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REVISOR of STATUTES

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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Senate Committee on Public Health and Welfare
From: Scott Abbott, Assistant Revisor of Statutes
Date: January 23, 2020
Re: Comparison of 2020 Senate Bill No. 252 to bill draft designated 2020rs1873, as presented to the Senate Select Committee on Healthcare Access

The following table compares provisions in 2020 Senate Bill No. 252 to the bill draft designated as 2020rs1873, as presented to the Senate Select Committee on Healthcare Access during the 2019 interim, on an issue-by-issue basis. The table is organized according to the structure of SB 252.

<u>Issue</u>	<u>2020 SB 252</u>	<u>Bill draft 20rs1873</u>
General agency authority	Sec. 2: Authority for KDHE and KID to submit to the federal government any approval request necessary to implement the respective program. Authority for KDHE to adopt rules and regulations needed to implement the act.	Sec. 2: Same.
Legislative notice	Sec. 2(a): At least 10 days prior to submission of any waiver request to the federal government, the Department of Health and Environment or the Insurance Department shall submit such waiver request to the State Finance Council.	Sec. 2: Same.

<p>Eligibility</p>	<p>Sec. 2(b) and (c):</p> <p>"Any adult under 65 years of age who is not pregnant and whose income meets the limitation..." with two scenarios:</p> <ol style="list-style-type: none"> 1. Up to 138% of the federal poverty level beginning on 1-1-2021; and 2. up to 100% of the federal poverty level beginning on 1-1-2022, if the state finance council and the federal government approve implementation of a health insurance plan reinsurance program. <p>If the reinsurance program is not approved, eligibility remains at 138%.</p>	<p>Sec. 2:</p> <p>"Any adult under 65 years of age who is not pregnant and whose income meets the limitation..." with three options based on approval by the federal government in order of priority in subsections (c)(1) through (c)(3):</p> <ol style="list-style-type: none"> 1. Up to 100% of the federal poverty level (FPL), with an accompanying 1332 reinsurance waiver for marketplace plans; 2. Up to 100% of the federal poverty level, and the option of Medicaid coverage or a marketplace plan for 100-138% FPL, with an accompanying 1332 reinsurance waiver for marketplace plans; 3. Up to 138% of the FPL. <p>If either the expansion waiver or the reinsurance waiver is not approved by the federal government in options 1 or 2, proceed to the next option. The expansion waiver may be implemented pending approval of the reinsurance waiver.</p>
<p>Work referral</p>	<p>Sec. 3:</p> <p>The Department of Health and Environment (KDHE) refers all non-disabled adults in the program who are unemployed or working fewer than 20 hours per week to the Kansasworks program administered by the Department of Commerce.</p> <p>As a condition of coverage, KDHE evaluates each new applicant for education and employment status and factors impacting the applicant's employment status.</p> <p>Full-time students enrolled in a postsecondary educational institution or technical college are exempt from the referral requirement.</p> <p>The Department of Commerce maintains a unique way to monitor Medicaid expansion Kansasworks participants.</p>	<p>Sec. 3:</p> <p>Same.</p>

<p>Premiums or fees</p>	<p>Sec. 4:</p> <p>KDHE charges to each covered individual whose income is greater than 100% FPL a \$25 monthly fee, up to \$100 per family household. No fee is charged to a covered individual whose income is 100% FPL or less.</p> <p>Past due premiums are subject to setoff against state lottery or gaming winnings and tax refunds in accordance with current Kansas law.</p> <p>KDHE may require MCOs to collect the fee in lieu of KDHE.</p> <p>KDHE submits to the legislature an annual report in January detailing accounts receivable for fees collected in the prior calendar year.</p>	<p>Sec. 14:</p> <p>KDHE charges to each covered individual whose income is greater than 100% FPL a premium equal to 5% of the individual's household modified adjusted gross income. Same exclusion for individuals under 100% FPL.</p> <p>An individual is ineligible if they have not made their first payment or if they are 60 or more days delinquent. An individual who is 60 or more days delinquent in making a premium payment shall be ineligible for six months.</p> <p>Same provision regarding debt setoff.</p> <p>KDHE requests a waiver to charge a copayment for non-urgent emergency care in addition to the premium.</p>
<p>Premium assistance</p>	<p>Sec. 5:</p> <p>KDHE may establish a premium assistance program for individuals whose household income does not exceed 138% FPL and who are eligible for coverage through an employer but cannot afford premiums.</p> <p>Eligibility would be the same as for expanded Medicaid coverage.</p> <p>An individual's premiums would be capped at 2% of the individual's household income.</p>	<p>Sec. 4:</p> <p>Same.</p>
<p>Managed care</p>	<p>Sec. 6:</p> <p>Except as prohibited by federal law, requires that KDHE administer Medicaid using a managed care delivery system.</p> <p>Requires KDHE, when evaluating contract proposals to provide managed care services, to:</p> <ol style="list-style-type: none"> 1) Not provide favorable or unfavorable treatment based on for-profit or not-for-profit status; 2) Give preference to an entity that provides health insurance plans on the marketplace; and 3) Require the entity to provide tiered benefit plans with enhanced benefits for beneficiaries who demonstrate healthy behaviors. 	<p>Sec. 6:</p> <p>Same.</p>

"Poison pill"	<p>Sec. 7:</p> <p>Requires KDHE to terminate coverage under the program over 12 months if the federal medical assistance percentage (FMAP) becomes lower than 90%, as provided in current federal law.</p> <p>Specifies that there shall be no new enrollment following a decrease in FMAP.</p>	<p>Sec. 13:</p> <p>Same.</p>
Severability	<p>Sec. 8:</p> <p>The "poison pill" provision is nonseverable from the remainder of the bill. All other provisions are severable.</p>	<p>Sec. 5:</p> <p>Same.</p>
Privilege fees	<p>Sec. 9:</p> <p>Revenues from privilege fees assessed on health maintenance organizations associated with expansion beneficiaries are redirected to a new special revenue fund to be used for medical assistance payments for expansion beneficiaries</p>	<p>Sec. 10:</p> <p>Same.</p>
Inmate coverage	<p>Sec. 11(a):</p> <p>Requires the secretary of corrections to coordinate with county sheriffs to facilitate enrollment of an inmate incarcerated in a Kansas jail for state medicaid services during any time period that the inmate is eligible (offsite hospitalization for longer than 24 hours).</p>	<p>Sec. 12:</p> <p>Same.</p>
Audit	<p>Sec. 13:</p> <p>Requires the legislative post audit committee to direct the legislative division of post audit to conduct an audit of the direct economic impact of the program on the state general fund during the first two fiscal years of the program, and requires LPA to submit the audit to the legislature.</p>	<p>Sec. 14:</p> <p>Same.</p>
Drug rebate revenue	<p>Sec. 14:</p> <p>Requires KDHE to remit all Medicaid drug rebate revenue (including current Medicaid population) for deposit into the state general fund, and for such revenue to be included as a separate item on any monthly state general fund receipts report prepared by the Kansas Legislative Research Department or the Division of the Budget.</p>	<p>Sec. 7:</p> <p>Same.</p>

<p>FMAP stabilization fund</p>	<p>Sec. 15:</p> <p>Includes the provisions of 2019 Senate Bill No. 2.</p> <p>Creates the FMAP stabilization fund.</p> <p>Increases to state share of Medicaid costs, due to a year-to-year decreases in the FMAP, would be funded out of the FMAP stabilization fund.</p> <p>Decreases to state share of Medicaid costs, due to a year-to-year increase in the FMAP, would be deposited into the FMAP stabilization fund.</p> <p>Directs that any moneys recovered by the Kansas Attorney General in the case <i>Texas v. United States</i>, challenging the legal validity of the health insurance providers fee imposed under the federal Patient Protection and Affordable Care Act, be deposited into the FMAP stabilization fund.</p>	<p>Sec. 16:</p> <p>Same.</p>
<p>Rural hospital transformation program</p>	<p>Sec. 16:</p> <p>Requires KDHE to establish an advisory committee comprised of public and private stakeholders for the purpose of developing and implementing transformation plans to improve the viability of eligible rural hospitals.</p>	<p>No equivalent provisions.</p>
<p>Report on cost shifting</p>	<p>Sec. 17:</p> <p>Requires the Kansas Insurance Department (KID) to analyze and prepare a report detailing any cost shifting from hospitals to commercial health insurance plans as a result of implementation of the act, and to submit the report annually to the House and Senate health committees.</p>	<p>No equivalent provisions.</p>
<p>Report on health exchange conversion</p>	<p>Secs. 18 and 20(a)(1) (appropriations):</p> <p>Requires KID to study and prepare a report on any risks and benefits associated with converting the health benefit exchange in Kansas from a federal facilitated health exchange to a state-based health benefit exchange, to procure a contractor to conduct the study, and to submit the report to the House and Senate health committees on or before January 11, 2021.</p>	<p>No equivalent provisions.</p>

Report on uncompensated care	<p>Sec. 19:</p> <p>Requires KDHE, in coordination with public and private stakeholders, to establish a task force for the purpose of developing a plan to measure and report uncompensated care provided by Kansas healthcare providers and hospitals, including historical data, and to submit such report annually to the House and Senate health committees.</p>	No equivalent provisions.
Reinsurance program waiver	<p>Sec. 20(a)(2):</p> <p>Requires KID to:</p> <ol style="list-style-type: none"> 1. Prepare a waiver under section 1332 of the federal patient protection and affordable care act to implement a reinsurance program for health insurance plans; 2. procure the services of an experienced contractor to assist in developing such waiver; 3. develop the waiver in coordination with KDHE to offset potential costs associated with Medicaid expansion; 4. determine the extent to which a \$35M annual appropriation for reinsurance would decrease health insurance premiums in Kansas; and 5. within 150 days, submit the waiver request and supporting actuarial analysis to the state finance council for approval. 	<p>Sec. 2:</p> <p>Same, except:</p> <ol style="list-style-type: none"> 2. Does not require KID to procure the services of an experienced contractor to assist; 4. does not require a determination with respect to a \$35M annual appropriation; and 5. does not require submission to and approval by the state finance council.
"Institutions for mental disease exclusion"	<p>Sec. 21:</p> <p>Requires KDHE to submit a waiver to CMS prior to 1-1-2021 to allow for medicaid reimbursement for inpatient psychiatric acute care and nullifies a previous budget proviso with a conflicting deadline.</p>	No equivalent provisions.
State Finance Council involvement	<p>Sec. 22:</p> <p>Appropriates \$35M to the State Finance Council in fiscal year 2022 for the health insurance plan reinsurance program and directs the Council to approve or deny the proposed reinsurance program prior to submission of the associated waiver to CMS.</p>	No equivalent provisions.

Bethell Joint Committee review	<p>Sec. 23:</p> <p>During calendar years 2021 and 2022, adds one additional day to each quarterly meeting of the committee and directs the committee to monitor the implementation of the act.</p>	No equivalent provisions.
Hospital surcharge	<p>Secs. 25 through 32:</p> <p>Requires KDHE to impose a new surcharge on each hospital provider in an amount necessary to generate, in the aggregate, \$35M per fiscal year.</p> <p>Surcharge revenues would be used to offset costs related to medicaid expansion beneficiaries.</p>	<p>Sec. 9:</p> <p>Similar, except that the annual amount is \$31M, and the draft does not make conforming amendments to existing hospital assessment statutes.</p>