

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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KENNY TITUS
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March 14, 2024

Budget Testimony in Support of SB 96 and HB 2569

Dear Chairman Tarwater and Members of the Committee:

Thank you for the opportunity to present testimony regarding the important issue of childcare regulations. As you consider the many options available for improving the availability and affordability of childcare services in our state, I would ask you to consider how our licensed childcare facilities are inspected. The majority of inspections are currently done by contracted entities and not by state employees. In many cases, the contractor is the local county health department and they in turn can have contracts with neighboring counties to perform inspections. Unfortunately, this method of employing inspectors has led to several issues that negatively impact childcare providers.

The primary issue is that the Kansas Department of Health and Environment (KDHE) cannot directly control the quality of the inspections (because they have hired an independent contractor), leading to the following issues:

- **Lack of accountability** in carrying out state law or inability to address problems without constant and time-consuming consultation with KDHE.
- **Failure to provide accurate information** in processing applications, changes, and dealing with violations between state and local staff.
- **Fear of retaliation** by local staff. Complaints that go to the local supervisor may never be reported to the state as many licensees say they are afraid to report issues with their inspector because of the close relationship between the county director and the inspector will lead to retaliation in future inspections.
- **Inconsistent inspections** from county to county and an inability of KDHE to ensure that regulations are applied as intended.

It may seem counterintuitive to transition employees from local agencies to state control, but this will result in better inspections. If transferred to the state, inspectors' performance will be reviewed directly by KDHE staff, which will allow for corrections and performance

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improvement plans. No longer will a local entity be solely responsible for the performance of employees. KDHE will also be able to implement consistent training and enforcement policies because they will have someone directly responsible for reviewing every inspection and the employee that conducts the inspection. Finally, by allowing care providers to lodge complaints directly with KDHE and giving KDHE the authority to directly deal with any issues, rather than working through a local supervisor, the chances of retaliation diminish greatly while also improving the likelihood of employee improvement.

While there is a fiscal cost associated with moving these inspectors to state employment, this has been done successfully with other regulatory programs. The best example is the transfer of restaurant inspectors from KDHE (including the same local contracting model) to the Kansas Department of Agriculture. The regulated community receives timely and uniform inspections, and the move has largely been regarded as successful. Given the increased flexibility of the state workforce, it is time to streamline the inspection of licensed childcare facilities. Further, the state will be able to utilize federal grant funding for the majority of costs. There is also an opportunity for additional federal grant funding to support an expanded program. This transition would also allow us to remove the burden of local fees from licensees. This change will ultimately create more flexibility in carrying out inspections and will result in a reduction in property taxes and extra fees that are needed by counties to support their own programs.

I believe you will find other examples in the testimony today, but it is important to remember that many providers do not feel like they can come forward. Below is a typical response I received from one provider when asked about sharing their experience:

I would love to share our story but I do have some concerns regarding confidentiality and retaliation.

As a further example of the current disjointed system, I have provided several emails from a constituent describing the issues they have faced because local inspectors are not able to communicate directly with KDHE.

Thank you for your consideration of this important bill.

To: [REDACTED]
Cc: [Kenny Titus](#)
Subject: [Derik J. Flerlage \[KDHE\]](#); [Matthew Lara \[KDHE\]](#)
Date: Re: [EXTERNAL] RE: Waiver Request
Tuesday, February 27, 2024 3:14:27 PM
Attachments: [image001.png](#)
[image002.png](#)
[image004.png](#)

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Thanks, Representative Titus.

Derik and Matthew,

My name is [REDACTED] and my son, [REDACTED] was one of the children affected by the upcoming closure of the Hope Lutheran Daycare here in Manhattan. We have been searching for daycare, but it has been extremely difficult. We have found a licensed daycare provider, [REDACTED] Daycare, run by [REDACTED]. She wrote the response below to my wife this afternoon in reply to our most recent communication with her. She is more than willing to take our son in and she applied for an exemption 2 weeks ago, but is being passed back and forth from the KDHE to the Riley County Health Department.

From my understanding, the waiver has been granted to Riley County for an exception to the limits on children in the licensed day care programs, but they need an official waiver for each application. Can someone from your office please contact [REDACTED] program to authorize this exception. Her number is [REDACTED].

With Hope Lutheran's last day of operation being this Thursday 2/29/24, we are in a huge hurry and were hopeful that this situation would have been rectified quickly after we had helped to apply for the exception 2 weeks ago. We don't have any other suitable options at this point.

Please let me know if anything else is needed from me, my family or Ms. [REDACTED]

Thank you for your help in getting this resolved.

[REDACTED]

Hi [REDACTED]

I submitted an exception to KDHE, 2/15, I waited a week and never heard from them so I called. They told me the exception must go through RCHD.

I submitted the exception on 2/25 to RCHD and re-submitted to KDHE. I then called RCHD Monday to confirm they received it and they did but told me it was to go straight to KDHE. ♀ I next called KDHE and they said the exception was to go through RCHD.

I asked to speak to someone at KDHE about exceptions and she said they are working on a plan to "allegedly" help the childcare crisis in Manhattan but cannot share what the plan is with me until it is finalized. They said they hope to get something in place soon.

██████ I am so frustrated with the lack of communication within the realm of the childcare administration.

I am doing everything I possibly can to help you. And there are so many others in the same situation. I get 2-3 calls daily. It seems RCHD and KDHE should put the displacement of children a priority.

I will keep you posted...I'm sorry I don't have any answers.

~██████

On Tue, Feb 27, 2024 at 2:02 PM Kenny Titus <Kenny.Titus@house.ks.gov> wrote:

Derik – I'm adding in my constituent ████████ to this chain so you can talk directly.

Given the short timeline with the Hope facility, do you anticipate being able to approve these waiver requests as parents will not have time to find alternatives if they have been waiting on your staff for several weeks to review these. Thanks.

Kenny Titus | State Representative | District 51

Pottawatomie, Wabaunsee, and Riley Counties

Office: 165-W | Office Phone: (785) 296-7310 | Cell: (785) 370-3401

kenny.titus@house.ks.gov

From: Derik J. Flerlage [KDHE] <Derik.Flerlage@ks.gov>

Sent: Tuesday, February 27, 2024 1:47 PM

To: Kenny Titus <Kenny.Titus@house.ks.gov>

Cc: Matthew Lara [KDHE] <Matthew.Lara@ks.gov>

Subject: RE: Waiver Request

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Rep. Titus,

My child care licensing directors are meeting this afternoon to finalize the approach to these exceptions. If willing and able, are you able to provide your constituent's contact info? You are also welcome to refer them directly to me, if needed, and I will ensure they get a response. I have provided this Daycare's name to our directors so that they can look into the communication (or potential lack thereof) regarding this outreach. It is the expectation that staff will respond to any form of communication they receive from the public – so we will ensure that is the standard.

Thanks!

Derik Flerlage, RT, MHA

Director | Bureau of Family Health

Kansas Department of Health & Environment

1000 SW. Jackson St., Suite 200

Topeka, KS 66612

Ph: (785) 296-4747

Cell: (785) 600-8611



KANSAS PALLIATIVE CARE

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From: Kenny Titus <Kenny.Titus@house.ks.gov>
Sent: Tuesday, February 27, 2024 1:18 PM
To: Derik J. Flerlage [KDHE] <Derik.Flerlage@ks.gov>
Cc: Matthew Lara [KDHE] <Matthew.Lara@ks.gov>
Subject: Waiver Request

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Derik – I have a constituent that is waiting on a wavier approval for [REDACTED] Daycare in Manhattan so that he can move his 2 year old there. He is one of the families that has been displaced by Hope Lutheran so he only has care through this week. I was told they submitted the application at least 2 weeks ago and have not heard back and that my constituent has tried call and emailing your office several times and no one has responded.

Can I get an update on this waiver? Thanks.

Kenny Titus | State Representative | District 51

Pottawatomie, Wabaunsee, and Riley Counties

Office: 165-W | Office Phone: (785) 296-7310 | Cell: (785) 370-3401

kenny.titus@house.ks.gov

--

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

000:

From: [Derik J. Flerlage \[KDHE\]](#)
Cc: [Kenny Titus](#); [Matthew Lara \[KDHE\]](#)
Subject: Re: [EXTERNAL] RE: Waiver Request
Date: Tuesday, February 27, 2024 6:46:16 PM
Attachments: [image001.png](#)
[image002.png](#)
[image004.png](#)

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Good evening all,

Yes, there will be communication with each facility that's requested an exception within the next 24-48 hours.

Thank you for reaching out!

Derik Flerlage, RT, MHA

Director

Bureau of Family Health

Kansas Department of Health & Environment

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From: [REDACTED]
Sent: Tuesday, February 27, 2024 3:22:49 PM
To: Derik J. Flerlage [KDHE] <Derik.Flerlage@ks.gov>
Cc: Kenny Titus <Kenny.Titus@house.ks.gov>; Matthew Lara [KDHE] <Matthew.Lara@ks.gov>

Subject: Re: [EXTERNAL] RE: Waiver Request

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Thank you, Derik, for your quick reply. I'll check in with Jarvis, too.
I am trying to plan out my schedule the rest of this week and next, is there any expectation that this situation could be resolved by Friday?

Thank [REDACTED]
[REDACTED]

On Tue, Feb 27, 2024 at 3:15 PM Derik J. Flerlage [KDHE] <Derik.Flerlage@ks.gov> wrote:

Wonderful. I went ahead and connected [REDACTED] and Jarvis separately.

Concerning the exceptions – we are finalizing a streamlined approach for that to assist the communities at-large. We understand that the facility closing with little notice has caused lots of stress for families as not everyone can afford to take off of work and not everyone has family resources to assist. So yes – I assure you that we are doing what we can to address this situation.

Derik Flerlage, RT, MHA

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