

SESSION OF 2018

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2676**

As Amended by House Committee on Federal  
and State Affairs

**Brief\***

HB 2676, as amended, would create law allowing the Secretary for Aging and Disability Services (Secretary) to issue correction orders (order) to community service providers (provider) when such provider is found to be in non-compliance with the Developmental Disabilities Reform Act and such noncompliance is likely to adversely impact the health, safety, nutrition, or sanitation of consumers or the public.

***Service of Correction Orders, Notice***

The bill would require that such orders be served upon the provider either personally or by certified mail. The order would be in writing, and would state the specific deficiency; cite the specific statutory provision, rule, or regulation alleged to have been violated; and specify the time allowed for correction.

***Civil Penalty***

The bill would provide that if, after a re-inspection, it was found that the provider had not corrected the deficiency or deficiencies specified in the order, the Secretary could assess a civil penalty in an amount not to exceed \$500 per day, per deficiency, against the provider for each day following the time period specified in the order, up to a maximum fine of

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

\$2,500. The bill would require such assessment be served upon the provider either personally or by certified mail.

Before assessing a civil penalty, the Secretary would be required to consider the following factors in determining the penalty amount:

- The severity of the violation;
- The good faith effort exercised by the provider to correct the violation; and
- The history of compliance of the provider with the rules and regulations.

If the Secretary found that some or all deficiencies cited in the order had also been cited against the provider as a result of any inspection or investigation that occurred within 18 months prior to the inspection or investigation that resulted in the order, the Secretary would be allowed to double the civil penalty assessed against the provider, up to a maximum of \$5,000.

### ***Payment of Civil Penalty***

The bill would require all civil penalties assessed to be due and payable within ten days after written notice of the assessment was served on the provider, unless a longer period of time was granted by the Secretary. If a penalty was not paid within the specified time period, the Secretary could file a certified copy of the assessment with the clerk of the district court in the county where the provider is located. The notice of assessment would be enforced in the same manner as a judgment of such court. The bill would require any penalties collected to be deposited in the State General Fund (SGF).

### ***Suspension or Revocation of License***

The bill would allow the Secretary to issue a notice of suspension of licensure, or revocation of such licensure, if the Secretary finds that a provider has failed to carry out a plan of correction within 30 days of the submission of a plan of correction. Such notice would be required to include an opportunity for a hearing pursuant to the Kansas Administrative Procedure Act (KAPA). The Secretary would be allowed to extend the time in which the provider must comply with the plan of correction, for good cause.

### ***Appeal of Suspension or Revocation***

The bill would provide that if no hearing is requested, or ordered by the Secretary, any order would remain in effect until it is modified or vacated by the Secretary. If a hearing is requested or ordered, the Secretary, after giving notice of and opportunity for a hearing to the provider, would be required to vacate, modify, or make the order permanent, by written findings of fact and conclusions of law.

### ***Transition Plan***

No order for the suspension or revocation of a license would be effective until the Secretary approved the licensee's transition plan (plan) for moving all consumers currently receiving services from the licensee to another licensed provider, and such transition was completed.

The bill would direct the Secretary to work in cooperation with the developmental disability organization to guarantee the orderly transition of services as described in the plan.

The bill would direct the Kansas Department for Aging and Disability Services (KDADS) to provide:

- Extraordinary funding for any community service provider that begins providing services to consumers pursuant to a plan for at least the first 60 days after the transition is completed; and
- Funding for community developmental disability organizations to prepare and implement community crisis plans to facilitate the transition of services when necessary.

The bill would allow providers to proceed under KAPA with respect to any pending order for the suspension or revocation of such provider's license.

### **Background**

The bill was introduced by the House Committee on Federal and State Affairs at the request of KDADS. In the House Committee hearing, proponent testimony was presented by a representative of KDADS. Neutral testimony was presented by a representative of InterHab. No other testimony was provided.

The House Committee amended the bill by removing provisions related to the transition of consumers and emergency orders. The Committee also added new provisions related to transition plans.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDADS states that enactment of the bill would have a fiscal effect on the agency, but such fiscal effect is unknown because the number of community service providers that would not be in compliance could not be estimated. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.