



January, 30, 2018

Chair Schmidt and Members of the Senate Health and Public Welfare Committee,

I am Mitzi McFatrigh, executive director of Kansas Advocates for Better Care (KABC). I appreciate the opportunity to come before the committee in support of SB 300.

KABC was among the more than 100 advocacy groups and individuals who recently submitted comments to the federal Centers for Medicare and Medicaid Services (CMS) in response to the Kansas application for a new version of the KanCare 1115 demonstration waiver. We asked CMS to reject the application for KanCare 2.0 for many reasons, all of which underscore why we support SB 300.

The serious and persistent problems – many of which were cited by the CMS compliance audit in early 2017 – continue and should be solved before moving forward. These problems include, but are not limited to, the ongoing HCBS waiting lists, challenges in processing claims and enrollment applications, inadequate provider networks, administrative red tape, a lack of transparency in the development of treatment plans, a general lack of responsiveness of the State and managed care organizations to the concerns of members, families, advocates, and stakeholders and a lack of adequate staff and financial resources within State agencies to oversee and manage the program.

None of these problems were addressed in the KanCare 2.0 application.

KanCare is failing older adults in Kansas. At a time when the number of older adults in Kansas is increasing, under KanCare the number of older adults in nursing homes has dropped significantly under KanCare to 8,563 - a decrease of almost 2,000 persons. The number of persons served by the HCBS Frail Elderly waiver also has dropped by 1,013. Combined this is a total of 3,000 fewer older adults being served through the KanCare program. This is alarming, counterintuitive, and we believe is caused in large part by a lack of targeted case management.

Problems impacting older adults include:

- Loss of community-based assistance
- Backlog of eligibility applications.
- KDHE fails to give required notice of the right to appeal whenever a person's eligibility application is delayed or backlogged
- Loss of Targeted Case Management (TCM) for older adults, including elders with dementia
- Significant decline in older adults being served, even as the older adult population expands

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- Diminishing provider network for home and community based (HCBS) services
- Diminishing access to nursing facilities due to backlog
- Inadequate health and safety oversight – 51st worst in nation for drugging elders with dementia; delayed health safety inspections, ineffective response to serious harm complaints
- Lack of consistent engagement and communications with older beneficiaries and their advocates

One of the most glaring omissions in KanCare 2.0 is the recognition of the need for a KanCare ombuds program. Since the inception of KanCare, KABC has strongly advocated for an independent, conflict-free, legally-based ombuds program charged with representing consumers. The current program, housed within KDADS, is not independent nor can it be free of conflicting influence as long as it is housed within a State agency. It does not have the authority or the legal resources to represent the people who need its help without the means to hire an attorney. These are the people needing advocacy assistance the most.

In an early report to Centers for Medicare & Medicaid Services (CMS), the State admitted the KanCare ombuds program was purposefully “narrowed to be responsive to consumer demand with an increased reliance of appropriate delegation to routine or administrative inquiries.” In other words, the program only operates as a resource and referral clearinghouse.

In its 2017 communication with the State, CMS was correct to point out that Kansas is not following the Special Terms & Conditions (ST&C) regarding the ombuds program because the current program “does not address all requests for support” and it “does not assist participants through the appeals process as described in STC 42. Kansans who receive their long term supports and services through the HCBS waivers need access to legally-based advocacy that can help them with more intensive grievances and appeals. They also need basic advice and information early in the process from a program that is designed with their rights and needs in mind.

KanCare 2.0 continues to ignore not only the rights and needs of consumers for independent representation but also its obligation to comply with KanCare’s original agreement with CMS.

We support the bill’s extension of KanCare for a year to allow the State to continue developing solutions to these problems. This gives KDHE’s new leadership time to develop a clearer, more complete and detailed plan for KanCare 2.0. It also provides an opportunity to thoroughly and publicly vet proposed changes through legislative oversight and stakeholder engagement; a critical piece that has been missing for the past five years.

Once again, with this application, we faced an arbitrarily compressed timeline and a rush toward implementation of a program that has not yet been fully vetted by the State, providers, consumers and their families or the Kansas legislature. The public forums hosted by the State were narrow in focus, lacked specificity of important detail in a forum that offered little opportunity for consumers to express their concerns. The information provided at the time gave only a broad overview without the details necessary to determine the scope or impact of the proposed changes.

We also support the enhanced legislative oversight provided by SB 300. As the second largest item in the State budget, the legislature should have a more active role in the oversight of the Medicaid program. Greater

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transparency and evaluation is necessary to build and maintain an efficient and operational program that serves the more than 400,000 who depend upon it for health care and long term supports and services.

We support the restoring Targeted Case Management as a service for seniors, persons with physical disabilities, and persons with traumatic brain injuries. This service is key to assuring that persons can remain in the community and connected to the services and supports needed, and at a much more affordable cost than institutional care.

The next version of KanCare should offer a fully developed operational plan with performance measures developed with the full involvement of advocates, consumers and their families. There is no reason to rush to implement a plan which is still undeveloped, does not fully outline policy changes, and has not had the benefit of real public input.

Without proper planning, oversight and resolution of the outstanding problems that still plague KanCare, the program cannot succeed, risking the health, safety and quality of life of the people who depend on it. As Kansas considers the possible renewal of the KanCare demonstration and negotiates the contracts with Medicaid providers – for both medical and HCBS supports and services – it is critical that the health and safety of older adults and persons with disabilities are the priority.

Thank you for the opportunity to appear before the committee and ask that you support SB 300.

Mitzi E. McFatrigh, 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 elders in all settings – nursing and assisted facilities and in-home. KABC is not a provider of government funded services. For 40 years KABC's role has been as a resource and advocate for older adults and families and as a resource to policy makers on aging and quality care issues. KABC provides consumer education information and tracks and reports on quality care performance issues.