

**Proponent Testimony on HB 2751
Senate Public Health & Welfare Committee
Wednesday, March 13, 2024**

Madam Chair and Members of the Committee,

Thank you for the opportunity to present proponent testimony on HB 2751. This is a bill the Kansas Department for Aging and Disability Services (KDADS) requested for introduction this session. It addresses a gap in the statutory authority of the Secretary of KDADS under the Kansas Administrative Procedures Act as part of our agency regulatory authority.

In the review process for the implementing regulations for the Crisis Intervention Centers (CIC), the Attorney General's Office brought to our attention that KDADS lacks rules and regulations authority in [K.S.A. 59-29c01 et seq.](#) Without specific rules and regulation authority in the Crisis Intervention Center Act, KDADS has to rely on the rules and regulations authority and other authorities contained in KDADS' licensure act ([K.S.A 39-2001 et seq.](#)) Anything that falls within the CIC that requires further explanation and implementation by KDADS will need to be addressed in detail in the implementing regulations rather than simply referring to general rules and regulation authority as a state agency because there is no authorizing or implementing authority for the proposed regulation in the CIC Act itself. The review identified a gap in the authorities and remedies that are available to KDADS under its statutory licensure authority in K.S.A. 39-2001 et seq.

The Attorney General's Office pointed out that KDADS lacks legal remedies in our licensing statute that most licensing agencies have, and our legal remedies do not connect to the Kansas Administrative Procedures Act (KAPA) and appeals through the Kansas Judicial Review Act (KJRA). Other state agency authorizing statutes clearly reference KAPA and KJRA for procedural authority which makes processes consistent across agencies and for stakeholders and licensees that work with state agencies. For instance, we can assess a fine on a licensed provider, but KDADS must file a case in district court to enforce the fine if it is not paid. The same is true for a correction order or corrective action plan. KDADS can only deny, suspend, or revoke a license. Other agencies have authority to impose conditions, restrictions or apply other remedies to enforce a requirement on a licensed provider or license holder that does not directly move to suspending or revoking its license.

In HB 2751, KDADS is requesting amendments to add the ability to place a condition or restriction on a license, add the Secretary's authority to waive a regulatory requirement when health, safety or welfare would not be jeopardized by the waiver, and clarify that KAPA and the KJRA processes apply for all remedies.

KDADS is seeking waiver authority in line with other licensing agencies. The Secretary's waiver authority exists in some sets of regulations that were transferred from KDHE and Social and Rehabilitation Services under ERO 41. In those regulations, the Secretary can waive a regulatory requirement (such as an environmental standard in an existing building) when the Secretary determines that health, safety and welfare would not be jeopardized. The Secretary's authority to waive a regulatory requirement must be granted by the Legislature to allow reasonable waivers from regulatory requirements that prevent unreasonable costs or burden without imposing health, safety, or welfare concerns for residents. HB 2751 cleans up language from previous agency reorganizations that impacted the statutory authority provided to KDADS and the Secretary of KDADS.

KDADS will be reviewing all of its rules and regulations as part of the 5-year cycle under during the next calendar year. Making the statutory changes in HB 2751 will clarify the regulatory authority and align agency procedures with the KAPA and KJRA before that review process starts. KDADS anticipates the statutory clarifications in HB 2751 will help avoid delays in the review or additional regulation updates by aligning to the standard practices used by other agencies and clarifying the Secretary of KDADS authority.

An amendment was made by the House Health & Human Services Committee in an attempt to address a licensing issue for Goodwill Industries. The amendment added a definition of “day service provider” under KSA 29-2009. The intent of that was to maintain the current background check requirement for employees working closely with vulnerable populations while not requiring background checks for participants in the prison reentry program or employees working in the corporate office.

Since that time, we have worked with both Goodwill and Interhab to improve upon that language and would appreciate that when the Committee works HB 2751, they adopt “balloon amendment XYZ” which replaces the definition of “day service provider” currently in HB 2751 with:

"Day Services Provider" means a provider of day support services for development in self-help, social, recreational and work skills for adults with intellectual and/or developmental disabilities licensed by KDADS or a separate and distinct dedicated division of a provider of day support services for development in self-help, social, recreational and work skills for adults with intellectual and/or developmental disabilities licensed by KDADS.

This definition is based on K.S.A. 39-1006 and is preferable to the current definition in HB 2751 as amended. The proposed amendment removes the reference to the definition of day service provider included in the Home and Community Based Services waiver for people with Intellectual and Developmental Disabilities (IDD.) The IDD waiver, including service definitions and provider types, is amended as the program changes. HB 2751 would need to be updated every time the IDD waiver is amended. The proposed amendment links the definition to KDADS licensing authority.

Thank you for the opportunity to provide supportive testimony on HB 2751. I am happy to stand for questions at the appropriate time.

Respectfully,

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