



2016 KANSAS LEGISLATIVE RECAP

Key health policy bills

Introduction

After a record-setting, 113-day session in 2015—and with elections looming for all 165 legislative seats—state policymakers entered the 2016 Kansas legislative session on January 11 with the intention of finishing their work as quickly as possible.

Legislators achieved their goal of a short session, adjourning 73 days later on May 2 at 3:28 a.m., following a marathon push to approve the fiscal year (FY) 2017 budget. However, on May 27—five days before sine die adjournment—the Kansas Supreme Court ruled that some provisions of the K-12 school finance bill passed by the Legislature were unconstitutional. The court set a June 30, 2016, deadline for legislators to respond or they would face the possibility of the

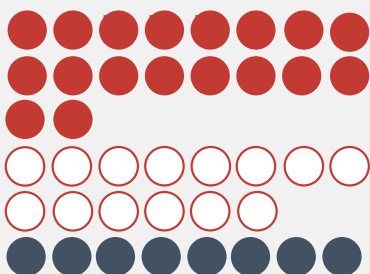
courts withholding all funding from schools, essentially shutting them down on July 1. On June 7, Governor Sam Brownback called for a special legislative session to address the school funding issue. Legislators returned to Topeka on June 23 for the special session, which lasted two days and satisfied the court's concerns.

Fiscal issues received a great deal of attention this session. The state's revenues continued to be lower than expected since the end of the 2015 session, forcing the governor to make mid-year cuts to the FY 2016 budget. Since an income tax reduction bill was passed in 2012—including a major business income tax exemption—the Legislature has struggled to find ways to achieve long-term budget stability, and that debate continued during the 2016 session.

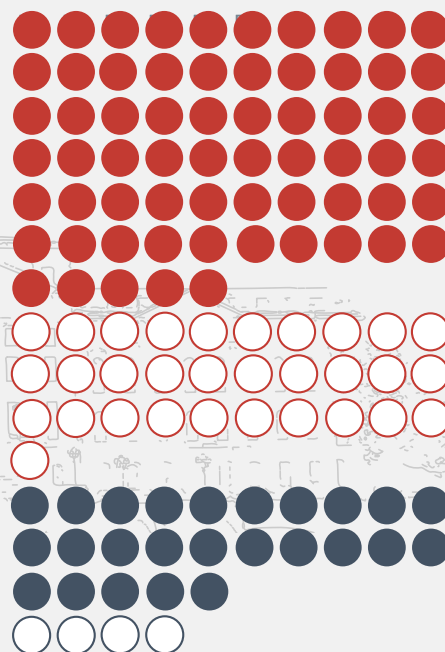
A look inside the Kansas Statehouse

All 165 legislative seats are up for election in 2016

Kansas Senate



Kansas House



As of the Aug. 2, 2016, primary:

- Incumbent is Republican 18-Senate/65-House
- Incumbent is departing Republican 14-Senate/31-House
- Incumbent is Democrat 8-Senate/25-House
- Incumbent is departing Democrat 0-Senate/4-House

Source: Kansas Health Institute, 2016.



In 2015, the Legislature hired a consulting firm to review state government operations and spending. Very few recommendations from their final report were adopted this session.

Underlying Issues

The Republican Party continued to hold a supermajority in both the Senate and House during the 2016 session. This set the stage for how bills were debated. In addition, several events occurred prior to or early in the session that further influenced the Legislature's approach to health-related bills.

House Health Committee

On November 11, 2015, Speaker of the House Ray Merrick removed Rep. Susan Concannon, Rep. Barbara Bollier and Rep. Don Hill—all moderate Republicans—from the House Health and Human Services Committee because of their support for Medicaid expansion. Rep. Concannon was vice chair of the committee.

Senate Health Committee

On February 12, 2016, Senate President Susan Wagle removed Sen. Mary Pilcher-Cook from the chairmanship of the Senate Public Health and Welfare Committee after Pilcher-Cook—an opponent of Medicaid expansion—attempted to add a Medicaid expansion amendment to an unrelated bill on the Senate floor. Wagle then named Sen. Michael O'Donnell as interim chair of the committee and Sen. Elaine Bowers as vice-chair. Since Sen. O'Donnell did not seek re-election in 2016, the committee chairmanship for 2017 is unknown at this time.

Efficiency Report Recommendations

Early in the session, Alvarez & Marsal, a consulting firm hired by the Legislature to perform a review of state government operations and spending, produced an efficiency study that included a list of 105 recommendations estimated to total more than \$2 billion in savings and increased revenues over five years. Major recommendations included proposed savings in risk management, procurement, information technology, state employee benefits, KPERS, real estate, corrections, K-12, higher education and Medicaid. Following numerous presentations to various committees, few of the recommendations were adopted during the session.

Which legislative committees deal with health policy bills?

While health policy bills can be introduced in any committee, a few play major roles:

Senate

- Public Health and Welfare
- Financial Institutions and Insurance

House

- Health and Human Services
- Social Services Budget
- Insurance and Financial Institutions

Joint

- Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight

State Mental Health Hospitals

In December 2015, the Centers for Medicare and Medicaid Services (CMS) decertified Osawatome State Hospital (OSH), a state-owned and operated facility that provides care for adults diagnosed with psychiatric disorders, citing “immediate and serious threat to patient safety.” Facility surveys in 2014 and 2015 had led to significant renovations. Decertification halted Medicare and Medicaid payments to the hospital in January, costing the state about \$1 million per month in lost reimbursement. The state budget included funds to replace those lost reimbursements, anticipating recertification later in the year.

The CMS decertification of OSH and the ongoing staffing problems dominated much of the conversation related to mental health during the 2016 legislative session. Kansas Department of Aging and Disability Services (KDADS) officials testified throughout the session about efforts to secure recertification and restore funding for OSH as quickly as possible.

KDADS officials also raised the possibility of privatizing OSH as a possible solution for ensuring its successful operation in the future. When some legislators expressed concerns about any movement toward privatization, the Legislature included a provision in a bill (SB 449) prohibiting KDADS from taking any action to privatize OSH or the state’s other psychiatric hospital in Larned (LSH), without specific authority from the Legislature.

The budget bill (SB 249) signed by Gov. Brownback included \$17 million in increased spending for both OSH and LSH, including \$11.7 million in FY 2016 to replace lost federal funding and other operating expenses, and \$5.6 million in FY 2017 to cover pay increases for registered nurses and mental health technicians.

Health Policy Bills

During the 2016 session, Kansas legislators considered many health policy issues and bills, but few actually made it to the governor’s desk. KanCare—the state’s privatized Medicaid managed care program—received significant attention, as did a variety of bills related to scope of authority, practice and licensing for various types of health care providers.

KanCare

Following the 2013 privatization of the Kansas Medicaid program to create KanCare, legislators have worked each session to refine the program.

Waiver Integration

Medicaid waivers allow the state to provide support services to people with disabilities who live in home and community-based settings instead of in nursing homes or other institutions. Services are split into seven groups based on type of disability: autism, frail/elderly, intellectual/developmental disability, physical disability, serious emotional disturbance, technology-assisted and traumatic brain injury.

The Kansas Department of Health and Environment (KDHE) and the Kansas Department for Aging and Disability Services (KDADS) sought to integrate those seven groups into two groups—children and adults. State officials believe integration would result in each group receiving a broader array of services more efficiently, resulting in cost savings that could reduce waiting lists for waiver services. Some disability advocates, however, are concerned integration could lead to service reductions.

Two hearings on waiver integration were held by a special subcommittee of the House Health and Human

The Centers for Medicare and Medicaid Services decertified Osawatome State Hospital in December 2015. Decertification is expected to cost the state about \$1 million per month in lost federal funding.



Services Committee charged with studying the issue. The subcommittee recommended that integration should be delayed until 2018. In addition, the subcommittee requested more details on the plan. Later, at the request of disability groups, legislators added a proviso to the state budget bill prohibiting any spending on waiver integration in FY 2017 if the plan is to be implemented before July 1, 2018.

Step Therapy

Legislators spent significant time debating step therapy, an approach to pharmaceutical management that starts treatment with cost-effective drugs before progressing to medications that are more expensive or higher risk. SB 341 was introduced to amend existing Kansas statute K.S.A. 39-7121, which prohibited the use of step therapy for Medicaid patients. Striking this provision was included as part of the governor's fiscal year 2017 budget, for a projected savings of \$10.6 million annually.

Opponents of the bill, including mental health advocates, expressed concerns about the use of step therapy in the treatment of mental illness, and raised questions about administrative burdens. Proponents argued that last year's legislation creating the Medicaid Mental Health Advisory Committee provides appropriate protection for the mental health drugs. The final amended bill "grandfathered in" any drug usage or therapies that were already in place for Medicaid recipients as of July 1, 2016, and also requires KDHE to annually prepare and submit reports to legislators detailing the amount of money saved under the step therapy program beginning on January 9, 2017. The amended bill passed out of the House by a vote of 23-16, and was ultimately included in House Substitute for SB 402 and signed by the governor on May 16.

Medicaid Expansion

Though many stakeholders expected Medicaid expansion to be a major debate topic during the 2016 session, only two bills were introduced—SB 371 and HB 2633. The companion bills were introduced by the Kansas Hospital Association and were entitled the "KanCare Bridge to a Healthy Kansas Program." They were referred to the Senate Public Health and Welfare Committee and the House Health and Human Services Committee. Neither committee scheduled a hearing.

Scope of Authority/Practice/Licensing

With the rise in interest of mid-level providers and other system-level health care changes, recent legislative sessions have included activity around the scope of authority and practice for health care providers, as well as the refinement of licensing guidelines. In 2016, the Legislature again considered a number of provider-related bills.

Interstate Licensing

As a part of HB 2615, a bundled bill, the Legislature established the Interstate Medical Licensure Compact (IMLC), which allows Kansas to establish a streamlined licensing process for physicians interested in practicing medicine in multiple states. When the original bill was introduced in the House Health and Human Services Committee, Chairman Dan Hawkins stated that he viewed the IMLC as a way to expand the number of physicians who could potentially provide telemedicine services to Kansans, particularly those in rural areas.

Charitable Health Care Providers

The bundled HB 2615 also set up a program to allow physicians and dentists to earn continuing education credits for providing charity care. The bill exempted



The Legislature authorized the use of step therapy for Medicaid patients—which requires starting treatment with lower-cost medications before progressing to others.

charitable health care providers who sign an agreement with the state to provide charity care from liability under the Kansas Tort Claims Act, and also exempted community mental health centers and employees of those centers from liability under the Kansas Tort Claims Act.

Acupuncturists

The Senate Public Health and Welfare Committee heard testimony during March from proponents and opponents of SB 363, which required the licensure of acupuncturists. While several acupuncturist groups and acupuncture patients testified in favor of the bill, groups representing physical therapists strongly opposed it. During committee debate, physical therapists objected to the authority granted in the bill that allowed acupuncturists to perform a technique known as “dry needling,” but that did not give similar authority to physical therapists. Ultimately, the bill was revised to include an amendment to the Physical Therapy Practice Act that also added dry needling to the scope of practice for physical therapists. The bill’s language was bundled into HB 2615 and signed into law on May 13.

Pharmacist Reimbursement

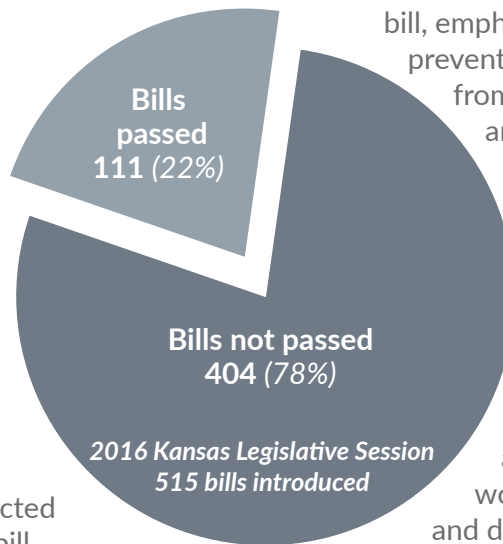
The governor also signed Senate Substitute for SB 103, which amended existing Kansas law to impose a number of new requirements on pharmacy benefits managers (PBMs), including the requirement to provide frequent updates to pharmacies regarding the maximum allowable cost of drugs for purposes of determining reimbursement rates. Proponents stated that the intent of the bill is to provide reimbursements that are in line with the cost of filling prescriptions, which can change unexpectedly. Several committee members hailed SB 103 as a well-reasoned compromise between pharmacists, PBMs and insurance companies, in contrast to a contentious debate last year on the topic.

Other Health-Related Bills

Tanning Beds

HB 2369 was introduced to prohibit minors from using commercial tanning beds, and prohibits tanning

facilities from providing access to a tanning device for any person under 18 years of age. Proponents, including physicians and cancer patients, spoke about the risk of early exposure and the potential for melanoma. The American Suntanning Association and the International Smart Tan Network testified in opposition to the bill, emphasizing the need to focus on “sunburn prevention” versus “sun avoidance.” Language from the bill was incorporated into HB 2456 and signed by the governor on May 13.



Suicide Prevention

House Substitute for SB 323, introduced during the first week of the session and referred to the Senate Education Committee, required school districts to provide suicide awareness and prevention programming. Districts would be required to train school staff and develop a crisis intervention plan that would be implemented if staff identify students considering suicide. Gov. Brownback signed the bill on May 11.

Immunity for Minors Seeking Medical Assistance

Early in the session, the governor signed SB 133, which provides immunity to minors regarding the possession or consumption of alcoholic beverages if they contact law enforcement or emergency medical services to request assistance for themselves or another person. The new law is intended to protect minors from prosecution if they report alcohol poisoning. Proponents hope it will prevent deaths of underage drinkers. Opponents of the bill would like to amend the law in 2017 to add a parental notification requirement and provisions for repeat offenders.

“Narrow Network” Insurance

Under HB 2454, health insurers in Kansas may now offer policies that require enrollees to obtain health services only from participating providers, with the exception of emergency services. The use of so-called “narrow networks” is one of the features that insurers use to control health care costs. The bill was introduced during the first week of the session and signed by the governor in March.

Tax on Electronic Cigarettes

House Substitute for SB 63 would have delayed the effective date of a new tax enacted in 2015 on the privilege of selling or dealing in electronic cigarettes from July 1, 2016 to January 1, 2017. The bill passed both chambers but died when the conference committee report was not adopted, so the tax began on July 1.



Simon's Law

Simon's Law (SB 437) was introduced to forbid health care facilities or providers from withholding life-sustaining procedures, food or medication from any patient under age 18 without written permission from a parent or legal guardian. The bill also prohibited physicians from instituting a do-not-resuscitate (DNR) order on a minor without permission from a parent or legal guardian. The bill was named after the minor son of Missouri native Sheryl Crosier, whose son died due to a DNR that she and her husband did not know about. The bill passed the Senate, but did not advance out of the House Committee on Federal and State Affairs.

Food Item Labeling

One of the more contentious hearings of the 2016 session was on HB 2595, which related to local jurisdictions' authority on food labeling and regulation of food items. Proponents want the Legislature to make food labeling standards statewide instead of allowing cities, counties and school districts to create local standards. Opponents discussed the definition of "political subdivision," which they believed would also include groups such as schools and food policy councils, and expressed concerns that the bill would prevent local efforts to create healthy food environments, promote healthy eating and increase access to healthy foods, especially for children.

Language from HB 2595 was inserted into SB 366, which was signed into law on May 17, 2016.

Disclosure of Medical Errors

SB 96, introduced in the Senate Judiciary Committee, would have required health care providers to disclose events resulting in unanticipated outcomes or medical errors to patients and their families or representatives. Opponents of the bill, including the Kansas Medical Society, expressed concerns that, without protection for malpractice liability for providers, the bill could encourage the filing of lawsuits. The bill died in committee.

Budget

The 2016 Legislature was dominated by discussion of how the budget would be affected by revenues that came in below original forecasts, as well as the Kansas Supreme Court's ruling that required a special session to address K-12 education funding.

By the end of the original session, the Legislature had adopted a revised budget that required the governor to make nearly \$100 million in additional reductions in FY 2017 in the form of allotments.

Notable reductions in the allotments included:

Reimbursement reductions around 4 percent for many Medicaid providers (\$38.2 million)

–Exempt from this cut were 95 critical access and other rural hospitals, as well as providers of home and community-based services for elderly and people with disabilities.

Other KanCare spending cuts (\$18.2 million)

–Included a half-percent reduction—from 1.0 percent to 0.5 percent—in the managed care profit margin built into KanCare rates.

Higher education cuts (\$30.7 million)

–Included cuts of \$7.0 million to the University of Kansas, \$3.7 million to the University of Kansas Medical Center, and \$5.2 million to Kansas State University.

Reductions averaging 8 percent for Children's Cabinet programs (\$3.4 million)

Other changes had already been adopted by the Legislature based on recommendations in the governor's budget, including *ending the health homes project for KanCare members with serious mental illnesses* (estimated to save **\$13.4 million**) and *removing the statutory prohibition on*

step therapy in the Medicaid program (estimated to save \$10.6 million).

The budget bill included some provisions to raise spending in health-related areas, most notably an increase in allocations for the state psychiatric hospitals in Osawatomie and Larned, and an increase in funding for Department of Children and Families (DCF) to recruit and retain social workers.

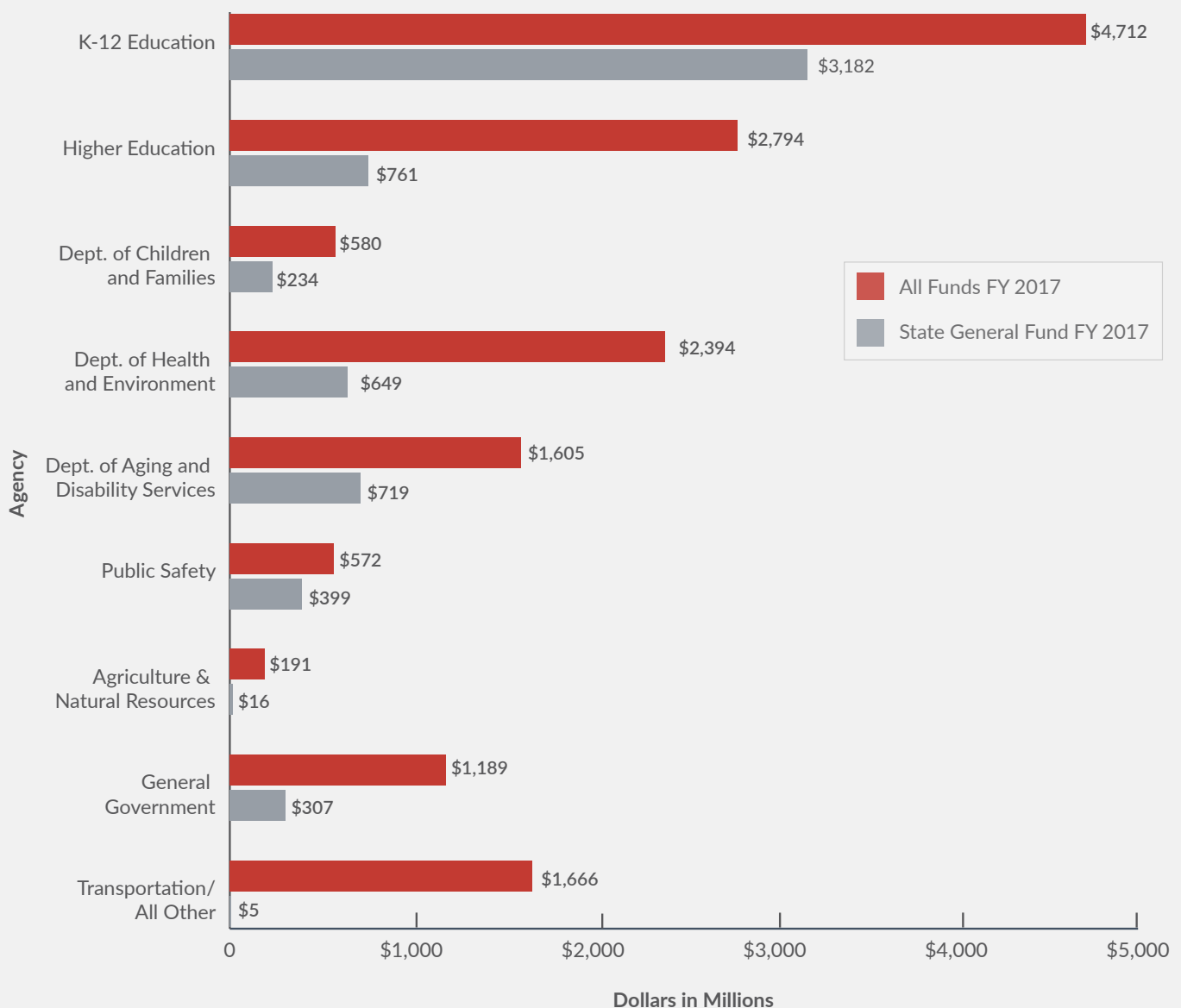
The Legislature also approved the sale of the Kansas Bioscience Authority (KBA) assets, estimated to bring in \$25 million. The KBA was founded in 2004 to invest in bioscience startup companies.

Looking Ahead

With school funding and the results of the August 2 primary behind them, legislators have now turned their attention to the general election on November 8. In addition to the contentious presidential race between Donald Trump and Hillary Clinton, one U.S. Senate seat, all four U.S. House seats, and all 165 legislative seats are up for re-election in Kansas.

In all, 49 Kansas legislators chose not to run for re-election or were defeated in their primary for the seat they held in 2016.

Figure 1. Approved Expenditures by Agency, Fiscal Year 2017 (in millions)



Note: Dollars rounded to the nearest million.

Source: Kansas Health Institute analysis of FY2017 Comparison Report, State of Kansas, August 15, 2016.

Speaker of the House Ray Merrick will not be returning for 2017 and a number of legislators serving on health-related committees are departing, including;

- **Three** legislators from Senate Public Health and Welfare;
- **Three** from Senate Federal and State Affairs;
- **Eight** from House Insurance and Financial Institutions;

- **Seven** from House Federal and State Affairs;
- **Five** from House Health and Human Services; and,
- **Three** from House Social Services Budget.

With 49 legislators exiting and more than 50 additional contested seats in the general election, the 2016 election results may be the most critical piece in shaping the agenda of the next Kansas legislative session, which begins on Monday, January 9, 2017.



Bill Tracking

The Kansas Health Institute monitored many health-related bills during the 2016 Kansas legislative session. The following table describes these bills

and actions taken on them during the session. Since 2016 was the second year of the two-year session period, these bills are considered “dead” unless they were signed by the governor. These issues may be introduced under new bill numbers in the future.

Bill	Summary	Originating Committee	Originating Chamber Vote	Opposite Committee	Opposite Chamber Vote	Governor
Mental Health Bills						
H Sub for SB 402	Public assistance; eligibility and limitations; step therapy under Medicaid	Passed	Passed	Passed	Passed	Signed
SB 449	Kansas department for aging and disability services; powers, duties and functions	Passed	Passed	Passed	Passed	Signed
SB 477	Establishing legislative oversight of state psychiatric hospitals	Passed	No Vote			
HB 2639	Enacting the emergency observation and treatment act; using licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance use disorders and co-occurring conditions	Hearing, No Vote				
KanCare Bills						
SB 181	Medicaid; restrictions of prescription-only drugs	Passed	Passed	Hearing, No Vote		
SB 341	Allowing step therapy for Medicaid patients (language was bundled into H Sub for SB 402)	Passed	Passed	Hearing, No Vote		See SB402
SB 371	Medicaid expansion through the KanCare Bridge to a Healthy Kansas Program	No Hearing				
H Sub for SB 402	Public assistance; eligibility and limitations; step therapy under Medicaid	Passed	Passed	Passed	Passed	Signed
SB 495	Eliminating medical assistance coverage for elective induced labor prior to 39 weeks of pregnancy	Passed	No Vote			

Bill	Summary	Originating Committee	Originating Chamber Vote	Opposite Committee	Opposite Chamber Vote	Governor
KanCare Bills continued						
HB 2633	Medicaid expansion through the KanCare Bridge to a Healthy Kansas Program	No Hearing				
HB 2682	Prohibiting agency changes to waiver services under the Kansas program of medical assistance without express legislative authorization	Hearing, No Vote				
Scope of Authority and Practice/Licensing Bills						
S Sub for SB 103	Limitation on pharmacy benefits managers' activities	Passed	Passed	Passed	Passed	Signed
SB 225	Interstate compact for recognition of emergency personnel licensure	Passed	Passed	Passed	Passed	Signed
SB 363	Relating to licensure of acupuncturists (language was bundled into HB 2615)	Passed	Passed	No Hearing		See HB2615
HB 2456	Relating to minor's access to tanning devices; licenses and regulation of barbering	Passed	Passed	Passed	Passed	Signed
HB 2614	Pharmacy act amendments	Passed	No Vote			
HB 2615	Relating to the licensure and regulation of certain health care providers	Passed	Passed	Passed	Passed	Signed
HB 2645	Mental health technician's licensure act amendments	Passed	No Vote			

Bill	Summary	Originating Committee	Originating Chamber Vote	Opposite Committee	Opposite Chamber Vote	Governor
Insurance Bills						
SB 340	Providing the appointing authority of the securities commissioner from the governor to the commissioner of insurance	Hearing, No Vote				
HB 2453	Including wraparound policies within the category of specifically designed policies	Passed	No Vote			
HB 2454	Allowing health insurers to offer policies that require health services to be rendered by a participating provider	Passed	Passed	Passed	Passed	Signed
HB 2645	Mental health technician's licensure act amendments	Passed	No Vote			
Alcohol/Tobacco Bills						
H Sub for SB 63	Taxation; community improvement district sales tax administration fund; electronic cigarettes; sales tax exemptions, Gove County Healthcare Endowment Foundation, Inc.	Original Bill Passed	Original Bill Passed	Substitute Passed	Substitute Passed, but died in Conference Committee	
SB 133	Possession or consumption of alcoholic beverage by minor; immunity from criminal prosecution for minor seeking medical assistance	Passed	Passed	Passed	Passed	Signed
Controlled Substance Bills						
Sub for SB 147	Authorizing hemp treatments for seizure disorders	Hearing, No Vote				
SB 465	Use of certain controlled substances authorized to treat binge eating	Passed	Passed	Passed	Did not pass	
SB 489	Hemp oil treatments for specified medical conditions	Passed	No Vote			
HB 2455	Use of certain controlled substances authorized to treat binge eating	Passed	No Vote			
HB 2461	Allow use of certified drug abuse treatment program for drug severity level 4 crimes	Hearing, No Vote				

Bill	Summary	Originating Committee	Originating Chamber Vote	Opposite Committee	Opposite Chamber Vote	Governor
Other Health-Related Bills						
SB 96	Kansas disclosure of unanticipated medical outcomes and medical errors act	Hearing, No Vote				
SB 122	Hospital facility fees	Hearing, No Vote				
SB 248	Title X funding priorities for family planning service providers	Passed	Passed	Passed	Passed	Signed
Sub for SB 323	Providing a cap on capital improvement state aid and authorizing the state board to prioritize the allocations of capital improvement state aid; requiring school districts to provide suicide prevention and awareness training; creating a language assessment program for children who are deaf or hard of hearing	Passed	Passed	Passed	Passed	Signed
SB 372	Amendments to Kansas public assistance eligibility, limitations and verification	Passed	Passed	No Hearing		
SB 437	Simon's Law; withholding life sustaining treatment for persons under 18 years of age; parent or legal guardian consent	Passed	Passed	No Hearing		
SB 457	Nursing home quality care assessment rate and sunset (became Senate Sub. for HB 2365)	Passed	Passed	Hearing, No Vote		Senate Sub for HB2365 Signed
SB 497	Birth risk factor screening for pregnant women	Hearing, No Vote				
HB 2369	Prohibiting minors' access to a tanning device (language was incorporated into HB 2456)	Passed	Passed	Hearing, No Vote		See HB 2456
HB 2595	Reserving regulation of consumer incentive items and nutrition labeling for food menu items in restaurants, retail stores, and vending machines to the legislature (inserted into SB 366)	Passed	Passed	No Hearing		SB 366 Signed

ABOUT THE ISSUE BRIEF

This brief is based on work done by Andrea N. Hinton and Linda J. Sheppard, J.D. It is available online at khi.org/policy/article/2016-legislative-recap

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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