

SESSION OF 2013

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
SUBSTITUTE FOR HOUSE BILL NO. 2183**

As Agreed to April 4, 2013

Brief*

Sub. for HB 2183 would enact and amend several provisions in Kansas law related to the Department of Health and Environment (KDHE). Generally, the bill would:

- Address the designation and control of infectious and contagious diseases;
- Create the Office of Laboratory Services Operating Fund, which would be a fee fund for the Kansas Department of Health and Environmental Laboratories Bureau (KHEL) of KDHE;
- Amend provisions of and rename the Kansas Health Information Technology and Exchange Act as the Kansas Health Information Technology Act; and
- Amend the law concerning the ability of KDHE to recover from the estates of recipients of medical assistance.

Effective Dates

The effective dates of all provisions of the bill take effect upon publication in the statute book.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Designation and Control of Infectious and Contagious Diseases

The bill would amend existing law to expand the scope of the rules and regulation authority of the Secretary of the Department of Health and Environment (Secretary) relating to the protection of public health and for the control of infectious or contagious diseases and would designate those changes made to KSA 65-116a and KSA 65-128 as “Chy J. Miller’s Law.”

The bill would allow the Secretary to issue orders and adopt rules and regulations to provide for the testing of such diseases as deemed medically necessary and reasonable for the protection of public health and control of infectious or contagious diseases. The bill also would require rules and regulations be developed and adopted by January 1, 2014, to protect both individuals who provide services that may result in occupational exposure to blood or other potentially infectious materials and those who receive the services. Further, the bill would provide definitions for applicable terms and would repeal KSA 2012 Supp. 65-129a containing definitions addressed by the bill. Technical amendments also would be made.

Existing law only authorizes the Secretary to designate diseases that are infectious or contagious and to adopt rules and regulations for the isolation and quarantine of such diseases and persons with or exposed to such diseases as are needed to prevent the spread and dissemination of diseases dangerous to the public.

The following definitions would be amended or newly defined by the bill:

- The definition of “tuberculosis” would be updated;
- “Infectious and contagious diseases” would mean those designated by the Secretary as needing control for the protection of the public health; and

- “Blood,” “occupational exposure,” and “other potentially infectious materials” would be defined.

Office of Laboratory Services Operating Fund

The bill would create the Office of Laboratory Services Operating Fund, which would be a fee fund for the Kansas Health and Environmental Laboratories Bureau of the KDHE. Expenditures from the fee fund would be used by KDHE only for the purpose of operating the Office of Laboratory Services (Office). The bill sets out the fees and penalties that would be deposited to the fee fund, some of which currently are deposited to the credit of the State General Fund (SGF) per existing law. The Secretary would have authority to adopt rules and regulations and set fees for biological or chemical analysis services provided by the Office, and to allow for the deposit of those fees in the fee fund. Further, the bill would repeal KSA 75-5607 and move language in that statute creating the Office of Laboratory Services to KSA 75-5608.

Specifically, the bill would allow the Secretary to remit to the State Treasurer, for deposit in the State Treasury to the credit of the fee fund, the fees collected for the analysis of all waters and fees and penalties received for certification of environmental laboratories at private and public facilities under the Environmental Laboratory Improvement Program (ELIP). Existing law requires the deposit of these fees and penalties in the State General Fund (SGF).

Further, the Secretary would have authority to adopt rules and regulations for the collection and biological or chemical analysis of samples received by the Office, to set fees for any biological or chemical analysis services provided, and to allow for the waiver of any such fees in the interest of protecting the public health and safety. The Secretary would be required to waive fees for such services provided to public health departments and the State Hospitals. The fees charged and collected could not exceed the actual cost of analysis and testing provided by the Office. Fees received for

biological and chemical analysis services also would be deposited to the credit of the newly created fee fund.

Kansas Health Information Technology Act

The bill would amend provisions of and rename the Kansas Health Information Technology and Exchange Act as the Kansas Health Information Technology Act (the Act), transfer the oversight of and the authorization to create and establish standards for the approval and operation of statewide and regional health information organizations from the Kansas Health Information Exchange, Inc. (KHIE) to the Department of Health and Environment (the Department), and establish the Advisory Council on Health Information Technology. The bill also generally would replace references to “health information exchange” with “the sharing of health information electronically.” The bill also would make several technical amendments.

Purpose of the Act

The bill would update the stated purpose of the Act, by indicating the Act is “to harmonize state law with the HIPAA privacy rule with respect to individual access to protected health information, proper safeguarding of protected health information, and the use and disclosure of protected health information for purposes of facilitating the development and use of health information technology and the sharing of health information electronically.” (The U.S. Department of Health and Human Services issued the Privacy Rule to implement national standards for the protection of health information pursuant to the Health Insurance Portability and Accountability Act of 1996 [HIPAA].)

Definitions

The bill would revise definitions of the terms “approved health information organization,” “covered entity,” “health care

provider,” “health information organization,” and “participation agreement.” Additionally, the term “health information technology” would be amended to specify that the term includes an electronic health record, a personal health record, the sharing of health information electronically, electronic order entry, and electronic decision support.

The bill would delete the following terms from the Act: “corporation” (this term refers to the Kansas Health Information Exchange, created by Executive Order 10-06), “designated record set,” “DPOA-HC,” “electronic protected health information,” “health care clearinghouse,” “health plan,” “hybrid entity,” “interoperability,” “public health authority,” and “standard authorization form.”

The bill would add definitions of “authorization” and “department” to the Act. “Authorization” would mean a document that permits a covered entity to use or disclose protected health information for purposes other than to carry out treatment, payment or health care operations, and that complies with the requirements of 45 CFR § 160.508.

Oversight by the Department of Health and Environment

The bill would transfer duties to establish and revise standards for the approval and operation of the statewide and regional health information organizations operating in the state from the Kansas Health Information Exchange (“corporation”) to the Department of Health and Environment. The Department would be required to ensure that approved health information organizations operate within the state in a manner consistent with the protection of the security and privacy of health information of the citizens of Kansas.

Standards

Among the standards in the Act and those amended or created by the bill are these:

- Adherence to nationally recognized standards for interoperability, that is, the capacity of two or more information systems to share information or data in an accurate, effective, secure, and consistent manner;
- Adoption and adherence to rules promulgated by the Department regarding access to and use and disclosure of protected health information maintained by or on an approved health information organization; and
- Development of procedures for entering into and enforcing the terms of participation agreements with covered entities which satisfy the requirements established by the Department pursuant to participation agreement provisions of this act.

The bill would further prohibit State General Fund expenditures for the purpose of administration, operation, or oversight of the health information organizations, with the following exception: the Secretary would be permitted to make operational expenditures for the purpose of adopting and administering the rules and regulations necessary to implement the Act.

Certificate of Authority and Re-approval, Health Information Organizations

The bill would direct the Department to establish requirements to be used by approved health information organizations in participation agreements with covered entities. Among the requirements, the Department would be required to provide:

- Specifications of procedures by which an individual's protected health information will be disclosed by covered entities, will be collected by

approved health information organizations, and will be shared with other participating covered entities and with the Department as required by law for public health purposes;

- Specification of procedures by which an individual may elect that protected health information be restricted from disclosure by approved health information organizations to covered entities; and
- Specifications of purposes for, and procedures by which a covered entity can access an individual's protected health information from the approved health information organization, including access to restricted information by a covered entity in an emergency situation when necessary to properly treat the individual.

The bill also would provide procedural requirements for the written notice provided by covered entities to individuals and their personal representatives.

Health Information Organizations and Protected Health Information

The bill would state that protected health information in the possession of an approved health information organization cannot be subject to discovery, subpoena, or other means of legal compulsion for the release of such information to any person or entity. Further, an approved health information organization could not be compelled by a request for production, subpoena, court order, or otherwise, to disclose protected health information relating to an individual.

Advisory Council on Health Information Technology

The bill would create the Advisory Council on Health Information Technology (Council), a group that would serve in

an advisory role to the Secretary of Health and Environment. The Council would be within the Division of Health, Department of Health and Environment. The Council would include 23 voting members serving, with the exception of the Governor and Secretary or their designees, in staggered terms at the commencement of the Council (term length, varying from one to four years for initial appointments, would be determined by lot):

- Secretary of Health and Environment, or designee;
- Governor, or designee;
- Four legislators, selected as follows:
 - Chairperson and ranking minority member, or their designees, of the House Health and Human Services Committee; and
 - Chairperson and ranking minority member, or their designees, of the Senate Public Health and Welfare Committee;
- Two members representing consumers (appointed by the Secretary);
- One member representing employers (appointed by the Secretary);
- One member representing payers (appointed by the Secretary);
- One member representing local health departments (appointed by the Secretary, from a list of three names submitted by the Kansas Association of Local Health Departments);
- Three members representing hospitals (appointed by the Secretary, from a list of three names for each position submitted by the Kansas Hospital Association):
 - One of the members must be involved in the administration of a critical access hospital;

- Three members appointed by the Secretary from a list of three names for each position submitted by the Kansas Medical Society:
 - At least two of the members must be practicing physicians; and
 - One of physicians must be a physician in a primary care specialty;
- Two members representing pharmacists (appointed by the Secretary from a list of three names submitted by the Kansas Pharmacists Association):
 - At least one of the members must be a practicing pharmacist;
- One member representing the University of Kansas Center for Health Information (appointed by the Secretary from a list of three names submitted by the University of Kansas Center for Health Information);
- One member representing the Kansas Foundation for Medical Care (appointed by the Secretary from a list of three names submitted by the Kansas Foundation for Medical Care);
- One member representing the Kansas Optometric Association (appointed by the Secretary from a list of three names submitted by the Kansas Optometric Association); and
- One member representing the Association of Community Mental Health Centers of Kansas (appointed by the Secretary from a list of three names submitted by the Association of Community Mental Health Centers of Kansas).

Following their initial terms of service on the Council, members would be eligible for reappointment and, if

reappointed, those members would serve for four years. The bill would make other provisions for filling vacancies on and removal of members on the Council. The Council would be required to meet at least four times per year and at times as the Council deems appropriate or as called by the Secretary.

Members of the Council would be entitled to compensation and expenses as provided in existing law. Members attending Council meetings or subcommittee meetings authorized by the Council would be paid mileage and all other applicable expenses, provided those expenses are consistent with policies established from time-to-time by the Council.

Medical Assistance Recovery Program

The bill would amend the law concerning the ability of KDHE to recover from the estates of recipients of medical assistance. Current law allows KDHE to file and enforce a lien against the real property of a recipient during the recipient's lifetime and, pursuant to the bill, KDHE also could file and enforce such a lien after a recipient's death. Any such lien would need to be filed in the office of the Register of Deeds of the county where the real property is located within one year from the date of death of the recipient. The bill would clarify these liens would not have priority over transfers for value to a *bona fide* purchaser of record. Pursuant to the bill, KDHE also could claim an interest in the unclaimed property of a deceased recipient of medical assistance held by the State Treasurer, not to exceed the amount of assistance received. Further, the bill would require the Kansas Department for Children and Families (DCF) to provide notice to KDHE that a recipient has died within seven days of receiving notice of the recipient's death.

The bill also would make technical amendments.

Conference Committee Action

The second Conference Committee agreed to the Senate amendments to the bill with the following exceptions, additions, and revisions:

- Further amended Sub. for HB 2183 by adding “medically necessary and reasonable” to the requirement that rules and regulations issued by the Secretary be necessary to prevent the spread and dissemination of disease injurious to the public health, and clarified which sections of law would be named “Chy J. Miller’s Law.”
- Inserted HB 2343, as recommended by the House Committee on Health and Human Services, and further amended the bill to require that the fees collected could not exceed the actual cost of analysis and testing provided by the Office, and to require the waiver of fees for services provided to public health departments and the State Hospitals.
- Inserted SB 210, as amended by the Senate Committee on Public Health and Welfare, addressing the renaming of the Kansas Health Information Technology and Exchange Act as the Kansas Health Information Technology Act and the establishment of the Advisory Council on Health Information Technology, and further amended the bill to name the appointing entity for certain members of the Advisory Council.
- Inserted Sub. for HB 2166, as recommended by the House Committee on Judiciary, regarding the ability of KDHE to recover from the estates of recipients of medical assistance, and further amended to require that the filing of a lien on real property would have to occur within one year from the death of the recipient of medical assistance.

Background

HB 2183 was introduced by the House Committee on Health and Human Services. Representatives of the City of Lenexa Fire Department, Butler County Emergency Medical Services, and the Kansas Board of Emergency Medical Services (EMS) testified in favor of the bill at the hearing before the House Committee on Health and Human Services. The City of Lenexa Fire Department representative testified the bill would update the disease list in accordance with Occupational Safety and Health Administration and the Centers for Disease Control and Prevention, as well as the updates to the federal Ryan White law. The representative of the EMS stated the bill would incorporate new language in several statutes that define, clarify, and identify updates to information and processes that address the management and follow-up of exposure to communicable diseases by emergency first responders, whether fire, law enforcement or emergency medical services. The representative said the bill would ensure providers found to be affected are made aware of the exposure and a treatment regimen is implemented. He noted if not known and not treated, there is the potential for continued exposure to fellow workers, family members, and patients treated after the exposure. Written testimony in favor of the bill was provided by representatives of the Kansas State Firefighters Association and the Kansas Hospital Association. No opponent or neutral testimony was provided on the bill.

The House Committee on Health and Human Services amended the bill by substituting a new bill to address the same subject matter of the original bill by using a different set of statutes related to the Secretary's authority to issue administrative regulations for infectious diseases other than Human Immunodeficiency Virus (HIV). The original bill used statutes explicitly dealing with HIV. The substitute bill would provide for the operational details in the original bill to be addressed in administrative regulations, rather than in statute, by expanding the Secretary's rules and regulations authority to manage exposures to infectious diseases. The substitute

bill contains an amendment to clarify the protections to be provided by rules and regulations regarding possible exposure to blood and other potentially dangerous materials extended to individuals receiving services from those who by the nature of their occupations may be exposed to such materials.

At the time the substitute bill was being considered by the House Committee, testimony was provided by a representative of the KDHE, who stated KDHE had worked closely with representatives from the Kansas Emergency Medical Services Association on the language and consulted with the Kansas Hospital Association and the Kansas Medical Society. The representative said these stakeholders indicated support for the revisions proposed.

The House Committee of the Whole amended the bill to correct an inadvertent omission in the printing of the substitute bill that did not reflect an amendment passed by the House Committee on Health and Human Services. The House Committee of the Whole amendment would clarify the protections to be provided by rules and regulations regarding possible exposure to blood and other potentially dangerous materials extended to individuals receiving services from those who by the nature of their occupations may be exposed to such materials.

The Senate Committee on Public Health and Welfare amendment names the changes to law made by the bill as “Chy J. Miller’s Law.” The amendment was requested in testimony submitted at the Senate Committee hearing on the bill by Representative Christmann.

Additional information about other bills inserted in Conference Committee is found in corresponding Supplemental Notes.

No fiscal note was available on Sub. for HB 2183. The fiscal note prepared by the Division of the Budget on the original bill states the Kansas Department for Aging and Disability Services indicated passage of the bill could increase costs for the State Hospitals; however, a precise

fiscal effect cannot be determined because the potential number of incidents that may occur is unknown. Both the Department of Corrections and the Juvenile Justice Authority expect that any fiscal effect resulting from the bill would be accommodated within existing agency resources. The Kansas Board of EMS indicated there would be no fiscal effect on the EMS; however, any reimbursements for patient transportation costs relating to incidents addressed in the bill would be handled at the local level.

The fiscal note on HB 2343, as introduced, states that, currently, operating expenditures for KHEL are paid by the SGF. Since KHEL already collects the fees, no additional staff would be required to implement the bill. According to the fiscal note, passage of the bill would have no fiscal effect on local governments. The bill would reduce revenue to the SGF by approximately \$1,002,000 which is the amount collected by KHEL in FY 2012 for sampling and certification work. This same amount, however, would no longer be appropriated from the SGF. Any fiscal effect associated with the bill is not reflected in *The FY 2014 Governor's Budget Report*.

The fiscal note on SB 210, as introduced, indicates KDHE states the costs and duties of administering the Advisory Council on Health Information Technology and associated activities would be absorbed within existing resources.

The fiscal note for HB 2166, as introduced, includes the HMS estimate that passage could result in recovery of \$1.4 million in FY 2014, but 57.0 percent of that amount would be returned to the federal government. In FY 2015, HMS estimates \$1.9 million in additional revenue and, of that amount, the state would retain \$821,300. The Office of Judicial Administration indicates passage could have a fiscal impact, but it likely would be accommodated within existing resources. There is no fiscal note for the substitute bill.

health; Kansas department of health and environment; infectious and contagious diseases; office of laboratory services operating fund; Kansas health information technology act; medical assistance recovery program

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