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December 16, 2024

Christine Osterlund  
Director  
Department of Health and Environment  
900 SW Jackson Avenue, Suite 900  
Topeka, Kansas 66612

Dear Director Osterlund:

The Centers for Medicare & Medicaid Services (CMS) is committed to supporting states in their efforts to ensure individuals receive high quality home and community-based services (HCBS) under the Medicaid program. A key component of federal HCBS regulations is the conflict-of-interest provision, with which Kansas is not compliant. I appreciate the acknowledgement the State of Kansas has made of the need to implement these provisions, and I reiterate below CMS expectations moving forward.

Regulations at 42 CFR 440.301(c)(1)(vi) articulate the conflict of interest requirements for 1915(c) HCBS waiver programs as the following: *Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS. In these cases, the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process. This language has been effective in federal regulations since March, 2014<sup>1</sup>.*

CMS and the State of Kansas have had several discussions about HCBS providers (including, but not necessarily limited to providers of services to individuals with developmental or intellectual disabilities) continuing to perform functions such as case management and person-centered service plan development for individuals to whom the providers are furnishing direct services. Most recently, CMS is in receipt of 2023 correspondence from the Kansas Department for Aging and Disability Services (KDADS) indicating that a contractor was hired from funding made available under section 9817 of the American Rescue Plan Act (ARP) to recommend options for bringing the state's system into compliance with regulatory

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<sup>1</sup> [Federal Register :: Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services \(HCBS\) Waivers](#)

requirements. From that correspondence, we understand that KDADS intended to conduct stakeholder engagement sessions as they selected the best path forward and indicated the utilization of state funding to provide grants to organizations to further compliance. CMS requests that the state submit a detailed timeline for coming into compliance with the conflict-of-interest provision, given the use of ARP funds and the technical assistance CMS has provided the state on conflict-of-interest compliance.

CMS is aware that KDADS plays a pivotal role in the implementation of 1915(c) HCBS waivers serving individuals with developmental or intellectual disabilities. This arrangement is shared by many states, and CMS recognizes the true expertise and value these state agencies bring to the implementation of HCBS programs. However, I am taking this opportunity to remind you that it is the Medicaid agency that is ultimately responsible for all aspects of the Medicaid program.

Section 1902(a)(5) of the Social Security Act (the Act) and its implementing regulations at 42 CFR part 431, subpart A set forth requirements that a single state agency be established to administer or supervise the administration of the Medicaid state plan. And I note that references to the “Medicaid state plan” include approved 1915(c) HCBS waivers. The Medicaid agency cannot delegate its authority to supervise the administration of the Medicaid state plan (42 C.F.R. § 431.10(e)). This means that as the single state agency, the Kansas Department of Health and Environment maintains ultimate responsibility for all facets of the Medicaid program, including the provision of HCBS and ensuring compliance with all federal requirements. The state should take all necessary steps to ensure compliance with the conflict-of-interest provision, and any other HCBS requirements for which Kansas is under a long-standing Corrective Action Plan.

CMS strongly encourages Kansas to take these necessary steps in a timely manner to ensure compliance with the conflict-of-interest provision outlined in regulation, so CMS does not have to consider formal actions, which could include withholding federal reimbursement of impacted HCBS. These provisions represent an important beneficiary protection. We are available to provide ongoing technical assistance to the state throughout this process, including in the submission of the compliance timeline requested above. Please do not hesitate to reach out to Curtis Cunningham, Director, Division of Long-Term Services and Supports, at [Curtis.cunningham@cms.hhs.gov](mailto:Curtis.cunningham@cms.hhs.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Anne Marie Costello".

Anne Marie Costello  
Deputy Director

cc:

Janet Stanek, Office of the Secretary, KDHE  
Seth Kilber, KDADS