

SESSION OF 2022

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE  
BILL NO. 2463**

As Recommended by House Committee on  
Health and Human Services

**Brief\***

Sub. for HB 2463 would prohibit certain changes to the state medical assistance program (KanCare) prior to January 1, 2025.

The bill would prohibit any state agency from making any substantive or material change to KanCare beginning on the effective date of this act through January 1, 2025. The bill would extend through December 31, 2024, the KanCare program in existence on the effective date of the act (*Register* publication).

The bill would require the Secretary of Health and Environment to negotiate and take actions necessary to extend contracts with the current managed care organizations (MCOs) for the administration and provision of benefits under KanCare through December 31, 2024, and submit to the U.S. Centers for Medicare and Medicaid (CMS) any approval request necessary to implement the extension.

The bill would not prevent any state agency from taking any action required by an act or appropriation act of the Legislature, federal law, or CMS.

Prior to January 1, 2025, and when the Legislature is not in session, the bill would provide for a state agency to submit to the Legislative Coordinating Council (LCC) a request to make a substantive or material change to KanCare. The bill

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

would allow the LCC to approve changes not otherwise prohibited by law.

The bill would be in effect upon publication in the *Kansas Register*.

## **Background**

The bill was introduced by Representative Arnberger. [Note: In House Committee on Health and Human Services discussion, it was noted the bill, as introduced, was intended to be a House Committee bill.]

### ***House Committee on Health and Human Services***

In the House Committee hearing on the bill on January 26, 2022, representatives of Kansas Hospital Association and Kansas Medical Society provided neutral testimony, stating concern the bill would preclude needed changes to KanCare, such as updating physician Medicaid fees that have been frozen since 2006 and ensuring the Health Care Access Improvement Program (HCAIP) is solvent.

Written-only neutral testimony was provided by a representative of the Association of Community Mental Health Centers of Kansas, Inc.

The State Medicaid Director (Director), on behalf of Kansas Department of Health and Environment (KDHE), and representatives of KanCare Advocates Network and Kansas Action for Children provided **opponent** testimony, stating concern about the breadth and vagueness of the bill and potential impact to the Medicaid program. The Director stated the bill could block fully implementing program improvements that are already in progress, including adding new drugs, treatments, and services to Medicaid and increasing provider reimbursement rates for certain services. The Director stated concern that the bill would significantly delay changes constituents have been asking for, including addressing the

wait lists for Home and Community Based Services waivers. The Director stated the bill could prevent the State from making changes to the Medicaid program as required by federal laws and CMS rules, putting all of the State's annual federal Medicaid funding at risk. The Director noted the bill could also create issues in maintaining KanCare's federal authority. The Director stated concern that the bill would disturb the routine reprocurement process by providing current MCOs with two additional years of State business without having to go through the competitive bidding process and would hinder the State's oversight power by not allowing the State to terminate an MCO contract, even in the case of egregious contract violations.

Written-only opponent testimony was provided by Community Care Network of Kansas, Kansas Department of Administration, Kansas Department for Aging and Disability Services (KDADS), Oral Health Kansas, and the United Methodist Health Ministry Fund.

No other testimony was provided.

On February 17, 2022, the House Committee discussed possible amendments to the bill to address the concerns of the Director. The Director provided comment that the amendments would decrease the amount of time the state agency would be blocked from making changes to KanCare by one year, but more urgent needs that need to be acted on quickly remain a concern, as they would require approval by the Legislature or LCC. The Director stated, because the bill would be in effect after publication in the *Kansas Register*, the state agency would have limited time to withdraw state plan amendments currently pending with CMS. The bill was tabled pending receipt of an opinion from the Kansas Attorney General.

On February 21, 2022, the House Committee voted to take the bill from the table and amended the bill to:

- Change dates, providing no changes could be made to KanCare prior to January 1, 2025, and maintaining the current KanCare system until December 31, 2024;
- Clarify the bill does not prevent any state agency from taking any action required by an act or appropriation act of the Legislature, federal law, or CMS; and
- Allow, prior to January 1, 2025, and when the Legislature is not in session, a state agency to submit to the LCC a request to make a substantive or material change to KanCare. The bill would allow the LCC to approve changes not otherwise prohibited by law.

The House Committee recommended a substitute bill be passed.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDHE and KDADS were unable to estimate a fiscal effect. Both agencies note the bill does not define the phrase “substantive or material change” but could potentially prevent the State’s Medicaid program from complying with federal law and directives from the CMS and put federal funding at risk. Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor’s Budget Report*.

Medical assistance program; Medicaid; KanCare; Legislature; Legislative Coordinating Council