

LAW OFFICES

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January 28, 2011

Anthony Brown
Chairman of Commerce and Labor
151 South State House
Topeka, Kansas 66612

Re: K.S.A.44-703 (i)(3)(D)

Dear Mr. Brown:

Please accept this letter as my testimony that the above-referenced section of K.S.A. 44-703 should be repealed as it is a job killer in the State of Kansas. I am a nationally practicing Medicare lawyer which clients all across the United States, including Kansas, and this law forces all compensated parties to be employees rather than independent contractors unless the "two-prong" test is met. This test requires (i) the individual be free from control or direction for the performance of the services **and** (ii) the service must be outside the usual course of business or outside the place of business where the services are performed. This is an almost impossible test to meet.

There are many reasons why a company would prefer an independent contractor arrangement. In the medical arena it can limit liability. Even the Stark law (also known as the anti-self referral law) under the Medicare regulations recognizes an exception for allowable compensation between referrals sources if there is a "Personal Service Arrangement". These independent contractor arrangements must be in writing, for a period of at least 12 months, negotiated at arm's length for commercially reasonable compensation, and signed by both parties. 42 C.F.R. § 411.357. Yet the Kansas statute disallows this popular exception used by Medicare providers and suppliers nationwide. I truly believe that could cost the state substantial business.

I was recently sent a copy of a proposed statute that purports to repeal the prohibition on independent contractor relationships. However there is no mention of the above-referenced statute in this proposed House Bill (which was not numbered) but it apparently repeals K.S.A. 2010 Supp. 44-766 and K.S.A. 79-3234. I am unaware of the content of these two statues but K.S.A. 44-703 is not affected.

House Commerce & Economic
Development Committee

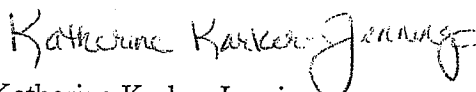
Date: 02/14/2011

Attachment #: 6-1

Anthony Brown
January 28, 2011
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Thank you for your consideration in this matter. I am,

Very truly yours,



Katherine Karker-Jennings
www.karkerjen.com

KK-J/

House Commerce & Economic
Development Committee
Date: 02/14/2011
Attachment #: 6-2