



To: House Judiciary Committee

From: Rachelle Colombo
Executive Director

Date: January 13, 2021

Subject: Concerning Health Care Liability and the provisions of the Kansas
Emergency Management Act

The Kansas Medical Society appreciates the opportunity to provide testimony today regarding the extension of those provisions outlined in the Kansas Emergency Management Act (KEMA) as established through the passage of HB 2016. KMS particularly appreciates the provisions which were included to stabilize the medical professional liability climate in the wake of the nationally declared emergency pertaining to COVID-19. Those provisions have ensured ongoing access to care for Kansas patients despite a host of unpredictable factors affecting medical treatment.

As passed in May of 2020, KEMA includes liability protections for provisions all health care providers, covering COVID-related professional health care services rendered, or otherwise medically necessary treatment that was delayed during the national state of emergency due to COVID-19. A significant portion of non-urgent medical care that would otherwise have been appropriately provided has been delayed at various points in response to COVID 19. Efforts to preserve PPE, prevent the spread of coronavirus and to maximize health care capacity to respond to COVID-19 have all been factors in delaying or altering medical treatments. Health care workers responding to the public health threat as outlined by local, state and national government agencies, as well as by their various professional organizations, should not face increased liability risks for care they could not responsibly render as a result of the pandemic. The provisions of HB 2016 do not immunize providers from acts that constitute gross negligence or willful misconduct, nor does it extend beyond professional health care services. These narrowly constructed liability provisions for health care providers are specifically limited to those services rendered or delayed during the national emergency declaration period.

We would respectfully urge your support of these liability provisions as a stand-alone policy, or as through the extension of current KEMA policy. The Kansas Medical Society has not previously provided public comment in a legislative venue on other aspects of KEMA as it represents a compilation of several policies that were first enacted through executive order. Kansas physicians understand the importance of extending the KEMA provisions contained in HB 2016, which was enacted by the Legislature as a temporary emergency response to the pandemic, in order to ensure an appropriate public policy framework for COVID related processes and necessary provisions, such as those

relating to liability protections. However, several portions of the act present well-intended, temporary provisions that created significant inconsistencies within the laws governing patient safety in our state. Appropriate licensure and regulation of medical professionals protects the public and should not be disregarded in an effort to respond to COVID patients, the majority of which do not require hospitalization or ongoing COVID treatment. We urge the committee to reconsider these policies individually at the appropriate time in order to restore consistency across the statutes and ensure optimal patient care.

Thank you for the opportunity to offer these comments in support of extending the liability provisions included in the Kansas Emergency Management Act.