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EQUALITY ♦ LAW ♦ JUSTICE

**Written-Only Testimony in Support of SB 252
Senate Committee on Public Health & Welfare
January 23, 2020**

Chairman Suellentrop 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.

The Disability Rights Center is pleased to offer written testimony in support of SB 252, a bill that would expand Medicaid in Kansas. Here are the key takeaways from our testimony:

- **We are pleased this bill does not include work requirements or erect any other barriers to access of Medicaid services.**
- **Our organization supports expanding KanCare in a manner that makes sense for Kansans, as it would help many Kansans with disabilities gain access to critical healthcare they need.**
- **While we support the bill, we would like to encourage the committee to remove the language in Section 21 of the bill that requires KDHE to request a waiver of the IMD (Institution for Mental Disease) rule.**

Many Kansans with Disabilities Unable to Qualify for KanCare Today

Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) are both massive bureaucratic programs with extremely complicated application processes. The application decision and appeal process typically takes individuals upwards of two to three years and often applying multiple times before they obtain approval. There are many Kansans with disabilities who either have not yet made it through those bureaucracies or have been unable to successfully navigate them. Under SB 252, these Kansans who meet the financial eligibility requirements would now be eligible for Medicaid under the expansion population. Without SB 252, these Kansans with disabilities would not be eligible for Medicaid, placing them among the 150,000 Kansans in the coverage gap population that KanCare expansion would help.

Additionally, because expansion is not an option to access Medicaid, there are many Kansas with disabilities who currently must apply for SSI (Supplemental Security Income) disability or SSDI (Social Security Disability Insurance) just so they can access Medicaid (SSI) or Medicare (SSDI). With Medicaid Expansion, some of these Kansans would not pursue SSI disability or SSDI because they can access Medicaid directly through expansion under SB 252. If they did not have to jump through all of those Social Security disability hoops, some of these Kansans would not have to utilize Social Security entitlement programs just to get access to the health care they desperately need. Expansion would give many Kansans with disabilities, particularly those who do not require HCBS (Home and Community Based Services) through Medicaid, a meaningful choice to not become entangled in the SSI disability or SSDI process, and instead obtain access to the life-sustaining Medicaid they need through the expansion population.

Many Director Support Workers and Personal Care Attendants Would Benefit

Of equal importance to the disability and aging communities is the fact that direct support workers and personal care attendants would also benefit greatly from expansion. The workforce shortage for these specific types of workers for Kansans with disabilities is already critical and is worsening. Direct support staff and

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personal attendants are the backbone of the home and community services system. They deserve meaningful access to healthcare; access that will assist with recruiting and retaining workers.

The issue of the HCBS waiting lists has wrongfully been used as an excuse to not expand Medicaid. We want to reiterate that there is no factual basis to support the claim that the federal government requires elimination of the waiting lists in order to expand KanCare. Additionally, just because Kansas still has waiting lists for HCBS Waiver programs should not be used as a political talking point to argue against expansion.

We stand in support of Medicaid Expansion, while also affirming our support of eliminating waiting lists, enhancing HCBS provider rates, and providing competitive and integrated employment opportunities for people with disabilities. We reject the idea that KanCare expansion and waiting lists are somehow tied together in the manner that has been suggested and implore this committee to stand up for all Kansans and vote in favor of this bill that expands Medicaid without erecting any barriers to accessing the program.

Concerns About Request of Waiver to IMD Rule

DRC has concerns about language in the bill (and similar to what was in the FY2020 budget bill) that requires KDHE to request a waiver from the IMD rule. Such a policy change would encourage overreliance on expensive and ineffective mental health institutions for long-term care (particularly here in Kansas, with our widespread use of Nursing Facilities for Mental Health). The past fifty years have seen a clear and deliberate public policy shift away from the historic overreliance on psychiatric institutions and increased investment in the community mental health services that reduce the need for psychiatric hospitalization and are more cost-effective. DRC recommends that this committee remove this language regarding IMDs as contained in Section 21 of SB 252.

In addition to the policy reasons why a IMD waiver application would not be a good idea, Kansas' request for such a waiver does not comply with federal law and CMS regulations. Here is what the Bazelon Center for Mental Health Law included in their comments to CMS regarding this topic:

Kansas asks CMS to waive the IMD rule beyond the parameters established by CMS' July 2016 regulation (Federal Rule 42 C.F.R. 438.6(e) as amended) and "provide coverage under KanCare 2.0 for otherwise-covered services provided to Medicaid-eligible individuals aged 21 through 64 who are enrolled in a Medicaid MCO and who are receiving services in a publicly-owned or nonpublic IMD." Such payments would clearly be impermissible under the Medicaid statute and CMS has no authority to allow them, including under a Section 1115 waiver.

CMS has specified in its regulations that, for the limited exception to the IMD rule to apply, several specific requirements must be met: (1) the person's stay in the IMD must not exceed 15 days in a month, (2) the person must have a choice about whether to receive the IMD services, (3) the IMD must be providing the person with crisis services, and (4) the IMD services must be shown to be cost-effective. 42 C.F.R. § 438.3(u); 80 Fed. Reg. 31098, 31118 (June 1, 2015). Kansas' proposal ignores these limitations and requests and asks for a complete waiver of the IMD exclusion for individuals enrolled in an MCO and receiving services in an IMD. While Section 1115 permits waiver of particular listed provisions of the Medicaid statute, the IMD rule is not among them. Accordingly, CMS has no authority to grant Kansas' request.

While we continue to believe that CMS does not have authority to allow any coverage for IMD stays for individuals 22-64,² it is beyond dispute that CMS' own regulations do not permit the waiver of the IMD exclusion that Kansas has proposed.

Thank you for the opportunity to support SB 252 and to ask you to amend the bill to delete the provision in Section 21 mandating Kansas to apply for an IMD exclusion waiver.