

Commission on Disability Concerns; Bidding Preferences for Certain Businesses Employing Individuals with Disabilities; HB 2453

HB 2453 updates statutory language for the Commission on Disability Concerns (Commission) to conform with 2011 Executive Reorganization Order No. 35 that moved the Commission from the Kansas Department of Commerce to the Governor's Office.

In addition, the bill establishes bidding preferences for certified businesses (defined by the bill to include any business which employs at least 20.0 percent of its employees with disabilities and meets other criteria), modifies state contract and purchasing laws, and enacts new law to require certain persons who are eligible for reinstatement to the Medicaid program to receive certain services without being placed on a waiting list for services.

Under the contract requirements established in the bill, the Kansas Director of Purchases and other state agencies will award bids to certified businesses as long as the bidder's total bid cost is not more than 10.0 percent higher than the lowest competitive bid. Further, the contract will be required to contain a promise by the certified business that the percentage of employees who are individuals with disabilities will be maintained throughout the contract term and also specify the certified business could not subcontract for goods or services in an aggregate amount of more than 25.0 percent of the total cost. The bill creates an exception to the Kansas Director of Purchases' authority to decide as to the lowest responsible bidder, including allowing bidders to deduct the cost of purchases from their bids for the purpose of determining the lowest possible bid, with the deduction not to exceed 10.0 percent of the original bid.

The bill requires the Secretary of Administration and the Secretary for Aging and Disability Services (Aging) to jointly adopt rules and regulations, as necessary, to effectuate the purpose of the contract provisions, including bids by certified businesses.

The bill establishes reporting requirements associated with the new contract provisions. On and after January 13, 2014, at the beginning of each regular session of the Legislature, the Secretary of Administration and the Secretary for Aging and Disability Services will be required to submit the following information to the House Social Services Budget Committee and the appropriate subcommittee of the Senate Ways and Means Committee:

- The number of "certified businesses" certified by the Department of Administration during the previous fiscal year;
- The number of certified businesses awarded contracts pursuant to the new contract provision established by the bill;
- The number of contracts awarded to certified businesses pursuant to the new contract provision established by the bill;
- The number of individuals with disabilities removed from, or reinstated to, home and community based services or other Medicaid program services during the previous calendar year as a result of employment with a certified business;

- The number of individuals employed by certified businesses during the previous fiscal year; and
- The number of individuals with disabilities employed by certified businesses during the previous fiscal year.

The bill also establishes definitions associated with the bidding requirements in the bill. Among the definitions, "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:

- Does business primarily in Kansas or substantially all of its production in Kansas;
- Employs at least 20.0 percent employees in Kansas who are individuals with disabilities;
- Offers to contribute at least 75.0 percent of the premium cost for individual health insurance coverage for each employee; and
- Does not employ individuals under a certificate issued by the United States Secretary of Labor under subsection (c) of 29 U.S.C. § 214.

The bill defines "individual with disabilities" or "individual with a disability" to mean any individual certified by the Kansas Department for Aging and Disability Services as having a physical or mental impairment which constitutes a substantial barrier to employment and who is:

- Receiving services, has received services, or is eligible to receive services under a home and community based services (HCBS) program;
- Working the minimum number of hours to receive health insurance;
- 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; or
- An individual with a severe and persistent mental illness, as determined by a clinical or functional assessment approved by the Secretary for Aging and Disability Services.

Reinstatement of HCBS or Medicaid Program Services to Certain Individuals

The bill creates new law to clearly state there is a rebuttable presumption that an individual with a disability is eligible for reinstatement to the level of home and community based services or other Medicaid program services the individual was entitled to on the day preceding the day the individual stopped receiving HCBS or other Medicaid services if:

- Such individual had received home and community based services or other Medicaid program services pursuant to an application filed with the Kansas Department for Aging and Disability Services, and entitlement to receive or receipt of home and community based services or other Medicaid program services terminated due to full-time employment for a certified business, not medical recovery or any other reason; and
- The individual with a disability is currently eligible under a physical or mental impairment which was the basis for the finding of disability that gave rise to the entitlement for the services.

Upon reinstatement to the Medicaid program, the bill requires the individual receive services and not be required to wait to receive services. The Secretary for Aging and Disability Services is permitted to adopt rules and regulations, as necessary, to effectuate the purpose of the new provision in law.

Some portions of this bill take effect and will be in force on and after January 1, 2013, and other portions will be effect from and after its publication in the statute book.