KANSAS HEALTH INSTITUTE

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ISSUE BRIEF

JANUARY 2016

2016 KANSAS LEGISLATIVE PREVIEW

Anticipating key health policy themes

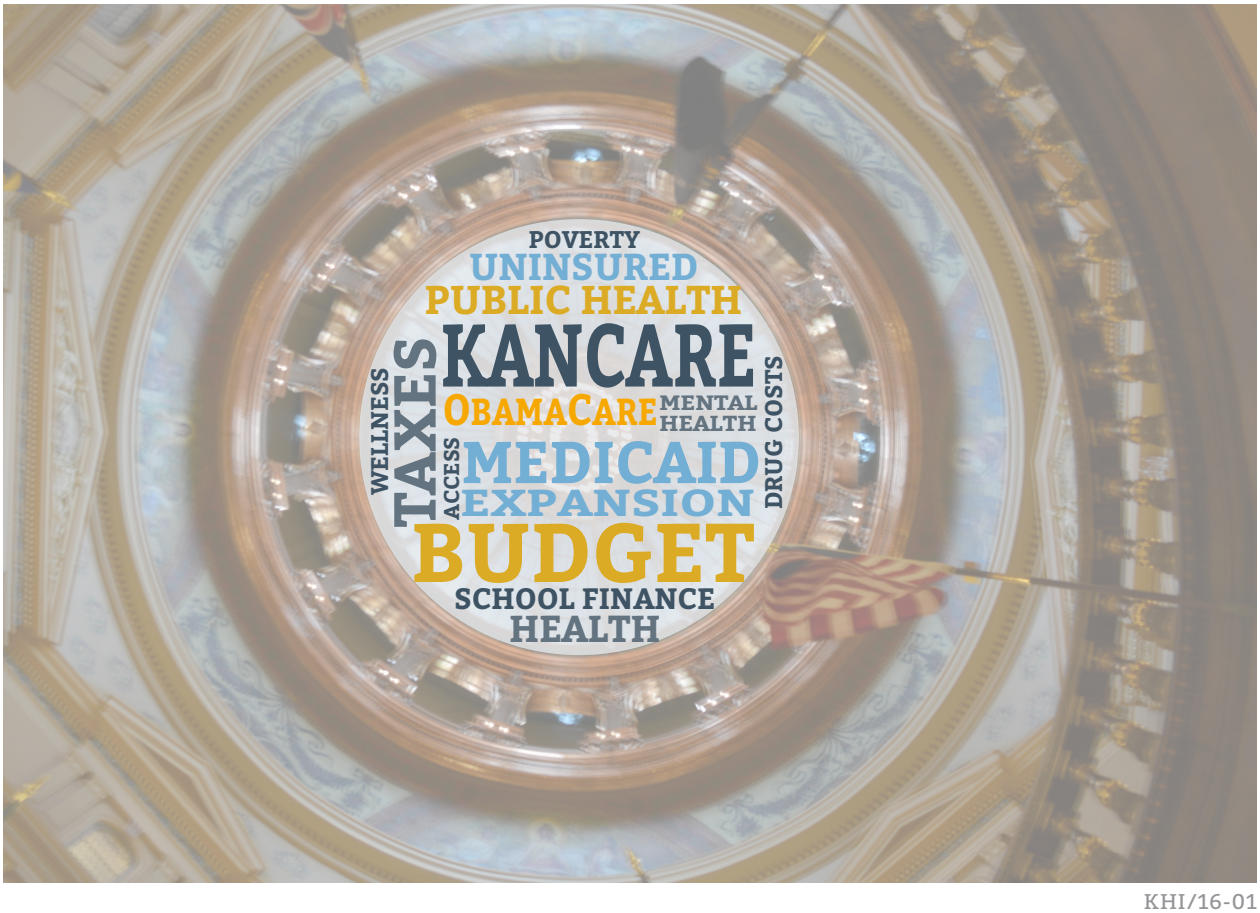
Introduction

During the 2015 session, Kansas legislators introduced and debated a number of issues related to health policy. Also in 2015, the Kansas Health Institute (KHI) for the first time published a brief summarizing the health policy issues considered during the session. This new brief continues that work by previewing health-related issues that may arise during the upcoming 2016 session.

Health policy advocates and health care providers are likely to once again ask legislators to consider Medicaid expansion. Legislators also will be assessing the operation and ongoing implementation of KanCare, the Medicaid managed care program in Kansas.

The Kansas Legislature operates on a two-year cycle; bills and resolutions introduced during the first year of the cycle (odd-numbered years) remain on the docket during the second year, which is also an election year. Consequently, bills and resolutions introduced but not passed during the 2015 session are still in play for the 2016 session. Health-related bills debated during 2015—including cannabis (marijuana) oil, liquor sales in grocery and convenience stores, and scope of authority and practice for a number of health care professionals—may again be considered in 2016. This brief also introduces some new topics that legislators may consider.

A presentation of the approved state budget and health-related spending for fiscal year 2016 is included here, because budget issues will likely occupy much of the legislature's time and attention as adjustments are made to accommodate for lower than expected



revenue collections. These debates may have a direct impact on the number and type of health policy issues legislators choose to address in 2016.

KanCare

Recent analysis shows that KanCare enrollment rose by 6.0 percent between 2013 and 2014, even though Kansas did not expand Medicaid as allowed under the Affordable Care Act (ACA). The initial three-year term of state contracts for KanCare managed care organizations (MCOs) ended December 31, 2015. Now, the state has the option to renew the contracts for up to two one-year periods. Therefore, legislators will likely be seeking more information and data regarding the outcomes and success of KanCare as they continue to review the program and make changes necessary for the future.

Under Senate Substitute for HB 2042, which passed in 2015, the Senate president will appoint two new members to the KanCare oversight committee, which is officially named the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight. At least one of the new members must come from the Senate Ways and Means Committee. Under the same bill, the Speaker of the House will appoint a member to the oversight committee that must come from the House Appropriations Committee.

Under Senate Substitute for HB 2149, which also passed in 2015, the Medicaid Drug Utilization Review Board will enact guidelines on medications used to treat mental illness, including prior authorization. The Kansas Department of Health and Environment (KDHE) has stated that prior authorization requirements will likely save $8 million in fiscal year 2016. The law also established the Mental Health Medication Advisory Committee, which is charged with developing and recommending guidelines to the Review Board. Mental health advocates have expressed concerns that the requirements will increase administrative costs and delay medications for patients. Those advocates will have the opportunity to respond when prior authorization guidelines are submitted to the Review Board for consideration. The Advisory Committee has met twice since the end of the 2015 session and its recommendations may be considered at the Review Board's next meeting in January 2016. Depending on the number and type of prior authorization guidelines recommended by the Advisory Committee, mental health advocates may ask legislators to review the guidelines or reconsider the Review Board's authority to enact those requirements without legislative action.

Medicaid Expansion

As many as 150,000 additional Kansans might be immediately eligible for coverage if the state expands Medicaid up to 138 percent of the federal poverty level, as allowed by the ACA.

Since the end of the 2015 session, a number of events have raised the profile of the Medicaid expansion debate. The Kansas Hospital Association, for example, has signaled its intent to introduce a detailed plan for expansion and has released the results of a study showing that additional federal Medicaid dollars flowing into the state would boost the Kansas economy. The closing of Mercy Hospital in Southeast Kansas—which has been attributed, in part, to not expanding Medicaid—has raised concerns about the possibility of additional rural hospital closings. A KanCare forum held in Wichita recently provided an opportunity for legislators and health care advocates to hear representatives from Indiana speak about the alternative expansion plan implemented by their Republican governor and legislature.

Recent polls show that a majority of Kansans support some form of expansion. The Wichita Metro Chamber

The newly formed Medicaid Drug Utilization Review Board will enact guidelines on medications used to treat mental illness, including prior authorization. Mental health advocates may ask legislators to review the guidelines before they are enacted.

Medicaid Drug Utilization Review Board

of Commerce—citing costs incurred by the business community to cover the losses experienced by hospitals providing care to uninsured adults—voted to add expansion to its list of priorities for 2016.

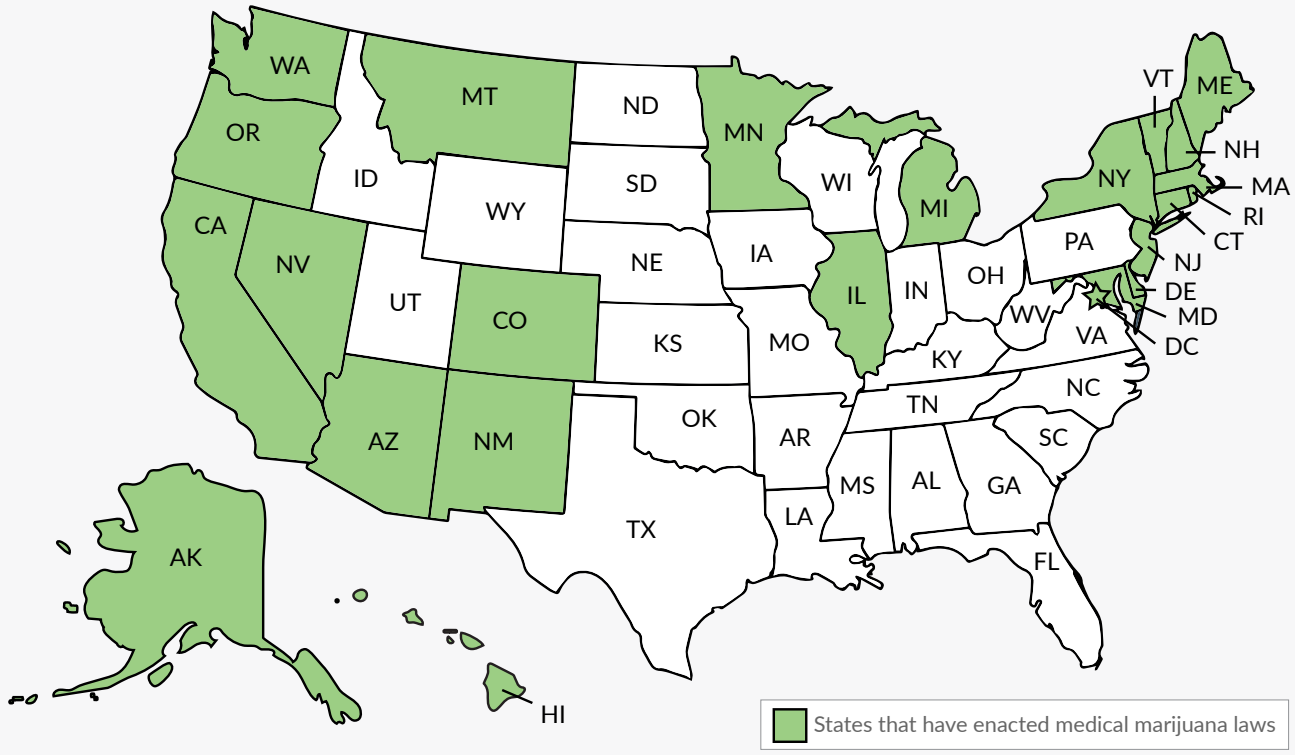
Despite all the attention, the state's current budget challenges are likely to be a major hurdle for expansion. Opponents are likely to continue to object to the state's assumption of a portion of the costs for the newly eligible population beginning in 2017, when the federal government's portion steps down from 100 percent to 95 percent for newly eligible individuals, and continues to phase down to 90 percent by 2020, where it will remain.

Medicaid expansion continues to be a controversial issue among Kansas legislators. In November 2015, House Speaker Ray Merrick removed three Republicans from the House Health and Human Services Committee due to their support of Medicaid expansion. In addition, Rep. Dan Hawkins, chairman of the House Health and Human Services Committee, has reiterated Governor Sam Brownback's comments about the need to eliminate the waiting lists for home and community-based support services for disabled Kansans before the state considers expansion to cover "able-bodied" individuals who may have other health care options. No disability advocacy groups in the state have expressed support for the need to eliminate the waiting lists as a condition of expansion.

Medical Marijuana

During the 2015 session, the legislature discussed several bills related to legalizing marijuana for medical use, but some were more restrictive in nature. Early in the session, SB 9 and HB 2011 would have legalized medical marijuana with few restrictions on use (e.g., oils and plants allowed). Although these bills received hearings, they did not pass out of committee. The discussion continued over HB 2282, which proposed medical marijuana for limited use. While this bill passed out of committee, the House Committee of the Whole amended HB 2049—which would lower the penalties for drug possession—to include provisions in HB 2282 that would allow the use of low-potency cannabis oil by individuals with persistent seizure disorders. After passing in the House, the amended bill was introduced in the Senate and referred to the Corrections and Juvenile Justice Committee, where it did not receive a hearing. Several legislators have indicated this will be a priority for the 2016 session. Currently, twenty-three states and the District of Columbia allow marijuana for medical use in some way.

Figure 1. **Medical Marijuana Laws in the United States, 2015**



Source: Information compiled by KHI from National Conference of State Legislatures, 2015.

Scope of Authority and Practice

Several bills were introduced during the 2015 session that proposed to change the scope of practice for a number of health care professionals, including advanced practice registered nurses, dental hygienists, massage therapists, podiatrists and mental health technicians. While none of these bills made it out of committee in 2015, it is anticipated that advocates for these professionals will resume their efforts to expand their scope of authority during 2016. It is likely that advanced practice registered nurses and dental hygienists will get the most attention during the upcoming session.

Kansas Right to Try

HB 2004, which was introduced in 2015 in the House Health and Human Services Committee, would give Kansans with terminal illnesses access to drugs that have not yet passed the U.S. Food and Drug Administration (FDA) clinical trials approval process. The bill received a hearing and was passed out of committee for consideration by the Committee of the Whole, but it did not get a vote. A number of legislators continue to support the measure and the bill is eligible for a vote during 2016 under the Kansas two-year legislative cycle.

Liquor Sales in Grocery and Convenience Stores

HB 2200 was introduced in 2015 and would have enacted the county option retailers act, which would allow counties to approve the sale of full-strength beer, wine and liquor in grocery and convenience stores. Advocates have introduced similar bills in each of the last few sessions and it is likely that this issue will be considered once again in 2016.

Affordable Care Act

As implementation of the ACA continues, Kansas legislators may consider introducing bills to make changes in the Kansas insurance market. SB 309, introduced late in the 2015 session, would have assessed a 3.5 percent surcharge on premiums of ACA-compliant health insurance plans in order to offset the cost to state agencies of implementing the ACA.

With the U.S. Supreme Court ruling this past June in the case of King v. Burwell which upheld federal marketplace subsidies, the 2016 session may bring additional ACA-related bills. For example, the legislature might take a look at the ACA's Section 1332 State Innovation Waiver, which allows states to opt out of key elements of the ACA and develop alternative ways to provide coverage beginning in 2017. In order to do so, states are required to pass legislation and then apply to the Secretary of the U.S. Department of Health and Human Services (HHS) for approval of a waiver. HHS released additional guidance on the application and approval process in July 2015 and at least eight states are considering submission of a 1332 waiver application to HHS. In September, Hawaii became the first state to post a draft of its 1332 waiver proposal for public comment. Hawaii's proposal seeks to maintain its 40-year-old employer mandate—which exceeds the employer mandate requirements in the ACA—and to waive the ACA requirements related to the Small Business Health Options Program (SHOP).

Food Sales Tax

Kansas is one of only 14 states that collects sales tax on food, and it has the second highest rate in the nation at 6.5 percent. Though this issue did not

The ACA's Section 1332 State Innovation Waiver allows states to opt out of key elements of the ACA and develop alternative ways to provide coverage beginning in 2017. In order to do so, states are required to pass legislation and then apply to the Secretary of the U.S. Department of Health and Human Services (HHS) for approval of a waiver.

State Alternatives for Health Reform

receive formal hearings during the 2015 session, legislators repeatedly debated proposals to lower the sales tax on groceries during budget debates in the final weeks of the session. Several early versions of HB 2109, the tax policy bill eventually approved by the governor, included provisions to lower food sales tax to 4.95 percent. Some legislators even advocated for complete sales tax exemption on fresh fruits and vegetables. However, the final bill did not include any of these provisions. Some have suggested that lawmakers will lower food sales tax during the 2016 session in anticipation of the next election. Others believe the dire budget situation will make lowering any revenue sources for the state unlikely.

E-Cigarettes

Electronic cigarettes (e-cigarettes) are battery-powered devices used to inhale vapor typically containing flavored nicotine. They have grown in popularity since they entered the U.S. market—recent data suggest that use among American teens tripled between 2013 and 2014. Proponents promote them as a "safe" alternative to traditional cigarettes and suggest they aid in tobacco cessation. Opponents label them as an easy way for youth to develop nicotine addiction.

In 2015, the Kansas Legislature passed Senate Substitute for HB 2109, which taxes e-cigarettes at $.20/mL of fluid, effective July 1, 2016. E-cigarette retailers have spoken out against the legislation, and the policy will likely be debated in the 2016 session, before the law goes into effect.

E-cigarettes are not currently regulated by the FDA, and some states and municipalities have taken various actions to ban or restrict the sale and use of e-cigarettes. The Kansas Indoor Clean Air Act, enacted in 2010, does not include a ban on the use of e-cigarettes in public places as a result of a 2011 Kansas Attorney General opinion stating that the Act's use of the word "cigarette" is not defined to include e-cigarettes.

Transparency and Cost Control of Pharmaceutical Drug Prices

As the cost of prescription drugs—particularly high-cost drugs for chronic conditions such as HIV, hepatitis, mental illness and cancer—continues to rise, both policymakers and patients are concerned about the affordability of these drugs and the pricing set by the pharmaceutical industry. A number of states that are looking for ways to lower health care costs introduced bills in 2015 that would require prescription drug manufacturers to disclose information about their profits and operating costs. In a recent national poll, 76 percent of Americans listed the cost of prescription drugs as their top health care concern. With all the attention being focused on prescription drug costs, this issue may come up in discussions about the overall cost of care provided to individuals in both public and private health insurance plans.

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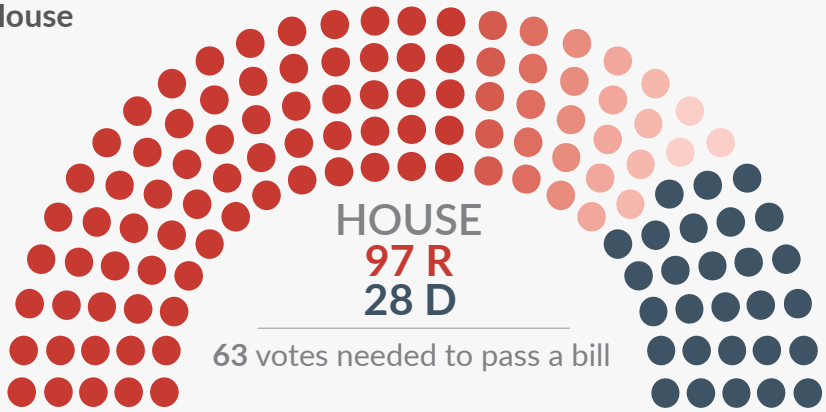
Political Makeup

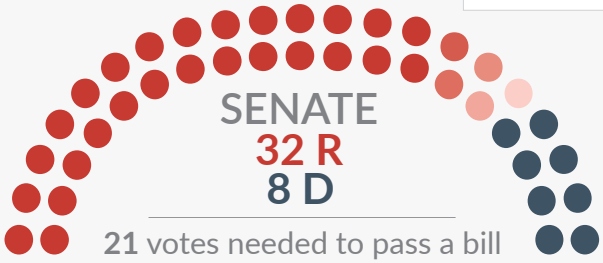
Since the 2014 elections, Republicans have held super majorities in both the Senate and House.

The tables below show committees that are critical to the health community.

Speaker of the House
Ray Merrick
Republican
Stilwell

President of the Senate
Susan Wagle
Republican
Wichita





Senate Financial Institutions and Insurance	
Republican	**Democrat**
Chair: Sen. Jeff Longbine	Ranking Minority Member: Sen. Tom Hawk
Vice Chair: Sen. Elaine Bowers	Sen. Laura Kelly
Sen. Jim Denning	
Sen. Jacob LaTurner	
Sen. Robert Olson	
Sen. Vicki Schmidt	
Sen. Rick Wilborn	

Senate Public Health and Welfare	
Republican	**Democrat**
Chair: Sen. Mary Pilcher-Cook	Ranking Minority Leader: Sen. Laura Kelly
Vice Chair: Sen. Michael O'Donnell	Sen. David Haley
Sen. Elaine Bowers	
Sen. Jim Denning	
Sen. Mitch Holmes	
Sen. Jacob LaTurner	
Sen. Garrett Love	

Source: Information compiled by KHI from kslegislature.org, 2015.

House Financial Institutions and Insurance	
Republican	**Democrat**
Chair: Rep. Scott Schwab	Ranking Minority Member: Rep. Roderick Houston
Vice Chair: Rep. Jim Kelly	Rep. Stan Frownfelter
Rep. Steven Anthimides	Rep. Broderick Henderson
Rep. Tony Barton	Rep. Jarrod Ousley
Rep. Rick Billinger	Rep. Ben Scott
Rep. John Bradford	
Rep. Larry Campbell	
Rep. Pete DeGraaf	
Rep. John Doll	
Rep. Willie Dove	
Rep. Keith Esau	
Rep. Bud Estes	
Rep. Mario Goico	
Rep. Daniel Hawkins	
Rep. Don Hill	
Rep. Dick Jones	
Rep. Kevin Jones	
Rep. Joseph Scapa	

House Health and Human Services	
Republican	**Democrat**
Chair: Rep. Daniel Hawkins	Ranking Minority Member: Rep. Jim Ward
Vice Chair: Rep. Willie Dove	Rep. Broderick Henderson
Rep. Blake Carpenter	Rep. Roderick Houston
Rep. John Edmonds	Rep. John Wilson
Rep. Bud Estes	
Rep. Brett Hildabrand	
Rep. Dick Jones	
Rep. Jim Kelly	
Rep. Les Osterman	
Rep. Randy Powell	
Rep. Scott Schwab	
Rep. Kent Thompson	
Rep. John Whitmer	

House Social Services Budget Committee	
Republican	**Democrat**
Chair: Rep. Will Carpenter	Ranking Minority Member: Rep. Barbara Ballard
Vice Chair: Rep. Peggy Mast	Rep. Nancy Lusk
Rep. Rob Bruchman	
Rep. Stephanie Clayton	
Rep. Linda Gallagher	
Rep. Randy Garber	
Rep. Kristey Williams	

Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight	
Republican	**Democrat**
Chair: Sen. Mary Pilcher-Cook	Ranking Minority Member: Sen. Laura Kelly
Vice Chair: Rep. Daniel Hawkins	Rep. Barbara Ballard
Sen. Jim Denning	Rep. Jim Ward
Sen. Jacob LaTurner	
Sen. Michael O'Donnell	
Rep. Will Carpenter	
Rep. Willie Dove	
Rep. John Edmonds	

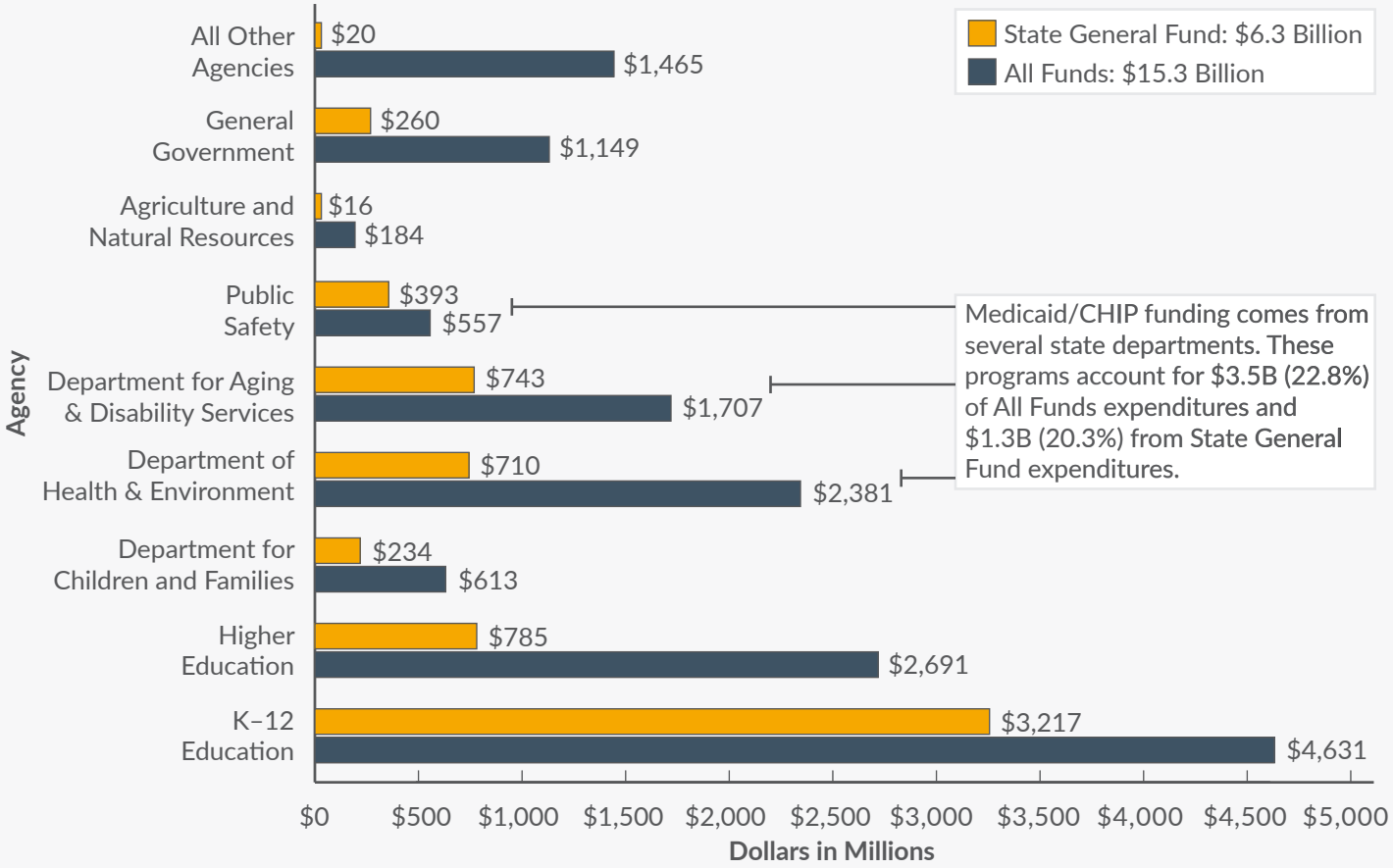
Source: Information compiled by KHI from kslegislature.org, 2015.

The Budget

The state budget will be the key issue for legislators during the 2016 session and will affect many health policy issues as well. The budget for fiscal year 2016 (July 1, 2015–June 30, 2016) was approved in the 2015 session. However, this budget must now be revised as a result of lower than expected revenue collections. Policymakers will face difficult choices about reducing spending and/or increasing revenue in order to keep the general fund balance above zero.

Legislators may debate additional transfers from the highway fund to the state general fund, elimination of the income tax exemption for some types of business income, and lowering the sales tax on food. They also will face the need to address rising KanCare costs, the court case on school finance, and state employee salary costs to address high staff vacancy rates at state hospitals and prisons.

Figure 3. **Approved Expenditures by Agency, Fiscal Year 2016**



Source: KHI analysis of data from the State of Kansas Comparison Report: FY 2016 Governor's Budget Report with Legislative Authorizations.

ABOUT THE ISSUE BRIEF

This brief is based on work done by Kelsey Nepote, M.S.W., and Linda J. Sheppard, J.D. It is available online at khi.org/policy/article/2016-legislative-preview.

KANSAS HEALTH INSTITUTE

The Kansas Health Institute delivers credible information and research enabling policy leaders to make informed health policy decisions that enhance their effectiveness as champions for a healthier Kansas. The Kansas Health Institute is a nonprofit, nonpartisan health policy and research organization based in Topeka that was established in 1995 with a multiyear grant from the Kansas Health Foundation.

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