

2021 KANSAS LEGISLATIVE PREVIEW

Budget and COVID-19 Will Be Priorities When Legislators Return

Introduction

The 2021 Kansas legislative session will begin on Monday, January 11. Because 2021 is the first year in a legislative biennium, or two-year cycle, none of the more than 100 unfinished health-related bills from last session remain on the calendar.

As a result of the 2020 election cycle, there will be 28 new House members and 7 new senators in 2021. Republicans continue to hold majorities in both chambers with 29 Republicans and 11 Democrats in the Senate (the same as 2020) and 86 Republicans and 39 Democrats in the House (84 and 41 in 2020, respectively).

Medicaid expansion could be on the table early in the session, as supporters move the discussion forward. Other health-related issues that may be considered in 2021 include medical marijuana, improvements in the behavioral health system and also

the child welfare system, options for private health insurance coverage, and licensure/scope of practice for some types of health care providers.

Overshadowing it all will be the response to the COVID-19 pandemic, including the impact on health, the state budget, the economy and jobs. Pandemic-related issues, such as statewide and local authority for responding to public health emergencies, will receive a lot of attention in 2021.

The Legislature also will start the process of redistricting, which is required under the U.S. Constitution, the Kansas Constitution, and federal and state law to occur every decade based on data from the federal Census. The Kansas Constitution requires redistricting to be completed in the second year after the federal Census. Official Census data will be provided to all states by April 1, 2021. As in previous rounds of redistricting, the Legislative Coordinating Council (LCC) likely

Figure 1. 2021 Kansas Legislative Makeup

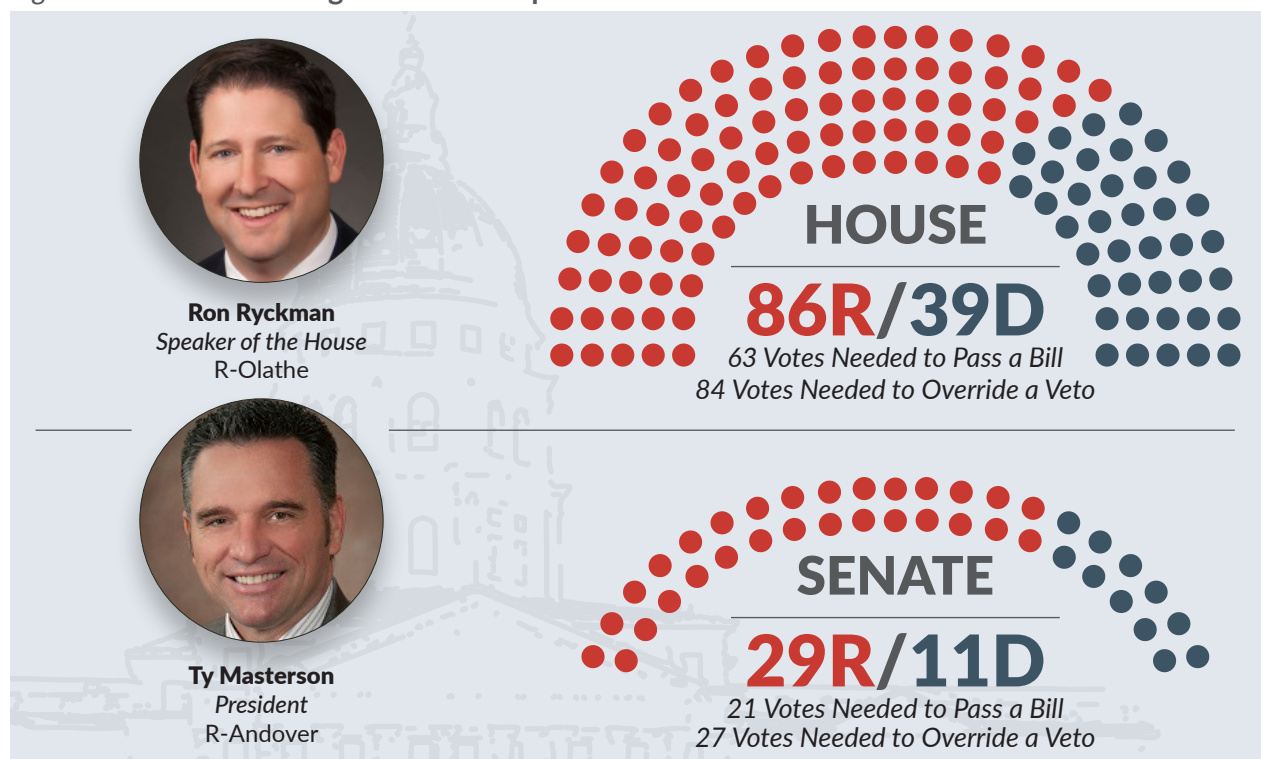
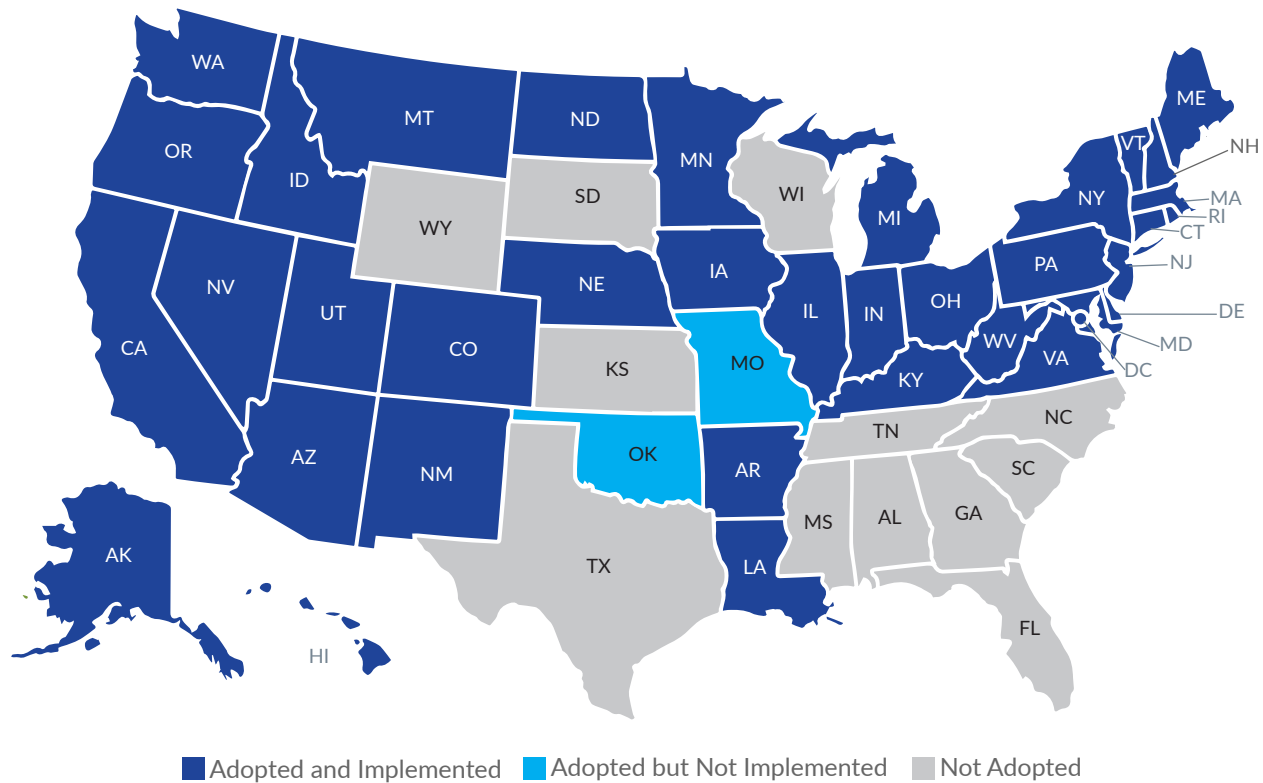


Figure 2. Status of State Medicaid Expansion



Source: Adapted by KHI from Kaiser Family Foundation <https://bit.ly/2VE3M5t>. Accessed December 4, 2020

will appoint a small group of legislators, historically called the Redistricting Advisory Committee, to work with the Kansas Legislative Research Department to conduct initial planning and make initial recommendations. Their work typically involves establishing rules and guidelines for redistricting, preparing for public meetings during the interim session and creating maps.

Medicaid Expansion

On August 5, 2020, Missouri became the 39th state to expand Medicaid (Figure 2), and within hours Gov. Laura Kelly held a press conference urging Kansas lawmakers to follow suit. She also appealed to Kansas voters to consider the issue when they went to the polls in November. As COVID-19 continues to impact the health of Kansans and the economy of the state, Medicaid expansion likely will continue to be a top priority for the Governor and pro-expansion legislators.

Expansion also was discussed by working group members of the Special Committee on Kansas Mental Health Modernization and Reform in meetings during the fall of 2020. The working group decided to designate Medicaid

expansion as a “high priority discussion item” for consideration by the full Special Committee.

With Republicans increasing their majority in the House and maintaining their majority in the Senate, it is unclear how the results of the election will affect the Medicaid expansion debate in 2021, even though many legislators made it an important part of their election platforms.

KanCare

As with many other programs in the state, multiple changes were made to KanCare in response to the pandemic which may have implications for the 2021 session. There is now more flexibility in some program areas, such as service delivery via telehealth, provider licensing, prescription refills, and provision of home and community-based services (HCBS). While many of these changes were intended to be temporary — and will expire when the federal COVID-19 public health emergency ends — others could continue as the state weighs the impact of longer-term policy changes.

Annual reviews for KanCare member eligibility also were impacted by the pandemic. Because the state accepted the enhanced federal match funds

included in the Families First Coronavirus Response Act, no KanCare member can be removed from the program during the pandemic unless they relocate outside the state or voluntarily leave the program.

Many issues discussed during the 2020 session are likely to reemerge in the 2021 session, including an increase in the protected income limit (PIL) that was included for the second year as a provision in the 2020 budget. The provision increased the PIL for any person receiving home and community-based services from \$747 per month to \$1,177 per month, which is 150 percent of Supplemental Security Income (SSI). Following the 2020 session, the Kansas Department of Health and Environment (KDHE) has been working to amend existing regulations around PIL to align with the budget provision. Legislators likely will consider again in 2021 whether to make this change permanent.

Other issues around reimbursement also may be considered, including a proposal that was considered during the 2020 session to increase reimbursement rates for Intellectual/Developmental Disability (I/DD) waiver services. Additionally, a detailed review of costs and reimbursement for

behavioral health services in Kansas is due to the Legislature in January from KDHE and may raise additional issues for legislators to consider.

KanCare is under new leadership and is working with a new contractor. In July 2020, Sarah Fertig, former Medicaid Inspector General, became the new Medicaid Director. On January 1, new contractor Conduent replaced Maximus and is processing family medical applications, which are primarily for children, low-income parents and pregnant women. KDHE will continue to process applications for some other KanCare programs, such as home and community-based services.

Behavioral Health

Following the conclusion of the 2020 session, the Legislative Coordinating Council approved the creation of the Special Committee on Kansas Mental Health Modernization and Reform. Leveraging the work of several groups over the last three years, the Special Committee, chaired by Rep. Brenda Landwehr, was charged with analyzing the behavioral health system and developing a strategic framework for how Kansas should modernize it.

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



Gene Suellentrop
Majority Leader
Wichita



Larry Alley
Asst. Majority
Leader
Winfield



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

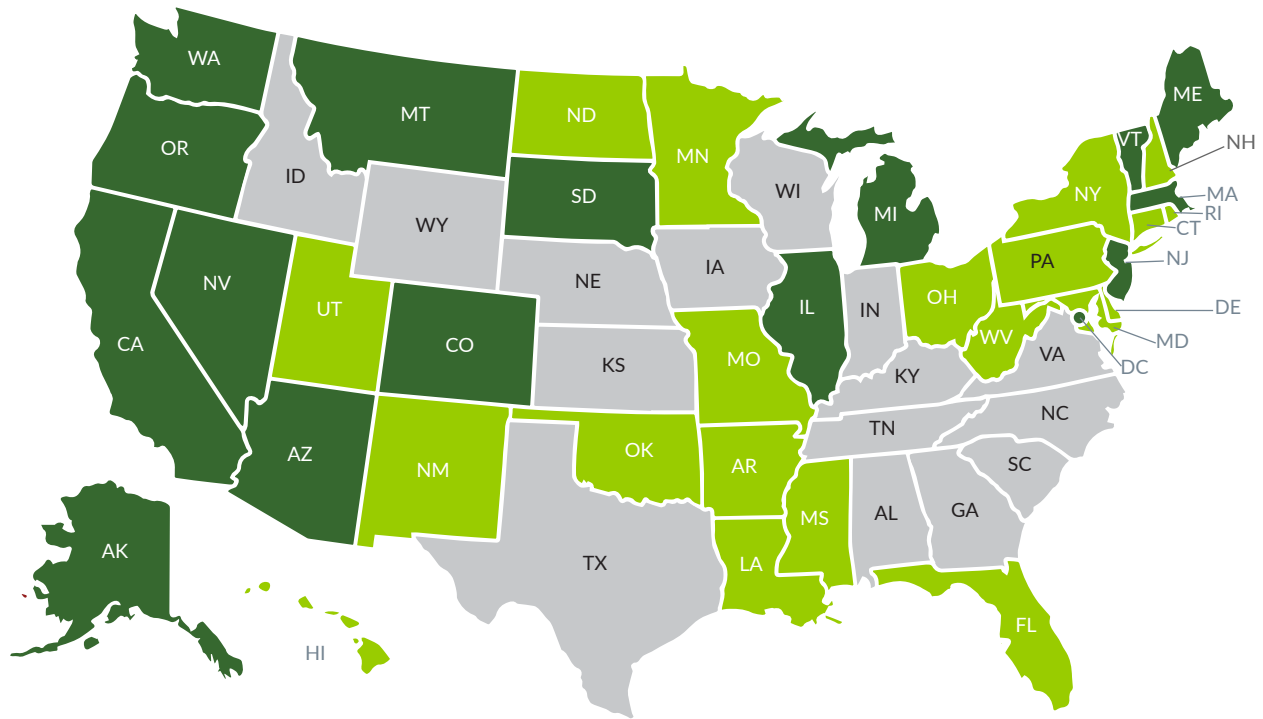


Larry Alley
Federal
and State
Affairs
Winfield



Richard Hilderbrand
Public Health &
Welfare
Galena

Figure 3. Status of State Marijuana Legalization Decisions



■ Legalized for Medical and Adult Recreational Use ■ Legalized for Medical Use ■ No Broad Laws Legalizing Marijuana

Source: Adapted by KHI from <https://bit.ly/2JPmWCR>. Accessed December 4, 2020.

The Special Committee met for six days, starting in August 2020, and convened three working groups facilitated by the Kansas Health Institute (KHI) to review recommendations from past reports and establish a set of strategic priorities related to the following topic areas: workforce, funding and accessibility, community engagement, prevention and education, treatment and recovery, special populations, data systems, interaction with the legal system and law enforcement, system transformation, and telehealth/telemedicine.

The Special Committee completed its final report, which incorporates the reports of the three working groups, on December 11, 2020. In the final report, the Committee adopted 4-5 high-priority recommendations for each topic area, and as a committee recommended: (1) leveraging opportunities for coordination and collaboration among the numerous groups focused on issues that impact the state's behavioral health system; (2) using data as a decision-making tool; (3) distributing the Committee's final report to at least nine standing and joint committees of the Legislature; and (4) the formation of a formal standing or joint committee to consider and continue to address the longer-term goals and

strategies incorporated in both the Special Committee and the working groups' reports.

Medical Marijuana

As of November 2020, 36 states and the District of Columbia have approved comprehensive, publicly available medical marijuana/cannabis program laws, and 15 of these states and the District of Columbia also have legalized marijuana for adult recreational use (Figure 3). While bills related to medical marijuana have been introduced in the Kansas Legislature each session for several years, the Legislature has not approved its use. Gov. Kelly has expressed support for legalizing medical marijuana, if it is well-regulated. While research on the health impacts of legalized medical marijuana continues to evolve, the 2021 Legislature may again consider bills related to this issue.

Electronic Cigarettes

Educators and public health officials continue to be concerned about the rapidly changing e-cigarette product landscape and the rising rates of e-cigarette use — especially vaping of nicotine or marijuana among young people. Now, some

evidence suggests that e-cigarette use and dual use of e-cigarettes and traditional cigarettes may be an underlying risk factor for COVID-19. During the 2021 session, Kansas lawmakers may have an opportunity to consider another comprehensive bill that could include amending Kansas law to conform with the federal Tobacco 21 (T21) law, adding the use of electronic cigarettes to the Kansas Indoor Clean Air Act and prohibiting cigarette vending machines.

While banning flavored vaping products continues to be highly debated, the Legislature also might consider addressing the regulatory gap in the federal flavor ban, which does not apply to disposable products (e.g., Puff Bar). They also could consider restricting online sales and shipments of e-cigarettes, as well as regulating on-demand or delivery services, which sell e-cigarettes through internet apps and are unregulated at the federal level.

Scope of Practice and Licensing

Scope of practice issues have been debated in the Kansas Legislature for many years. During the 2020 session, the House Health and Human Services Committee held a roundtable discussion on providing “full practice authority” to advanced practice registered nurses (APRN), which would allow them to practice and prescribe without being supervised by or having a collaborative practice agreement with a physician. That roundtable discussion did not result in consideration of a bill during the regular session.

However, APRN full practice authority was granted in executive orders issued by Gov. Kelly in response to the pandemic. Then, during the 2020 Special Session, legislators included provisions in House Bill (HB) 2016 that extended APRN full practice authority and temporarily waived supervision requirements for additional providers, including physician assistants (PA), registered nurses (RN) and licensed practical nurses (LPN) to respond to the COVID-19 pandemic. Those provisions will sunset on January 26, 2021.

Other licensure changes were temporarily enacted in Special Session HB 2016, including some related to telehealth (see next section) and some that allowed registered nurses and licensed practical nurses with inactive, exempt or lapsed (within the past five years) licenses to provide services. The temporary grants of expanded authority and licensure included in Special

Session HB 2016 — including the allowance of APRN full practice authority — likely will add a new dynamic to future discussions on this issue.

Telehealth

While the Kansas Legislature did not consider telehealth legislation during the 2020 regular session, beginning in March, Gov. Kelly issued multiple executive orders to increase access to telehealth services during COVID-19. Provisions from these orders that were included in Special Session HB 2016 allowed physicians under quarantine and out-of-state physicians without a Kansas license to practice telemedicine. The bill also directed the Kansas State Board of Healing Arts to not enforce statutes, rules or regulations that require in-person examinations to prescribe medications, including controlled substances. Because many of the provisions codified in HB 2016 are set to expire on January 26, 2021, legislators have expressed interest in revisiting telehealth issues during the 2021 session.

Though not enacted in HB 2016, lawmakers also may consider legislation extending changes made during COVID-19 by the KanCare program and other insurers that increase access to telehealth by mandating payment parity and expanding the services allowed under telehealth.

Child Welfare

Over the last few years, several task forces and working groups have made recommendations to improve the lives of children in the foster care program. From August through October 2020, the Special Committee for Foster Care Oversight, chaired by Rep. Susan Concannon, met six times to develop recommendations for program improvement and oversight to present to the 2021 Legislature. Kansas lawmakers again may consider creating an independent agency, like Missouri and Nebraska have done, to monitor child welfare services and complaints. Senate Bill (SB) 2187, which would have established the Office of the Child Advocate for Children’s Protection and Services, was introduced in 2019, received a hearing in 2020, but ultimately died in committee. The Special Committee will continue to meet in the coming months to discuss other recommendations around funding, evidence-based prevention services, and better collaboration with health care and schools.

Private Health Insurance Regulation

President-Elect Joe Biden is expected to protect and build on the Affordable Care Act (ACA) by creating a public health insurance option. He also supports federal legislation protecting consumers from surprise medical bills (see next section) and allowing private health insurance plans to access “reasonable” pricing for prescription drugs that will be developed for the Medicare and public option programs. Kansas lawmakers likely will be paying close attention to actions taken by President-Elect Biden that impact private health insurance, which is regulated by the state. They also may be presented with opportunities to respond to changes in the

ACA that impact coverage options, benefits and consumer protections available to Kansans.

Surprise Medical Bills

As of November 2020, 32 states have enacted laws to protect consumers from surprise medical bills and balance billing that arise when consumers with private health insurance unknowingly receive care from an out-of-network provider resulting in higher-than-expected out-of-pocket costs.

Although there has been wide support for enacting legislation to protect consumers from surprise medical bills, both Congress and states have struggled to balance the interests of insurance companies and providers when determining the amount an out-

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
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Insurance and Pensions
Assaria



Will Carpenter
Social Services Budget
El Dorado

of-network provider will be paid by the insurer for providing services to enrollees. During the 2020 legislative session, a comprehensive bill related to surprise medical bills was introduced but failed to receive a hearing. However, on December 11, key House and Senate members of Congress announced a bipartisan agreement in principle on surprise billing legislation, known as the No Surprises Act, and a revised version of that legislation was included in H.R. 133, the Consolidated Appropriations Act, 2021, and signed by President Trump on December 27. Under this new federal law, which goes into effect on January 1, 2022, health plans, including both fully insured and self-funded plans, are required to hold patients harmless from balance billing for all out-of-network air ambulance and emergency services and for out-of-network services provided at in-network facilities.

KHI recently published an issue brief on surprise medical bills, which discussed legislation enacted by other states, past efforts by Congress to enact federal legislation, and actions taken by the Trump administration to prohibit hospitals and other providers who receive grants through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) from sending surprise medical bills to patients treated for COVID-19.

Food Taxes

Since the start of the 2019 session, a dozen bills have been introduced related to the sales tax on food, but only four have received a hearing. HB 2033, which included provisions that would have reduced the sales tax on food beginning July 2020, was passed by the Legislature in 2019 but vetoed by Gov. Kelly because of other tax cuts included in the bill. However, in her veto message, the governor noted that lowering the state sales tax rate on food, which is the second highest in the country at 6.5 percent, is one of her top priorities. Legislators may make another attempt to reduce this tax, which significantly impacts low-income Kansans.

Kansas Emergency Management Act

The Special Committee on Kansas Emergency Management Act (KEMA), chaired by Rep. Fred Patton, was charged with reviewing KEMA, Special Session HB 2016, and oversight and emergency management approaches utilized in other states, and with making recommendations to the Legislature regarding improvements or changes that should be considered in KEMA and other Kansas law. During six meetings held in August and September 2020, the Special

Committee heard from local and national conferees, including representatives of the National Conference of State Legislatures (NCSL), Adjutant General David Weishaar, KDHE Secretary Lee Norman, Commissioner of Education Randy Watson, Attorney General Derek Schmidt, and representatives of the Kansas Association of Counties, the Kansas Chamber of Commerce, the National Federation of Independent Businesses, the Kansas Hospital Association, the Kansas Association of Chiefs of Police, and the Kansas Emergency Management Association.

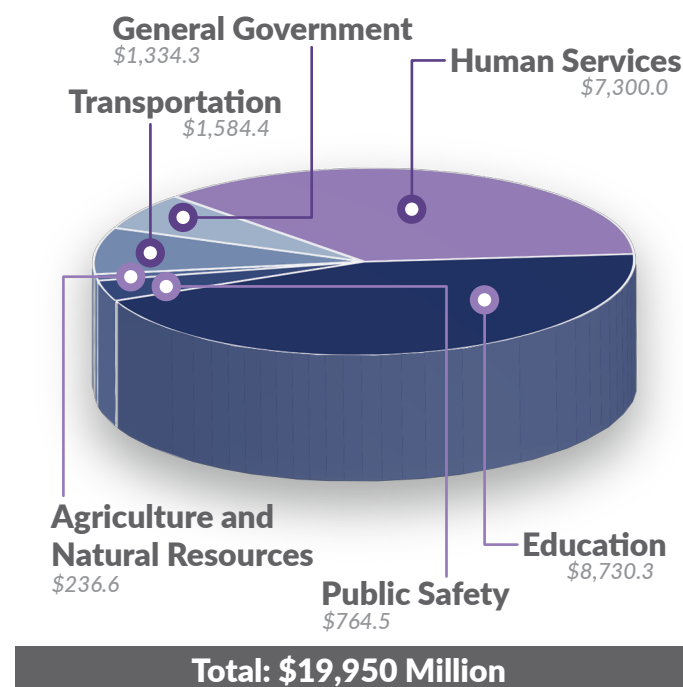
At the Special Committee's final meeting on September 24, members discussed potential recommendations related to a variety of issues, including legislative changes to KEMA, the authority of cities and counties when responding to statewide orders, legislative oversight of the governor's disaster declarations, the closure of businesses and schools, enforcement of statewide orders, and the extension of the COVID-19 Contact Tracing Privacy Act. A final report from the Special Committee is expected to be released soon.

Special Committee on Economic Recovery

The Special Committee on Economic Recovery, chaired by Sen. Julia Lynn, was charged with reviewing state policies and making recommendations to the Legislature related to economic recovery from the impact of COVID-19. During eight meetings held during August through December, Special Committee members heard from conferees about the economic impact of COVID-19 on various state interests, private business sectors and industries. Conferees had many concerns, including tax receipts, the economy of the state, job loss, workforce, the unemployment insurance system, agriculture, banking, real estate, utilities, retail, health care, health and property insurance, mental health facilities, long-term care facilities, tourism, oil and gas production, hospitality, child care and higher education.

At the Special Committee's final meeting on December 8, members discussed potential recommendations, including (1) identifying uniform regulations for state and local government that protect the operation of businesses during a pandemic; (2) evaluation and oversight of the Kansas Unemployment Insurance System; (3) review of existing state rules and regulations to identify those that are overly burdensome for new and existing businesses; (4) use of federal COVID-19 funding to expand broadband internet for Kansans, including rural, urban and K-12 students using remote

Figure 4. FY 2021 Approved Expenditures From All Funding Sources



Note: Dollars in millions. Totals may not add due to rounding. Represents Fiscal Year 2021 approved budget, adjusted for SGF reappropriations and the Governor's July allotments.
Source: Kansas Legislative Research Department.

or virtual options; (5) addressing the high cost of energy in the state that is a deterrent to new businesses and the expansion of existing businesses; (6) workforce development, especially in the aviation industry and other skilled labor careers; (7) creation of a low interest loan program to encourage investment in the state, especially in rural communities; and (8) changes in the state's income, property and sales tax laws to incentivize economic development and investment in the state.

Budget

COVID-19 and the response to the pandemic has had a significant impact on state budgets. In Kansas, lower tax receipts prompted Gov. Kelly to implement an allotment plan in July 2020 to eliminate what was then projected to be a nearly \$700 million budget shortfall in fiscal year (FY) 2021. On November 6,

2020, the Division of Budget released a memo regarding the State General Fund Revenue Estimate for FY 2021 and FY 2022, which showed revenues are now expected to exceed the revised estimates from the spring, leading to a positive ending balance projection for FY 2021 of \$363.5 million. However, the FY 2022 projection is for a deficit of \$152.5 million that the Legislature will need to address.

The federal government provided financial assistance to states for the public health response, additional Medicaid funds, a Coronavirus Relief Fund (CRF) for state and local governments for costs related to COVID-19 not otherwise accounted for (but limited to calendar year 2020), education stabilization funds, mass transit funds, Community Development Block Grants, Child Care Development Block Grants, and enhanced unemployment insurance payments.

Gov. Kelly's Strengthening People and Revitalizing Kansas (SPARK) task force created a plan for how Kansas would spend the \$1.034 billion in CRF dollars it received from the federal CARES Act and released an "Investment Dashboard" which shows the categories for "planned investment" and the amounts transferred as of December 8, 2020, totaling \$998 million. Federal lawmakers recently passed a second COVID-19 relief package.

Figure 5. Kansas Coronavirus Relief Fund Priorities

SPARK Category	Planned Investment
Public Health	\$208.80
Essential Needs	\$160.50
Business Resiliency and Workforce	\$137.90
Education	\$66.40
Connectivity	\$60.00
County Allocation	\$400.00

Total: \$1,034 Million

Note: Dollars in millions. Totals may not add due to rounding. All funds had not been transferred as of date of publication.
Source: <https://covid.ks.gov/covid-data/>, accessed December 11, 2020.

ABOUT THE ISSUE BRIEF

This brief is based on work done by Linda J. Sheppard, J.D., Peter F.H. Barstad, Hina B. Shah, M.P.H., and Sydney McClendon. It is available online at khi.org/policy/article/21-01.

KANSAS HEALTH INSTITUTE

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