

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
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**MEMORANDUM**

**To:** Senator Jim Denning  
**From:** Scott Abbott, Assistant Revisor of Statutes  
**Date:** January 8, 2020  
**Re:** Comparison of bill draft 20rs2067 to 2019 House Bill No. 2066, as amended by the House Committee of the Whole

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The table beginning on page 2 of this memorandum compares provisions in the bill draft designated 20rs2067 to 2019 House Bill No. 2066, as amended by the House Committee of the Whole, on an issue-by-issue basis. The table is organized according to the structure of the bill draft designated 20rs2067.

The following provisions exist in substantially the same form in both 20rs2067 and HB 2066:

- Authority for KDHE to submit to the federal government any approval request necessary to implement the respective program (section 2(a) of 20rs2067 and section 6 of HB 2066);
- Exclusion from the work referral for full-time students enrolled in a postsecondary educational institution or technical college (section 3(c) of each);
- Redirection of revenues from privilege fees assessed on health maintenance organizations associated with expansion beneficiaries to a new special revenue fund to be used for medical assistance payments for expansion beneficiaries (section 10 of 20rs2067 and section 8 of HB 2066), including technical conforming amendments to K.S.A. 40-3213; and
- Requirements imposed on KDHE and the secretary of corrections to make annual reports to the legislature identifying costs and cost savings (sections 10 through 12 of 20rs2067 and sections 9 through 11 of HB 2066).

<u>Issue</u>	<u>20rs2067</u>	<u>2019 HB 2066 HCoW</u>
Legislative notice	<p>Sec. 2(a):</p> <p>At least 10 days prior to submission of any waiver request to the federal government, the Department of Health and Environment or the Insurance Department shall submit such waiver request to the State Finance Council.</p>	No equivalent provisions.
Eligibility	<p>Sec. 2(b) and (c):</p> <p>"Any adult under 65 years of age who is not pregnant and whose income meets the limitation..." with two scenarios:</p> <ol style="list-style-type: none"> <li>1. Up to 138% of the federal poverty level beginning on 1-1-2021; and</li> <li>2. up to 100% of the federal poverty level beginning on 1-1-2022, if the state finance council and the federal government approve implementation of a health insurance plan reinsurance program.</li> </ol> <p>If the reinsurance program is not approved, eligibility remains at 138%.</p>	<p>Sec. 2:</p> <p>"Any adult under 65 years of age who is not pregnant and whose income does not exceed 133% of the federal poverty level[.]"</p>
Work referral	<p>Sec. 3:</p> <p>The Department of Health and Environment (KDHE) refers all non-disabled adults in the program who are unemployed or working fewer than 20 hours per week to the Kansasworks program administered by the Department of Commerce.</p> <p>As a condition of coverage, KDHE evaluates each new applicant for education and employment status and factors impacting the applicant's employment status.</p> <p>The Department of Commerce maintains a unique identifier to monitor Medicaid expansion Kansasworks participants.</p>	<p>Sec. 3:</p> <p>As a condition of coverage, KDHE refers the same adults to the state's existing workforce programs, including, but not limited to, Kansasworks or K-GOAL administered by the Kansas Department for Children and Families.</p>

<p>Premiums or fees</p>	<p>Sec. 4:</p> <p>KDHE charges to each covered individual whose income is greater than 100% FPL a \$25 monthly fee, up to \$100 per family household. No fee is charged to a covered individual whose income is 100% FPL or less.</p> <p>Past due premiums are subject to setoff against state lottery or gaming winnings and tax refunds in accordance with current Kansas law.</p> <p>KDHE may require MCOs to collect the fee in lieu of KDHE.</p> <p>KDHE submits to the legislature an annual report in January detailing accounts receivable for fees collected in the prior calendar year.</p>	<p>Sec. 14:</p> <p>KDHE charges to each covered individual a \$25 monthly fee, up to \$100 per family household.</p> <p>An individual's coverage is suspended for three months following three consecutive months of nonpayment. An individual may apply for reinstatement once but shall be permanently suspended following an additional three months of nonpayment.</p>
<p>Premium assistance</p>	<p>Sec. 5:</p> <p>KDHE may establish a premium assistance program for individuals whose household income does not exceed 138% FPL and who are eligible for coverage through an employer but cannot afford premiums.</p> <p>Eligibility would be the same as for expanded Medicaid coverage.</p> <p>An individual's premiums would be capped at 2% of the individual's household income.</p>	<p>Sec. 4:</p> <p>Same, except that an individual qualifies if household income does not exceed 138% FPL <u>or</u> is eligible for coverage through an employer but cannot afford premiums.</p>
<p>Managed care</p>	<p>Sec. 6:</p> <p>Except as prohibited by federal law, requires that KDHE administer Medicaid using a managed care delivery system.</p> <p>Requires KDHE, when evaluating contract proposals to provide managed care services, to:</p> <ol style="list-style-type: none"> <li>1) Not provide favorable or unfavorable treatment based on for-profit or not-for-profit status;</li> <li>2) Give preference to an entity that provides health insurance plans on the marketplace; and</li> <li>3) Require the entity to provide tiered benefit plans with enhanced benefits for beneficiaries who demonstrate healthy behaviors.</li> </ol>	<p>No equivalent provisions.</p>

"Poison pill"	<p>Sec. 7:</p> <p>Requires KDHE to terminate coverage under the program over 12 months if the federal medical assistance percentage (FMAP) becomes lower than 90%, as provided in current federal law.</p> <p>Specifies that there shall be no new enrollment following a decrease in FMAP.</p>	<p>Sec. 13:</p> <p>Same, except no specific mention of new enrollment following a decrease in FMAP.</p>
Severability	<p>Sec. 8:</p> <p>The "poison pill" provision is nonseverable from the remainder of the bill. All other provisions are severable.</p>	<p>Sec. 5:</p> <p>All provisions are severable.</p>
Inmate coverage	<p>Sec. 11(a):</p> <p>Requires the secretary of corrections to coordinate with county sheriffs to facilitate enrollment of an inmate incarcerated in a Kansas jail for state medicaid services during any time period that the inmate is eligible (offsite hospitalization for longer than 24 hours).</p>	<p>No equivalent provisions.</p>
Audit	<p>Sec. 13:</p> <p>Requires the legislative post audit committee to direct the legislative division of post audit to conduct an audit of the direct economic impact of the program on the state general fund during the first two fiscal years of the program, and requires LPA to submit the audit to the legislature.</p>	<p>No equivalent provisions.</p>
Drug rebate revenue	<p>Sec. 14:</p> <p>Requires KDHE to remit all Medicaid drug rebate revenue (including current Medicaid population) for deposit into the state general fund, and for such revenue to be included as a separate item on any monthly state general fund receipts report prepared by the Kansas Legislative Research Department or the Division of the Budget.</p>	<p>Sec. 7:</p> <p>Requires KDHE to remit all Medicaid <u>expansion</u> drug rebate revenue for deposit into a new special revenue fund administered by KDHE to be used for medical assistance payments for expansion beneficiaries.</p>

<p>FMAP stabilization fund</p>	<p>Sec. 15:</p> <p>Includes the provisions of 2019 Senate Bill No. 2.</p> <p>Creates the FMAP stabilization fund.</p> <p>Increases to state share of Medicaid costs, due to a year-to-year decreases in the FMAP, would be funded out of the FMAP stabilization fund.</p> <p>Decreases to state share of Medicaid costs, due to a year-to-year increase in the FMAP, would be deposited into the FMAP stabilization fund.</p> <p>Directs that any moneys recovered by the Attorney General in the case <i>Texas v. United States</i>, challenging the legal validity of the health insurance providers fee imposed under the federal Patient Protection and Affordable Care Act, be deposited into the FMAP stabilization fund.</p>	<p>No equivalent provisions.</p>
<p>Rural hospital transformation program</p>	<p>Sec. 16:</p> <p>Requires KDHE to establish an advisory committee comprised of public and private stakeholders for the purpose of developing and implementing transformation plans to improve the viability of eligible rural hospitals.</p>	<p>No equivalent provisions.</p>
<p>Report on cost shifting</p>	<p>Sec. 17:</p> <p>Requires the Kansas Insurance Department (KID) to analyze and prepare a report detailing any cost shifting from hospitals to commercial health insurance plans as a result of implementation of the act, and to submit the report annually to the House and Senate health committees.</p>	<p>No equivalent provisions.</p>
<p>Report on health exchange conversion</p>	<p>Secs. 18 and 20(a)(1) (appropriations):</p> <p>Requires KID to study and prepare a report on any risks and benefits associated with converting the health benefit exchange in Kansas from a federal facilitated health exchange to a state-based health benefit exchange, to procure a contractor to conduct the study, and to submit the report to the House and Senate health committees on or before January 11, 2021.</p>	<p>No equivalent provisions.</p>

Report on uncompensated care	<p>Sec. 19:</p> <p>Requires KDHE, in coordination with public and private stakeholders, to establish a task force for the purpose of developing a plan to measure and report uncompensated care provided by Kansas healthcare providers and hospitals, including historical data, and to submit such report annually to the House and Senate health committees.</p>	No equivalent provisions.
Reinsurance program waiver	<p>Sec. 20(a)(2):</p> <p>Requires KID to:</p> <ol style="list-style-type: none"> <li>1. Prepare a waiver under section 1332 of the federal patient protection and affordable care act to implement a reinsurance program for health insurance plans;</li> <li>2. procure the services of an experienced contractor to assist in developing such waiver;</li> <li>3. develop the waiver in coordination with KDHE to offset potential costs associated with Medicaid expansion;</li> <li>4. determine the extent to which a \$35M annual appropriation for reinsurance would decrease health insurance premiums in Kansas; and</li> <li>5. within 150 days, submit the waiver request and supporting actuarial analysis to the state finance council for approval.</li> </ol>	No equivalent provisions.
"Institutions for mental disease exclusion"	<p>Sec. 21:</p> <p>Requires KDHE to submit a waiver to CMS prior to 1-1-2021 to allow for medicaid reimbursement for inpatient psychiatric acute care and nullifies a previous budget proviso with a conflicting deadline.</p>	No equivalent provisions.
State Finance Council involvement	<p>Sec. 22:</p> <p>Appropriates \$35M to the State Finance Council in fiscal year 2022 for the health insurance plan reinsurance program and directs the Council to approve or deny the proposed reinsurance program prior to submission of the associated waiver to CMS.</p>	No equivalent provisions.
Bethell Joint Committee review	<p>Sec. 23:</p> <p>During calendar years 2021 and 2022, adds one additional day to each quarterly meeting of the committee and directs the committee to monitor the implementation of the act.</p>	No equivalent provisions.

Hospital surcharge	<p>Secs. 25 through 32:</p> <p>Requires KDHE to impose a new surcharge on each hospital provider in an amount necessary to generate, in the aggregate, \$35M per fiscal year.</p> <p>Surcharge revenues would be used to offset costs related to medicaid expansion beneficiaries.</p>	No equivalent provisions.
Working group	No equivalent provisions.	<p>Sec. 12:</p> <p>Establishes a working group to identify non-state general fund sources to fund any shortfall in the program, comprised of legislator members and members from various stakeholder organizations.</p>
Abortion coverage	No equivalent provisions.	<p>Sec. 15:</p> <p>Prohibits program coverage or reimbursement for any abortion services.</p>