

**Testimony in Support of House Bill 2427
Relating to the adult care home licensure act; requiring
national criminal record checks on employees in adult care homes**

**Presented to the House Committee on Federal and State Affairs
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Chairman Barker and Members of the Committee:

I appreciate the opportunity to testify as a proponent on behalf of House Bill 2427 which amends three statutes, K.S.A. 39-970, 39-2009 and 65-5117. Passage of this bill will provide authorization for national background checks affording a more thorough check of individuals with access to the frail and elderly residing in Kansas licensed adult care homes and will assure that the criminal record check requirements for home health agencies and providers of services to HCBS Waiver recipients are aligned and include time frames.

Employees Residing Outside Kansas - Currently, there are approximately 8,000 individuals working in the adult care homes licensed by KDADS who reside in a state that borders Kansas. Performing a name-based, Kansas only record check under the current statute requirements on any of these individuals is of little to no value. The National Background check would ensure that records of criminal events that occurred in other states would be available to be reviewed. Fingerprint-based background checks also ensure that potentially prohibited individuals cannot circumvent employment restrictions by changing their name or falsifying information.

ANE Related to Criminal History - Of those individuals with findings of Abuse, Neglect and/or Exploitation (ANE) 40% have some sort of criminal history, though not necessarily prohibiting offenses.

Workforce Numbers - We do not believe a shortage of workers will occur with passage of this bill. Approximately 20% of workers in the long-term care industry have some sort of criminal history. In 2017 a total of 63,514 criminal background checks were completed. Less than 1% of those with criminal history are prohibited. With the addition of some drug offenses the 1% may rise slightly.

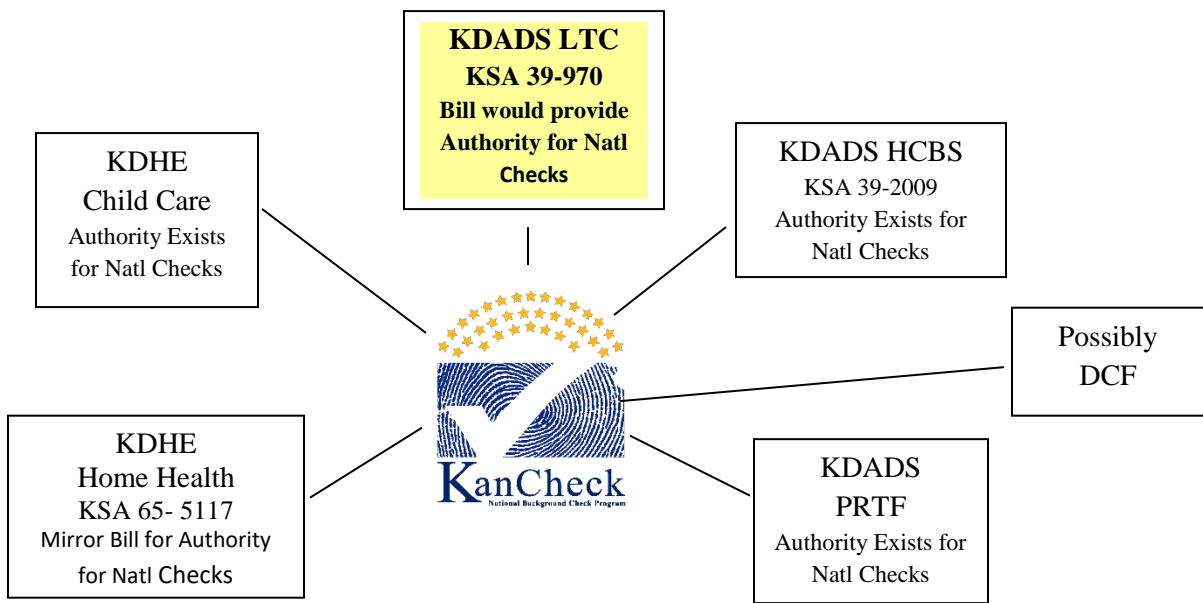
Grant History - In June of 2010, the Centers for Medicare and Medicaid Services (CMS) began accepting applications for grants for the purpose of providing funds to States to develop a structured system to identify efficient, effective, and economical procedures for adult care homes and providers to conduct National fingerprint-based background checks on potential direct access employees prior to employment.

The Kansas Department for Aging and Disability Services (KDADS) applied for a grant in 2015 and were awarded a grant amount of \$ 3,000,000. In addition to the monetary award, the grant also provides technical assistance. CMS' contractors worked with KDADS and the Kansas Bureau of Investigation (KBI) to assess the State's needs and develop a system. It is important to note that the assessment, development and building of the

system is included as part of the technical assistance provided by the grant and is provided at no cost to the state. The grant will expire June 30, 2018. KDADS will apply for consideration of a one-year extension. This bill is necessary to ensure Kansas complies with federal requirements and the terms of the grant.

Multi Agency System - Shortly after the grant was awarded the Kansas Department of Health and Environment (KDHE) Child Care Licensing Program contacted KDADS to inquire about their usage of the system to meet federal requirements. Discussions began with KDHE, KDADS and the CMS contractors to assess KDHE’s needs in late 2015. Much of the work on the system to meet KDHE’s needs was covered under the scope of the grant. However, other work required specifically by KDHE for the system to meet their needs is outside the scope of the contract and will be paid for by KDHE. The Department for Children and Families has also expressed interest in using the system.

The chart shows how the core system, called KanCheck, built at no cost to Kansas, will be utilized by multiple agencies and programs. Some already have authority for national background checks.



Costs to Users Subsidized by Grant - The cost of the state and national background check is approximately \$47.00. Language has been added to the bill to allow KDADS to utilize grant money to subsidize part of the \$47.00 cost so the actual cost to those facilities licensed by KDADS would be \$19.00. Through the use of a financial sustainability model developed by the contractors for CMS and other states, it is estimated that the national background check system can be self-sustaining requiring no State funding as long as the user fees go back into the fund to subsidize the cost.

Step one in the KanCheck portal includes registry checks, some free. For example, the Office of Inspector General (OIG) registry and the KDADS Abuse, Neglect, Exploitation (ANE) registry will be included. Then, if no prohibiting registry findings, the employer incurs the cost of a criminal background check. This will prevent unnecessary costs for criminal background checks.

Coordination with the Office of the Attorney General and the Kansas Bureau of Investigation – KDADS worked with Stakeholders, convening 10 meetings to discuss all aspects of the bill. Staff also worked closely with the Office of Attorney General Schmidt and the Kansas Bureau of Investigation ensuring language was approved.

Amendments to K.S.A. 39-970:

- Specific language added in the bill is required by both the FBI and KBI in order to submit fingerprint-based record checks.
- Addition of twenty-one offenses.
- Removal of nine offenses.
- Addition of waiver process for prohibited individuals which requires specific time periods must have passed in addition to fulfillment of all sentencing requirements.
- Added language which authorizes staggered implementation of requirements.
- Language added which allows other agencies to access the system to submit record requests.
- Authorizes a maintenance fee of \$1.00 per request to be collected by the department which will assist with the self-sustaining of the system.

Amendments to K.S.A. 39-2009:

House Bill 2427 also amends K.S.A. 39-2009 that requires criminal record checks for employees of providers of care to individuals who receive home and community based (HCBS) waiver services, adding time frames and aligning the prohibiting offenses with those for adult care homes and home health agencies.

Multiple Settings Problematic – Currently, some consumers that receive services through the HCBS Waiver program reside in their own homes. There are some who happen to reside in KDADS licensed Assisted Living Facilities and there are other consumers who receive services in their homes through KDHE licensed Home Health Agencies. This is problematic because employers may have to complete two separate criminal record checks for each employee since the statutes governing those settings differ in prohibiting offenses.

Unintended Consequences – Because the current statute does not include times frames for prohibiting offenses, there have been many instances where a long-time worker with no work issues, has been disqualified by the criminal background check due to convictions from many years past. The consumer loses their care provider and the care provider loses their job. The consumer is then without a care provider until someone else can be hired and pass the background checks.

The amendments to K.S.A. 39-2009 will ensure that offenses which prohibit employment are identical throughout all work settings subject to the three different criminal background laws administered by the Kansas Department for Aging and Disability Services providing for a more streamlined and fair criminal background check process.

HB 2427 will provide authorization to conduct national finger print-based background checks, providing for more protection to Kansans residing in adult care homes. For these reasons, KDADS respectfully requests this committee pass House Bill 2427. At this time, I welcome the opportunity to answer any of the questions you may have regarding the bill.