



EQUALITY ♦ LAW ♦ JUSTICE

## Disability Rights Center of Kansas

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### House Appropriations Committee Testimony – HB 2442 \* January 26, 2012

Chairman Marc Rhoades and members of the Appropriations Committee. Thank you for the opportunity to speak before you. My name is Rocky Nichols. I am the Executive Director of the Disability Rights Center of Kansas (DRC). The DRC is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy organization for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation whose sole interest is to protect and advance the rights of Kansans with disabilities.

**DRC Kansas is very supportive of HB 2442, and in particular its aim to assist more Kansans with disabilities to become competitively employed. We believe this bill should be acted upon favorably, and we have some suggestions to better ensure its success.**

**Components DRC is very supportive of which are critical to this bill's success:**

- **Certified Business Incentive Encouraging Hiring Individuals with Disabilities** – Providing an incentive for businesses that want government contracts to hire people with disabilities and become a “certified business” under this bill. This status granted under the bill is a very powerful and critical tool to ensure greater employment of people with disabilities,
- **Incentive for Businesses to Purchase from Certified Businesses** – The incentive for businesses bidding on state contracts to purchase from certified businesses that hire people with disabilities is another important tool,
- **Certified Businesses Pay for Health Insurance** – The requirement that to be eligible for the bill's incentives that the certified business must pay the vast majority of the total health insurance premium for its employees, which if done correctly, will reduce Medicaid costs for people with disabilities employed by the certified business,

- **Rebuttable Presumption to be Reinstated to Medicaid** – The intent to create an ability for people with disabilities to be reinstated to Medicaid and home and community based services (HCBS) Waiver programs without waiting if they happen to go off such services and purchase their supports outside of Medicaid is needed,
- **Intent for Competitive Employment** – The thrust and intent of the bill that the individuals with disabilities at these certified businesses must be employed in jobs that pay competitive wages is a crucial policy objective (note: under the next section of our testimony and in the attachment we suggest some language to make this intent more clear). As you know, Kansas passed the Employment First Initiative last year, making competitive and integrated employment for people with disabilities the first option and official policy of the state of Kansas.

**Amendments and other considerations to address potential unintended consequences:**

- **Have the Right “Rules” to Ensure the Desired Outcomes and Prevent some from “Gaming” the System** – Make sure you get the desired intent you want by ensuring the requirements to obtain the “certified business” designation are effectively high. In short, you want to make sure that these certified businesses employ people with disabilities at competitive wages good health insurance plans (and not cut-rate, low benefit plans) so that Medicaid and other government programs pay as little as possible of their health costs and the person with a disability is paying more in taxes. The current language creates some unintended loopholes that would allow employers to satisfy the requirements of the bill and potentially game the system to gain the status of a “certified business,” without ensuring they provide an adequate and effective level health insurance coverage, which will save Medicaid costs. At the end of my testimony, I will walk the Committee through DRC’s proposed amendments to the bill that would fix this and the other issues.
- **Make Adjustment to Ensure Accommodations & Specialized Needs are Meet** – Make sure people with disabilities have the ability to obtain an accommodation to work part-time either because their disability does not allow them to work 40 hours per week or working part-time is needed to maintain the specialized services and supports not covered by health insurance. Due to medical conditions and other disability factors, not all people with disabilities may be able to work 40 hours per week. Also, private health insurance does not cover most long-term care services and supports that specifically enables many individuals with disabilities to work (personal care attendants to help the person shower, dress, eat or do other activities of daily living; other specialized services and supports, etc.). To keep these services and supports

which are needed for employment, the individual with a disability may request that they work part time. Those with the most significant disabilities, in particular, may need this option. The Americans with Disabilities Act (ADA) requires that reasonable accommodations be made to people with disabilities. We think our language allowing the individual with a disability to work part time under this program if they request it and the employer agrees to grant it is both reasonable from an ADA vantage point and good policy for state taxpayers.

- **Make it Clear that Adults with Mental Illness and those with other disabilities can both be “individuals with disabilities” under the bill** – In the bill, the definition of an “individual with a disability” means that you must meet SRS’s certification that your disability is a substantial barrier to employment and you either: 1) are eligible for home and community based services (HCBS Waivers) or, 2) you are employed by a 501c3. There is NO HCBS Waiver for adults with mental illness. Most adults with mental illness are not eligible for HCBS Waiver services, but they are the perfect candidates to be hired by certified businesses. As such, we fear the proposed language may have the unintended effect of not giving proper credit for hiring someone with a mental illness to a certified business, which would be a disincentive for a *for profit* business to hire a person with a mental illness. We are certain that this is not the intent, and we propose language to clearly fix this.
- **Eliminate the Potential Trap Door in the Bill and Make the Eligibility for Reinstatement the Same as Eligibility for the Program** – The current wording says that you only are eligible for reinstatement through a rebuttable presumption if you meet a three pronged test. This would seem to make it nearly impossible to qualify for the rebuttable presumption and reinstatement to services. We are certain this was not the intent. In talking with the Legislative sponsor, it may be that the “and” at the end of section (2) on page 9, line 11 should be changed to an “or.” That would correct this issue. The other language in the amendment ensures that everyone eligible on the front end as an individual with a disability are also eligible for reinstatement on the back end, including those who only qualify for Medicaid and not an HCBS program or who work for a 501c3. In short, the Legislature has to get this rebuttable presumption language right to prevent any trap doors. DRC is still reviewing this section, but we believe that at least these changes are needed.
- **What Process is SRS Going to use to “Certify” that a Hire is an Eligible “Individual with a Disability” Under the Bill (page 7, line 12)?** – As stated previously, setting the right requirements to gain the incentives of this bill critical to its success. We are not certain what process SRS would use under this provision, and believe policymakers need to understand this as this bill moves forward. Will it be SSI

disability determination process? This and the definitions found on page 7, lines 20-31, are important to be re-reviewed by the Legislature to ensure there are not unintended consequences.

We agree wholeheartedly that with the right language and if implemented correctly that HB 2442 will have the net effect saving precious taxpayer dollars by reducing many costs Medicaid must cover, along with enabling more individuals with disabilities to pay more in taxes through competitive employment. Under federal law, Medicaid is payer of last resort. Therefore, for a person with a disability who has effectively robust health insurance provided by a certified business under this bill, every health care cost covered by that insurance is a cost that will not have to be paid by Medicaid. The vast majority of Medicaid codes and the types of health care services provided by Medicaid are generally covered by private health insurance. Also, for adults with mental illness who do not need long-term care HCBS Waiver supports, an effective private health insurance program may the likelihood of paying for a greater percentage of services and costs previously paid for by Medicaid. Having private health insurance pay for those covered health plan services will clearly save money.

However, long-term care services and supports provided by HCBS Waiver are specifically NOT covered by private health insurance policies. Examples include: personal care assistance, assistance with activities of daily living, case management and other specialized services and supports that accommodate the individual's disability. These are all needed to enable employment. Therefore, we do want to manage the expectations of policymakers regarding the number of individuals with disabilities who will completely go off Medicaid and HCBS services because of this bill. For many people with disabilities, particularly those with the most significant needs, they will need to continue to receive their long-term care and other non-medical supports through Medicaid and HCBS programs. Without these supports, many will not be able to work. With Medicaid as the payer of last resort, the higher you set the bar on the extensiveness of health insurance that must be provided to more you will save in Medicaid costs. Also, as individuals with disabilities are employed in competitive jobs with competitive wages, they will pay to buy in to the Medicaid, instead of just having the state pay all of the state match costs. Just understand that because Kansas does not require health insurance companies to provide long-term care services and supports that individuals with disabilities will have to access Medicaid HCBS Waivers. You should right the requirements on the certified business to ensure they do not purchase cut-rate health insurance, ensuring more savings to Medicaid, but you should understand.

## DRC Proposed Amendments to HB 2442

Amendment to Section (g), starting on page 6, line 39, and continuing through page 7, line 19:

~~Strikethrough~~ = deleted

Underlined = added

(g) As used in this section:

(1) "Certified business" means any business certified annually by the department of administration that is a sole proprietorship, partnership, association or corporation domiciled in Kansas, or any corporation, even if a wholly owned subsidiary of a foreign corporation, that:

(A) Does business primarily in Kansas or substantially all of its production in Kansas;

(B) employs at least 20% full-time employees in Kansas that are individuals with disabilities, and pays competitive wages which are at least the minimum wage; and

(C) contributes at least 70% of the total health insurance premium cost annually to a qualified health insurance plan for all employees. All employees who are individuals with a disability shall be provided health insurance per this section. In the process of certifying eligible businesses, the department of administration will determine whether the level of health insurance provided qualifies as being a sufficient level of health insurance coverage as to justify the benefits granted to certified businesses and to further maximize effective savings to the Kansas Medicaid program. The department of administration may pre-qualify certain levels of health coverage or otherwise provide information to better ensure that the level of a qualified plan can be understood by prospective applicants for certification;

(2) "full-time" means employment of persons residing in this state and working at least 40 hours per week in this state, which has a minimum six-month duration during any twelve-month period, however, if an individual with disabilities requests and is granted the ability to work fewer than 40 hours per week, then the hours worked by such individual will still count toward a certified business meeting the 20% threshold if such business employs in the aggregate the full-time equivalent of 20% individuals with disabilities, based on adding the hours worked part time and calculating the full-time equivalence of individuals with disabilities employed. The department of administration will ensure that the option of the full time equivalence calculation shall only be utilized when the request to work less than 40 hours is made by the person with a disability, and is not imposed by the certified business;

(3) "individuals with disabilities" or "individual with a disability" means any individual certified by the department of social and rehabilitation services as having a physical or mental impairment which constitutes a substantial barrier to employment and:

(A) Is receiving services, has received services or is eligible to receive services under Medicaid, including but not limited to a home and community based services program, as defined by this section; or

(B) is employed by a charitable organization domiciled in the state of Kansas and exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, as amended;

(OVER – SEE BACK)

Amendment to Section (b), starting on page 8, line 39, and continuing through page 9, line 33:

~~Strikethrough~~ = deleted

Underlined = added

New Section 3 ...

(b) There is a rebuttable presumption that an individual with a disability shall be eligible for reinstatement to the level of Medicaid and home and community based services and Medicaid such person was entitled to on the day preceding the day such person stopped receiving home and community based services if:

(1) Within 12 months prior to the month in which an individual with a disability files a request for reinstatement, such individual had received services under Medicaid and home and community based services program, pursuant to an application filed with the department of social and rehabilitation services, and entitlement to receive or receipt of services under Medicaid and home and community based services program, ~~terminated~~ ceased Medicaid services due to being employed by full-time employment for a certified business, not medical recovery or any other reason;

(2) the individual with a disability is currently under a physical or mental impairment that was the basis for the finding of disability that gave rise to the entitlement for the services specified in subsection (b)(1); ~~or~~ and

(3) such physical or mental impairment renders the individual with a disability unable to perform full-time employment for a certified business.

(c) Entitlement to services received under Medicaid and any home and community based services program shall be reinstated in any case where an individual with a disability files a request for reinstatement of services under Medicaid and a home and community based services program, conforming to the requirements of this section. Upon reinstatement to Medicaid and a home and community based services program, such individual shall receive services and not wait to receive services under such program.

(ed) Requests for reinstatement of services under Medicaid and a home and community based services program, shall be filed with the department of social and rehabilitation services within three months after cessation of work for a certified business. In the case of an individual with a disability who fails to timely file a request for reinstatement of services under Medicaid and a home and community based services program, the secretary or the secretary's designee may extend the filing period if the secretary or the secretary's designee determines that such person had good cause for the failure to file. A request for reinstatement of services under Medicaid and a home and community based services program, shall be filed on a form provided by the department of social and rehabilitation services.

~~(de)~~ The secretary may adopt rules and regulations as necessary to effectuate the purpose of this section.