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Shawn Sullivan, Director of the Budget

Sam Brownback, Governor

March 22, 2017

AMENDED

The Honorable Vicki Schmidt, Chairperson
Senate Committee on Public Health and Welfare
Statehouse, Room 441-E
Topeka, Kansas 66612

Dear Senator Schmidt:

SUBJECT: Amended Fiscal Note for SB 69 by Senate Committee on Public Health and Welfare

In accordance with KSA 75-3715a, the following amended fiscal note concerning SB 69 is respectfully submitted to your committee.

Substitute for SB 69 would amend current law regarding the Kansas Program of Medical Assistance including changing the allowed hospital re-admittance period from 30 days to 72 hours and adding process and contract requirements and procedures for claims appeals as administered by the Kansas Department of Health and Environment (KDHE). Any managed care organization (MCO) providing Medicaid services would be required to:

1. Provide accurate and uniform patient encounter data to a participating healthcare provider that would include the MCO claim number, patient Medicaid identification number, patient name and type of claim; the amount billed by revenue code; MCO amount paid and date paid; and the provider patient account number.

2. Provide quarterly education for participating healthcare providers regarding billing and reimbursement guidelines and program policies and procedures.

3. Upon receiving a request for patient encounter data, a MCO would be required to furnish to the participating healthcare provider all requested information within 30 calendar days of receiving the request. The MCO would be allowed to charge a reasonable fee for furnishing the requested data.

The Secretary of KDHE would develop uniform standards to be utilized uniformly by each MCO providing Medicaid services; uniform processes and forms for credentialing healthcare providers; requirements that documentation be provided by MCOs to healthcare providers when a claim or portion of a claim is denied; procedures, requirements and limitations

for prior authorization for healthcare services and prescriptions; internal claims grievance and appeal processes and timelines for resolving a grievance within 90 days and for resolving an appeal within 45 calendar days. If the MCO exceeds the time limit for resolving a grievance or appeal, then the participating healthcare provider would automatically prevail in the grievance or appeal.

Any contract or agreement between the Kansas Program of Medical Assistance and a MCO that provides services on or after July 1, 2017 would establish a definition of and cap on administrative spending so that administrative spending does not include any profit greater than the contracted amount. Administrative spending could not include contractor incentives and would not exceed 10.0 percent of the MCOs total expenditures to provide Medicaid services. Each MCO would report on expenditures quarterly to the Secretary of KDHE.

Any MCO providing Medicaid services through a contract with the Kansas Program of Medical Assistance would be required to include a statement detailing its appeal process to participating healthcare providers, and that statement must include that the provider is entitled to an external independent third-party review. Any MCO would pay a penalty not to exceed $1,000 for any non-compliance with appeal process requirements. Any aggrieved provider must submit a written request appealing the final decision by a MCO within 60 calendar days of receiving the MCOs final decision. The bill includes specific information required to be included in the independent third-party review request, including the specific issues and disputes related to the adverse final decision issued by the MCO. The MCO must acknowledge the provider has requested an external independent third-party review and must notify the recipient of medical assistance that the provider has requested a review if it is related to the denial of a healthcare service. If the MCO fails to satisfy the above requirements, the provider would automatically prevail in the review.

An external independent third-party review would automatically extend the deadline to request a hearing before the Office of Administrative Hearings of the Department of Administration pending the outcome of the external third party review. Upon conclusion of the external third-party review, the reviewer would forward a copy of the decision and a new notice of action to the provider, recipient, applicable MCO, KDHE and the Kansas Department for Aging and Disability Services. When a deadline to request a hearing before the Office of Administrative Hearings has been extended pending the outcome of an external independent third-party review, all parties would be granted an additional 30 days from the receipt of the review decision and notice of action to request a hearing before the Office of Administrative Hearings.

Upon receiving notification of a request for external independent third-party review, KDHE would assign the review to an external independent third-party reviewer; notify the MCO and the provider's designated contact of the identity of the external independent third-party reviewer. KDHE would deny any request for external independent third-party review if the requesting provider fails to exhaust the MCO's internal appeal process or fails to submit a timely request. Multiple appeals to the external independent third-party review process regarding the same recipient of medical assistance, a common question of fact or interpretation of common

applicable regulations or reimbursement requirements may be determined in one action upon request of a party in accordance with rules and regulations adopted by KDHE. The provider that initiated a request for an external independent third-party review process, or one or more other providers, may add other initial denials of claims to the reviewer prior to the final decision and after exhaustion of any applicable written internal appeals process of the applicable MCO, if the claims involve a common question of fact or interpretation of common applicable regulations or reimbursement requirements.

The final decision of any external independent third-party review conducted would also direct the losing party of the review to pay an amount equal to the costs of the review to the third-party reviewer. Any payment ordered pursuant to this subsection of the bill would be stayed pending an appeal of the review. If the final outcome of any appeal is to reverse the decision of the external independent third-party review, the losing party of the appeal would be required to pay the costs of the review to the third-party reviewer within 45 calendar days of entry of the final order. Any MCO providing state Medicaid services through a contract with the Kansas Program of Medical Assistance would be prohibited from discriminating against any licensed pharmacy or pharmacist located within the geographic coverage are of the MCO that is willing to meet the conditions for participation established by the Program. The bill would require KDHE to adopt rules and regulations to implement the bill's provisions by January 1, 2018. The bill would take effect after its publication in the statute book.

The KDHE Division of Health Care Finance indicates that the passage of SB 69 would include four potential fiscal effects for Medicaid expenditures. First, changing the allowed hospital re-admittance period from 30 days to 72 hours would require system changes to the MMIS system and the KanCare managed care organizations' systems. The estimated cost for MMIS changes is $72,000, including $31,680 from the State General Fund, in FY 2018. Also, claims that were previously denied would now be accepted, increasing the costs by an estimated $5.0 million per year for hospital re-admittance claims. The State General Fund portion of these additional costs would be $2.2 million.

Second, hiring and retaining an auditor for independent review of MCO-closed provider disputes would cost $150 per hour due to the need for clinical and Medicaid knowledge. It is estimated that there could be over 10,000 reviews each year and each review would take three and one-half hours. Therefore, the cost of the reviews could be up to $5.3 million, including $2.3 from the State General Fund, in FY 2018. The cost would lag one year to allow the costs to be incorporated into the rates paid to the MCOs.

Third, oversight of the new independent review process would require 7.0 FTE positions at a cost of $420,000 per year, including $210,000 from the State General Fund. This would involve the review of over 10,000 letters per year to ascertain if the requirements for timeliness, completeness and accuracy are met for addressing the independent reviews after MCO final denials. Also, these employees would ensure that the proper parties are billed for the independent reviewer services and provide advice and status to providers who are requesting an independent review.

Finally, current capitation rates have a component for administration that equates to approximately 7.0 percent of expenditures. There would be no savings realized if administration costs are legally capped at 10.0 percent. Any fiscal effect associated with SB 69 is not reflected in *The FY 2018 Governor's Budget Report*.

Sincerely,

Shawn Sullivan,
Director of the Budget

cc: Dan Thimmesch, Health & Environment
Colleen Becker, Department of Administration