

**Date:** September 2, 2024

**To:** Bethell Joint Committee on HCBS & KanCare Oversight Members

**From:** Laura Howard, KDADS Secretary

**Re:** Summary of Corrective Action Plans (CAP) for HCBS Compliance

KDADS is actively addressing compliance issues identified by the federal Centers for Medicare and Medicaid (CMS) in Kansas' Home and Community Based Service (HCBS) programs. In 2023, CMS issued two corrective action plans (CAPs), highlighting critical areas requiring improvement to meet federal standards. Addressing these CAPs is essential for maintaining the integrity of our HCBS programs and ensuring services provided to Kansans align with federal requirements.

### **CAP #1: HCBS Settings Rule Compliance**

**Issued Date:** June 16, 2023

**Objective:** This CAP aims to bring Kansas into compliance with the HCBS Settings Rule by ensuring that home and community-based settings receiving waiver funding are truly integrated into the community. This CAP will remain in place until the state is able to demonstrate it has successfully implemented all identified remediation strategies.

#### **Key Issues Identified:**

- **Conflict of Interest (COI):** CMS highlighted concerns about COI, particularly when case management and service provision are conducted by the same entity. This can lead to compromised decision-making and reduced autonomy for individuals receiving services.
- **Person-Centered Planning:** The CAP identified that the development and implementation of person-centered service plans (PCSPs) were inconsistent, often lacking documentation of individual choice and autonomy. This led to regimented environments where residents had limited control over their schedules and activities.
- **Community Integration:** The CAP revealed that many HCBS settings lacked full integration into the broader community, limiting opportunities for employment, social interaction, and access to services. Specific findings from the March 2023 site visit highlighted systemic issues such as limited community access, restricted schedules, and limited individual choice in residential and day settings.

**State's Response and Remediation Strategy:** KDADS acknowledges these issues as systemic and has identified strategies to address them. This includes enhancing community integration by refining service definitions, supporting and improving access to the community through grant opportunities, and ensuring that all HCBS settings support individual autonomy through enhanced training and policy guidance. The department is also strengthening person-centered services by adopting tools like Charting the LifeCourse, transitioning to the Medicaid Functional Eligibility Instrument (MFEI), and implementing the InterRAI assessment to improve planning and evaluation. Additionally, Kansas intends to address COI by separating case management from service provision where possible and implementing strict oversight for agencies that continue to perform both roles.

## **CAP #2: HCBS Administrative Authority and Service Delivery**

**Issued Date:** August 2, 2023

**Objective:** This CAP addresses broader administrative and operational deficiencies within Kansas' HCBS programs, with an emphasis on improving oversight, maintaining administrative authority, and ensuring service delivery meets federal standards. This CAP will remain in place until the state has fully remediated and is compliant for 8 straight waiver submission quarters (2 years).

### **Key Issues Identified:**

- **Oversight and Administrative Authority:** CMS identified that Kansas needs to enhance its oversight mechanisms to ensure that KDHE as the Single State Medicaid Agency (SSMA) maintains definitive control over all waiver programs, including those managed by MCOs.
- **Level of Care (LOC) Evaluations:** The CAP emphasized that Kansas must improve its waiver LOC evaluation processes. Currently, the overlap between service providers and assessing entities who perform LOC evaluations presents a conflict of interest, where the same entities involved in service provision are also responsible for assessing the level of care required. This intersection can lead to biased assessments, impacting the accuracy of care planning and resource allocation.
- **Qualified Providers and Financial Accountability:** CMS identified systemic deficiencies in ensuring that all HCBS providers meet required waiver standards. Additionally, there are gaps in the state's financial accountability processes that need to be addressed to prevent improper payments and ensure the integrity of the HCBS program.

**State's Response and Remediation Strategy:** KDADS is actively collaborating with KDHE and has engaged the National Association of State Directors of Developmental Disabilities Services (NASDDDS) to provide technical assistance and support in addressing these systemic deficiencies. This includes revising policies to enhance administrative oversight and ensuring the SSMA maintains control over all HCBS programs. The state is also overhauling performance measures, data collection methods, and reporting processes to ensure alignment with current and new federal requirements. Additionally, Kansas will be strengthening provider qualifications and financial accountability processes to meet CMS standards. Addressing COI remains a critical focus of this CAP, as it is essential to preserving the integrity of service delivery and oversight.

### **Conclusion**

The corrective action plans issued by CMS highlight interconnected systemic issues within Kansas' HCBS programs that require coordinated strategies for resolution. The gaps in community integration and person-centered planning in CAP #1 are closely linked with the administrative oversight challenges in CAP #2. Central to both is the critical need to address conflicts of interest (COI), which, if ignored, can shift the focus from the individual to the provider, compromising the essence of person-centered care.

Kansas' response to these CAPs goes beyond compliance—it's about ensuring long-term HCBS improvements that elevate the quality of these programs and reaffirm our commitment to ensuring every Kansan receiving HCBS is the author of their own life. This requires systemic changes that enhance service quality, uphold HCBS integrity, and meet federal standards.