

To: House Health and Human Services Committee

From: Kelli Ludlum, KDADS Assistant Secretary

Date: February 10, 2016

Subject: HB 2571, Licensure renewal of community mental health centers

Chairman Hawkins and members of the Committee:

I appreciate the opportunity to present testimony on HB 2571, legislation which will change the licensure process of community mental health centers (CMHCs). At this time, KDADS licenses 26 CMHCs, two of which are currently accredited by national organizations. Licensure is intended to establish minimum requirements below which licensees are not permitted to operate. KDADS and its predecessor agency have worked closely with CMHCs over many years to ensure that quality care is provided to those individuals in need of mental health services. For purposes of this hearing, I would like to describe KDADS' oversight and enforcement of licensure requirements, to outline some differences between state and national regulations, and to offer suggestions that will clarify and refine the intent of the legislation.

#### Current Practice

The Licensing Quality Management (LQM) process is designed to maintain consistent compliance with CMHC licensing regulations. CMHCs are presently monitored for compliance with licensing requirements throughout the licensing cycle and not just at a single point in time, such as an annual survey. LQM replaced an earlier process which consisted of a bi-annual site visit lasting two to four days. The previous process required several staff to complete depending on the size of the CMHC.

LQM is designed to prevent the need for formal plans of correction which could temporarily put the CMHC's license in jeopardy by identifying compliance concerns immediately and providing the opportunity for correction well before a license was due to expire. This process has made it possible for the CMHC to continue normal operations while corrections were made without the need for formal enforcement actions through the administrative hearing process. Mental health quality assurance (licensing) and quality improvement (contract monitoring) have been done simultaneously in recent years to efficiently facilitate improvements throughout the CMHC system. The two forms of oversight complement each other by facilitating needed improvements and ensuring accountability for responsible expenditure of State dollars.

#### State Licensure and National Accreditation

In the past, KDADS staff has compared Kansas licensing regulations with the Commission on Accreditation of Rehabilitation Facilities (CARF) and The Joint Commission (TJC) standards. While there is some overlap, we have also found differences between Kansas regulations and accreditation standards. For example, a set of standards may address parts of a specific regulation but not the entire regulation. Therefore, even if KDADS were to "deem" certain sections of an accreditation standard as meeting the requirements of Kansas regulations,

the non-compliant sections might still require licensing review. In any event, deemed status would require KDADS to have two separate processes for accredited and non-accredited CMHCs.

Accreditation in concert with state licensing requirements could help improve the quality of CMHCs beyond what one or the other can accomplish by itself. However, these differences create some issues that would need to be worked through if HB 2571 were enacted. KDADS' preference would be to identify the high-level issues during the legislative process, via a cross-walk or similar mechanism, in order to create the best possible legislation that is workable for all parties including the CMHCs, the state, and ultimately the safety and protection of the consumers we all serve.

### Legislative Considerations

#### 1. Retain state authority to conduct complaint or "look behind" surveys

In KDADS' understanding, based on the historical context of general hospitals and other medical care facilities licensed by the Kansas Department of Health and Environment, deemed status simply means that a facility is not subject to annual state surveys as the provider is "deemed" to meet state licensing regulations. However, the provider is still subject to complaint surveys or other surveys that look behind the findings of the accrediting body. Deemed status essentially eliminates the requirement of annual surveys, while still allowing the regulator to conduct unannounced surveys, resurveys and revisits as needed. This has generally worked effectively for child care centers, adult care homes, hospitals, hotels, restaurants and many other surveyed industries.

HB 2571, in its present form, takes a much broader view of the exemptions afforded by deemed status. There is no language indicating any exception to deemed status for complaint, follow up or comparative surveys. In addition, there is no language indicating that KDADS may continue to require corrective action or file a petition to suspend or revoke a license, if that became necessary. Moreover, if either CARF or TJC issues corrective action to a CMHC, there is no requirement that KDADS be notified so that administrative action can be initiated where appropriate. It is essential that KDADS be able to conduct surveys when appropriate or warranted, even though they would not be done on an annual basis.

#### 2. Two-year sunset from effective date

Because the process contemplated in HB 2571 differs significantly from the current one, particularly given the vague nature of the legislative language, KDADS suggests that the legislature include a timeline to review the results. We believe that sun-setting the legislation after a two-year working period would allow a sufficient period to demonstrate the success of deemed status for those CMHCs that seek it, while also bringing to light any changes that the legislature might consider necessary to further improve licensure options.

Thank you for your time. I welcome the opportunity to answer any questions you may have for KDADS regarding this bill.