To: All members of the Legislature

From: The Kansas Association of Centers for Independent Living

Re: response to memo dated 1/25/12 from WM. Jeff Kahrs, Interim Acting Secretary, SRS and Shawn Sullivan, Secretary KDOA

The purpose of this letter is to illuminate Centers' concerns with statements presented in the above referenced memo. CILS remain committed to insuring individuals with disabilities have access to quality self-directed services with an array of choices to meet their needs. To uphold this, Kansas legislators passed the state law for Self-Direction in 1989 (ref. HB2012 KSA39-7100) assisting Kansas in becoming a national leader in Home and Community Based services. To further these efforts, Kansas applied for and received grants through the Federal Systems Transformation grants process. Stakeholders representing cross-disabilities worked closely with State departments through this five-year long process to develop systems for improving long-term care services in Kansas. Several of the studies recently referenced by the Secretary Sullivan, former Secretary Seidlecki and former Assistant Secretary Moreno were completed as part of this process. CILS and other stakeholders were integral partners in completion of these studies so we are very familiar with purpose, scope and outcomes. These studies did not result in a formula or established FMS rate. The Secretaries' letter dated 1/25/12 states that Sue Flanagan was hired as a consultant "to calculate a monthly rate per participant" –Cost Calculation was **not** in the scope of consultation provided. Sue Flanagan made no financial recommendations in this report. Please refer to attachment A.

It is interesting to see the chart provided to legislators because Providers have been asking for a breakdown of the $115 rate since it was first announced. Below is a comparison of the agreed upon rate compared to the new lower rate.

Expenses – definitions	**$115 Rate**	**$140 Rate**
Workers Comp Ins – lowest per member per month cost by those participating in cost study was $6.81 the highest was $8.56) *2008 data provided by payroll agents	11.00	*Not broken out in initial chart
Unemployment ins.	3.00	3.00
Other insurances	1.00	6.00
Filing/paying taxes	9.00	10.00
Writing checks	3.00	12.00
w/-2 garnishments & other admin (background checks)	21.00	22.00
Independent Audit/reporting	5.00	5.00
Direct and indirect operating cost	15.00	27.00
Information and Assistance	30.00	45.00
Operational Overhead	17.00	10.00
Total	**$115**	**$140**

A variation of this breakdown of service costs first appeared at one of our Systems Transformation workgroup meetings. The workgroup together discussed the FMS expenses and provided supporting data to justify expenses. The initial summary demonstrated a rate of $200/member/month as a break even cost for Providers who currently provided extensive Information and assistance services. This rate was later negotiated down to $140/member/month as the lowermost rate for FMS providers.

In support of this rate reduction, the current administration has offered numerous explanations as to why the rate is adequate. One of the arguments is that Information and Assistance services provided by FMS agents are nominal.

Information and Assistance (I&A) – SRS and KDOA continue to downplay I&A as a nominal service and the secretaries' letter suggests that this service is minimal and perhaps rarely provided. In fact, Providers (And consultant Sue Flanagan) can attest that I&A service is a widely used and integral tool for the success of HCBS in Kansas. It should be noted that the attempts to implement the Electronic Worker Verification system has dramatically increased the amount of I&A services provided to consumers. CMS's definition of I&A and listing of the vast array of services is Attachment B. $45/member per month is a fair rate to provide this extensive service to consumers.

Client Obligation –By requiring Providers to collect the Client Obligation, the State is in effect, asking Providers to loan the State money. When customers aren't able to pay their obligation, Providers are left with no recourse. The new imposed reimbursement rate does not cover the "aggregate" cost of doing business. This is reflected in the indirect operating expenses noted in the chart above.

Direct Support Worker Rates – It is true that some DSW's saw in increase in their pay rate BUT many Senior DSW's saw a decrease. The implementation of the DSW rate along with forced use of EVV has resulted in numerous individuals moving to "agency-Direct" services to avoid these mandatory changes.

Electronic Visit Verification –The Secretaries' letter incorrectly suggests that the system provides several benefits for Providers. It in fact has created additional hardships and Providers concerns have not been adequately addressed. First, the system does not use an interactive voice response system per the secretaries' letter. The system is only partially interactive with the State's MMIS system which has drastically increased Provider workloads. One Provider has testified that a procedure that used to take 2 procedural steps, now takes 62. Thought the system is designed for tracking services to individuals with disabilities, it is not accessible and has created a barrier for individuals with disabilities who work as DSW's. The system is not HIPPA compliant and currently allows providers to see confidential information for individuals not enrolled in their programs. The Secretaries' letter states several "benefits" to Providers including a component allowing Providers to schedule worker's services. Self-Directed consumers set their work schedules, NOT Providers. The system is not "cost-free" to providers who have increased workloads to use the system and increased programming costs to integrate

this system into current payroll systems. DSW's must continue to use paper timesheets for numerous reasons when the EVV system is not available for their use. The system is complicated, confusing and so far, continually changing. So far the implementation date has changed from 11/1/2011 to 1/9/12 then 1/16/12 then 2/1/12 then 2/16/12 and now the suggested complete implementation is stated as 3/16/12. With each change, procedures have changed. And with each change, all consumers and DSW's must be notified, at the expense of the Providers. The failure of the State to implement this system has significantly undermined the credibility of Providers.

It is also significant to note that this system was implemented to reduce fraud; however, fraud investigators have stated that this type of system actually makes it harder to prove fraud.