

To: House Committee on Insurance and Financial Institutions

From: Codi Thurness
Commissioner of Survey, Certification, and Credentialing Commission

Date: February 16, 2016

Subject: HB 2579, Authorizing the use of correction orders and civil penalties for health care facilities that violate health care provider insurance statutes

Chairman Schwab and members of the Committee:

I appreciate the opportunity to submit testimony regarding HB 2677, legislation which will authorize intermediate enforcement mechanisms against health care facilities that violate certain statutes. In context, the Kansas Department for Aging and Disability Services (KDADS) is responsible for the administration of the adult care home licensure act found at K.S.A. 39-923 et seq., and rules and regulations promulgated to promote the safe, proper and adequate treatment and care of individuals in adult care homes. Within KDADS, the Survey, Certification, and Credentialing Commission (SCC) has responsibility for administration of the act and regulatory oversight of adult care homes. K.S.A. 39-945 provides the secretary or the secretary's designee with authority to issue a correction order to an adult care home licensee when the state fire marshal or the marshal's representative or authorized agency staff determines non-compliance significantly and adversely affecting the health, safety, nutrition or sanitation of adult care home residents.

In 2014, K.S.A. 40-3401 of the Health Care Provider Insurance Availability Act was amended to add nursing facilities, assisted living facilities and residential health care facilities licensed by the state of Kansas to the definition of "Health care provider" found at K.S.A. 40-3401(f). The requirement of coverage became effective in January 2015. While K.S.A. 40-3416 requires the board of governors to report suspected violations to the state agency which licenses, registers, or certifies such health care providers; and K.S.A. 40-3416 provides that, upon evidence of a violation of K.S.A. 40-3402, the state agency shall make such investigation as it deems necessary and take such other official action as deemed appropriate – clear authority concerning the type of action is absent.

Since the amendments to K.S.A. 40-3401 became effective, KDADS has worked with the Kansas Health Care Stabilization Fund (HCSF) and has requested that licensure applicants who are now covered by the requirements provide notices of coverage. However, correction orders or civil penalties have not been issued.

If the legislature approves HB 2579, it would be KDADS' intent to continue working with the HCSF with the goal of entering into a memorandum of understanding to clarify operational interactions relative to the responsibilities assigned to each entity. KDADS' SCC staff is comprised mainly of registered nurses with expertise in matters of health; therefore, KDADS views the role of the HCSF as providing insurance compliance expertise similar to that of the state fire marshal in the existing provisions of K.S.A. 39-945

Without legislative action, KDADS will continue to request a notice of basic coverage. However, correction orders or civil penalties might not be issued due to the absence of clear enforcement authority.