



**Testimony in Support of Senate Bill 232
Relating to the Kansas Adult Care Home Licensure Act**

**Presented to the Senate Public Health and Welfare Committee
By Kimberly M.J. Lynch, Chief Counsel
Kansas Department for Aging and Disability Services (KDADS)**

March 20, 2019

Chairman Suellentrop and members of the Committee:

I appreciate the opportunity to present testimony in support of Senate Bill (SB) 232. This bill seeks to ensure the health, safety, welfare, and continuity of care for all Kansans who reside in adult care homes.

Under K.S.A. 39-954, the Secretary of KDADS may petition the district court to be appointed as a receiver to operate an adult care home when:

- 1) Conditions exist in the adult care home that are life threatening or endangering to the residents of the adult care home;
- 2) the adult care home is insolvent; or
- 3) the secretary for aging and disability services has issued an order revoking the license of the adult care home.

Over the past year, KDADS has taken twenty-two (22) adult care homes into receivership due to insolvency or because life-threatening or endangering conditions exist at the facility(ies). In many instances, the facilities were in serious jeopardy of losing access to critical vendors such as food service, durable medical equipment, basic sanity supplies, staffing agencies, and utilities. In many of the facilities, there were not adequate funds to cover the upcoming payroll, and staff payroll checks had bounced in the recent past. Staff were unknowingly left without insurance, worker's compensation, and other employment benefits even though premiums were still being deducted from the employees' checks. In a couple instances, former operators had improperly used resident trust funds for their own use, leaving the residents with a negative balance.

As a result of the receivership actions, KDADS recommends the following amendments to the Adult Care Home Act (the "Act") to ensure that the State of Kansas is able to adequately and efficiently protect vulnerable Kansans who reside in adult care homes from applicants and licensees who are unfit or unqualified to provide for the residents' care.

In recent litigation, owners and operators of adult care homes have argued that they are not insolvent, and that the Act does not define insolvency. During a recent hearing, the district court

of Black's Law Dictionary.

This definition of "insolvent" substantially mirrors the definition used in the most recent version

the adult care home, or any individual or entity that operates an adult care home or appears on the license, has liabilities that exceed the value of assets; has stopped paying debts in the ordinary course of business or is unable to pay them as they fall due.

K.S.A. 39-923 defines terms and phrases used in the Act. KDADS proposes adding a definition for the term insolvent. The term "insolvent" will be defined by K.S.A. 39-923(a)(30) to mean that:

A. Definition of Insolvent (K.S.A. 39-923(a)(30))

II. Amendments to Adult Care Home Receivership Statutes

Amendments to K.S.A. 39-931 require that whenever a receiver is appointed by a district court to operate an adult care home, the former operator(s) shall be ineligible to apply for a new license or reinstatement of a license for 10 years from the date that the receivership action is terminated. This amendment will assist in protecting vulnerable Kansans who reside in an adult care home from owners and operators who fail to maintain a safe, homelike environment for residents or who lacked the financial means to adequately operate the adult care home.

B. Ineligibility for Adult Care Home License for 10 Years After Receivership (K.S.A. 39-931)

Kansas regulations currently require KDADS to review only one month of financial documentation for an individual or entity applying for a license to operate an adult care home. The amendments will require KDADS, as the licensing agency, to review a detailed projected budget for the first twelve (12) months of operation, together with evidence of access to a sufficient amount of working capital required to operate the adult care home in accordance with the budget. The applicant will additionally be required to provide a list of any current or previously licensed facility(ies) in which the individual has or had any percentage of ownership in the operations or the real property of the facility. This requirement will assist the licensing unit in performing compliance reviews on current or previously licensed facilities in Kansas and nationwide.

A. Increased Scrutiny of Initial Application and Change of Ownership Process (K.S.A. 39-927)

I. Amendments to the Initial License and Change of Ownership Process

suggested that an expert witness may be necessary to further describe what insolvency means in the context of operating an adult care home. Requiring the Secretary to hire an expert to demonstrate insolvency adds unnecessary expense and delay and is contrary to the expedited nature of a receivership action.

Many of the operators taken into receivership were not complying with their payment terms for critical vendors such as the food service, durable medical equipment, therapy, staffing agencies and utilities. The substantial noncompliance or lack of payment placed the residents in immediate risk of injury or harm. Adding the definition of insolvent to the Act clarifies when an application for the appointment of a receiver is appropriate and assists KDADS in litigating adult care home receivership actions by setting a clear standard for insolvency that can be demonstrated through evidence.

B. Amendments to Receiver's Powers and Duties (K.S.A. 39-959)

Amends K.S.A. 39-959 to categorize the receiver's powers and duties into actions that *shall* be taken by the receiver and actions that the receiver *may* take if the funds available to the receivership permit such expenditures. These amendments ensure that:

- 1) receivership funds are used, directly or indirectly, for the protection of the residents' health, safety, welfare, and continuity of care;
- 2) the receiver is entitled to immediate use of all proceeds of any accounts receivable to discharge the powers and duties of the receiver; and
- 3) the civil monetary penalty fund is protected from unnecessary expenditures.

These changes ensure the receiver is able to use all funds for the benefit and care of the residents and staff of the adult care homes.

C. Procedural Amendments (K.S.A. 39-955 through K.S.A. 39-958)

A few procedural amendments are proposed to assist KDADS in managing adult care home receivership litigation.

K.S.A. 39-955

K.S.A. 39-955 was amended to permit the application for the appointment of a receiver to be filed in the Shawnee County District Court in addition to the county where the adult care home is located.

K.S.A. 39-956

K.S.A. 39-956 was amended so that the Secretary, as applicant for the appointment of a receiver, is only required to send one copy of the application to the adult care home, to post in a conspicuous place within the facility, typically next to the license.

K.S.A. 39-957

K.S.A. 39-957 was amended to clarify that the responding party or parties are given five days after they *receive* service of the application in which to file an answer. The current statute allows five days for an answer after the application is filed; however, in many instances it may take more than five days to effectuate service of process, especially for out-of-state respondents.

K.S.A. 39-958

K.S.A. 39-958 was amended to require the hearing on the application for receivership to be heard by the district court no later than the seventh day following the filing of the answer or other responsive pleading. This amendment is necessary because in some instances, respondents do not receive service of process within seven days, making a hearing on the matter impractical at that time. Amending the statute to allow the hearing to be held within seven days after the answer or other responsive pleading ensures that all parties have proper notice of the application and that the court is appropriately briefed on the matter prior to the hearing.

This statute was also amended to allow a district court to grant a continuance of no more than fourteen (14) days in which to conduct the hearing on the application for receivership. The current statute allows for a ten (10) day continuance. Amending this statute to allow one continuance 14 days rather than 10 days complies with current district court procedures for calendaring hearings and deadlines.

We appreciate the Committee's time and consideration of this bill. At this time, I welcome the opportunity to answer any questions you may have regarding this bill.