SESSION OF 2015

SECOND CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2149

As Agreed to April 2, 2015

Brief*

Senate Sub. for HB 2149 would require the Kansas Department of Health and Environment (KDHE) to reimburse "medical care facilities," as defined in the bill, for donor human breast milk (milk) provided to a recipient of medical assistance under the Kansas Program of Medical Assistance in certain situations.

The bill also would amend the procedures regarding restrictions of patients' access to any new prescription-only drug under the Kansas Medicaid Program and would establish meeting requirements for the Medicaid Drug Utilization Review Board (Board). Further, the bill would allow prior authorization or other restrictions on medications used to treat mental illness to be imposed on Medicaid recipients for medications subject to guidelines developed by the Board in accordance with provisions of the bill; establish instances not to be construed as restrictions; provide for the development of guidelines; establish requirements for Board review of medications used to treat mental illness available for use before and after July 1, 2015; and create a Mental Health Medication Advisory Committee (Committee), outlining Committee membership and appointments, meeting frequency, and member compensation.

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*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/klrd

Reimbursement for Prescribed Human Breast Milk

Reimbursement would be required for prescribed milk provided to infant recipients of medical assistance if the infant is under three months of age, critically ill, and in the neonatal intensive care unit of a hospital as long as the following conditions are met:

- The milk was ordered by a person licensed to practice medicine and surgery;
- KDHE determined the milk was medically necessary for the infant;
- An informed consent form indicating the risks and benefits of using banked milk was signed and dated by the infant's parent or legal guardian; and
- The milk was obtained from a milk bank that meets the quality requirements established by KDHE.

The KDHE would be required to utilize an electronic prior authorization system that uses the best medical evidence and care and treatment guidelines consistent with national standards to determine medical necessity. In addition, the KDHE would be required to promulgate rules and regulations deemed necessary to administer the provisions regarding reimbursement for prescribed milk prior to July 1, 2016.

Access to New Prescription-only Drugs under the Kansas Medicaid Program

The Secretary of Health and Environment (Secretary) would be allowed to implement prior authorization of any new prescription-only drugs until such drugs are reviewed by the Board at its next scheduled meeting. During the period before the new drugs are reviewed by the Board, the drugs would be approved for use as indicated in package insert guidelines

approved by the federal Food and Drug Administration and clinically reputable compendia, as approved by the Secretary.

Under existing law, the Secretary is prohibited from restricting patient access to prescription-only drugs through a program of prior authorization or a restrictive formulary, except by rules and regulations. The current requirement that these proposed rules and regulations be submitted to the Board for written comment would be eliminated.

Board Meeting Requirements

The Board would be required to meet at least quarterly. The meetings would be open to the public and provide an opportunity for public comments. The Board would be required to post notice of its meetings at least 14 business days before the scheduled meetings.

Prior Authorizations or Other Restrictions on Mental Health Medications for Medicaid Recipients

The bill would provide that no requirements for prior authorizations or other restrictions on medications used to treat mental illnesses may be imposed on Medicaid recipients, except on medications subject to guidelines developed by the Board in accordance with provisions of the bill.

Existing law prohibits requirements for prior authorization or other restrictions on medications used to treat individuals with mental illnesses who are Medicaid recipients. Medications in the existing statute available without prior authorization or other restrictions include atypical medications, conventional antipsychotic medications, and other medications used for the treatment of mental illness.

The bill specifies the following would not be construed as restrictions:

- Any alert to a pharmacist that does not deny the claim and can be overridden by the pharmacist;
- Prescriber education activities; or
- Consolidation of dosing regimens to equivalent doses.

Adoption of Guidelines and Medication Review

The Committee would be required to provide the Board with recommendations for the development of guidelines. With regard to the recommendations from the Committee, the Board would have the following options:

- Accept the recommendations in whole, to become effective immediately upon approval; or
- Reject the recommendations in whole, requiring referral back to the Committee for further consideration.

The Board would be prohibited from adopting medication guidelines related to mental health medications without recommendations made by the Committee.

Prior to July 1, 2016, the Board would be required to review all medications used to treat mental illness available for use on July 1, 2015. The Board would be required to review all medications used to treat mental illness that do not exist on July 1, 2015, but are later developed or believed to be effective in the treatment of mental illness within six months of presentation to the Board.

Committee Appointment, Meetings, and Compensation

The bill would create the Committee, with members appointed by the Secretary. Committee membership would be as follows:

- The Secretary or Secretary's designee, to serve as chairperson;
- Four persons licensed to practice medicine and surgery with board certification in psychiatry, of which:
  - Two would be nominated by the Kansas Psychiatric Society, with one specializing in geriatric mental health; and
  - Two would be nominated by the Association of Community Mental Health Centers of Kansas, with one specializing in pediatric mental health;
- Two pharmacists nominated by the Kansas Pharmacists Association;
- One person licensed to practice medicine and surgery nominated by the Kansas Medical Society; and
- One advanced practice registered nurse engaged in a role of mental health nominated by the Kansas State Nurses Association.

Nominating bodies would provide two nominees for each position for which they provide nominations to the Secretary, who would select the appointee from the provided nominees.

The Committee would meet upon the request of the Committee chairperson, and would be required to meet at least once each quarter. Committee members would receive compensation and expenses as provided in KSA 75-3223. Mileage and all other applicable expenses would be paid to

members attending Committee meetings if such expenses are consistent with policies established by the Secretary.

Conference Committee Action

The Second Conference Committee agreed to all provisions in Senate Sub. for HB 2149 and agreed to delete the requirement that the Secretary would utilize rules and regulations to approve use of new drugs for package insert guidelines, during the period before new drugs are reviewed by the Board. The Committee also made technical amendments.

Background

The Senate Committee on Public Health and Welfare amended the contents of SB 123 and then added the amended language of SB 123 and the contents of SB 181 (as amended by the Senate Committee of the Whole) to HB 2149 and created a substitute bill.

The Senate Committee of the Whole amended the substitute bill to establish a date certain for the promulgation of rules and regulations on prescribed milk and to remove redundant language regarding what would not be construed as restrictions on medications used to treat mental illness.

HB 2149

In the House Committee on Health and Human Services, a neonatal nurse practitioner from St. Luke's Health System testified in support of the bill. She noted the benefits of human breast milk, explained the donation process, and discussed situations in which milk may be the most beneficial option for nutrition. No opponent or neutral testimony was provided.

In the Senate Committee on Public Health and Welfare, a neonatologist with Pediatrix Medical Group at St. Luke's Health System testified in favor of the bill. No opponent or neutral testimony was provided.

According to the fiscal note on the original bill prepared by the Division of the Budget, the fiscal effect of the bill for KDHE would be negligible.

SB 123

The bill was introduced by the Senate Committee on Public Health and Welfare.

In the Senate Committee, testimony in support of the bill, as introduced, was provided by the Acting Secretary of Health and Environment, the Secretary for Aging and Disability Services, and representatives of Amerigroup Kansas Plan, Sunflower Health Plan, and UnitedHealthcare Community Plan. The proponents generally stated the bill would provide flexibility for the Medicaid agency to collaborate with mental health providers and develop policies that ensure access to care and protect the health and well-being of vulnerable Kansas residents. Written testimony in support of the bill was provided by a representative of Kansas Independent Pharmacy Service Corporation.

Testimony in opposition to the bill, as introduced, was provided by representatives of the Association of Community Mental Health Centers of Kansas, Inc., Family Service and Guidance Center, High Plains Mental Health Center, Horizons Mental Health Center, Kansas Association for the Medically Underserved, National Alliance on Mental Illness, The Center for Counseling and Consultation, and Valeo Behavioral Health Care and by a pharmacist, a psychologist, and several private individuals. The opponents generally expressed concern about the potential delay or lack of access to appropriate behavioral health medications and the impact that would have on patients, hampering the providers' ability to

treat their patients adequately. Written testimony in opposition to the bill was provided by representatives of Compass Behavioral Health, Kansas Association of Addiction Professionals, Kansas Association of Counties, Kansas Medical Society, Kansas Psychiatric Society, and the Pharmaceutical Research and Manufacturers of America and by several private individuals.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, *The FY 2016 Governor's Budget Report* includes savings of $16.0 million, including $6.9 million from the State General Fund, which would be realized with passage of the bill. The fiscal note states, if the bill is not enacted, the previously stated amount would have to be added to the budget for FY 2016 and FY 2017.

SB 181

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of KDHE. At the Senate Committee hearing, a representative of KDHE provided testimony in support of the bill, as introduced, stating the changes would allow the KanCare program to better manage new-to-market drugs and ensure the drug is being prescribed appropriately. The representative also noted the bill would allow KanCare to move drugs more quickly through the process.

Written testimony in opposition to the bill, as introduced, was provided by representatives of the Kansas Pharmacists Association and the Pharmaceutical Research and Manufacturers of America. The opponents generally stated the bill could make it difficult for patients to receive new medicines in a timely manner by placing a hold on the use of new drugs and any delays or utilization management only should occur through careful consultation with the Board. No other testimony was provided.

The Senate Committee amended the bill by removing language regarding the Secretary's option to submit new prescription-only drugs to the Board for review and comment and allowing the Secretary to place a hold on the use of any new prescription-only drug until the Board had completed its review. The Senate Committee amended the bill by adding language allowing for prior authorization of new prescription-only drugs, until reviewed by the Board; approving use of the drugs within the package insert guidelines approved by the Federal Drug Administration, as approved by the Secretary in rules and regulations, prior to review by the Board; and adding provisions regarding Board meeting requirements.

The Senate Committee of the Whole made technical amendments to the bill.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDHE states all changes to revenue and expenditures that would result from the bill have been included in the Governor's Budget Recommendations for FY 2016 and FY 2017. KDHE indicates, if the bill is not enacted, the budget for KanCare would have to be increased by $17.4 million per year, including $7.5 million from the State General Fund in FY 2016 and $7.7 million from the State General Fund in FY 2017. The remainder of the additional needed expenditures would come from federal Medicaid funds.

Medicaid; Medicaid Drug Utilization Review Board; human donor breast milk

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