

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2784**

As Agreed to April 26, 2024

Brief*

HB 2784 would transfer authority for certification of continuing care retirement communities (CCRCs) from the Kansas Insurance Department (Department) to the Kansas Department for Aging and Disability Services (KDADS).

The bill would permit the Secretary for Aging and Disability Services to waive a requirement of the rules and regulations related to licensing of disability services in certain circumstances, would include a definition for “day service provider” as it relates to criminal history record checks, and would require notices to licensees include information on appeals available under the Kansas Administrative Procedure Act (KAPA) and the Kansas Judicial Review Act (KJRA).

The bill would amend law regarding the certification of Certified Community Behavioral Health Centers (CCBHCs).

The bill would prohibit the State Fire Marshal (Marshal) and the Marshal’s representatives from wearing or operating an audio or video recording device during an on-site inspection in certain facilities.

The bill would also make technical amendments.

Use of Body Camera or Other Audio or Video Recording Device by State Fire Marshal and Marshal’s Representatives

The bill would prohibit the Marshal and the Marshal’s representatives from wearing or operating a body camera or other audio or video recording device during an on-site inspection in a licensed care facility or community-based locations where individuals with intellectual and developmental disabilities (I/DD) receive habilitation services.

Definitions Regarding Inspections of Facilities by State Fire Marshal

The bill would define these terms:

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- “Body camera” would mean a device that is worn by a law enforcement officer that electronically records audio or video of such officer’s activities; and
- “Licensed care facility” would mean child care facilities and adult care homes and include the following types of facilities:
 - Child care facility, as defined in KSA 65-503, which includes the following:
 - A facility maintained by a person who has control or custody of one or more children under 16 years of age, unattended by parent or guardian, for the purpose of providing the children with food or lodging, or both, except children in the custody of the Secretary for Children and Families who are placed with a prospective adoptive family or who are related to the person by blood, marriage, or legal adoption;
 - Children’s home, orphanage, maternity home, day care facility, or other facility of a type determined by the Secretary of Health and Environment to require regulation;
 - Child placement agency or child care resource and referral agency, or a facility maintained by such an agency for the purpose of caring for children under 16 years of age; or
 - Any receiving or detention home for children under 16 years of age provided or maintained by, or receiving aid from, any city or county or the State;
 - Qualified residential treatment program, which includes a program designated by the Secretary for Children and Families as a qualified residential treatment program pursuant to federal law;
 - Psychiatric residential treatment facility, which includes any non-hospital facility with a provider agreement with the licensing agency to provide the inpatient services for individuals under the age of 21 who will receive highly structured, intensive treatment for which the licensee meets the requirements as set forth by regulations created and adopted by the Secretary for Children and Families;
 - Secure facility, which means a facility, other than a staff secure facility or juvenile detention facility, that is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or that relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents. No secure facility is in a city or county jail;
 - Shelter facility, which means any public or private facility or home, other than a juvenile detention facility or staff secure facility, that may be used in accordance with the Revised Kansas Code for Care of Children for the purpose of providing either temporary placement for children in need of care prior to the issuance of a dispositional order or longer-term care under a dispositional order;
 - Youth residential facility, which means any home, foster home, or structure that provides 24-hour-a-day care for children and that is licensed by the Kansas Department of Health and Environment;
 - Any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home, and adult day care facility, all of which

- are classifications of adult care homes and are required to be licensed by the Secretary for Aging and Disability Services;
- Medical care facilities, which would include hospitals, ambulatory surgical centers, or recuperation centers; and
- Hospice facilities that are certified to participate in the Medicare program under 42 C.F.R. § 418.1 *et seq.*

Disability Service Provider Licenses

Waivers of Adopted Rules and Regulations for Disability Service Provider Licenses

The bill would allow the Secretary for Aging and Disability Services (Secretary) to grant a waiver for disability service provider licenses for a violation of rules and regulations if the waiver is in the public interest and would not detrimentally affect the life, safety, health, or welfare of any person receiving care or treatment in a licensed center, facility, or hospital, or an individual receiving services from a licensed provider.

Criminal History Record Checks for Day Service Providers

The bill would require persons who meet the definition of “day service provider” to have a criminal history record check completed and specify such persons could be disqualified from employment based upon their criminal history record check.

The term “day service provider” would mean a provider of day support services for development in self-help, social, recreational, and work skills for adults with I/DD that is 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 or developmental disabilities licensed by KDADS.

Disability Service Providers Licensing Failure to Comply

Whenever a failure to comply with requirements, standards, or adopted rules and regulations is found, the bill would permit the licensing agency to make an order denying, conditioning, restricting, suspending, or revoking the disability service provider license after issuing a notice and opportunity for a hearing in accordance with KAPA. [Note: Current law requires the licensing agency to issue an order denying, suspending, or revoking the license of a disability service provider when a substantial failure to comply with requirements, standards, or rules and regulations is found.]

The bill would also provide for a person to appeal an order made on a license. “Person” would be defined as any person:

- Who is an applicant for a license or who is the licensee and who has any direct or indirect ownership interest of 25 percent or more in the center, facility, or hospital; or
- Who is the owner, in whole or in part, of any mortgage, deed of trust, note, or other obligation secured, in whole or in part, by the center, facility, or hospital; or

- Who, if the center, facility, hospital, or provider is organized as a corporation, is an officer or director of the corporation, or who, if the facility is organized as a partnership, is a partner.

Disability Service Providers Licensing Notice of Appeal

Current law provides for, if it is found upon reinspection that a licensee has not corrected the deficiency or deficiencies specified in the correction order, the Secretary may assess a civil penalty, and a written notice of assessment would be served upon the licensee. The bill would require that when a licensee is issued a written notice of assessment, the licensee would be notified of the opportunity to be heard under KAPA and that an appeal of an administrative order may be made to the district court, in accordance with the provisions of KJRA.

Disability Service Providers Licensing Civil Penalty

The bill would specify that a licensee has ten days to appeal a civil penalty assessment after receiving written notice of assessment. The licensee would be required to file a written notice of appeal with the Office of Administrative Hearings (OAH) specifying why the civil penalty should not be assessed. However, the filing of a notice of appeal would not stay the payment of a civil penalty. OAH would be required to have a hearing on the notice of appeal. If OAH finds in favor of the appellant licensee and the Secretary affirms the initial order, the civil penalty would be refunded to the appellant licensee. Either party would be permitted to file an appeal on the final order to the District Court in accordance with KJRA.

Certified Community Behavioral Health Center (CCBHC) Certification

The bill would require that, prior to February 1, 2027, only Community Mental Health Centers (CMHCs) licensed by KDADS and that provide certain services could be certified as CCBHCs in Kansas.

On or after February 1, 2027, the bill would require KDADS to certify as a CCBHC any CMHC or qualified nonprofit provider that is licensed by KDADS and provides certain services, as in current law.

The bill would also require KDADS to adopt rules and regulations to implement and administer the certification process.

CCBHC Certification Renewal

The bill would specify that programs and treatments provided by a CCBHC may be granted a certification renewal if such programs and treatments have been:

- Previously certified by the Secretary for Aging and Disability Services (Secretary); and
- Accredited by the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accrediting body approved by the Secretary.

Continuing Care Retirement Community (CCRC)

Definitions

The bill would add a definition of CCRC to law regarding adult care homes. “Continuing care retirement community” would mean any place or facility that combines a range of housing and services to encompass the continuum of aging care needs provided at an independent living facility, an assisted living facility, a residential health care facility, home plus, or a skilled nursing care facility within a single place or facility to avoid the need for residents to relocate to a separate place or facility. The provision on community care would include the multiple levels of care provided as part of a CCRC.

The bill would also add a definition for “continuing care” in law regarding insurance uniform policy provisions. Continuing care would mean the multiple levels of care provided as part of a CCRC.

Certification Authority for CCRCs

The bill would transfer authority for certifying CCRCs by replacing the definition of “Commissioner” with “Secretary,” to mean the Secretary for Aging and Disability Services (Secretary), in insurance uniform policy provisions statute regarding CCRCs. The bill would also replace “Commissioner” with “Secretary” to clarify in the continuing law that the Secretary would:

- Prescribe an annual disclosure statement for CCRC providers to complete;
- Accept annual disclosure statements filed by CCRC providers, continuing care contracts, and annual audits certified by a certified public accountant;
- Accept copies of continuing care contract forms entered into between the provider and any resident and associated required documents;
- Issue certificates of registration for CCRC providers;
- Prescribe and accept applications for CCRC certificates of registration; and
- Renew certificates of registration with appropriate notification and payment of the continuation fee, unless the Secretary determines that the CCRC is not in compliance with statute.

The bill would specify that CCRC providers would be required to file annual disclosure statements, continuing care contracts, and annual audits within four months of completion of such provider’s fiscal year. The bill would also require the Secretary to renew certificates of registration for CCRCs in compliance with requirements within four months of completion of such provider’s fiscal year.

The bill would also provide the Secretary the ability to adopt any rules and regulations necessary to carry out CCRC oversight.

Conference Committee Action

The second Conference Committee agreed to:

- The provisions of HB 2784 as passed by the Senate regarding the authority for certification of continuing care retirement communities (CCRCs);
- To add the contents of HB 2751, as passed by the Senate Committee on Public Health and Welfare, regarding licensing of disability services;
- To add the contents of HB 2578, as amended by the House Committee of the Whole, regarding the certification of Certified Community Behavioral Health Clinics (CCBHCs) with the following amendments:
 - Insert qualified nonprofit provider as a healthcare provider eligible for CCBHC certification;
 - Amend the date for CCBHC certification for only those CMHCs licensed by KDADS that provide certain services to prior to February 1, 2027;
 - Amend the effective date for CCBHC certification to on and after February 1, 2027, for any CMCH licensed by KDADS that provides certain services;
 - Add qualified nonprofit providers to that certification period; and
 - Remove the sunset provision for certification renewals; and
- To add the contents of HB 2777, as amended by the House Committee of the Whole, regarding the wearing or operating of recording devices by the State Fire Marshal in certain facilities.

Background

The second Conference Committee report contains the provisions of House Bills 2784, 2751, 2578, and HB 2777. The background information concerning these bills follows.

HB 2784 (Continuing Care Retirement Community)

HB 2784 was introduced by the House Committee on Health and Human Services at the request of Representative Landwehr.

House Committee on Health and Human Services

In the House Committee hearing, **proponent** testimony was provided by representatives of the Insurance Department (Department) and the Kansas Medicaid Inspector General, who generally stated the Department's role with CCRCs is limited to registration and annual renewal, and these functions would be more appropriately handled by KDADS, who already manages quality care assessments, Quality Care Assessment Tax determinations, and other aspects of the management of CCRCs.

Opponent testimony was provided by representatives of Kansas Health Care Association and Kansas Center for Assisted Living (KHCA/KCAL) and LeadingAge Kansas. Opponents stated they were not opposed to moving oversight of CCRCs from the Department to KDADS, but expressed some concern about the definition of CCRC included in the bill.

Written-only opponent testimony was provided by representatives of Kansas Adult Care Executives and Kansas Hospital Association (KHA).

Neutral testimony was provided by a representative of KDADS.

The House Committee amended the bill to:

- Remove CCRC from the definition of “adult care home” in law regarding adult care homes;
- Clarify the definition of CCRC in law regarding adult care homes;
- Clarify that “place or facility” includes multiple buildings;
- Clarify the definition of “continuing care” in the bill;
- State that if certification is not issued or renewed, the provider would be able to appeal the decision in accordance with the Kansas Administrative Procedure Act, and judicial review would be in accordance with the Kansas Judicial Review Act; and
- Remove Section 9 of the bill regarding the Quality Care Assessment Tax.

[*Note:* The second Conference Committee retained these amendments.]

Senate Committee on Public Health and Welfare

In the Senate Committee hearing, **proponent** testimony was provided by representatives of KDADS and the Department. The Department representative stated the agency’s authority is limited to the registration and annual renewal of certificates of registration of CCRCs and, given the substantial authority of KDADS over such facilities, the registration and renewal authority would best reside with KDADS. The KDADS representative stated the agency supports the bill with the amendments made by the House Committee.

Written-only proponent testimony was provided by Representative Landwehr.

Neutral testimony was provided by a representative of LeadingAge Kansas, who stated support for tightening loopholes in CCCR statutes and better ensuring the integrity and efficacy of the nursing home bed tax program, but requested amendments be made to add “home plus” to the list of care settings in the definition of a CCCR and restore the current statutory language on fiscal year reporting.

No other testimony was provided.

The Senate Committee amended the bill to:

- Add “home plus” to the list of CCRCs;
- Restore the current statutory language regarding the due date of a CCRC’s fiscal year reporting; and
- Replace the requirement that the Secretary renew a certificate of registration as a continuing care provider on or before April 1 of the current calendar year with renewal if the Secretary determines that the continuing care provider is in compliance with requirements within four months of completion of such provider’s fiscal year.

[Note: The second Conference Committee retained these amendments.]

HB 2578 (CCBHC Certification)

HB 2578 was introduced by the House Committee on Health and Human Services at the request of Representative Buehler on behalf of the Association of Community Mental Health Centers of Kansas.

House Committee on Health and Human Services

In the House Committee hearing, **proponent** testimony was provided by representatives of the Association of Community Mental Health Centers of Kansas, COMCARE, Four County Mental Health Center, The Guidance Center, and Johnson County Mental Health Center. Proponents generally stated support for the CCBHC model of care and streamlining of the recertification process.

Neutral testimony was provided by a representative of KDADS.

Opponent testimony was provided by representatives of the Behavioral Health Association of Kansas, Community Care Network of Kansas, Community Health Center of Southeast Kansas, and CKF Addiction Treatment, who generally stated concern with limiting new CCBHC certifications only to CMHCs and a desire to increase patient access to the model.

Written-only opponent testimony was provided by DCCCA, Greeley County Health Services, Health Ministries Clinic Community Health Center, Heartland Community Health Center, Kansas Association of School Boards, and KVC Kansas.

House Committee of the Whole

The House Committee of the Whole amended the bill to specify that only CMHCs licensed by KDADS and providing certain services would be certified as CCBHCs until July 1, 2027. The bill was also amended to sunset provisions related to certification renewal on July 1, 2027.

[Note: The second Conference Committee amended the date for CCBHC certification for only those CMHCs licensed by KDADS and providing certain services to prior to February 1, 2027, and removed the sunset provision for certification renewal.]

HB 2751 (Disability Service Provider Licensing)

HB 2751 was introduced in the House Committee on Health and Human Services at the request of Representative Haswood on behalf of KDADS.

House Committee on Health and Human Services

In the House Committee hearing on February 12, 2024, a representative of KDADS provided **proponent** testimony, generally stating that the bill would provide additional remedies regarding licensure. A representative of Goodwill Industries of Kansas testified in support of the bill in general, but expressed concern regarding the criminal history records check, as Goodwill Industries of Kansas is a second-chance employer.

Written-only proponent testimony was provided by a representative of InterHab.

No other testimony was provided.

The House Committee amended the bill to add a definition for “day service provider.”

[*Note:* The second Conference Committee retained this amendment.]

Senate Committee on Public Health and Welfare

In the Senate Committee hearing on March 13, 2024, **proponent** testimony was provided by a representative of KDADS, who generally stated the bill would 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 KJRA processes apply for all remedies. The KDADS representative presented a proposed amendment agreed to by Goodwill Industries of Kansas and InterHab that would replace the definition of “day service provider.” Goodwill Industries of Kansas testified in support of the bill but expressed concern with the definition of “day service provider,” noting the amendment proposed by KDADS would resolve the concern and allow its day services operations to resume in an integrated employment setting that benefits individuals with intellectual and developmental disabilities.

Written-only proponent testimony was provided by InterHab.

No other testimony was provided.

The Senate Committee amended the definition of “day service provider.”

[*Note:* The second Conference Committee retained this amendment.]

HB 2777 (Inspections of Facilities by State Fire Marshal)

HB 2777 was introduced by the House Committee on Health and Human Services at the request of Representative Bergquist on behalf of Representative Landwehr.

House Committee on Health and Human Services

In the House Committee hearing on February 14, 2024, representatives of the KHA and LeadingAge Kansas provided **proponent** testimony, generally stating that there is concern for patient privacy and potential facility liability because staff would be knowingly admitting individuals wearing video or audio recording devices into an area that is subject to the Health Insurance Portability and Accountability Act (HIPAA) for a routine, non-emergency-related facility inspection. Representatives also noted that the licensing agency does not utilize video or audio devices during routine licensing facility inspections.

Written-only proponent testimony was provided by representatives of the Alzheimer's Association, Children's Alliance of Kansas, InterHab, and KHCA/KCAL.

Written-only neutral testimony was provided by the State Fire Marshal.

No other testimony was provided.

The House Committee amended the bill to include additional facility types within the definition of "patient care facility" and to include community-based locations where I/DD individuals receive habilitation services as a site where body cameras could not be used by the Marshal.

[*Note:* The second Conference Committee retained this amendment.]

House Committee of the Whole

The House Committee of the Whole amended the bill to extend its provisions to all licensed care facilities, including child care facilities.

[*Note:* The second Conference Committee retained this amendment.]

Senate Committee on Public Health and Welfare

In the Senate Committee hearing on March 5, 2024, **proponent** testimony was provided by Representative Johnson and a representative of Leading Age Kansas. Proponents generally stated the bill would protect privacy rights of those in a licensed care facility. They noted that current HIPAA regulations allows cameras only after consent by the individual has been obtained, something that is not possible in this situation as current inspections are often unannounced.

Written-only proponent testimony was provided by representatives of KHA and KHCA/KCAL.

Neutral testimony was provided by the State Fire Marshal.

No other testimony was provided.

The Senate Committee amended the bill to clarify that the State Fire Marshal is allowed to collect still photographic evidence of violations discovered during an inspection or investigation.

[Note: The second Conference Committee did not retain this amendment.]

Fiscal Information

Fiscal information for provisions of the bill, as amended by Conference Committee action, appears below.

HB 2784 (Continuing Care Retirement Community)

According to the fiscal note prepared by the Division of the Budget on HB 2784, as introduced, KDADS states that enactment of the bill would adjust the current provider assessment rates, and the agency estimates additional Quality Care Services Fee Fund revenue of \$17.5 million annually. The bill would increase the nursing facility provider assessment rate for approximately 265 facilities and lower it for approximately 60 facilities. This could result in an additional offset and reduction of State General Fund (SGF) expenditures as part of the Human Services Consensus Caseload for the Nursing Facility Medicaid program. This impact assumes Centers for Medicare and Medicaid Services (CMS) approval of the provider tax rate methodology.

KDADS estimates that enactment of the bill would increase agency expenditures by \$650,000 from the SGF for FY 2025 and beyond. The agency states that it would require hiring 6.00 new FTE (full-time equivalent) positions to take on the additional responsibilities and two cars for surveyors. The positions would include 2.00 FTE Surveyor positions, 1.00 FTE Program Consultant position, 1.00 FTE Program Manager position, 1.00 FTE Licensure and Enforcement Specialist position, and 1.00 FTE Hotline Intake Specialist position.

With the provider assessment rates in the bill and current assessment parameters, it does not appear that KDADS would be in compliance with the CMS parameters. In the event CMS does not approve the rates and assessment methodology as noted in the bill, there would be a loss of revenue of approximately \$25.5 million to maintain current nursing facility rates and service funding, which would be offset by an increase of SGF expenditures.

The Kansas Commission on Veterans Affairs Office indicates that enactment of the bill would not have a fiscal effect on the agency.

The Department indicates there are approximately 137 CCRC facilities currently registered with the Department. The annual renewal fee is \$25. Assuming all continue to be registered, enactment of the bill would decrease fee revenue by \$3,425 annually. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

HB 2578 (Certified Community Behavioral Health Centers (CCBHCs) Certification)

According to the fiscal note prepared by the Division of the Budget on HB 2578, as introduced, KDADS indicates that the bill would not have a fiscal effect on agency operations, as it is currently developing and drafting rules and regulations. KDADS has a process for publication, review, and certification and does not recognize any accreditations for option of certification renewal.

HB 2751 (Disability Service Provider Licensing)

According to the fiscal note prepared by the Division of the Budget on HB 2751, as introduced, the Office of Judicial Administration states enactment of the bill could increase the number of cases filed in district courts because it would allow for either party to appeal the final order under KJRA, which would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. However, an accurate estimate of the fiscal effect on expenditures by the Judicial Branch cannot be given until the courts have had an opportunity to operate under the provisions of the bill. The bill would not have a fiscal effect on revenues to the Judicial Branch, but enactment of the bill could result in the collection of docket fees and civil penalties in cases filed under the provisions of the bill, which would be deposited in the SGF.

According to the State Fire Marshal, KDADS, and OAH, enactment of the bill would have no fiscal effect on the respective agencies. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

HB 2777 (Inspections of Facilities by State Fire Marshal)

According to the fiscal note prepared by the Division of the Budget on HB 2777, as introduced, the Marshal indicates enactment of the bill would have no fiscal effect on agency operations.

Kansas Department for Aging and Disability Services; Kansas Department of Health and Environment; Kansas Insurance Department; continuing care retirement communities; Kansas Administrative Procedure Act; certified community behavioral health clinics; community mental health centers; State Fire Marshal; adult care home; child care facility; licensing

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