

**H Sub for SB 96**  
**House Committee on Commerce, Labor, and Economics**  
**Opponent Testimony**  
**March 14, 2024**

Chairman Tarwater and Members of the Committee:

Thank you for the opportunity to testify today. My name is Derik Flerlage, and I am the Director for the Bureau of Family Health at the Kansas Department of Health and Environment (KDHE). I oversee multiple programs, including child care licensing (CCL). I am here today to present testimony in opposition of SB 96.

Over the last 12-18 months, there has been intense focus on KDHE's CCL program. With a major departmental restructuring that took place and a comprehensive review of child care regulations, I am excited to report that our program has made historically significant improvements since the 2023 legislative session.

As of February 2024, the licensed capacity to serve (potential child care slots) was at 143,061 slots, the highest point since we have a record of tracking (2008). This trend began in 2021 when additional funding became available to child care providers. Whether it was federal pandemic relief funding, public-private partnerships, or the child care bonus program that awarded providers directly, the data is clear in showing a sustained workforce and growing child care capacity. From the recorded value in 2021 (134,200 slots) to the recent data point in December 2023 (143,408), this represents an increase in child care slots by 9,208. Though important, federal and state dollars should not be viewed as the number of slots they created, rather the number of slots they helped keep open. One example is that KDHE, in partnership with DCF, is proud to have been able to offer free applications and free background checks and fingerprints for providers for the last several years. This continues today.

Our team recognized the opportunity to accelerate what needed to be done and completed a swift and comprehensive regulatory review and rewrite, all centered around a strategic plan to address four different categories for review: Federal compliance, home providers, center and preschool providers, and our existing school-age and drop-in programs. Our approach was to directly involve providers in the drafting of the regulations, as it most closely affected them. Through multiple engagement sessions held on Saturday mornings with more than 400 licensed providers, an online survey and feedback form, a dedicated webpage, and multiple forms of conversation via email and other platforms, we were able to craft proposed regulatory changes that we feel confident reflect the consensus of Kansas providers. These proposed changes were submitted to the Attorney General's (AG) office in October 2023. During this review, we acknowledged that our school-age and drop-in programs deserved their own comprehensive regulatory review. Once again, through direct meetings with partners and providers, like YMCA and Boys and Girls Club, we were able to draft proposed regulatory changes for what will now be known as "Out of School Time" programs. You have heard it from these partners themselves, but we truly are one call, one email, one text or one meeting away from collaborating at any time.

## Ratios

Within our packet of regulatory changes, which currently sits with the AG's Office, are proposed changes to our staff-to-child ratios. These changes would allow more children to be safely cared for at one time in various settings. Of specific note is our increase in the infant ratio in the center setting, as well as redefining age of toddlers. This lowers the age so that a center may move a child into the next age category at an earlier date, thus opening an additional slot for an infant. The proposed staff-to-child ratios consider the tradeoff of safety, quality, and viability. As part of our regulatory review, we remained transparent with providers that we wanted to entertain higher ratios to assist on multiple fronts. Our proposed changes to ratios reflect the consensus from providers themselves, while considering best practice and literature concerning safe child development from literature like *Caring for Our Children* and state-by-state comparisons.

We have also consolidated our home providers from two license types down to one. This creates flexibility for providers and reduces the amount of red tape and administrative burden for KDHE, allowing applications to be processed faster.

### **KDHE Proposed Changes to K.A.R. 28-4-114** **Family Child Care Home – Table I, One Provider**

Maximum Number of Children Under 12 Months	Maximum Number of Children at Least 12 Months but Under 5 Years of Age	Maximum Number of Children at Least 5 Years but Under 10 Years of Age*	Maximum Group Size
0	8	2	10
1	6	3	10
2	5	2	9
3	3	2	8

\*Children five years of age and older may be substituted for younger children in the maximum group size.

### **Family Child Care Home – Table II, One Provider**

Ages of Children Enrolled	Maximum Group Size
At Least 2 1/2 Years but Under 10 Years of Age	10
At Least 3 Years but Under 10 Years of Age	11
At Least 5 Years but Under 10 Years of Age	12

**Family Child Care Home – Table III, Two Providers**

Maximum Number of Children Under 12 Months	Maximum Number of Children at Least 12 Months but Under 5 Years of Age	Maximum Number of Children at Least 5 Years but Under 10 Years of Age**	Maximum Group Size*
0	10	2	12
1	9	2	12
2	8	2	12
3	7	2	12
4	5	3	12
5	4	3	12
*A second provider shall be present when the number of children exceeds the maximum number allowed for one provider. See Table I.			
**Children five years of age and older may be substituted for younger children in the maximum group size.			

**Child Care Center and Preschool Ratios**

Ages of children	Minimum staff-child ratio	Maximum number of children per unit
Infants*	A. 1 to 3  or  B. 1 to 4	A. 9  or  B. 8
Infants and other children under the age of 6	1 to 6  (including not more than 3 infants)	12  (including not more than 6 infants)
Toddlers	1 to 6	12
Children at least 2 years of age but under the age of 3	1 to 7	14
Children at least 2.5 years of age but under school-age	1 to 12	24
School-age	1 to 16	32
*Only one staff-child ratio may be used at any one time for each infant unit.		

## **Qualifications**

In addition to our ratio increases, we have also taken a closer look at staff qualifications. There is a delicate balance between respecting the workforce and acknowledging their expertise, while allowing for foundational entry into the profession by those interested. We specifically focused on accounting for experience in early childhood settings while opening qualifications to include those with early childhood backgrounds that may not be specific to child care. Child care is a respectable field of work, and Kansas families expect their children to be cared for in a safe and nurturing manner. We understand that not just anybody can care for and educate our children. Our proposed staff qualifications are only a part of the exciting work within the early care and education ecosystem as the development of the workforce registry and career pathways continues forward to build a pool of qualified child care providers.

## **Administrative Improvements**

While the regulatory work has been going on, our program has also worked to ensure administrative improvements. This includes a redesign of our webpage, which simplifies navigation. Accessibility is also improved, with several forms becoming digital and a new help desk service to streamline the way our program receives requests for assistance. With federal fingerprinting requirements, KDHE CCL has worked to make this more accessible throughout the state. In addition to traveling the state and holding free fingerprint events for providers, our team has also started holding “fingerprinting 101” courses at no cost to providers. These are designed for our larger centers where KDHE staff train center directors to fingerprint their own staff. This lifts a huge administrative burden from the agency while making fingerprinting services more accessible. These events are in-person, on Saturdays and scheduled throughout the state.

We have also restructured the KDHE CCL team to ensure that staff can give appropriate attention to all areas of our program. This has improved customer service, application processing times, relationships and communications with state agency partners, and responsiveness to emerging community child care issues.

It is important to note that licensed child care slots are not the same as “desired” slots. Many child care providers elect not to fill all their licensed slots for a variety of reasons, and capacity can vary from day to day. Yet, KDHE has seen a steady increase in licensed capacity year over year and is excited to offer additional flexibility and opportunity with updated regulations and pilot programs throughout Kansas. We continue to be proactive in ensuring that information is available to those who need it. Whether it is our “How to Become a Licensed Provider” toolkit, our redesigned webpage, meeting with architecture and construction firms to discuss child care facility plans, or showing up at local coalition meetings, KDHE is committed to playing a critical role in building more child care capacity throughout the state. We also actively work at the systems level to modernize our networks, support the workforce, and streamline navigation for Kansas providers and families.

For us to continue modernizing and reacting to needs as they emerge in Kansas communities with minimal disruption, KDHE continues to support that regulations should not be moved to statute and that ratios and professional qualifications should be aligned with providers’ feedback and expertise. The provisions currently included in SB 96 jeopardize safety and are out of alignment with the preferences providers expressed to our agency during our regulatory review engagement sessions. Recently, KDHE was able to work on a solution with several counties as a large facility closed with little notice to parents, showing that our flexibility can be one of our greatest strengths in responding to child care crises. Rigid state statutes would not allow for this flexibility, while adding to the ambiguity of who has ultimate authority in enforcing those who may violate it.

Additionally, regulations allow our team to work with providers in efforts to support them toward regulatory compliance while offering education on why and how. We notably changed the title of our formerly called “surveyors” to “licensing specialists” to remove that negative stigma and work on building positive community relationships. Lastly, it would not be to the advantage of KDHE, the legislature, our providers or Kansas families to wait for the legislative session for potential changes to state statute. KDHE can engage in regulatory review as needed to enact changes and provide exceptions to current regulations that may inhibit individual providers’ operations. KDHE has a proven track record of responding to community need. Some examples include the creation and implementation of our small center pilot in rural Kansas and the hundreds of exceptions to regulations we grant every year.

KDHE is committed to solving regulatory and administrative tasks and leading with systems-level thinking. As we have shown over the last year, we are committed to this alongside our partners: state agencies, economic development leaders, local child care coalitions, local health departments, and most importantly, our providers. We appreciate and thank you for your time today and continued attention to child care in Kansas because child care matters. I look forward to answering any questions you may have at the appropriate time.