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New Federal Policies Threaten Kansas Self-Directed Home-Based Services *Potential impact of new U.S. Department of Labor rules on Kansas consumers and workers*

TOPEKA – Kansas Department for Aging and Disability Services Secretary Kari Bruffett said today that the State of Kansas is asking the federal Department of Labor (DOL) to exempt Kansas home and community-based consumers who self-direct their own care from a new set of federal rules that would force a reduction in their plans of care hours and services.

“The new DOL rule, as currently written, would work strongly against the principal of maintaining individuals in the least restrictive environment necessary to meet their needs and force our members into more restrictive institutional settings,” Secretary Bruffett said in a letter to U. S. Department of Labor Secretary Tom Perez Monday. “We want to avoid the great deal of harm this new rule will do to Kansas consumers who receive personal attendant care and home health services.”

The new rule will impact more than 41 percent of KanCare members who receive home- and community-based Services (HCBS) services (10,722 individuals receive personal attendant care and home care services in their homes). These are individuals with intellectual and developmental disabilities, people with physical disabilities and the frail elderly. Currently all are able to continue to live in their homes with these services.

But DOL issued a Final Rule regarding application of the Fair Labor Standards Act to Domestic Service that is scheduled to go into effect January 1, 2015. The rule alters how minimum wage and overtime is calculated for supportive homecare workers and personal care attendants. The requirements of the new rule will have a dramatic impact on Medicaid home and HCBS because it will modify the interpretation of “third-party employment.” It will impact individuals in Kansas who receive in-home services, those who provide services and the state’s current system for delivery of these services.

Many Kansas HCBS consumers “self-direct” their care and are responsible for hiring, training, monitoring, and terminating their personal care attendants and home health workers. The administrative side of this is handled by a Financial Management Service (FMS) provider; funding is provided by the state through managed care organizations (MCOs). Under the current system, the workers bill their hours separately based on each

individual consumer they serve. The new rule will redefine the state of Kansas, KanCare MCOs and the FMS provider as joint employers along with the consumer. The designation will roll all personal care attendant hours per week into one calculation. The result of this calculation will make personal care attendants and home health workers who work more than 40 hours per week eligible for overtime benefits, which will create potential unintended consequences in many areas described below:

- **The new rule increases the likelihood of institutional placement by reducing sleep support for around 1,400 Kansans.** It will likely force a reduction in plan of care hours and services including the loss of sleep-cycle support. Sleep-cycle support for many consumers will be reduced or eliminated because if this service is forced to convert to an hourly rate, the increased cost will be prohibitive. Without key sleep-cycle support service, many waiver participants will likely end up in institutions.
- **The new rule increases the administrative burden on consumers and their families.** Currently, each Kansas consumer has on average 1.5 workers. Proposed changes will create a burden on self-directed consumers because it will require more supportive homecare workers and personal care attendants to provide services on plans of care. Family members will find it difficult to maintain outside employment because they will have to fill the gaps in care that occur when service workers' hours are restricted.
- **The new rule will create workforce shortages in rural areas.** There will not be enough supportive homecare workers and personal care attendants available to provide services and support consumer needs under the proposed DOL ruling. Limiting workers' hours in this way will affect the ability of consumers to find qualified staff, especially in sparsely populated, rural communities.
- **The new rule will reduce the earning potential for 14,581 Kansas Domestic Service Workers.** The immediate effect of the new rule will be to limit the number of hours that direct service workers are allowed to work to 40 hours per week. Current home health workers and personal care attendants will then have an incentive to leave the field because of this limitation.
- **The new rule will negatively impact 40 Kansas small businesses** by imposing increased administrative costs for FMS providers for increased monitoring of hours for compliance. The 40-hour work restriction will place an enormous burden on the agency directed program. All participating FMS providers have indicated this will affect their business.
- **The new rule would reduce state resources for waiting list reduction.** If program costs increases, the state will be hampered in its efforts to reduce the waiting list for these services.

“The new rule would have adverse impacts on consumers who need these services, and put workers at a disadvantage,” Secretary Bruffett said. “We believe our workers can be paid fairly without imposing a set of rules that disrupts the entire culture of self-direction that Kansas has established over the years.”

“We are asking the U.S. Department of Labor to exempt Kansas' self-directing HCBS consumers from these new rules, which would place an onerous burden on our consumers and our state system of delivering HCBS services,” Secretary Bruffett said. “At the very least, we are requesting that the Department of Labor delay the implementation of the final rule until Kansas and other states in the same predicament have been provided more information about how this is supposed to work.”

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The Kansas Department for Aging and Disability Services mission is to foster an environment that promotes security, dignity and independence for all Kansans.