



**To: Rep. Brenda Landwehr, Chair and Members, Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight**

**Date: December 15, 2020**

LeadingAge Kansas is the state association for not-for-profit and faith-based aging services. We have 160 member organizations across Kansas, which include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living, homes plus, senior housing, low-income housing, home health agencies, home and community-based service programs, PACE and Meals on Wheels. Our members serve more than 25,000 older Kansans each day and employ more than 20,000 people across the state.

We thank you for the opportunity to update the Committee on the challenges our members and their residents continue to face in this pandemic. Nursing homes and assisted living communities have been some of the hardest hit by COVID-19 in Kansas and across the nation. There are many reasons, documented by experts, why COVID-19 spreads so quickly within nursing homes. By design, these care settings are home to a high concentration of older adults with serious underlying health conditions who live in a communal, non-acute care, environment and require hands-on assistance with basic activities of daily living like dressing and bathing. There are many things about the virus we do not fully understand, and it has a very high rate of asymptomatic and pre-symptomatic spread. This combination of factors makes the virus extremely challenging to control, even for nursing homes that have honed their infection-control and prevention protocols during scores of influenza seasons.

#### **Liability Protections for Long Term Care**

Long term care providers are the only health care providers, and only businesses, excluded from full COVID-19 liability protections during the state of emergency in Kansas. The liability protections given to every other health care providers in the state are narrowed to only those health care activities related to the COVID-19 emergency, and do not apply to acts, omissions or decisions that result in gross negligence or willful and reckless conduct. These liability protections preserve the ability to go after actual bad actors, while allowing all other providers

to continue doing their best without the constant threat of litigation that drains precious resources away from patient care.

Long term care is not asking for special treatment, we are only asking for the same treatment and protection granted to every other health care provider in the state. We have heard the same frustrations over and over from our providers that the people who have the most power to help long term care and mitigate the harm to our residents and staff, are also the same people villainizing our providers and doing all they can to ensure our providers can be dragged into court for issues outside of their control. Singling out long term care for personal injury and class action lawsuits during this pandemic threatens the very existence of the senior care system in Kansas. A system that was already on the verge of disaster before the pandemic started. It has already sparked a crisis in our liability insurance markets, and will ultimately effect the stability of our state's health care stabilization fund, the same fund that helps to stabilize liability insurance markets for all health care providers and guarantees recovery for all patients seeking liability damages. Last, but not least, it represents a demoralizing punishment for the tens of thousands of long term care workers in this state who are loving, dedicated, exhausted, and traumatized heroes risking their health every day caring for Kansas seniors during the one of the worst public health crises in history.

Now is the time to support nursing homes, give them the resources and support they sorely lack, and recognize their important role in the health care system. That includes providing them the same protections that every other health care provider needs during this heartbreaking time.

### **Staffing in Long Term Care**

The increase in outbreaks this fall has caused dire shortages in the nursing home workforce. The options available to our providers to find more staff continue to narrow. Staffing agencies are short on workers, and have quadrupled their charges for nurses and nurse aides. Staffing agencies are also not a quick fix as many require ten to fourteen-day quarantines before sending a new agency nurse or aide into a nursing home. Hospitals are facing their own staffing shortages and are unable to offer nursing support to long term care. With no options left some providers have had to resort to CDC emergency guidance allowing asymptomatic COVID-19 positive staff to care for COVID-19 positive residents.

We hear from Directors of Nursing putting in 80-100 hour work weeks to cover nursing shifts on top of their immense duties as head of clinical care at the nursing home. We hear from administrators and other leaders working as nurse aides to care for residents in a desperate effort to keep afloat while staff members are sent home to quarantine.

Eleven months into this pandemic our workers are exhausted. The exhaustion is not just from being overworked. They are also exhausted from going to work every day facing the fear, grief, and trauma this virus has wrought upon our elders and the people who care for them.

Possible solutions:

- Deploy national guard to assist with cleaning, monitoring, recordkeeping, and testing specimen collection
- Continue use of temporary nurse aides and pathway to certified status after emergency order has ended
- Expanded virtual CNA training
- Limit staffing agency charges
- Continued emergency funding for testing, supplies and staffing in long term care
- Adequate Medicaid reimbursement for nursing homes

### **Testing**

Due to the massive increase in outbreaks across the state, nearly all Kansas nursing homes are required to test every staff person twice a week. Depending on the size of the nursing home, this non-stop testing is a massive undertaking logistically and financially. It requires an incredible amount of staffing resources and time that exacerbate the staffing shortages experienced all over the state.

The challenges of surveillance testing in long term care have now increased due to Executive Order 20-69 signed by Governor Kelly on December 9<sup>th</sup>. The order extends the federal nursing home testing requirements to all long term care settings in Kansas. Our providers are not opposed to testing, but they are opposed to sweeping government mandates that come with no additional funding or support to meet them. By design, state licensed settings (non-nursing home settings) do not have nursing home level staffing. They have also received far less federal and state emergency dollars than nursing homes. Despite this reality, all adult care homes are now required to test at the same level as nursing homes with no extra support or dollars to do so. EO 20-69 states that adult care homes may use the state designated labs for free – a program that ends in three weeks.

Point-of-case antigen testing supplies have improved, and are helpful with surveillance testing. Issues still remain in accessing more expensive PCR tests, which are required for outbreak testing and must be performed by a lab. The majority of our members report that they are able to obtain PCR test results within the 48 hour time frame required by CMS. However, there are still some in the state who have had to wait much longer. Nursing homes and some assisted living settings continue to receive Abbott BiNax cards from the federal government, but they are not available for purchase on the open market because of their government acquisition through the Defense Production Act.

We have encouraged our providers to sign up with their regional lab to take advantage of the free PCR testing being offered under the state's new testing strategy. However, some members stated that they are not enrolled in the program because the set up was taking too long, their assigned lab said they were not ready to set up anything yet, or in the case of WSU, the lab ran out of testing supplies. In any event, the program is scheduled to end on December 30, 2020.

### **Personal Protective Equipment**

Our providers continue to struggle with PPE supplies. Supply chains remain shaky, especially with the recent surge in outbreaks which cause nursing homes and hospitals to burn through PPE at a rapid pace. The cost of PPE supplies also continues to rise.

As of last week, nursing homes were able to access KDADS' PPE ordering portal to obtain PPE supplies using left over CARES act money. We appreciate the assistance from KDADS and the CARES Act committee. The portal seems to be working, but we have had some issues with the quality of the supplies received. We also received a report that gloves are backordered for six weeks. We are working closely with KDADS to get all issues resolved. The PPE ordering program is funded through CARES Act dollars which are set to expire December 30, 2020.

Thank you for the opportunity to lay out our challenges today in fighting COVID-19 in long term care settings, and their mounting struggle to pay the spiraling costs of expensive testing supplies, PPE and staffing. We appreciate the legislature's strong commitment to working on behalf of older Kansans amid the COVID-19 crisis and we stand with you to act urgently to provide the support older adults and senior care providers so desperately need and deserve.