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Susan Mosier, MD, Acting Secretary | Department of Health & Environment | Sam Brownback, Governor

Date: 1/29/2015

Subject: Written Informational Testimony on House Bill 2004

Submitted By: Mike Randol, Kansas Department of Health and Environment – Director of the Division of Health Care Finance

Bill Description: KDHE appreciates the opportunity to give testimony on HB 2004, Right to Try Act. This act would give terminally ill patients the right to utilize investigational drugs, biological products, and devises that are not FDA approved.

Agency/Program Impact: The bill states that a health insurance carrier, in this instance Medicaid, may but shall not be required to provide coverage for the cost of an investigational drug, biological product, or device. If the intent would be to allow Medicaid beneficiaries to participate, the cost of such participation would be with state only funds. The Centers for Medicare and Medicaid Services (CMS) does not allow federal funding for drugs/devices, etc. that are not FDA approved.

The bill also articulates that the patient's health insurer, Medicaid in this instance, are not obligated to pay for any care or treatments consequent to the use of the investigational drug, biological product, or device. It would be extremely difficult to determine the causal effects of the use of investigational drugs, biological products, etc. For example, if you had a Medicaid beneficiary who participated and later developed cancer, how would the Medicaid agency determine the cause of the consequent disease? It could put the agency in the position of continuing to provide qualified medical services to the beneficiary - but not allow for the treatment of the "consequent" disease. If the state were to determine that all treatments should continue – then the additional cost for the "consequent" disease would be state only funds.

It is also of concern regarding the language allowing the denial of coverages during utilization of these drugs, biologicals, and devices. It is unclear what position CMS would take relative to a state Medicaid agency denying otherwise allowable services.