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Janet Stanek, Acting Secretary

Laura Kelly, Governor

## **KanCare Advisory Council Meeting Minutes of December 7, 2021**

### **Council Members Attending Via Zoom:**

Larry Martin, Chairman  
Dr. Rebecca Reddy  
Mark Hinde  
Jay Rowh  
Dr. Michael Kennedy  
Susan Harris  
Ed Nicholas  
Beth Simpson

### **Council Members Absent:**

Lora Key  
Susan Concannon  
Allen Schmidt  
Walt Hill  
Njeri Shomari  
James Bart

### **Other Participants:**

Sarah Fertig, Medicaid Director, Kansas Department of Health and Environment.  
Chris Swartz, Director of Operations/COO, Deputy Medicaid Director, Kansas Department of Health and Environment  
Janis DeBoer, Commissioner, Kansas Department of Aging and Disability Services  
Kerrie Bacon, Ombudsman, KanCare Ombudsman Office  
Lisa Baird, Aetna Better Health of Kansas  
Dale Marsico, United Healthcare Community Plan  
Corey Stoltz, United Healthcare Community Plan  
Stephanie Rasmussen Sunflower State Health Plan

### **Welcome – Larry Martin, Chairman**

Chairman Larry Martin welcomed council members. Farewell wishes extended to Dr. Michael Kennedy as he is retiring from the council effective December 31, 2021. Kayli Blankenship introduced as the KDHE Administrative Assistant who will be the contact person for future KanCare Advisory Council meetings.

## **Review and Approval of Minutes from Council meeting August 31, 2021**

Larry Martin asked if the Advisory Council had any changes to the proposed agenda and there were none. The August 31, 2021 meeting minutes were approved as written by the Council.

## **Old Business – KanCare Advisory Council**

### **Define the capable person policy in regard to the care of our disabled kids and adults in need of care per their personal care plans – Ed Nicholas**

Kim Tjelmeland emailed Amy Penrod, Kansas Department of Aging and Disability Services the contact information for Ed Nicholas to address this business item prior to the next KanCare Advisory Council meeting. Topic will remain on old business.

### **What are the average nursing hours that our consumers are receiving compared to the hours that they are given according to their basis score – Ed Nicholas**

Kim Tjelmeland emailed Amy Penrod, Kansas Department of Aging and Disability Services the contact information for Ed Nicholas to address this business item prior to the next KanCare Advisory Council meeting. Topic will remain on old business.

## **New Business – KanCare Advisory Council**

No new business items were received for this meeting.

## **KDHE Update - Sarah Fertig, Medicaid Director, Kansas Department of Health and Environment and Chris Swartz, Director of Operations/COO, Deputy Medicaid Director, Kansas Department of Health and Environment**

Sarah Fertig announced Janet Stanek will serve as Acting Secretary for Kansas Department of Health and Environment until the Kansas Senate confirms her as the new head for the agency. An introduction and brief background was provided by Susan Harris, new member to the KanCare Advisory Council.

Sarah provided a federal update on the American Rescue Plan Act of 2021 (ARPA). Update on 10% increase in FMAP funding for HCBS/PACE/home health. KDHE and KDADS submitted a joint initial spending plan to CMS on July 9, 2021. "Partial approval" received on September 30, 2021, along with a series of questions on certain projects. Responses to those questions were submitted promptly. KDHE received informal notice of approval on December 1, 2021. The Public Health Emergency (PHE) declaration expires January 16, 2022; may be extended by HHS Secretary for additional 90-day periods. New federal COVID-19 vaccination rules: Federal contractor rule on October 29, 2021, seven states (Alabama, Georgia, Idaho, Kansas, South Carolina, Utah and West Virginia) filed a lawsuit in the U.S. District Court for the Southern District of Georgia against the Federal Contractor Vaccine Mandate. The court set a hearing on those parties' request for a preliminary injunction for December 3, 2021. A separate lawsuit filed by Kentucky, Ohio and Tennessee resulted in a preliminary injunction on November 30, 2021. CMS rule on November 10, 2021, 10 states (Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming) filed a lawsuit in the U.S. District Court for the Eastern District of Missouri, challenging CMS's Vaccine Mandate for healthcare workers. The lawsuit alleges violations of the Administrative Procedure Act (APA), the Social Security Act, 42 U.S.C. § 1395z, 42 U.S.C. § 1302, and constitutional violations. Preliminary injunction granted on November 29, 2021. The OSHA rule for preliminary injunction granted on November 6, 2021.

The upcoming legislative committees: December 9, 2021, 340B committee. December 13-14, 2021, Bob Bethell KanCare Oversight Committee. December 15-16, 2021, Special Committee on Mental Health Modernization and Reform.

2021 Special Legislative Session: New legislation HB 2001 (see [HB 2001 | Bills and Resolutions | Kansas State Legislature \(kslegislature.org\)](https://kslegislature.org/legislation/bills-resolutions/2021/HB2001)). This HB becomes effective November 23, 2021 and applies to any person “who employs one or more persons.” Requires the employer to grant an exemption from the employer’s COVID-19 vaccination requirement if an employee or applicant submits the following: A note from a physician or delegated health care provider stating that the vaccine requirement would “endanger the life or health of the employee or an individual who resides with the employee”, or a written waiver request stating that complying with the employer’s vaccination requirement would violate sincerely held religious beliefs of the employee or applicant, including “non-theistic moral and ethical beliefs as to what is right and wrong that are sincerely held with the strength of traditional religious views.” Employers may not inquire into the sincerity of exemption requests based upon religious beliefs. Aggrieved persons may file a complaint with the Kansas Secretary of Labor, and the Secretary must promptly initiate an investigation. The Secretary of Labor must then issue a final order with findings and conclusions as to whether a violation occurred. The Attorney General is required to secure enforcement of the order by filing a civil action against the employer. The court may impose a civil penalty not to exceed \$10,000 per violation for employers with fewer than 100 employees, or not to exceed \$50,000 for employers with more than 100 employees. The Attorney General shall not file such civil action if the employer reinstates the terminated employee with back pay.

The 2022 Session begins Monday, January 10, 2022.

KDHE is working with Mercer as the consultant for the KanCare contract reprocurement. Internal meetings are in process to develop a work plan, communication plan, etc. The RFP development will begin after the new year.

Chris Swartz provided an update on resuming KanCare renewals due to the end of the Public Health Emergency (PHE). During the past two years, current contact information for individuals has not been updated. The following steps will be used to update contact information: A script will be given to the call center to request members to provide current contact information. A front message will be placed on the automated voice response messaging system used by the beneficiaries. A message will be placed on the KanCare website of the importance for individuals to provide current contact information. The Managed Care Organizations (MCOs) will assist in obtaining current information from members. Providers have been instructed to ask patients if updated contact information has been provided to KanCare. The intent of this process is to prevent the loss of eligibility for individuals. All notices also include a message that the members may qualify for the market and to pursue these opportunities. A link is provided to the market website.

## **KDADS Update – Janis DeBoer, Deputy Secretary, Kansas Department for Aging and Disability Services**

Janis DeBoer provided an update on priorities and issues. Narrative and spending plans submitted for CMS 10% FMAP Bump for Medicaid community-based services with a focus on HCBS and PACE programs. Plans submitted for SAMHSA Block Grant federal relief fund opportunities. The nursing facilities for mental health (NFMHs) Pre-Litigation settlement agreement signed. Planning and implementation associated with certified community behavioral health clinics (CCBHCs.) Workforce issues are being addressed, including at state hospitals. Management of Covid-related issues are ongoing.

Kansas has ten state-funded nursing facilities for mental health (NF-MH), serving around 600 persons. In August, the State announced a pre-litigation agreement with the Disability Rights Center or Kansas (DRC) and several national disability rights organizations in response to a demand letter issued in June 2020 to Secretary Lee Norman and Secretary Laura Howard. The demand letter alleged discrimination against persons with mental illness in violation of Title II of the Americans with Disabilities Act and other federal laws. Over the last 10 months, all involved parties have met to see if we could reach an amicable path to address the issues in the demand letter. The agreement focuses on enhancing informed choice and providing additional community options. The agreement provides for 3 outcomes with targeted goals for the next five years; and 8 practice improvements to be phased in over 8 years, with most completed in 1-5 years. The outcomes focus on diversion, reducing long-term average lengths of stay, and increasing the number of residents who are discharged and successfully remain in the community. The practice improvements are about informed choice, person-centered planning, a reformed PASSR process, employment, assertive community treatment and supported housing. Funding in the approved FY 22 budget and policies supported by the 2021 Legislature cover most elements of the Agreement. Bridge funding through some one-time federal block grants funds will be used to 'kick start' some elements. CCBHC implementation covers many elements in the future. The agreement requires no specific spending levels, allows for renegotiation/mediation if circumstances change. Parties agree not to initiate any class action litigation during the pendency of the Agreement.

KDADS took 22 adult care homes into receivership due to insolvency or because life-threatening or endangering conditions existed at the facilities. Of the 22 facilities in receivership; one facility remains and is on the market for sale.

Kansas has 325 Licensed Nursing Facilities with 97.5% Medicaid participation as of July 29, 2021. Janice reported a significant drop in nursing facility caseload attributed to COVID.

KDADS reported an uptick in enrollment for Frail Elderly (FE) and Physical Disability (PD) HCBS Waiver services. The PD Waiver continues to have a wait list.

In addition to the day-to-day management of the seven HCBS Waiver programs, KDADS will focus on the following initiatives during 2021: 10% FMAP Enhancement Projects, Final Settings Rule Compliance, Brain Injury Waiver Policies, Autism Task Team, and Autism and SED Waiver Renewals (renews in 2022.)

KDADS is expected to draw down approximately \$80.3 million in additional federal match for Home and Community Based Services (HCBS) which must be reinvested in HCBS-related initiatives.

The HCBS Settings Final Rule defines the qualities of settings that are eligible to receive HCBS funding and was published in the Federal Register on January 16, 2014. The HCBS Settings are required to come into compliance by March 17, 2023.

KDADS has solicited PRTFs and MCOs for ideas to address staffing shortages, those ideas are being reviewed to determine how KDADS might be able to assist in their implementation. KDADS continues to meet with MCOs and DCF weekly to review individual cases on the wait list. KDADS continues to work with an organization to open a PRTF facility in Hays.

Working with KDHE and DCF, KDADS has assisted in the development of mobile crisis KanCare policy and State Plan Amendment for the Kansas Family Response which will launch on October 1, 2022.

KDADDS and KDHE continue to work together to implement readiness for CCBHC certification by May 2022.

**Update from KanCare Ombudsman – Kerrie Bacon, KanCare Ombudsman Office (Written only)**

Document emailed prior to meeting.

**Updates on KanCare with Q&A**

***Aetna Better Health of Kansas – Lisa Baird***

Lisa Baird provided a brief update. Document emailed prior to meeting.

***Sunflower State Health Plan – Stephanie Rasmussen***

Stephanie Rasmussen provided a brief update. Document emailed prior to meeting.

***United Healthcare Community Plan – Dale Marsico and Corey Stoltz***

Dale Marsico and Corey Stoltz provided a brief update. Document emailed prior to meeting.

**Next Meeting: KanCare Advisory Council Meeting – March 9, 2022, 2:00-4:00 pm.**