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Nov. 18, 2016

Rep. Hawkins and members of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight:

Kansas Advocates for Better Care (KABC) thanks you for the opportunity to comment today. KABC, a non-profit organization, is beholden to no commercial interests; supported almost entirely by citizen contributions in support of our mission to improve the quality of long-term care. KABC does not provide any form of direct care or receive any government money reimbursement. KABC is an established resource for older adults on long-term care issues. Those seeking our guidance and assistance are primarily elders and their families facing difficult, life-altering decisions.

KanCare was a five-year 1115 demonstration project; an experiment to test the effectiveness of combining all Medicaid services into a managed care model. In 2011, KABC testified that *“nursing home residents should not be forced to participate in this experiment until we are certain that the system is functional and operational with public policy oversight in place. Without it, major indicators point to the likelihood of a “perfect storm” in which systems fail and consumers already challenged by frailty, disability and poverty will be harmed.”*

During the past four years we have watched the program struggle with chronic administrative understaffing and high turnover, a lack of communication between the State and its stakeholders, significant delays in eligibility determinations and the loss of local assistance. Because of these and other system deficits, frail elders and their families across the state struggle to find services within a decreasing network of home and community based providers, are denied nursing home care because they are forced to wait months for eligibility determinations and get lost in a bureaucratic maze because local and community supports have been eliminated. The results for elders over the past four years has been a perfect storm.

KanCare has failed to live up to the promises made by the State. Tactics such as those described above are just a few of the ways that Medicaid eligible older Kansas adults are being discouraged from seeking help through the KanCare program, ultimately being denied the health care, home based services, and long-term supports that they need.

Joint Committee – HCBS &  
KanCare Oversight

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Attachment: 25

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Since the beginning of KanCare, KABC has asked for consumer protections. It has become increasingly apparent over the past four years that the lack of these protections has contributed to the program's failings. We have repeatedly raised KanCare's deficiencies and the need for consumer supports and protections. We continue to raise them as the renewal deadline approaches.

**Inadequate Funding** – Funding for the **Senior Care Act** should be restored. This program, funded by the State General Fund, has proven successful in delaying the need for many older adults to utilize Medicaid allowing them to live at home longer. The recent severe cuts to that program leaves hundreds of older adults with no choice but to move into an institutional setting at a far greater cost to the State and a loss of their personal choice to live at home with supports.

Despite the goals of KanCare, we are experiencing a steady decline in both the number of older adults being served at home **and** a decline in nursing home residents. Logically, we **should** see the number of persons receiving long-term supports and services (LTSS) services through the HCBS/FE waiver grow as people are diverted from nursing home care. Instead, we see a decrease of 1,193 in the average number of persons per month living in nursing homes as compared to the 2011 pre-KanCare averages. At the same time, there are 866 fewer persons receiving HCBS services per month through KanCare. (*KS Medical Assistance Report FY 2016*)

A stronger home-based program **should** result in delayed, and ultimately, fewer nursing home admissions but that is not happening for older Kansans under KanCare. Budget restraints and the State's inability to sustain a strong KanCare LTSS provider network continues to hinder rebalancing efforts, forcing older adults to the highest expense option – nursing homes.

**A Burdensome Application Process** – Changes to the application process have made it difficult, if not nearly impossible, for older adults to apply for KanCare. A heavy reliance on a web-based application process puts older adults at a disadvantage from the start. Many older adults don't have a personal computer nor do they have reliable transportation to a public site, such as a library. The community supports that once were available to help older adults complete an application, gather the necessary supporting documents and monitor the progress of the application are now gone.

We continue to hear reports of elders who wait six months or longer for eligibility determinations and who never receive a notice of their right to appeal the delay. These long delays have resulted in extended and unnecessarily hospital stays because nursing homes' unwillingness to accept individuals with pending status. It has also resulted in nursing homes denying admissions to applicants who are waiting for a determination of their eligibility.

Those who have been admitted but continue to wait are often encouraged by the nursing home to find another placement, citing their inability to provide adequate care as an excuse to move them to another home and avoid not being paid by KanCare. Lack of payment leads to less staffing and poor outcomes for frail elders.

The ongoing delays are causing undue financial hardships on families who are desperate to find nursing home care for a frail elder because they can no longer provide care at home. Family members are forced into thousands of dollars of debt while they wait and hope that KanCare will find their family member eligible.

After these unconscionable waits, many other applicants are inappropriately denied, only to have to begin the long process again. Frail elders are the least equipped to rebound from delayed care resulting from bureaucratic missteps. Too many have died waiting for the care they need, deserve and were eligible to receive.

**Oversight and Enforcement** – Health and safety for frail elders in adult care homes is to be assured by KDADS through the annual health survey. KDADS is directed by state statute and federal regulation to complete inspections in all adult care homes on average every 12 months. The agency is failing its state and federal mandates and failing frail elders. KDADS current statewide average is nearly 16 months and growing longer. Older adults and families repeatedly express frustration about having to make multiple calls to report poor care to the hotline – some calls go unanswered and seem to go ignored with no follow up with the facility or no action to address the complaint. This system failure puts both private pay and Medicaid residents at risk of receiving poor care. For quality indicators in Kansas, we need look no further than the ongoing and dangerous overuse of antipsychotic drugs in nursing homes and Kansas' 50<sup>th</sup> worst-in-the-nation ranking.

**Consumer Protections** – KanCare should assure the rights and protections for both applicants and participants are in place. The KanCare Ombudsman's Office is not adequately staffed but more importantly it does not have the authority to advocate for older adults to ensure their rights of due process. To be truly effective, the ombudsman program should be an independent, conflict-free entity to help members understand their right to fair hearing, grievance and appeal from the State and each MCO. An effective ombudsman can proactively assist members through the process as needed. Individual beneficiaries and family members frequently report being discouraged from filing appeals or fair hearing requests by the managed care organizations and/or State agency staff. This leaves consumers on an uneven playing field that tilts against them.

**Meaningful health outcomes** – Current KanCare outcomes are inadequate to improve health outcomes because they do not measure the health outcomes of KanCare's older adults. KABC once again asks that KanCare make publicly available specific performance measures, methodologies for calculating quality ratings and performance improvement projects; data that can be used to evaluate the program's performance. KanCare utilization data is minimal and does not show specific LTSS data for frail elders. We don't know the utilization rates of those older adults, what services they need and utilize and most importantly, where there are gaps in the program. Without basic data specific to elders' utilization of KanCare services and measurable health care goals, elders are at risk for poor health care outcomes and long term supports and services which do not address their unique needs.

It is within the purview of the Legislative Oversight Committee to direct and require KDHE and KDADS to rectify these significant failings of the program before asking CMS to approve any renewal of the 1115 demonstration waiver. We ask that you require it such correction. We also ask that you direct the agencies to reinstitute local points of access for one-on-one personal assistance for older adults and persons with disabilities with Medicaid applications and processing. Issues with KEES and the backlog run deep. This system should no longer be relied upon for eligibility determinations or processing until such time that the system is fully functional, determined by an independent validation.

We now have a program in crisis where people can't find the local home and community based providers to provide the services they need but are denied nursing home care because of unacceptably long delays in determining eligibility. Their health deteriorates and the state agencies nor the legislature has required corrective action.

It is time to end experimenting on older Kansans whose lives quite literally depend on stable and reliable health care and home supports and services. It is well past time that the State addresses the systemic problems that have plagued KanCare since the beginning. The renewal process is the perfect time to right the moral and systemic failings of the KanCare program. We urge you to act swiftly on recommendations to improve KanCare and protect frail elder Kansans.

Respectfully, Mitzi E. McFatrach, Executive Director  
On behalf of KABC Board and Members