



February 12, 2018

Chairwoman Landwehr and members of House Social Services Budget; thank you for the opportunity to comment on the FY 2019 budget for the Kansas Department on Aging and Disability Services.

Health & Safety Deficits

KDADS Oversight of Health Standards and Protection of Vulnerable Elders in Nursing Facilities Survey/Inspection Deficit – For the past seven years we have watched the KDADS survey and inspection process fall farther and farther behind the statutory required frequency of 12 months (statewide average). We have brought this to the attention of legislators year after year and it is at the top of our comments for FY 2019. However, it is encouraging to see that KDADS is asking for additional funding for its survey unit.

KDADS is responsible for conducting survey/inspection in all adult care homes, for assuring the protection of vulnerable elders in nursing facilities, and for assuring that facilities comply with health, safety and sanitation standards. Survey frequency in a nursing facility can range from 15-22 month and longer, lagging far behind the statutory requirement of KDADS to inspect all Kansas nursing homes 12 months (average). There are about 340 nursing facilities and a similar number of assisted type adult residential care facilities. Delays in inspecting assisted living type facilities are significantly longer in many cases than for nursing facilities.

According to the KDADS budget, in 2017 the agency was found to be out of compliance by CMS in conducting consecutive standard surveys within 15 months for all nursing homes. At last report, KDADS was four months behind at 16 months (statewide average) on survey frequency in nursing facilities. A recent KDADS report showed the agency had 22 open inspector positions out of this critical 60-person unit.

Impact: When elders are at risk of harm or are being harmed by abuse, neglect, exploitation and substandard care they are left to endure it for an additional 4-6 months longer than if KDADS was meeting its legal requirements. Understaffing of surveyors, puts elders at risk and in harm's way longer, exposing them to substandard care practices for increasingly longer periods of time. Turnover among surveyors results in inexperience to identify and cite areas of deficient practice, leaving older adults at risk for harm from abuse or substandard care.

Recommendation: KABC supports the agency's supplemental request for \$892,559 (\$286,234 SGF) for surveyor salary increases and its request for one new position.

The Governor's recommendation of an additional \$501,333 (\$160,426 SGF) is simply not adequate to begin addressing this problem. The agency states it intends to use these funds to increase salaries to a competitive level for current staff. The agency estimates that surveyor annual salaries are roughly \$8,500 less than what the average RN in Kansas earns. This is a minimal start but won't begin to fill the 22 unfilled positions while bringing the salaries of current staff to a competitive level. We must keep this as a funding priority.

We would also ask for continued legislative oversight to assure that KDADS survey unit is adequately staffed and able to meet its State and Federal mandated responsibilities to protect older adults and to oversee the standards and quality of care in all licensed Adult Care Homes.

Nursing home reimbursement rates – The purpose of adequate Medicaid reimbursement rates is to assure safe, good quality care for older adults and adults with disabilities who live in Kansas nursing facilities. The State has not been fulfilling its statutory obligation to annually rebase nursing home reimbursement rates using a rolling, three-year average of each facility’s costs. Contrary to expressed intent of the enabling legislation, the State has heavily relied on the provider bed tax to replace State General Funds. The funds generated by the provider bed tax were intended to be used to improve the quality of care for nursing home residents.

Recommendation: KABC supports the Governor’s recommendation for FY 2019 adding \$17.7 million (\$7.7 million SGF) to rebase nursing facility reimbursement rates. While this isn’t the full amount necessary for a full rebase, it is again a start to bringing the State back into compliance with its statutory obligations. **With this increase, we should expect to see improvements in the quality of care provided to nursing home residents, particularly a reduction in the inappropriate and over use of antipsychotics and improved staffing levels.**

Chemical Restraint of Elders – Kansas ranks 51st worst in the U.S for inappropriate overuse of anti-psychotic drugs on older adults. Anti-psychotic drugs are used to chemically restrain elders with dementia. Anti-psychotic drugs carry a black box warning due to the high danger they pose to older adults and even though there is no approved anti-psychotic drug use for treatment of dementia.

Serious negative health outcomes for older adults include death, stroke, and falls, creating unnecessary pain and suffering for older adults already challenged with a serious health condition. Costs of unnecessary medications, hospitalizations, therapies, surgeries, and other avoidable health care costs increase overall expenses for Medicaid, Medicare and private insurance, and greatly decrease the quality of life for frail elders. Nursing Facilities performance has worsened in comparison to peers in 50 states.

Recommendation: Direct KDADS to define resources of funding and staff to develop a workable blueprint and provide leadership to stop this harmful and costly practice.

Long-Term Care Supports and Services for Frail Elders

It should be of concern to all of us that since the beginning of KanCare 1,000 fewer older adults are being served by the HCBS Frail Elderly waiver. During this same period, 2,000 fewer persons are being served in nursing homes. This makes little sense at a time when the number of older adults in Kansas is increasing. We can only conclude that our most frail and vulnerable older Kansans are falling through the cracks without the services they need.

Frail elders lost their targeted case managers under KanCare, despite the promise that the service would continue. This has proven to negatively impact older adults who need that high touch, personal care to stay in their homes and active in their communities. Add to this equation the fact that older adults are being denied nursing home care because of problems with the eligibility process, it becomes clear that we are failing our frail, older Kansans.

Recommendation: Restore Targeted Case Management for all HCBS waivers. Without Targeted Case Management older adults are at risk of being prematurely institutionalized at a higher Medicaid cost instead of being served at home where they prefer to live.

Backlog: Frail older adults continue to wait 9 months and longer for eligibility determinations and entry to the KanCare program placing them at risk of serious injury and illness. Older adults and hospitals report difficulties in identifying nursing facilities which will accept Medicaid pending persons when they are ready for discharge from the hospital setting. Nursing homes report the inability to “float” the cost of care for older adults with pending Medicaid applications. Unlike in nursing facilities, the providers who might cover services for older adults applying for Medicaid HCBS FE waiver services are not reimbursed retroactively back to the date of application. This practice effectively denies access to needed services for months and places older adults at greater risk of harm or premature institutionalization without needed assistance.

Recommendation: We support the agency’s supplemental request of \$3 million (\$1,347,000 SGF) to its FY 2019 base budget and beyond to provide funding for a policy change to allow retroactive payments to the date of the Medicaid application for individuals residing in an adult care home (assisted type facilities/non-nursing homes) at the time the Medicaid application was submitted. Currently, no HCBS provider services are covered retroactively in assisted type adult care homes or for older adults living at home. Rather the HCBS FE waiver services are covered only from the date of the plan of care following eligibility. **We support the agency’s request but would recommend that retroactivity be applied to all providers of HCBS FE waiver services, to make it possible for older adults to get the care needed at home as well as in a facility based setting.**

Mitzi E. McFatrach, Executive Director - On behalf of Board of Directors and Members

KABC is a not-for-profit organization whose mission is to improve the quality of long-term care for older adults in nursing and assisted facilities and in-home.

Kansas Advocates for Better Care

536 Fireside Court, Suite B Lawrence, Kansas 66049

phone: 785.842.3088 toll-free: 1-800.525.1782 email mitzim@kabc.org www.kabc.org