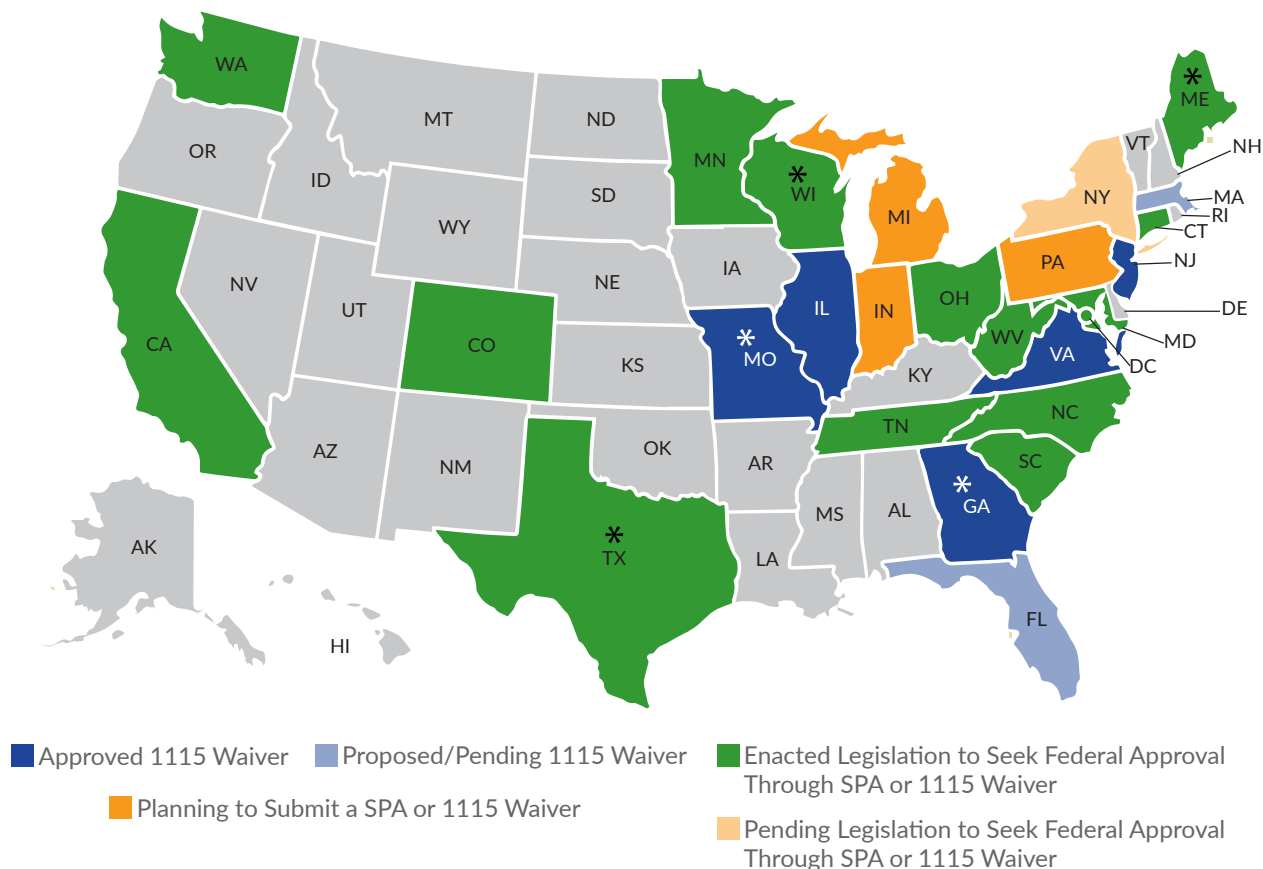
Other bills that remain active include companion bills SB 154 and HB 2046, which would increase reimbursement rates for providers of home and community-based services under the Intellectual/Development Disability waiver, and HB 2373, which would require the Kansas Department for Aging and Disability Services (KDADS) to establish and implement a mobile crisis services program for individuals with intellectual and/or developmental disabilities.

Legislators might also consider extending Medicaid benefits for postpartum women. Under the federal Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, states were required to not disenroll most enrollees, including postpartum women, in order to get enhanced FMAP during the federal public health emergency (PHE). The PHE is currently scheduled to end on January 16, 2022. A provision in ARPA, which becomes effective on April 1, 2022, gives states the opportunity, for five years, to extend Medicaid and Children's Health Insurance Program (CHIP) eligibility to pregnant women for 12 months postpartum. As of December 2021, more than 20 states have implemented or are planning to implement this extended coverage through approved or pending 1115 waivers, state plan amendments or state legislation.

Behavioral Health

Over the past two years, the COVID-19 pandemic has added additional strain on the state behavioral health system and further emphasized the need for

Figure 3. Medicaid Postpartum Coverage Tracker Map as of December 9, 2021



Note: Pending legislation includes legislation that has passed one or both chambers. *State limits the eligible population, provides a limited benefit package, and/or limits the coverage period (<12 months).

Source: Kaiser Family Foundation, <https://www.kff.org/medicaid/issue-brief/medicaid-postpartum-coverage-extension-tracker/>, accessed December 9, 2021.

change. Beginning in 2020, the Special Committee on Kansas Mental Health Modernization and Reform, created by the Legislative Coordinating Council following the 2020 session and chaired by Rep. Brenda Landwehr, has developed a strategic framework for reform of the Kansas behavioral health system. A few key recommendations from the Special Committee’s report to the 2021 Legislature have been adopted.

The Special Committee continued to meet during the 2021 interim period and assembled three working groups – Services and Workforce, System Capacity and Transformation, and Telehealth – facilitated by the Kansas Health Institute to revisit the recommendations in the report to the 2021 Legislature and develop new recommendations related to trauma-informed care, social isolation, stigma, suicide prevention, rural populations, the Autism waiver, behavioral health services in schools, outcomes data, specialty courts, law enforcement impact, and telehealth payment parity. New recommendations coming from the working

groups will be reviewed and approved by the Special Committee and presented to legislators early in the 2022 session.


Medical Marijuana

Legislators will likely continue their work on the creation of a medical marijuana regulatory framework during the 2022 session and have two bills ready for consideration - H. Sub. for SB 158, passed by the House at the end of the 2021 session, and SB 315, introduced in the Senate. While many of the provisions in the bills are very similar, there are a few key provisions, including the determination of qualifying health conditions; the timeline for implementation; rules for when physicians can make recommendations for medical marijuana for patients; rules for advertisements; and licensing fees, that will likely need to be negotiated. Both bills remain alive for consideration and a summary comparing select provisions of both bills is available on our website https://www.khi.org/assets/uploads/news/15183/hatc_mm_figure01.pdf. Tables summarizing some of the key features of


Senate Leadership

29 Republicans, 11 Democrats
Majority - Republicans


M A J O R I T Y




Ty Masterson
President
Andover




Rick Wilborn
Vice President
McPherson



Larry Alley
Majority Leader
Winfield




Renee Erickson
Asst. Majority Leader
Wichita




Richard Hilderbrand
Whip
Galena


M I N O R I T Y




Dinah Sykes
Minority Leader
Lenexa




Oletha Faust-Goudeau
Asst. Min. Leader
Wichita



Pat Pettey
Minority Whip
Kansas City




Marci Francisco
Agenda Chair
Lawrence




Jeff Pittman
Caucus Chair
Leavenworth


C H A I R S




Rick Billinger
Ways and Means
Goodland



Jeff Longbine
Insurance
Emporia



Robert Olson
Federal and State Affairs
Olathe



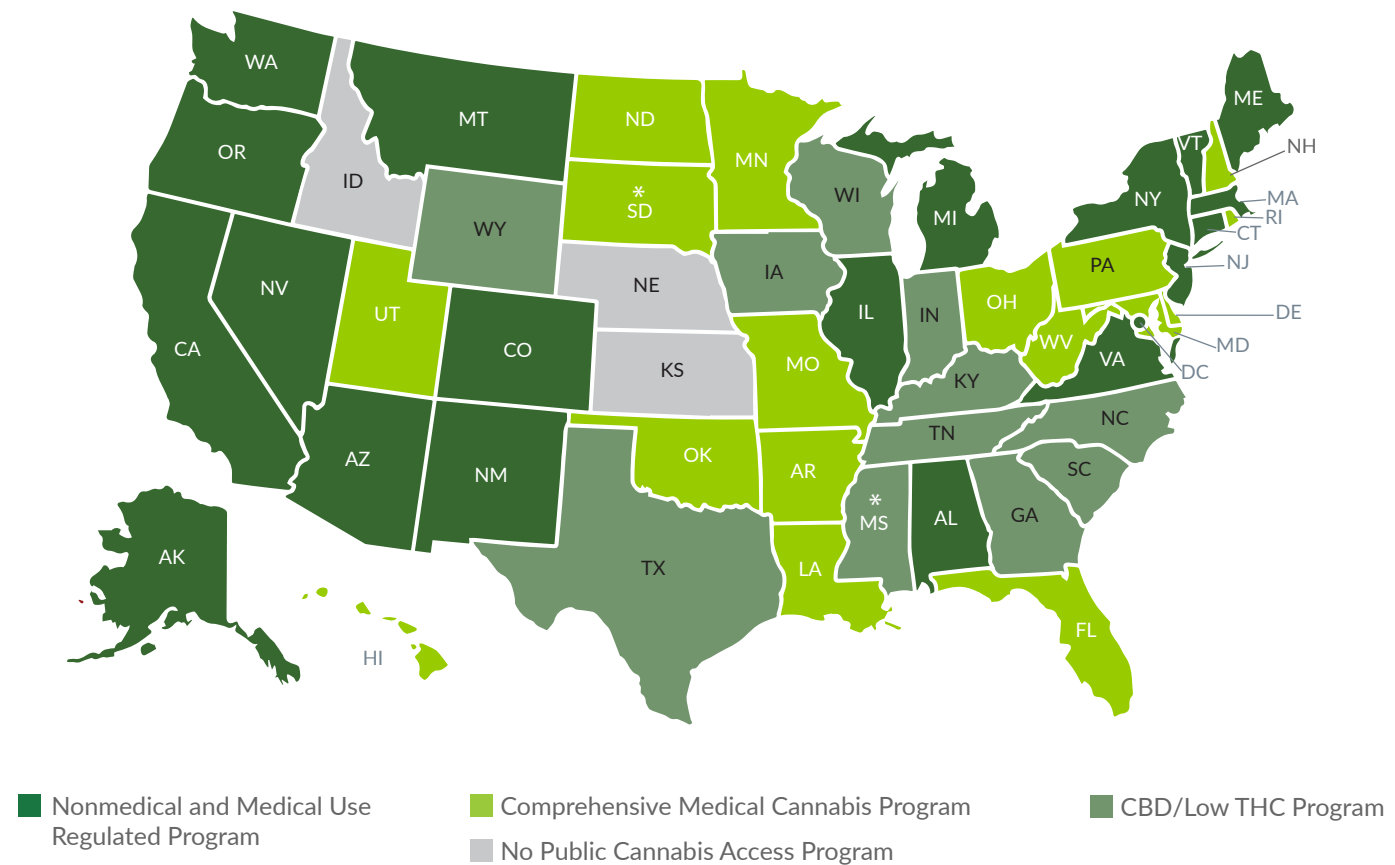
Richard Hilderbrand
Public Health & Welfare
Galena

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Figure 4. Status of State Marijuana Legalization Decisions as of December 3, 2021



the comprehensive medical marijuana laws in other states are available on our website at <https://www.khi.org/policy/article/21-45>.

Tobacco Products/ Electronic Cigarettes

Data released on September 30, 2021, by the U.S. Food and Drug Administration (FDA) and the U.S. Centers for Disease Control and Prevention show that youth e-cigarette use, specifically among middle and high school students, continues to be a serious public health concern. This latest data may prompt legislators to take another look at two bills introduced during the 2021 session — HB 2061 and HB 2340 — which address various aspects of the sale and use of electronic cigarettes, including increasing the minimum age for the purchase or possession of cigarettes and other tobacco products, including vaping devices.

Since the FDA began requiring e-cigarette manufacturers to apply for premarket review of their products in 2020, the agency has blocked the sale of more than 55,000 flavored e-cigarette products, citing their “public health threat to youth,” but also

recently authorized the sale of the Vuse electronic cigarette device and tobacco-flavored cartridges marketed by R.J. Reynolds. In addition to the provisions in the 2021 bills, the Legislature also could consider other policies to curb youth use of e-cigarettes, including the levy of an excise tax on e-cigarettes based on nicotine content, increasing enforcement efforts related to the sale of e-cigarettes to minors, and prohibiting e-cigarette advertising that targets youth.

Scope of Practice and Licensing

In 2022, legislators will likely once again be asked to consider proposals to modify licensure and scope of practice for certain health care providers. During the 2021 session, four bills related to scope of practice requirements for advanced practice registered nurses without a supervising physician (SB 174 and HB 2256); expansion of the scope of practice for pharmacists (SB 200); and the licensure of dental therapists (SB 129) received hearings but failed to receive a vote. All four bills remain active for 2022.

Telehealth

During the COVID-19 pandemic, the use of telemedicine or telehealth services increased significantly and has proved to be an immediate way to increase access to various types of care across the state. While the largest group of Medicaid and private telehealth claims during the pandemic have been related to behavioral health care, telehealth also has been an important tool for outpatient primary care and specialty services. During the 2021 session, three bills related to telehealth were passed and signed by Governor Laura Kelly. However, the provisions of one of the bills — SB 283, which continues the state response to the COVID-19 pandemic and allows out-of-state physicians with a temporary emergency license from the Kansas State Board of Healing Arts to treat patients located in Kansas — are set to expire on March 31, 2022. With the successful increased use of telehealth services for a variety of health care services, legislators may want to continue allowing out-of-state physicians to treat Kansans under the rules provided in SB 283.

The Legislature also may be interested in taking another look at SB 248, which would make a significant number of changes to the Kansas Telemedicine Act, including updating definitions and adding new requirements related to the coordination of care by telemedicine providers with a patient's Kansas-based primary care provider or medical home.

Child Welfare

For several years, lawmakers have focused on addressing problems with the child welfare system in Kansas. During the 2022 session, legislators likely will consider recommendations for changes to the system from members of the Joint Committee on Child Welfare Oversight, which was created in 2021. Following creation of the Special Committee on Foster Care Oversight in 2020 by the Legislative Coordinating Council, lawmakers continued their focus on child welfare in 2021. They passed HB 2158, which established the bipartisan Joint Committee and charged it with continuing the efforts of the Special Committee to review and make recommendations on several issues throughout the system, including changing current laws, rules and regulations, and policies addressing the safety

and well-being of children in the state system. The Joint Committee met four times during October and November and will be submitting its first report to the Legislature at the beginning of the 2022 session.

Legislators also may take another look at passing legislation to establish the Office of the Child Advocate within the Office of the Attorney General. Four bills were introduced during the 2021 session that included provisions creating an Office of the Child Advocate and one bill, S. Sub. for HB 2153, was passed by the Senate at the end of March but did not receive a vote in the House. On October 4, 2021, Gov. Kelly issued Executive Order (EO) 21-28, which established the Division of the Child Advocate within the Department of Administration. During a meeting of the Joint Committee on November 5, 2021, Sen. Richard Hilderbrand, chair of the Joint Committee, suggested that the EO should be repealed so that legislators could come up with a consensus bill to be passed in 2022. Unlike legislation, executive orders can be repealed, canceled or revoked by a governor.

Private Health Insurance Regulation

During the 2021 session, several bills regulating the business of health insurance were introduced but failed to pass out of committee. These bills, which are still active for consideration in 2022, would create new rules or requirements for insurers related to the use of step therapy protocols, mandate coverage for certain benefits in the State Employees Health Plan, including tobacco cessation treatment, and establish requirements for how costs would be shared between patients and insurers.

Legislators may also once again consider introducing legislation related to the definition of short-term, limit duration insurance (STLDI), a type of insurance that some consumers view as a less expensive alternative to ACA-compliant health plans. After the Trump administration issued a Final Rule in 2018 that allowed STLDI to cover longer periods of time and be renewed by consumers, bills have been introduced each year beginning in 2019 to amend Kansas law to conform to the new definition established by federal law. Legislators passed a bill during at the end of the 2021 session, but it was vetoed by Gov. Kelly and an effort to override the veto failed in the House.

Legislation focused on the operation of pharmacy benefit managers (PBMs) may also be revisited in 2022. PBMs are companies that negotiate prescription drug prices with drug manufacturers and pharmacies and manage prescription drug benefits on behalf of health insurers, large employers, and other payers. During the first meeting of the Special Committee on Federal 340B Drug Program on October 20, 2021, members heard testimony from pharmacists, drug manufacturers, safety net clinics, and hospitals who requested that legislators consider legislation to prohibit certain practices by PBMs related to the

federal 340B program. Two bills introduced during the 2021 session, HB 2260 and SB 128 (companion bill), which would have prohibited PBMs from engaging in disparate treatment of certain pharmacies and pharmaceutical services providers participating in the federal 340B drug program, failed to receive a hearing.

COVID-19 Mandates

On November 22, 2021, lawmakers passed Special Session HB 2001, which requires employers who impose COVID-19 vaccine requirements

House Leadership

86 Republicans, 39 Democrats
Majority - Republicans

M A J O R I T Y



Ron Ryckman
Speaker of the House
Olathe



Blaine Finch
Speaker Pro Tem
Ottawa



Dan Hawkins
Majority Leader
Wichita



Les Mason
Asst. Majority Leader
McPherson



Blake Carpenter
Whip
Derby



Ken Rahjes
Caucus Chair
Agra

M I N O R I T Y



Tom Sawyer
Minority Leader
Wichita



Jason Probst
Asst. Minority Leader
Hutchinson



Stephanie Clayton
Whip
Overland Park



Barbara Ballard
Caucus Chair
Lawrence



Brandon Woodard
Agenda Chair
Lenexa



Rui Xu
Policy Chair
Westwood

C H A I R S



Troy Waymaster
Appropriations
Bunker Hill



Susan Concannon
Children and Seniors
Beloit



John Barker
Federal and State
Abilene



Brenda Landwehr
Health and Human Services
Wichita

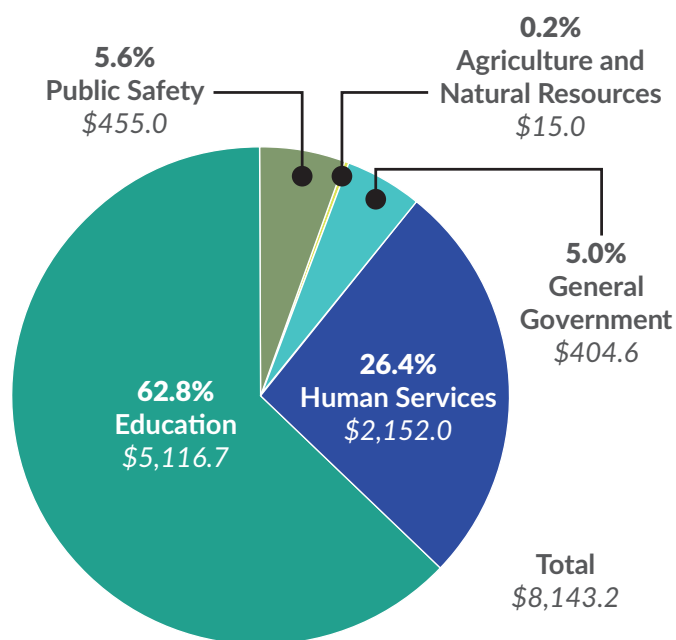


Steven Johnson
Insurance and Pensions
Assaria



Will Carpenter
Social Services Budget
El Dorado

Figure 5. Fiscal Year 2022 Approved Expenditures From the State General Fund (in Millions)



Note: Includes expenditures authorized during the 2021 legislative session. Total may not sum because of rounding.
Source: Fiscal Year 2022 Comparison Report, Kansas Division of the Budget.

to allow medical and religious exemptions; authorizes employees to file complaints with the Secretary of Labor for violations of the law; authorizes district courts to impose civil penalties; and allows employees who are discharged or suspended in violation of the law or decline to work if required to comply with a COVID-19 vaccine requirement to be eligible for unemployment benefits. During debate of the bill, several amendments were offered but not included in the final bill. The 2022 legislative session could include the introduction and consideration of bills to address the issues raised in those unsuccessful amendments, including protection for employers from paying more into the state unemployment trust fund if there is a spike in jobless claims; prohibiting private employers from requiring employees to be vaccinated; prohibiting any form of “vaccination

passport” indicating whether an individual was or was not vaccinated; and adding vaccination status to the list of prohibited forms of employment discrimination.

Food Taxes

Legislators will likely be considering one or more bills to eliminate or reduce the state sale tax on food, which at 6.5 percent is the second highest in the country. On November 8, 2021, Gov. Kelly announced she wants a bill introduced early in the 2022 session to eliminate the tax and then quickly passed so it can go into effect on July 1, 2022. Three days earlier, Attorney General Derek Schmidt, who announced on March 9, 2021, that he will be running for governor in 2022, asked Senate President Ty Masterson and House Speaker Ron Ryckman to introduce a bill to eliminate or “significantly reduce” the sales tax on groceries. Two bills that were introduced during the 2021 session, SB 296 and HB 2091, failed to receive a vote but are available for legislators to consider in 2022.

Budget

On November 10, 2021, the Division of Budget released a memo regarding the State General Fund (SGF) Revenue Estimate for Fiscal Year (FY) 2022 and FY 2023, which showed a revised estimate of \$8.870 billion for FY 2022, an increase of \$1.308 billion above the adjusted June 2021 estimate, and an initial estimate of \$9.048 billion for FY 2023. Earlier in November, human services caseloads estimates showed a reduction of \$173.2 million in SGF for FY 2022 compared to the FY 2022 approved budget. The estimate for FY 2023, meanwhile, was an increase of \$170 million in SGF over the revised FY 2022 estimate, largely attributable to the end of a temporary 6.2-percentage point increase in the federal matching rate related to the COVID-19 pandemic response, which is anticipated to end before the beginning of FY 2023.

ABOUT THE ISSUE BRIEF

This brief is based on work done by Linda J. Sheppard, J.D., Wendy Dang, M.P.H., C.P.H., and Hina B. Shah, M.P.H. It is available online at khi.org/policy/article/22-01.

KANSAS HEALTH INSTITUTE

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