



November 30, 2023

## **STATE LEGISLATURE INVOLVEMENT WITH STATE MEDICAID MANAGED CARE ORGANIZATION REQUEST FOR PROPOSAL PROCESS AND SELECTION**

This memorandum provides an overview of legislation either passed or introduced in other states that prescribes or otherwise recognizes the state legislature's involvement in the Managed Care Organization (MCO) Request for Proposal (RFP) process. This memorandum also provides an overview of current Kansas law regarding the Legislature's role in the process.

Currently, 41 states and the District of Columbia use managed care to implement their state Medicaid program (Medicaid). Those states contract with MCOs to provide services to eligible residents. While federal rules outline minimum provisions that must be included in the contract between a state and an MCO for Medicaid purposes, no minimum standards exist for the procurement process. The majority of those 41 states and the District of Columbia give the authority to contract with MCOs to the executive branch. However, states that have more recently implemented managed care have seen more state legislature involvement with contractual provisions and the RFP process.

Federal Medicaid rules require states to have a Medicaid Advisory Committee (MAC) composed of Medicaid beneficiaries, providers, and other members of the public. However, some MCO states are creating legislative committees specific to Medicaid program oversight with directives that extend beyond those given to MACs.

In Kansas, the authority to contract with MCOs is held by the executive branch. Kansas has established a legislative oversight committee to monitor and study Medicaid implementation and operations; however, the committee is not expressly given Medicaid procurement oversight. Rather, the committee focuses on quality of care, savings, and outreach, among other items.

### **Kansas Legislature's Involvement with Medicaid**

#### ***Authority Given***

KSA 39-7,112(a) gives the Secretary of Social and Rehabilitation Services (currently the Kansas Department of Health and Environment) authority to, "**negotiate and enter into contracts with one or more service providers to implement a managed care system** in accordance with this section to provide medicaid services for Kansas medicaid-eligible residents which may utilize capitation and other reimbursement methodologies. No contract entered into under this section shall be subject to the competitive bid requirements of KSA 75-3739, and amendments thereto. The services to be provided for such residents under the contracts shall be provided through a system of managed care as specified in the contracts."

KSA 39-7,160 created the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight (KanCare Oversight Committee). Specifically, this committee, “shall **monitor and study** the implementation and operations of the home and community based service programs, the children’s health insurance program, the program for the all-inclusive care of the elderly and the **state medicaid programs** including, but not limited to, access to and quality of services provided and any financial information and budgetary issues.”

The statute continues, “Any state agency shall provide data and information on KanCare programs, including, but not limited to, pay for performance measures, quality measures and enrollment and disenrollment in specific plans, KanCare provider network data and appeals and grievances made to the KanCare ombudsman, to the joint committee, as requested.”

Subsection (b) of the statute states the joint committee shall consist of 11 members of the Legislature. Subsection (e) of the statute requires the committee to provide a written report about specific KanCare program information to the Speaker of the House of Representatives, the Senate President, the House Committee on Health and Human Services, and the Senate Committee on Public Health and Welfare. This report provides data, analysis, and testimony relating to KanCare program quality of care, information availability, costs, and other items. Subjection (i) of the statute states the joint committee may make recommendations and introduce legislation as it deems necessary in performing its functions.

### ***What Does this Mean?***

Kansas gives procurement authority to the executive branch through the Secretary of the Kansas Department of Health and Environment (KDHE). The law gives KDHE authority to establish rules relating to the procurement process, while also requiring KDHE to report data and provide testimony to a KanCare Oversight Committee tasked with monitoring the performance of Medicaid. There is no statute requiring the Legislature to be involved with the procurement process.

Additionally, Kansas statutes create and give the KanCare Oversight Committee authority to monitor and study Medicaid, request data, and issue a report, but do not expressly provide for the KanCare Oversight Committee to be involved in the procurement process.

### **Other State Legislatures’ Involvement with Medicaid**

The following states do not offer managed care Medicaid: Alabama, Alaska, Connecticut, Idaho, Maine, Montana, South Dakota, Vermont, and Wyoming.

Unlike the majority of MCO states, Pennsylvania statutes created a council composed of executive and legislative branch members, as well as members of the public selected by both branches. The statutes also provide specifications for the content and procurement process of the state’s MCO contracts.

Like Kansas, the other 39 MCO states and the District of Columbia give procurement authority to the executive branch. Seven of those states do contain statutory requirements for contract provisions or procurement process. Additionally, ten states and the District of Columbia have created a legislative oversight body, similar to the KanCare Oversight committee in

Kansas, that allows the body to monitor and study their state Medicaid program but does not grant authority to participate in the procurement process.

### ***Recent Laws and Legislation***

Since 2021, three state legislatures have inserted statutory language relating to MCO contract provisions and RFP process. North Carolina and Oklahoma recently enacted laws providing managed care Medicaid. Those two states have statutes that list required contractual provisions and procurement processes for their Medicaid. In 2023, Tennessee saw proposed legislation that would eliminate the MCO RFP process altogether.

#### *North Carolina*

In 2021, North Carolina implemented managed care Medicaid. The statutes underlying this change provide specific guidelines for contractual provisions and legislative involvement in the RFP process.

N.C.G.S.A. §108D-65(6) grants authority to the Department of Health and Human Services (Department) to enter into contracts for the delivery of Medicaid services. Specifically, it requires the contracts to be the result of RFPs issued by the Department and the submission of competitive bids. Additionally, the section sets forth seven minimum standardized contractual terms, including: cost growth limit, required savings, minimal medical loss ratio, required coverage and reporting, prompt payments, pharmacy of choice, and implementing specific plan benefits and provisions.

N.C.G.S.A. §108D-65(7) further requires the Department to consult with the Joint Legislative Oversight Committee on the state's Medicaid program about the **terms and conditions** of the RFPs before issuing the RFPs. It is unclear if “terms and conditions” refers to the material terms of the MCO agreement or the standard boilerplate terms and conditions of a contract.

#### *Oklahoma*

In 2022, Oklahoma enacted a managed care model detailing specific MCO contractual provisions and requiring an RFP process. The program is expected to launch in April 2024.

Ok. St. Ann. §56-4002.3a grants authority to the Oklahoma Health Care Authority (OHCA) to enter into contracts with entities for Medicaid services for certain Medicaid populations. The statute goes on to require the OHCA to list specific services in the MCO contract.

Ok. St. Ann. §56-4002.3b requires an RFP process, a minimum of three contracts awarded by the authority, and a scoring methodology including certain factors, such as: provider participation in ownership group, experience in care coordination for Medicaid members, and experience with Medicaid organizations and alternative payment methods. It also places a cap of seven years on the MCO contract.

## Tennessee

In 2023, legislation was introduced in Tennessee that would affect the state's Medicaid procurement process. HB 332 and SB 308 would have amended T.C.A. §71.5.1, which currently gives authority to the state's Department of Health to establish rules and regulations for payment to providers.

The bills would give Medicaid recipients the ability to choose their MCO, or if they fail to do so, assign an MCO based on an MCO's recipient level. Specifically, section three of the bills would have required their Medicaid program to, "select all managed care organizations in accordance with this section, and **shall not use a competitive bidding or request for proposal process.**"

The senate bill did not make it out of the Senate Committee on Commerce and Labor (0-9). The house bill is currently in the House Committee on Insurance.

### Breakdown by State

As the following table shows, excluding Pennsylvania, the remaining MCO states give the executive branch express authority to contract for Medicaid services and providers with relatively few restrictions and no direct authority to oversee the procurement process.

State	Related statute	Procurement authority	Legislative oversight body	Notes
Alabama	N/A	N/A	N/A	
Alaska	N/A	N/A	N/A	
Arizona	A.R.S. §36-2906	Department of Administration		
Arkansas	A.C.A. §20-77-2708	Department of Human Services		
California	Cal. Welfare & Institutions §14093.05	Department of Health Care Services		
Colorado	CO Rev Stat §25.5-5-402	Department of Health Care Policy and Financing		
Connecticut	N/A	N/A	N/A	
Delaware	31 Del. C. §512	Department of Health and Social Services		
District of Columbia	D.C. Code §1-307.02	Department of Health Care Finance	Council of the District Columbia	
Florida	F.S.A. §409.966	Agency for Health Care Administration		Statute requires an RFP process, provides for quality selection considerations and preferences, and limits contracts to six years.

<b>State</b>	<b>Related statute</b>	<b>Procurement authority</b>	<b>Legislative oversight body</b>	<b>Notes</b>
Georgia	Ga. Code Ann. §33-21A-3	Department of Community Health		
Hawaii	HRS §346-14	Department of Human Services		
Idaho	N/A	N/A	N/A	Managed care is only provided for behavioral and dental services, not for primary care.
Illinois	305 ILCS 5/5-30.6	Department of Healthcare and Family Services	Medicaid Managed Care Oversight Commission	Statute requires any MCO contract be procured in accordance with Illinois procurement code.
Indiana	IC 12-15-1-4	Division of Family Resources	Medicaid Oversight Committee	Requires the Division of Family Resources to include qualifications for bidders and assist the Department of Administration in preparing bid specifications.
Iowa	I.C.A. §249A.4	Department of Health and Human Services		
Kansas	KSA 39-7,112	Department of Social and Rehabilitation Services	KanCare Oversight Committee	Further description in the narrative above.
Kentucky	KRS §205.52	Department for Medicaid Services	Medicaid Oversight and Advisory Committee	205.532 is also a specific MCO contract provision.
Louisiana	LSA-R.S. 46.437.11	Department of Health	Joint Medicaid Oversight Committee	
Maine	N/A	N/A	N/A	
Maryland	MD Code, Bus. Reg., §15-103	Department of Health	Maryland Medicaid Advisory Committee	
Massachusetts	Mass. Gen. Laws ch.118E § 12	Division of Medical Assistance		
Michigan	M.C.L.A. 400.105d	Department of Health and Human Services		
Minnesota	M.S.A. §265B.035	Department of Human Services		
Mississippi	Miss. Code Ann. §43-13-121	Division of Medicaid		

State	Related statute	Procurement authority	Legislative oversight body	Notes
Missouri	R.S.Mo. 208.44	Department of Social Services	MO HealthNet Oversight Committee	
Montana	N/A	N/A	N/A	
Nebraska	Neb. Rev. St. §68-908	Department of Health and Human Services		
Nevada	N.R.S. 422.273	Department of Health and Human Services		
New Hampshire	N.H. Rev. Stat. §126-A:5	Department of Health and Human Services		
New Jersey	N.J.S.A. 30:4D-8.22	Department of Human Services		
New Mexico	N.M.S.A. §27-2-12.6	Human Services Department		
New York	SOS §364-j	Department of Health		
North Carolina	N.C.G.S.A. §108D-65	Department of Health and Human Services	Joint Legislative Oversight Committee on Medicaid	Further description in the narrative above.
North Dakota	NDCC, 50-24.1-37	Department of Human Services		
Ohio	R.C. §5167.1	Department of Medicaid	Joint Medicaid Oversight Committee	
Oklahoma	Okla. St. Ann. §56-4002.3a	Oklahoma Health Care Authority		Further description in the narrative above.
Oregon	O.R.S. §414.65	Oregon Health Authority		
Pennsylvania	35 P.S. §3314	Health Care Cost Containment Council		Council comprises legislative and executive branch members, as well members of the public as selected by the two branches. The council prepares service specifications and uses an RFP process to solicit bids.
Rhode Island	Gen. Laws §40-8-4	Department of Human Services		
South Carolina	Code §44-6-50	Department of Health and Human Services		
South Dakota	N/A	N/A	N/A	

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Tennessee	T.C.A. §71-5-105	Department of Health		Further description in the narrative above.
Texas	V.T.C.A., Government Code §533.002	Health and Human Services Commission		
Utah	U.C.A. §26B-3-115	Department of Health and Human Services		
Vermont	N/A	N/A	N/A	
Virginia	VA Code Ann. §32.1-325	Department of Medical Assistance Services		
Washington	RCWA 74.04.050	Department of Social and Health Services		
West Virginia	W. Va. Code, 9-2-5	Department of Human Services	Legislative Oversight Commission on Health and Human Resources Accountability	
Wisconsin	W.S.A. 49.45	Department of Health Services		
Wyoming	N/A	N/A	N/A	