



**To: Senator Beverly Gossage, Chair, and Members, Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight**

**From: Kylee Childs, Director of Government Affairs, LeadingAge Kansas**

**Date: October 11, 2023**

LeadingAge Kansas is the state association for not-for-profit and mission-focused aging services. We have 150 member organizations across Kansas, which include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living, home plus, senior housing, low-income housing, home health agencies, home and community-based service programs, PACE and Meals on Wheels. Our members serve more than 25,000 older Kansans each day and employ more than 20,000 people across the state.

#### **Medicaid Application Processing Delays**

Our providers continue to experience delays in state processing of Medicaid applications. These delays often center around communication issues between all parties involved in the process. We are interested in seeing the most recent numbers on application processing times and any backlogs in the process.

Despite continuing to have delays, the KDHE team has been helpful in expediting applications as needed. We appreciate the KDHE leadership staff's support in addressing these concerns and identifying solutions via future collaboration opportunities.

#### **HCBS Final Settings Rule and Long-Term Care**

We shared during August committee hearing about the CMS HCBS Final Settings Rule which will have a chilling effect on HCBS services in residential settings such as assisted living. The state issued their response to CMS's Heightened Scrutiny visit report with their corrective action plan – setting a final statewide compliance date of May 16, 2024. While we agree with person-centered care theme of the rule, we believe the rule negates the health care standards, protections, and regulatory requirements imposed by Kansas law and will lead to more residents transitioning to early nursing facility placements.

We are continuing to have discussions with other state associations and KDADS on the rule. We would ask for your continued support in preserving access to HCBS services for older adults in Kansas by:

- Advocating with CMS to delay the Settings Rule compliance for adult day and assisted living providers who serve a population primarily over the age of 65 and individuals with dementia.
- Collecting data and developing a state plan to preserve access to HCBS services for older adults in Kansas.

## **Survey Trends**

We continue to see an increase in the number of immediate jeopardy (IJ) deficiencies across Kansas. We have continued conversations with leadership at KDADS, the regional CMS office, and our membership to identify potential causes and solutions. Leadership at KDADS has shared with us they intend to hold survey consistency meetings with providers in-person in each region moving forward to attempt to increase participation. We appreciate the on-going partnership from the state to work through these trends and support providers in delivering quality care for residents.

## **CMS Proposed Minimum Staffing Rule**

A large concern looming over the nursing home sector is the CMS Proposed Minimum Staffing Rule which will establish staffing ratios and additional requirements such as 24/7 registered nurse staffing and enhanced facility assessments. While we agree with the end goal of the rule in providing excellent quality care to residents, we believe the rule as is will have unintended consequences.

Our early analysis shows the cost of implementation for the rule will be nearly \$58 million per year to Kansas providers. However, the cost is likely to be much more due to the labor premiums that accompany government mandates, the scarce availability of health care workers, and increasing use of staffing agencies. CMS has not proposed any federal fundings to support these requirements and is encouraging states to “adequately fund” the cost of care. Additionally, licensed practical nurses (LPNs) have been left out of the rule, which we believe will exacerbate our long-term care workforce issues.

In the proposed rule, CMS estimates Kansas is short 109 RNs to meet the 24/7 requirement and short 51 RNs and 369 nurse aides to meet the ratio requirement. We are concerned this rule, without proper funding and policy support, will lead to more nursing home closures – especially in rural areas of the states. This will reduce access for Kansas residents and their families.

### **How Policymakers Can Help**

We, along with other state LeadingAge associations and our national counterpart, have voiced our concerns with the achievability of the rule. Currently this is a proposed rule and the comment period on the Federal Register ends November 6 with no timeline for finalization. To preserve access and help our providers achieve the provisions of the proposed rule, we ask for your support in the following:

- Push back on CMS and the White House by writing letters calling for delayed finalization of the rule while the agency takes necessary actions to work with Congress to appropriate funding or enact policy that enhances the agency services workforce.
- Support staffing agency regulations to prevent skyrocketing labor costs to meet these standards.
- Allocate additional funding to providers to achieve the provisions of the rule.
- Support additional state policy measures that will enhance the aging services workforce.

Thank you for allowing me to share an update and I am available to answer any questions you may have.