

**Testimony on House Bill 2463
Health and Human Services Committee
Sarah Fertig, *State Medicaid Director*
Kansas Department of Health and Environment
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Chairwoman Landwehr and Members of the Committee:

The Kansas Department of Health and Environment Division of Health Care Finance (KDHE-DHCF) appreciates the opportunity to testify in opposition to HB 2463. Our opposition is based on concerns about the breadth and vagueness of the bill, as well as the likely impacts to the Medicaid program if it were to become law. We also have concerns about whether CMS would allow the state to implement the bill.

HB 2463 is not clear about what it would prohibit.

HB 2463 is vague with respect to the types of routine and ongoing changes to the Medicaid program that would be prohibited until January 1, 2026. If it became law, the bill would likely block the state from fully implementing program improvements that are already in progress, including:

- Adding new drugs, treatments, and services to Medicaid coverage;
- Increasing provider reimbursement rates for certain services;
- Updating MCO capitation rates so they remain actuarially sound;
- Completing projects in progress, such as phasing in Certified Community Behavioral Health Clinics and implementing electronic visit verification for home health services; and
- Implementing recent recommendations from legislative committees, including the Robert G. (Bob) Bethell Committee on Home and Community Based Services and KanCare Oversight, the 2021 Special Committee on Mental Health Modernization and Reform; the 2021 Special Committee on Home and Community Based Services Intellectual and Developmental Disability Waiver.
- If CMS approval is received, finally implementing 2020 House Bills 2168 and 2246, which would draw more federal dollars into the state to support hospitals and allow the state to make changes needed to ensure the health care access improvement program (HCAIP) is solvent.

However, it is not clear from the text of the bill whether any, all, or some of the above examples would be subject to the four-year bar.

HB 2463 would likely significantly delay changes our constituents have been asking for.

During the 2021 interim session alone, possible changes to the Medicaid program were discussed by the KDADS Autism Task Team, three special legislative committees, and two joint legislative committees. During those meetings, we heard about a number of issues that Medicaid providers, advocates, and beneficiaries would like to see the state address, including:

- extending Medicaid coverage for postpartum women;
- adding new behavioral health codes to Medicaid coverage;
- addressing the wait lists for HCBS waivers;
- improving access to therapeutic services for children with autism; and
- addressing workforce issues that are making it difficult for some elderly and disabled Kansans to access needed care.

Each of these projects would likely be considered a “substantive or material change” barred by Section 1(a) of the bill, and therefore the state would likely have to put off consideration of these critical program enhancements that stakeholders have been advocating for in recent years.

HB 2463 would place federal funding for Medicaid at risk.

Most critically, the bill as written could prevent the state from making changes to the Medicaid program as required by federal laws and CMS rules. This would put the state in violation of the Special Terms and Conditions of our Section 1115 waiver, and therefore place all of our annual federal Medicaid funding at risk. In state fiscal year 2021 alone, the state received **\$2,897,914,823** in federal funding to pay for Medicaid, and the state paid its three Medicaid MCOs **\$3,928,902,596** in monthly capitation payments. If even a portion of federal funding were lost as a result of the state’s compliance with HB 2463, the results would be devastating.

CMS may not allow the state to implement HB 2463.

Medicaid is a state-federal partnership. CMS must approve all contract amendments with our Medicaid MCOs, and they must also approve the federal authority under which Medicaid operates in Kansas. These requirements are among the federal conditions placed on the state’s ability to draw down federal matching funds.

KanCare is currently operating under the authority of Section 1115 of the Social Security Act, also known as a Section 1115 waiver. Our current Section 1115 waiver expires on December 31, 2023. HB 2463 would require the Medicaid program to remain as it exists today through December 31, 2025, two years after our Section 1115 waiver expires. While the bill’s intent is unclear, it may require the state to request a two-year extension of our current Section 1115 waiver. However, CMS has advised the state that it would not approve a two-year extension of our current Section 1115 waiver, so the state would have to look to other options to continue its federal authority.

The state has been studying options for the administrative structure of the KanCare program, such as shifting from a sweeping 1115 waiver to a hybrid authority structure that would ease the state's administrative burden and give Kansas more power to operate KanCare as the state sees fit. Those options may be foreclosed if HB 2463 becomes law, which would leave the state with one option for federal authority: renewing the current Section 1115 waiver, which would saddle the state with more onerous administrative requirements for another five years.

KDHE-DHCF also has concerns as to whether CMS would approve a two-year, no-bid contract extension for our three MCOs in the absence of a clear operational need.

HB 2463 would block routine competitive bidding for Medicaid MCOs.

The three current Medicaid MCOs were selected as state contractors following a robust competitive bidding process. This process ensures that the state continues to receive the best value for its money. HB 2463 would disturb the routine reprocurement process by requiring the state to extend its three current MCO contracts for two additional years, through the end of 2025. This would give the current Medicaid MCOs two additional years of state business without having to go through the competitive bidding process.

The agency would oppose this change because it would deprive the state of the benefits of competitive bidding, which encourages innovation, efficiency, and market competition. The competitive bidding process also allows the state the opportunity to reset our expectations of the MCOs, learn lessons from past contracts, and continue driving improvements. Lastly, HB 2463 would prevent the state from terminating an MCO contract even in the case of egregious contract violations, which would hinder the state's oversight powers.

Summary

HB 2463 would require sweeping changes to normal Medicaid operations, but the extent of those changes is unclear. If HB 2463 as written were to become law, it could jeopardize federal funding and place the state Medicaid program in an awkward position of being unable to comply with either state or federal law. We would encourage the committee to vote against this bill because of its uncertain and far-reaching implications.

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