

**Testimony**  
**Engrossed Senate Bill No. 2296**  
**House Government and Veterans Affairs Committee**  
**Representative Austen Schauer, Chairman**  
March 16, 2023

Chairman Schauer, and members of the House Government and Veterans Affairs Committee, I am Jonathan Alm, the Chief Legal Officer with the Department of Health and Human Services (Department). The Department is providing testimony in opposition of Engrossed Senate Bill 2296.

The Department is concerned with Section 1 and its financial impact on the State. Removing a judge's ability to defer to a governmental entity's interpretation of the statute, regulation, or rule will only increase the appropriation need of the Department. The true financial impact of this Bill is unknown as it pertains to the services and programs offered by the Department. Over the last two years, the Department received 627 requests for fair hearings, which includes adverse actions taken by the Department to either deny or terminate a service or benefit to an individual. Eliminating the judge's ability to defer to the Department's expertise interpretation of a statute, regulation, or rule which also includes the Department's knowledge of the legislative intent of a particular statute, will only result in the State having to expend additional funds and resources for services or benefits it should not be providing. Therefore, the Department's budget will increase with the passage of this Bill.

This Bill will impact the Department's use of the Office of Attorney General. The Department currently uses a hybrid approach before the Office of Administrative Hearings. In 2021 and 2022, the Office of Attorney General provided legal representation on approximately 41% of the cases before the Office of Administrative Hearings and in the other approximately 59% of the cases, the Department or Human Service Zone eligibility workers appeared on behalf of the Department. If Section 1 remains, the Department will be using the Office of Attorney General for 100% of all cases before the Office of Administrative Hearings. Legal representation would assure that the proper legal argument and facts are made before the Office of Administrative Hearings. The Department's proposed budget to pay the Office of Attorney General would need to be increased by \$458,252 for the 2023-25 biennium. The Office of Attorney General charges the Department \$140.91 per hour for legal representation. The Department anticipates the Office of Attorney General will need additional staff to represent the Department. The Department must also pay the Office of Administrative Hearings to conduct hearings and issue findings of fact, conclusions of law, and order at \$195.00 per hour. The Department anticipates needing an additional \$120,938 which reflects a 15% increase in its proposed budget to pay the Office of Administrative Hearings as hearings will take longer to conduct, increasing costs for all parties.

The Department will also need an additional full-time equivalent position for an attorney as it will need to expand administrative rules and proposed legislation to make sure the Legislative assembly's and Department's intent and interpretation is clear. The Department also expects to conduct additional rulemaking at a cost of \$20,000 for public notices.

Finally, removing agency deference may lead to federal audit findings as individuals will be receiving assistance when they are not legally entitled to the assistance, and it will increase the potential need to use the State's general funds to pay back the Federal government for improper spending of federal funds.

This concludes my testimony. Thank you.