



Testimony to Senate Judiciary Committee on Senate Bill 301

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Chairwoman Warren and members of the Committee, my name is Kyle Kessler. I am the Executive Director for the Association of Community Mental Health Centers of Kansas, Inc. The Association represents the 26 licensed Community Mental Health Centers (CMHCs) in Kansas that provide behavioral health services in all 105 counties, 24-hours a day, seven days a week. In Kansas, CMHCs are the local Mental Health Authorities coordinating the delivery of publicly funded community-based mental health services. As part of licensing regulations, CMHCs are required to provide services to all Kansans needing them, regardless of their ability to pay. This makes the community mental health system the “safety net” for Kansans with behavioral health needs.

We appreciate the opportunity to testify as a neutral conferee regarding SB 301. We support efforts to improve the child welfare system and to put in place mechanisms for families who struggle to navigate the system or who need the support of an impartial ombudsman-type authority to resolve concerns and complaints. However, we have significant concerns, particularly related to the issue of the inherently confidential nature of the patient-therapist relationship and how SB 301 could affect it, as well as several questions about how the provisions of SB 301 would be operationalized.

CMHCs provide treatment and services to the most vulnerable among us, including children and youth who have been traumatized by abuse and neglect and have been removed from the home or who are at risk of being removed from the home. The ability to build and maintain a trusting relationship with patients and their families, while ensuring confidentiality, is vital to the therapeutic process.

SB 301 creates the Office of Child Advocate (OCA), and vests the OCA with unprecedented power to request “all records of any public or private agency or institution having custody of the child under court order, providing education, medical or mental health services to the child or any placement or potential placement provider determined by the secretary for children and families.” The bill would conflict with medical and health privacy, legal privilege, and due process of law. For CMHCs, this means that they could be put in a position of having to go to court to comply every time, wasting time and resources, and many times the court order will not be granted based on federal or privilege laws.

Additional clarity is needed related to how and what requests will be made to providers:

- Can the OCA require CMHCs to provide all mental health records of a family receiving treatment?
- Are there any limitations on the breadth of records requests?
- What will be the timeframe for responding to records requests?
- Can the OCA demand additional levels of involvement from CMHC staff?

The demand for mental health services continues to increase, and CMHCs already struggle with workforce challenges to meet the need for services in our communities. Depending on the processes and guidelines to be developed, the time burden placed on providers to not only respond to records requests but also the potential to be compelled to provide statements and participate in interview requests, all in addition to current communication, referral, and reporting requirements to state agencies, child welfare providers, law enforcement, and courts, could take significant time away from providing direct services and treatment.

Furthermore, it will be difficult to explain this new level of access to mental health records by an external entity. We believe that this change in access to mental health records will have a chilling effect on individuals seeking services. People come to us for when they are seeking help and want to maintain confidentiality. One could reasonably assume that if we do not have protection of mental health records, fewer will be seeking our services.

One potential avenue for clarifying both the concerns about confidentiality and process could be to refer the issues to the Judicial Council for an interim study. We understand the need for this legislation and are in complete support of creating the best child welfare system in the nation. The concern we have is that we must get this legislation right the first time, so that we can avoid costly and unnecessary litigation that will not serve providers and will not get better outcomes for children.

We support the provisions of the SB 301 that establish the joint committee on child welfare oversight. The joint committee ensures ongoing oversight of the Kansas child welfare system and a venue to bring to light issues and concerns as they arise.

Thank you for the opportunity to appear before the Committee today, and I will stand for questions at the appropriate time.