DATE: May 20, 2022

TO: Adult Care Homes

FROM: Deputy Secretary Scott Brunner

SUBJECT: Information Regarding the Termination of Federal 1135 Blanket Waivers and Kansas House Bill 2477

EFFECTIVE: May 20, 2022

Purpose: To communicate the effects of QSO 22-15-NH & NLTC & LSC and Kansas House Bill 2477 to Operators and Administrators of Kansas Adult Care Homes.

In response to the COVID-19 Public Health Emergency (PHE) CMS enacted several temporary blanket waivers under Section 1135 of the Social Security Act provide health care providers flexibilities to respond to the COVID-19 pandemic. CMS is evaluating the impact of these waivers on patient care and providers. CMS issued QSO Memo 22-15 NH & NLTC & LSC on April 7, 2022 that announced the end of several of these blanket waivers within 30 or 60 days. KDADS is clarifying how the termination of the 1135 waivers will impact adult care homes. In Kansas, HB 2477 extends some authorities and flexibilities that continue until January 20, 2023. This memo clarifies the overlapping flexibilities for adult care homes.

This section pertains to Skilled Nursing Homes, Nursing Homes & Nursing Facilities for Mental Health.

QSO 22-15 NH NLTC and LSC describes the 1135 waiver flexibilities that are ending after April 7, 2022.

What this means for SNH, NH and NFMH is:

In-Service Training for LTC facilities – 42 CFR §483.95(g)(1)

- CMS modified the nurse aide training requirements for SNFs and NFs, which required nursing assistants to receive at least 12 hours of in-service training annually.

- Training and Certification of Nurse Aides for SNF/NFs - 42 CFR §483.35(d) (Modification and Conditional Termination) (Please note that June 7, 2022 is when the 12-month time period to come into compliance will begin. Providers need to have a plan in place to assure compliance with the 12 hours of in-service training for nursing assistants by
June 7, 2023

• CMS waived the requirements which required that a SNF and NF may not employ anyone for longer than four months unless they met the training and certification requirements under §483.35(d). CMS provided information related to nurse aides working under this blanket waiver in QSO-21-17- NH. All nurse aides, including those hired under the above blanket waiver at 42 CFR §483.35(d), must complete a state approved Nurse Aide Competency Evaluation Program (NATCEP) to become a certified nurse aide. State approved NATCEPs must have a curriculum that includes training in the areas defined at 42 CFR §483.152(b), such as respecting residents’ rights, basic nursing skills, personal care skills, and caring of cognitively impaired residents. Additionally, the requirements at 42 CFR §483.154(b)(i) and (ii) requires these nurse aides pass a written or oral exam, and demonstrate skills learned.

• CMS did not waive the requirement that the individual employed as a nurse aide be competent to provide nursing and nursing related services at 42 CFR §483.35(d)(1)(i), and that requirement must continue to be met. (Providers will need to have proof of competency for tasks that are assigned to an individual employed as a nurse aide).

• CMS and KDADS are aware that there may be instances where the volume of aides that must complete a state approved NATCEP exceed the available capacity for enrollees in a training program or taking the exam. This may cause delays in in nurse aides becoming certified. If a facility or nurse aide has documentation that demonstrates their attempts to complete their training and testing (e.g., timely contacts to state officials, multiple attempts to enroll in a program or test), a waiver of these requirements (42 CFR §483.35(d)) is still available and the aide may continue to work in the facility while continuing to attempt to become certified as soon as possible. However, for all other situations, this waiver is terminated. (Please note that the June 7, 2022 is when the 4-month time period to come into compliance will begin. As of October 6, 2022, Nurse Aides must be certified via an approved 90-hour course. If you have staff members in the above listed situation, please contact the facilities regional manager at KDADS to discuss a waiver)

Physical Environment for SNF/NFs - 42 CFR §483.90

• CMS waived requirements to allow for a non-SNF building to be temporarily certified and available for use by a SNF in the event there were needs for isolation processes for COVID-19 positive residents. States needed to approve the location as one that sufficiently addresses safety and comfort for patients and staff.

• States could waive certain conditions of participation and certification requirements for opening a NF if the state determines there is a need to quickly stand up a temporary COVID-19 isolation and treatment location.

• Requirements to temporarily allow for rooms in a long-term care facility not normally used as a resident’s room, to be used to accommodate beds and residents for resident care in emergencies and situations needed to help with surge capacity.

(All areas of the SNF, NH, and NFMH must return usage to prior use as of June 7, 2022.)
HB 2477 allows State Licensed Only Adult Care Homes (Adult Day Care, Assisted Living, Boarding Care Home, Home Plus and Residential Health Care Facility) and the KDADS to continue the following:

**In-Service Training for Adult Care Homes**

The bill allows KDADS to continue allowing state licensed facilities to have some flexibilities.

- **Section (c)** Allows an extension of the delay in continuing education requirements.

- **Section (e)** allows temporary aides to work in a state licensed facilities as long as they receive a minimum amount of training and each facility shall ensure that any person with a temporary aide authorization is competent to perform and execute the duties of such position, including, but not limited to: Infection control; proper patient handling; and how to effectively assist with the performance of activities of daily living. *(Providers will need to have proof of competency for tasks that are assigned to an individual employed as a nurse aide).*

- **Section (f)** allows KDADS to issue a temporary authorization for Individuals to work in a nursing facility with individuals who require minimal supervision or assistance with activities of daily living. A nursing facility shall ensure that any person with a temporary authorization is competent to perform and execute the duties of such position, including, but not limited to: Infection control; proper patient handling; and how to effectively assist with the performance of activities of daily living.

- **As of January 20, 2023**, Nurse Aides working in Adult Day Care, Assisted Living, Boarding Care Home, Home Plus and Residential Health Care Facility must be certified via an approved 90-hour CNA course. If you have staff members in the above listed situation, please contact Mike Hays at the KDADS at Mike.hays@ks.gov.

**Physical Environment for Adult Care Homes**

- **(g) (1)** Notwithstanding any provision of law to the contrary, the secretary for aging and disability services may issue a provisional license pursuant to K.S.A. 39-929, and amendments thereto, to an adult care home that submits a checklist, on a form approved by the secretary, and a detailed plan for isolation and cohorting of residents in response to the
COVID-19 pandemic. In approving such checklist and plan, the secretary may temporarily suspend standards, requirements and rules and regulations related to the physical environment, a change in bed capacity or a change in bed classification for such adult care home. Notwithstanding the provisions of K.S.A. 39-929, and amendments thereto, the secretary may issue a provisional license under this subsection without approval by the state fire marshal, if the secretary approves the adult care home's checklist and plan. A provisional license issued pursuant to this subsection shall remain valid through the expiration of this section.

- (2) For any provisional license issued under K.S.A. 39-929, and amendments thereto, for reasons other than the isolation and cohorting of residents in response to the COVID-19 pandemic, all requirements of K.S.A. 39-929, and amendments thereto, shall remain in force and effect. (All areas of the Adult Day Care, Assisted Living, Boarding Care Home, Home Plus and Residential Health Care Facility must return usage to prior use as of January 20, 2023.)

These provisions of HB 2477 will remain in effect in Kansas until January 20, 2023.