

To: Rep. Brenda Landwehr, Chairman, House Health and Human Services Committee
From: Secretary DeAngela Burns-Wallace, Kansas Department of Administration
Subject: Potential Procurement Impacts of HB 2463
Date: January 26th, 2022

Chair Landwehr and Members of the House Health and Human Services Committee,

Thank you for the opportunity to provide some context on the procurement process that the Department of Administration adheres to.

State contracts with vendors generally include provisions for extensions beyond the initial term or expiration date of the contract. There are many reasons why the state may choose to extend a contract, but primarily, contracts are extended because of issues surrounding timing of executing a new contract. The state extended the original KANCARE contracts while we engaged in bidding the current contracts which are the subject of the legislation.

An extension of the KanCare contract would require federal approval, since it would necessarily impact Medicaid eligibility and disbursements. Federal approval would substantially increase the complexity involved with extending the contract.

There are additional potential complications.

For example, if KDHE had faced problems with any specific vendor, this bill could force the state to enter into a contract extension with a vendor it no longer wishes to do business with. The language of the bill indicates that no substantive or material change can be made in the contracts. Vendors could argue that the state must retain the current vendor regardless of the vendor's performance.

HB 2463 would also prevent the state from seeking any new technology or process which could lead to efficiencies and save money, as these changes could be substantive and material, thus changing the current contracts.

In addition, the language requiring "no substantive or material change" could impact the bidding process for any contracts beyond January 1, 2026. The state would potentially have to wait until 2026 to initiate a new bid event in order to seek changes. This would necessitate an additional extension of the current contracts beyond December 31, 2025. Open enrollment for 2026 will occur in the Fall of 2025—that contract process will need to start by early 2025. Any contract for after January 1, 2026 would need to be completed in the summer of 2025 for any litigation or transition in time for Open Enrollment.

If HB 2436 were enacted, it would serve as the authority to extend the current contracts. However, there is no guarantee that the federal government (Health and Human Services and the Center for Medicare and Medicaid Services) would approve the extension of the federal waiver the current contracts and KanCare program are operating under. In addition, the state may also lose the leverage that is typical of contract negotiations if a contractor isn't performing satisfactorily, and the timeline for renegotiation of KANCARE contracts would necessarily be delayed significantly.

Thank you for allowing me to testify on this issue. If you have any questions about the procurement process, please send them to samir.arif@ks.gov.