

KABC Advocacy in Action

2018 Legislative Update

as of June 1, 2018

The Kansas legislature officially wrapped up its 2018 session on Friday, May 4. During the seven-day “sine die session the legislature finalized issues around school finance plan to fix the flawed school funding bill, the budget, a revenue plan, and a few other issues. The school funding plan awaits a ruling on the adequacy of that funding by the Kansas Supreme Court. If the Court rejects the legislature’s school finance plan, the Governor may need to call a special session to revisit the funding formula.

Signed by the Governor:

***Sub for HB 2427/Employee Background Check** allows fingerprinting of all employees working with vulnerable persons. The contents of the bill were embedded within S Sub HB 2386 in conference committee. Awaits the Governor’s signature.

The bill expands the classes of persons who cannot be employed by an adult care homes, hospitals, and home health agencies to include persons who have had adverse findings on any State or national registry, as defined by KDADS. The inclusion of a national database search will improve safety. KABC advocated for additional changes because as is, this bill increases the risk of harm to older adults by allowing “provisional employment.”

Provisional employment allows a provider or facility to employ a person and allow them to work directly with vulnerable adults for 60 days without a completed, clean background check. A clean background check would reflect no history of abuse or other harm. Disallowed offenses are defined in the bill.

During the provisional employment period, the provider/facility is not required to have “eyes on” the provisional employee. So essentially, for 60 days the provider/facility may hire an employee who has access to an older adult and their property without providing direct supervision of the employee.

The provider or facility is not required to inform the older adults in care facilities or individuals who receive in-home care services about provisional employment or identify those employees who do not have a cleared background check but are working within older adults during the 60 day window. Providers and facilities are protected from civil liability even if the provisional employee harms an older adult.

Provisional employment transfers all the risk to the vulnerable older adult, even though he/she is the most unable to protect her/himself from abuse or other wrong-doing. The bill strips older adults of the right to pursue civil legal action against the provider/facility that hired the person, is not required to provide direct supervision of the provisional employee, nor required to inform the older adult of the potential risk a provisional employee poses to the older adult. Provisional employment presents serious and significant harm risks to older adults, without any proper notice, and it deprives them of appropriate remedy through the civil legal system.

The bill also amends law related to licensure, certification or registration (licensure) qualifications. Among its changes, the bill requires any licensing body to list the specific civil and criminal records that could disqualify an applicant from receiving a license, certification or registration. The revision of existing requirements must be done within 180 days of publication in the statute book.

***HB 2458/adds physical abuse, unreasonable punishment or unreasonable confinement to the list of elder victim crimes.** The new law merges the previous two categories of crimes of mistreatment of a dependent adult and mistreatment of an elder person into a single crime of mistreatment of a dependent adult or an elder person. Under previous law, the two crimes included the same list of acts against their victims, with the exception of the act of committing mistreatment of a dependent adult by infliction of physical injury, unreasonable confinement or unreasonable punishment of the adult. Under this legislation this act also becomes a crime when committed against an elder person. The bill also adds an additional act applicable to all victims; taking the personal property or financial resources of a victim through a violation of the Act for Obtaining a Guardian or Conservator.

The bill amended the penalty provisions of the crime where the penalty level depends on the monetary value of the personal property or financial resources to increase the ceiling for a misdemeanor from less than \$1,000 to less than \$1,500. The corresponding floor for the lowest felony penalty (severity level 7) and ceiling for multiple previous offenses charged to \$1,500.

It also changed the definition of “elder person” from 70 to 60 years of age.

***Senate Substitute HB 2600/Palliative Care.** Included in this legislation, is the creation of a 13-member council responsible for developing recommendations and advising the Kansas Department of Health and Environment on matters related to the establishment, maintenance, operation, outcomes and the evaluation of palliative care initiatives in the state and program effectiveness. The program is charged with maximizing the effectiveness of palliative care initiatives by ensuring comprehensive and accurate information and education about care available to the public, health care providers and facilities.

SB 311/Mandatory reporters added emergency medical service attendants to the list of mandatory reporters of abuse, neglect, exploitation or need of protective services as it pertains to a resident in adult care homes or certain other adults.

State Budget: Included in the legislative appropriations for the remainder of FY 2018 (which ends June 30, 2017) and FY 2019:

- An additional \$4.9 million (\$4.8 million State General Fund) allocated to the Kansas Department on Aging and Disability Services (KDADS) to provide administrative case management services for persons being served by the frail elderly, physically disabled and the traumatic brain injury waivers under KanCare. This amount includes \$4.4 million, including \$2.2 million from the State General Fund, for individuals on the PD waiver; \$589,462, including \$294,731 from the State General Fund, for individuals on the TBI waiver; and \$4.5 million, including \$2.3 million from the State General Fund, for individuals on the FE waiver for FY 2019.
- Requires KDADS to implement a change to the Medicaid Home and Community Based Services (HCBS) Traumatic Brain Injury Waiver to allow coverage for individual with a documented brain injury acquired from a cause not already covered under the waiver, eliminate the requirement that individuals on the waiver must be at least 16 years old, and allow expenditures within existing resources to provide coverage for new individuals on the waiver.
- Funded the second year of a two-year increase in HCBS provider rates. Implemented in the FY 2018 budget, HCBS reimbursement rates were increased by 7% over fiscal years 2018 and 2019.
- Add \$433,778, including \$138,574 from the State General Fund, for a salary increase for nursing facility surveyors for FY 2019. This amount would be above the salary increase totaling

\$501,333, including \$160,425 from the State General Fund, which is included in the Governor's recommendation for FY 2019. 138,574 295,204 433,778 0.03.

- Add \$200,000, all from the State General Fund, to provide funding for additional meals through grants to the senior nutrition program (Meals on Wheels) for FY 2019.
- Add language notwithstanding KSA 75-5958, which requires yearly rebasing of nursing facility reimbursement rates using the three most current years of actual costs, to allow the Secretary of KDADS to provide an adjusted rate increase for nursing facilities in FY 2018.
- Add \$22.1 million, including \$10.0 million from the State General Fund, for an increase in nursing facility reimbursement rates for FY 2019.
- Requires legislative consent before making changes to eligibility policy for KanCare renewal and extends current contracts with MCOs for three years. The bill requires KanCare policies in place 1/1/18 to remain in place. Only changes approved by the Legislature can be made to the Medicaid system or to contracts with managed care companies.

KanCare: The 2018 legislature made it clear that it intends to apply more oversight of the state's Medicaid program, KanCare. The final budget included a special one-year proviso prohibiting the State from substantially changing the KanCare program from policies in place as of Jan. 1, 2018. This includes but is not limited to imposing any new eligibility requirements or limitations, without legislative approval. The proviso allows exceptions for the implementation of new telehealth services and the expansion of behavioral health services if they don't impose new eligibility requirements or limitations.

The proviso allows KDHE to continue to negotiate three-year contracts with potential KanCare managed care organizations but may not enter into those contracts without prior legislative approval. The State may also continue to negotiate with the federal Centers for Medicare and Medicaid Services (CMS) for the implementation of a work requirement but must receive approval from the Kansas legislature before implementation. KDHE must report back to the 2019 legislature.

KanCare Oversight Committee – The Bethell Home and Community Based Services and KanCare Oversight Committee has tentatively set its third quarter meeting for Aug. 21 and 22. More information will be available once the date has been confirmed and the agenda set.