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MEMORANDUM

To: Healthcare Stabilization Fund Oversight Committee
From: Office of Revisor of Statutes
Date: Thursday, October 1, 2020
Re: 2020 Special Session House Bill No. 2016, governmental response to the COVID-19 pandemic in Kansas

During the 2020 special session of the Legislature, the Legislature passed, and the Governor signed into law, 2020 Special Session House Bill No. 2016 (HB 2016). The bill included provisions addressing a broad array of issues related to the COVID-19 pandemic, including, but not limited to, health, welfare, property and economic security. Although the legislation was broad in scope, this memorandum addresses provisions of the bill directly relating to healthcare providers.

I. Liability Protection for Healthcare Providers

Section 10 of HB 2016 provides that healthcare providers are immune from civil liability for acts, omissions, healthcare decisions or the rendering of or the failure to render healthcare services, including service that are altered, delayed or withheld, as a direct response to the state of disaster emergency related to the COVID-19 public health emergency. The bill does not provide immunity for: (1) Acts, omissions or healthcare decisions that constitute gross negligence or willful, wanton or reckless conduct; or (2) services not related to COVID-19 that are not altered, delayed or withheld as a direct response to the COVID-19 public health emergency. These provisions apply retroactively to any cause of action accruing on or after March 12, 2020, and continue to apply through the end of the state of disaster emergency.

II. Liability Protection for Adult Care Homes

Section 13 of HB 2016 provides an affirmative defense to liability in a civil action for damages, administrative fines or penalties for a COVID-19 claim if the facility: (1) Was caused to reaccept a resident who was removed from the facility for treatment for COVID-19; (2) treats a resident who tested positive for COVID-19 in compliance with a statute or rule and regulation; or (3) is acting pursuant to and in substantial compliance with public health directives. These

provisions apply retroactively to any cause of action accruing on or after March 12, 2020, and continue to apply through the end of the state of disaster emergency.

III. Adult Care Home Operations Related to COVID-19

Section 19 of HB 2016 requires the Kansas Department for Aging and Disability Services to take certain actions related to adult care homes, including: (1) Within 90 days of the bill becoming law, make infection control inspections; (2) provide necessary personal protective equipment, sanitizing supplies and testing kits appropriate to the needs of each facility; and (3) ensure that infection prevention and control best practices are adopted and made available publicly.

IV. Expanded Practice of Telemedicine

Section 20 of HB 2016 codified into statute the provisions of Executive Order 20-08, authorizing the expanded use of telemedicine by physicians. The section also allows a physician holding a license issued by another state to practice telemedicine to treat patients in the state of Kansas, if the physician advises the State Board of Healing Arts of such practice in writing and the physician holds an unrestricted license to practice and is not the subject of any investigation or disciplinary action. The provisions expire on January 26, 2021.

V. Hospital Operations Related to COVID-19

Section 21 of HB 2016 allows hospitals to admit patients in excess of the hospital's number of licensed beds or inconsistent with the licensed classification of the hospital's beds, to the extent necessary to treat COVID-19 patients and to separate COVID-19 patients from non-COVID-19 patients. The section also allows a hospital to use non-hospital space, including off-campus space, to perform COVID-19 care and to permit healthcare providers to provide services at the hospital without becoming a member of the hospital's medical staff. This section expires 120 days after the expiration or termination of the COVID-19 state of disaster emergency.

Section 39 of HB 2016 amended current law, effective through June 30, 2021, to suspend restrictions placed on critical access hospitals.

VI. Temporary Emergency Licensure of Healing Arts Professions

HB 2016 codified into statute the provisions of Executive Order 20-26, allowing the State Board of Healing Arts to issue temporary emergency licenses to practice professions under the jurisdiction of the Board for the purpose of preparing for, responding to or mitigating any effect of COVID-19, if the applicant has qualifications sufficient to protect public safety and welfare. This section expires 120 days after the expiration or termination of the COVID-19 state of disaster emergency.

VII. Amended Scope of Practice and Licensure Requirements for Certain Professions and Facilities

Section 23 of HB 2016 codified into statute the provisions of Executive Order 20-26, authorizing specific expanded the scope of practice for certain healthcare professionals to provide services related to COVID-19 treatment and suspending certain healthcare professional licensure requirements. Professions specifically addressed in the bill include: Licensed physician assistants, licensed advanced practice registered nurses, registered nurse anesthetists, registered professional nurses, licensed practical nurses, licensed pharmacists, students enrolled in programs to become healthcare professionals, healthcare professionals or emergency medical personnel serving in the military, medical students, physical therapists and emergency medical services providers. The bill also grants expanded reciprocal practice privileges for a healthcare professional licensed and in good standing in another state, subject to any license limitations as in the professional's licensing state, and provides that such professional shall not be liable in any criminal prosecution, civil action or administrative proceeding arising out of the professional's lack of licensure in the state of Kansas.

The section also allows a healthcare professional to be licensed, certified, registered, renewed or reinstated within five years of lapse without satisfying certain requirements, including: Examination, if the examination has been canceled during the state of disaster emergency; fingerprinting; continuing education; and payment of a fee.

The section also provides that a professional certification in basic life support, advanced cardiac life support or first aid shall remain valid if the certification is due to expire or be canceled during the COVID-19 state of disaster emergency.

The section also suspends fingerprinting requirements as a condition of licensure or certification for any hospital, adult care home, county medical care facility or psychiatric hospital.

Section 23 expires on January 26, 2021.