

SESSION OF 2015

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2281**

As Agreed to June 5, 2015

Brief*

Senate Sub. for HB 2281 would create in the State Treasury the Medical Assistance Fee Fund, would increase the annual privilege fees paid by every health maintenance organization (HMO), would authorize the Insurance Commissioner (Commissioner) to terminate the operation or the change in the rate of the privilege fee under certain conditions, and would amend one section enacted in 2015 Senate Sub. for HB 2258 pertaining to Temporary Assistance for Needy Families (TANF) cash assistance transactions for cash withdrawals from automated teller machines (ATMs). [2015 Senate Sub. for HB 2258 will become effective upon publication in the statute book.]

Medical Assistance Fee Fund; HMO Privilege Fee

The bill would create in the State Treasury the Medical Assistance Fee Fund (Fund); would increase the annual privilege fees paid by every HMO for the reporting period beginning January 1, 2015, and ending December 31, 2017, from 1.0 percent per year to 3.31 percent per year of the total of all premiums, subscription charges, or any other term that may be used to describe the charges made by such organization to enrollees; and the privilege fees paid from July 1, 2015, through June 30, 2018, would be deposited in

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the Fund, instead of the State General Fund (SGF). On and after January 1, 2018, the privilege fee would be 2.0 percent.

The provisions pertaining to the creation of the Fund, its administration, and reporting, would expire on July 1, 2018.

If the Commissioner determines at any time that the application of the privilege fee, or a change in the rate of the privilege fee, would cause a denial of, reduction in or elimination of federal assistance to the state or to any HMO subject to this act, the Commissioner would be authorized to terminate the operation of such privilege fee, or the change in such privilege fee.

From July 1, 2015, through June 30, 2018, all moneys collected or received by the Commissioner from HMOs, including the three KanCare Managed Care Organizations (MCOs), and Medicare provider organizations for fees specified in KSA 2014 Supp. 40-3213 would be remitted to the State Treasurer for deposit in the State Treasury to the credit of the Fund. (Those fees would include filing an application for a certificate of authority, filing each annual report, filing an amendment to the certificate of authority, and privilege fees.)

The use of moneys in the Fund would be expended for the purpose of Medicaid medical assistance payments and for no other governmental purpose. The moneys in the Fund would not be subject to allotments by the Governor, certificates of indebtedness, and transfers by the Secretary of Health and Environment.

The Secretary of Health and Environment would be required to prepare and deliver to the Legislature, on or before the first day of each regular legislative session, a report summarizing all expenditures from the Fund, Fund revenues, and recommendations regarding the adequacy of the Fund to support necessary medical assistance programs.

TANF Assistance and Requirements—Amendment

The Secretary for Children and Families would be authorized to raise or rescind the ATM withdrawal limit in order to ensure continued appropriation of the TANF Block Grant through compliance with the provisions of the Middle Class Tax Relief and Job Creation Act of 2012 that govern adequate access to cash assistance.

Conference Committee Action

The second Conference Committee agreed to accede to Senate amendments and further agreed to:

- Delete all language related to the Vision Care Services Act and the Unfair Trade Practice Law (the original content of HB 2281) [*Staff Note:* The Vision Care Services Act was inserted in SB 206, as amended by the House Committee on Insurance.];
- Amend the title of the bill to an act concerning public assistance; relating to the Fund, privilege fees; and TANF cash assistance;
- Change the expiration date of the section creating the Fund to July 1, 2018;
- Set the HMO privilege fee for the reporting period beginning January 1, 2015 and ending December 31, 2017, at 3.31 percent, and on and after January 1, 2018, set the privilege fee at 2.0 percent;
- Clarify that deposits to the Fund would be made for a period beginning July 1, 2015, and ending on June 30, 2018;

- Add language authorizing the Commissioner to terminate the change in the privilege fee upon a determination by the Commissioner that the application or a change in the rate of the privilege fee would cause a denial of, reduction in, or elimination of federal financial assistance to the state or to any HMO subject to the act;
- Amend one section of 2015 Senate Sub. for HB 2258 (enacted and effective on publication in statute book) pertaining to TANF cash assistance transactions for cash withdrawals from ATMs by authorizing the Secretary for Children and Families to raise or rescind the ATM withdrawal limit to ensure continued appropriation of the TANF Block Grant through compliance with the provisions of the Middle Class Tax Relief and Job Creation Act of 2012 and insert the new language in the bill. [*Staff Note*: Technical amendments made to this section (KSA 39-709) by 2015 SB 240 are now law.]; and
- Make technical amendments.

Background

The following is background information regarding Senate Sub. for HB 2281 and fiscal information for the bill, as amended by the Conference Committee.

Senate Sub. for HB 2281

The Senate Committee on Public Health and Welfare added the contents of SB 180, as amended by the Senate Committee of the Whole, to HB 2281, as amended by the Senate Committee, and created a substitute bill.

HB 2281

In the House Committee on Health and Human Services, a representative from the Kansas Optometric Association (Association) testified as a proponent of the bill. The representative stated the bill was drafted in response to the ongoing concerns of Association members regarding insurance companies and vision plans lacking compliance with the Act since it took effect in April of 2014. No opponent or neutral testimony was provided.

In the Senate Committee on Public Health and Welfare, a representative of the Association testified as a proponent of the bill. The representative requested an amendment that would clarify the ability of the Kansas Attorney General's office and Commissioner's office to provide oversight and enforcement of the Act. Representatives of America's Health Insurance Plans and Consumer Health Alliance provided opponent testimony. Both representatives stated they had no objection to the underlying bill, but expressed concerns about the amendment proposed by the Association. No other testimony was provided.

The Senate Committee amended the bill by clarifying the roles of the Commissioner and Kansas Attorney General in providing oversight and enforcement of the Act, inserting language that a violation of the Act would be a violation of the Unfair Trade Practice Law and would be subject to penalties, and provided a date certain for rules and regulations promulgated by the Commissioner and Kansas Attorney General.

SB 180

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of the Kansas Department of Health and Environment (KDHE). In the Senate Committee hearing on the bill, as introduced, a representative of KDHE testified in support of the bill stating

the increased privilege fee would be placed in the Fund and would be limited to paying only costs associated with Medicaid medical assistance payments. No other testimony was provided at the hearing.

The Senate Committee amended the bill to allow for the increase in the privilege fees for a limited time and to establish an expiration date for the provisions in Section 1 of the bill relating to the Fund, its administration, and reporting requirements.

The Senate Committee of the Whole amended the bill to change the sunset date to December 31, 2017, on the increase in the privilege fees and the deposit of these fees in the Fund, and on the provisions in Section 1 of the bill relating to the Fund, its administration, and reporting requirements.

***Fiscal Information—Conference Committee Report for
Senate Sub. for HB 2281***

Senate Sub. for HB 2281 (HMO Privilege Fee). The following is an estimate of the FY 2016, 2017, and 2018 impact for provisions of the Conference Committee Report associated with the HMO privilege fee and Fund. The fiscal impact of these provisions is a decrease of \$29.2 million for FY 2016, \$30.5 million for FY 2017, and \$31.8 million for FY 2018. The fees collected under this bill are estimated to generate \$106.3 million for FY 2016, \$110.7 million for FY 2017, and \$115.1 million for FY 2018. These fees will be deposited into the Fund in KDHE to be used for Medicaid expenditures and will lessen the need for SGF moneys for that purpose. It is anticipated those privilege fees could replace approximately \$76.9 million in FY 2016, \$80.1 million in FY 2017, and \$83.3 million in FY 2018 contingent upon legislative action adjusting the budgets for KDHE and the Department for Aging and Disability Services. The net impact of these provisions is estimated to be a SGF ending balance of \$47.8 million for FY 2016, \$49.6 million for FY 2017, and \$51.5 million for FY 2018.

This estimate assumes the following: the privilege fee collections will increase each year; collections are based generally upon FY 2015 collections based on CY 2014 premiums; additional information received after the Spring Consensus Revenue Estimate process has been included to reflect additional premiums (These additional premiums only are reflected as expenditures as the payments were not previously anticipated.); the new fee is established at 3.31 percent for premiums in CY 2015-2017; and the Federal Medical Assistance Percentage (FMAP) rate used for FY 2016 is 43.87 percent and 43.89 percent is used for FY 2017 and FY 2018.

Additional Historical Background Information

The information provided below regarding Senate Sub. for HB 2258, which has already been signed into law, is included to provide a complete history of all bills relating to the bill in conference.

Senate Sub. for HB 2258

The Senate Committee on Public Health and Welfare removed the contents of HB 2258, which originally amended the Kansas Mortgage Business Act, and inserted the contents of HB 2381, as amended by the House Committee on Commerce, Labor and Economic Development. The Senate Committee created a substitute bill with the following amendments to provisions from HB 2381 as amended:

- Not limit a parent or caretaker of a child born significantly prematurely, with serious medical conditions or with a disability, to the three-month exemption from the requirement to engage in work participation to receive TANF assistance applicable to a parent or caretaker of a child less than three months of age;

- Prohibit an individual convicted on or after July 1, 2015, of a second or subsequent felony involving controlled substances or their analogs from receiving food assistance regardless of the exception allowing for such assistance if the individual submits to and passes drug testing and participates in a drug treatment program approved by the Secretary for Children and Families;
- Adjust, by the Consumer Price Index, the limit on the amount of TANF cash that may be withdrawn using an ATM;
- Place a TANF recipient's photograph on a Kansas benefits card only if the recipient agrees; and
- Make technical amendments.

The Senate Committee of the Whole amended the bill to modify the amount of TANF cash assistance transactions using ATMs, add food assistance to the benefits a protective payee could be appointed to receive on behalf of children, require an electronic check for false information on an application for TANF and other benefits programs, modify the mandatory work participation requirements, and make a technical amendment.

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act that created the TANF Program. It is a time-limited cash benefit program that requires work as a condition of eligibility. Under federal law, an individual may receive no more than 60 months of TANF assistance, but states have the discretion to set a shorter period of assistance. The Child Care Assistance Program is an income-based program that provides a child care subsidy to low-income, working families, up to 185 percent of the federal poverty level. The USDA food assistance program specified in the bill is called the Supplemental Nutrition Assistance Program (SNAP); it provides food benefits to

households with incomes up to 130 percent of the federal poverty level.

HB 2381

During the hearing before the House Committee on Commerce, Labor and Economic Development proponent testimony was provided by representatives of the Department for Children and Families (DCF), the Department of Commerce, and a work service provider. Proponents stated the bill would solidify recent policy changes by enacting them in statute. New policies, which would be additional to those currently contained in administrative rules and regulations, would require adults receiving food assistance to cooperate with child enforcement services, make persons convicted of certain drug-related felonies ineligible for food assistance, and would prevent TANF assistance from being used at certain types of retail establishments to purchase products or services. Several individuals testified in favor as well, describing their experiences with TANF and the steps they took to provide for themselves.

Opponent testimony was provided by representatives of Kansas Action for Children, Kansas Appleseed, New Beginnings, Noel Emergency Lodge, Kansas Association of Community Action Programs, United Community Services of Johnson County, Harvesters Food Network, KC Healthy Kids, and the Kansas Association of Criminal Defense Lawyers. Opponents expressed concern the new requirements and waiver prohibitions would decrease access to persons in need.

Neutral testimony was provided by representatives of USDA, explaining the federal agency's involvement with DCF, and the Kansas Catholic Conference, expressing concern a lifetime ban on food assistance for a drug felony would not take rehabilitation into consideration.

The House Committee on Commerce, Labor and Economic Development amended the bill to:

- Include recreational vehicles and exclude any additional motor vehicle used to generate income when determining a household's eligibility;
- Include various types of retail establishments and tickets for public entertainment in the list of prohibited uses for TANF cash assistance;
- Require a TANF recipient's photograph to appear on the Kansas benefit card and allow an option for a parent's or legal guardian's photograph to appear;
- Allow Kansas benefit cards with photographs to be a valid form of ID for voting purposes;
- Preclude the Secretary for Children and Families from using gross income and resource limit standards higher than federal law for food assistance purposes;
- Reduce the number of months of regular TANF assistance from 48 months to 36 months, and reduce the maximum number of months including extensions, from 60 months to 48 months;
- Limit the amount and frequency that TANF cash may be withdrawn using an ATM;
- Require recipients of food assistance to submit to drug testing and participation in drug treatment program as approved by the Secretary for Children and Families; and
- Include technical corrections, making the language and references in the bill consistent.

According to the fiscal note prepared by the Division of the Budget, in consultation with DCF, the bill, as introduced,

would have no fiscal effect on state revenues or expenditures.

insurance; HMO privilege fees; KDHE; Medical Assistance Fee Fund; TANF cash assistance; ATM transaction limits; DCF

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