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Testimony in Support of SB 69
Senate Public Health and Welfare Committee
January 31, 2017

Chairwoman Schmidt and members of the Committee:

My name is Rocky Nichols. I am the Executive Director of the Disability Rights Center of Kansas (DRC). DRC is a public interest legal advocacy organization that is part of a national network of federally mandated organizations empowered to advocate for Kansans with disabilities. DRC is the officially designated protection and advocacy system in Kansas. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose sole interest is the protection of the legal rights of Kansans with disabilities.

Madam Chair, thank you for the opportunity to submit testimony in support of SB 69.

This bill is very thorough in how it works to address a number of provider concerns within KanCare. The bill offers helpful measures to better ensure accountability, for providers in particular. The bill takes a very reasoned, logical and reasonable approach in order to better address several provider concerns with KanCare. We appreciate the members of this committee and in particular the Chair, Vice Chair and Ranking Member for taking seriously the concerns about KanCare. If passed, this bill would be one of several bills and concrete steps the Legislature can and should take to restore confidence in the KanCare Medicaid program.

We also strongly support the ability to obtain independent third-party reviews under SB 69. These independent third-party reviews are an important step to help get to the truth and better ensure accountability. We do offer an amendment (see attached) in order address one of the potential unintended consequences with some current language in the bill regarding how these third-party reviews interact with the Office of Administrative Hearings and the rights of recipients to appeal negative actions. As written, the bill appears to create a potential dead end for

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Date 2.2.17

Attachment 5

recipients if they appeal a negative action, because such an appeal would preclude the ability to obtain independent third-party reviews. These independent third-party reviews are absolutely needed. In fact, such independent reviews would be very helpful in resolving conflicts. As merely one example, these third party reviews would prove extremely helpful in appeals to the office of administrative hearings. These independent reviews can help establish independent facts and a review regarding whether services, procedures or devices are needed. These independent reviews should be conducted in a way in which they would be automatically shared with the hearing officer, so that the facts of the review could be taken into account with the hearing. However, that is not how the bill is currently written in this regard. In fact, as written, the opposite occurs. The bill is written in such a way that if you appeal your negative action to the office of administrative hearings in order to get the service and support you need, you would be prohibited from obtaining an independent third-party review which could independently provide facts to help determine whether you needed that service. We don't think this provision is purposefully written this way. However, it has the consequence of punishing consumers who appeal a service denial by not allowing this independent third-party review from occurring. We think this is an unintended consequence of the bill, and our amendment clears this up.

Our amendment reflects and supports that these independent third-party reviews are important. Our amendment makes changes to get these independent reviews into the hands of hearing officers. In fact, for both recipients who have not yet appealed a negative action or who have a case pending before a hearing officer, our amendment would allow time for the review to be conducted and to be automatically shared with the hearing officer so that the facts of the review would be taken into account by the hearing officer.

Please see the attached language to hopefully address those concerns.

Thank you for the opportunity to share our support with you. I would be happy to stand for questions at the appropriate time.

Suggested Adjustments to SB 69 regarding appeals and recipients to protect the rights of recipients and ensure the hearing officer can obtain the third party review as facts in the hearing.

Change Page 4, lines 11-21 to read:

(6) (A) An external independent third-party review shall **automatically extend the deadline for requesting a** ~~not be granted regarding a claim for which the recipient of medical assistance or participating healthcare provider has already requested a hearing before the office of administrative hearings of the department of administration **pending the outcome of the third-party review.** **Once the third-party review is completed all parties, including the provider, recipient, managed care organization and relevant state agencies will receive a copy of the review and new notice of action based on the review.** **When a deadline has been extended due to a third-party review, all parties shall be granted an additional 30 days from receipt of the third-party review and notice of action to file a request for a hearing with the office of administrative hearings.**~~

(B) If a recipient for medical assistance or participating healthcare provider files a request for a hearing before the office of administrative hearings regarding a claim for which the provider has already filed a request for external independent third-party review, ~~the~~ **then KDHE and KDADS shall immediately request a continuance from the office of administrative hearings** ~~external independent third party review shall be held in abeyance until the recipient's appeal before the office of administrative hearings.~~ **The results of the third-party review will be automatically forwarded by KDHE and KDADS to the office of administrative hearings so that it shall be considered by the hearing officer with any other facts.** ~~has been fully adjudicated.~~

Change Page 5, line 14-20 to read:

(e) (1) A party, **which includes the recipient or the healthcare provider,** may appeal a final decision of the external independent third-party review process to the office of administrative hearings of the department of administration in accordance with the Kansas administrative procedure act within 30 calendar days from receiving the final decision of the external independent third-party review. A party may appeal an order of the office of administrative hearings in accordance with the Kansas judicial review act.