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MEMORANDUM

To: Healthcare Stabilization and Oversight Committee
From: Office of Revisor of Statutes
Date: November 29, 2023
Subject: 2023 Legislative Update

1) Healthcare Stabilization Fund - Maternity Centers and Abortion Providers

House Bill 2325 would have amended the definition of “healthcare provider” K.S.A. 40-3401 to include a maternity center and to not include “any facility where elective abortions, as defined under K.S.A. 65-4a01, and amendments thereto, are performed.” This change would have allowed maternity centers to access the Kansas availability plan and would have prohibited facilities where elective abortions are performed from accessing the Kansas availability plan. The bill also amended K.S.A. 40-3403a to add that any such facility described in K.S.A. 40-3401, is required to maintain professional liability insurance coverage equal to the amount provided by the fund and submit proof of such insurance to the board of governors.

As introduced, HB2325 contained only the maternity center provisions and passed the house on a vote of 121-0. The senate public health committee amended the bill by adding the contents of SB219, which contained the elective abortion provider provisions, and the amended bill passed the senate 33-6. The house concurred with the amendments by the senate, but the bill was vetoed by the governor. The motion to override the governor’s veto prevailed in the house on a vote of 84-40, but the motion to override failed in the senate on a vote of 25-15.

However, in the omnibus budget bill, SB25, section 17, a proviso was added that would deem a maternity center a “healthcare provider” for the purposes of the healthcare provider insurance availability act if such maternity center is accredited by a recognized national organization and falls within the definition in K.S.A. 65-503. This proviso is in effect for fiscal year 2024.

2) Women’s Right-to-Know-Act - Abortion

House Bill 2264 began as a bill requiring patient visitation, but those contents were replaced in conference committee with the provisions of SB297 and HB2439. SB297 revised the definition of abortion and clarified that removal of an ectopic pregnancy and prescribing or use of contraceptives are not included in the definition of abortion. HB2439 required certain notifications

to women having medication abortions, including for physicians to notify women in writing at least 24 hours prior to a medication abortion that “it may be possible to reverse the intended effects of a medication abortion”. The conference committee report for HB2264 was adopted by both chambers but was vetoed by the governor. The motion to override veto prevailed on votes of 84-40 and 29-11, and the law went into effect on July 1.

However, the provisions of this bill and the women’s right-to-know act (Act) were temporarily enjoined by Johnson County District Judge K. Christopher Jayram in a ruling issued on October 30, 2023. In addition to enjoining HB2264, the court also enjoined the mandatory disclosure requirements and waiting period in K.S.A. 65-6709, the portions of K.S.A. 65-6710 requiring physician certification that patients have been advised of the disclosures, and provisions of K.S.A. 65-2837 that specify noncompliance with the Act constitutes unprofessional conduct. These provisions are enjoined until the trial, which is scheduled for June 2024, but Attorney General Kobach has filed a notice of appeal.

3) Out-of-State Physician Sports Waiver

SB131 authorizes a sports waiver for certain out-of-state physicians to practice medicine on a limited basis during sporting events and authorizes the board of healing arts to adopt procedures to allow other licensed healthcare professionals to also be issued a sports waiver and authorizes pharmacy technicians to administer certain vaccinations, among others. The bill passed both houses and was signed into law effective July 1.

4) Liability for Emergency Care by Healthcare Providers

HB2014 amends, in relevant part, K.S.A. 65-2891 to clarify the definition of healthcare providers who render emergency care or assistance during an emergency are not liable for negligent actions. The definition of “healthcare provider” is amended to require that a physician assistant must now be licensed to receive liability protection rather than just successfully completing training and national board examination. The bill passed both houses and was signed into law effective July 1.