

May 20, 2022

Re: KDHE Home Health Regulations effective May 20, 2022

Greetings:

I am writing on behalf of the Kansas Department of Health and Environment concerning the recent implementation of amendments to KDHE's Home Health licensure regulations. Those amendments were published in the May 5, 2022 Kansas Register and became effective 15 days later on May 20, 2022. See K.A.R. 28-51-100 et seq. KDHE has fielded a number of inquiries concerning the regulations during the last couple of weeks. As a result, KDHE will be hosting three meetings during June 2022 to receive input and concerns from stakeholders, providers and other interested parties concerning the regulations. Tentatively, the dates will be June 14, 21, and 28. Locations and virtual access are still to be determined. There will be a number of announcements made to the public once the details of the meetings are settled.

Briefly, the comments that KDHE received fall into three areas of concern: definition of services; the cost for compliance (with initial and subsequent assessments of clients mentioned repeatedly); and agency oversight. Electronic visit verification will be included in this last category. I want to do a quick overview of these categories as a way to focus participation in the meetings noted above.

Some of the ambiguity over the definition of services seems to be partially fueled by the different definitions promulgated by state and federal governmental entities having authority over home health agencies. From KDHE's analysis, some of the concerns flow from trying to harmonize the various definitions. I have included some explanatory bullets below for this conclusion.

- Kansas, in 2017, passed legislation identifying home health agencies as being able to provide "home health services", "supportive care services" and "attendant care services". See K.S.A. 65-5101. Attendant care services were defined as "basic and ancillary services provided through Kansas Medicaid's Home- and Community-based Services (HCBS) waivers. Kansas, also, required home health agencies, including Medicare and Medicaid providers, that provided those defined services to be licensed. See K.S.A. 65-5102.

Page Two

Letter concerning Home Health Regulations

May 20, 2022

- K.S.A. 65-6201 defined “attendant care services”, “basic services” and “ancillary services”, but not in the context of home health agencies or services.
- Federal Medicaid, at 42 C.F.R. 440.70, defined “home health services” that included nursing, home health aide and therapy services. Part of the definition included identifying a home health agency that could bill as also being one that was certified for participation in Medicare. This federal regulation, also identified some requirements for initial face to face assessments.
- Medicare, at 42 C.F.R. Part 484, identifies a number of conditions for a home health agency if they wish to participate in the Medicare program as a provider. Parenthetically, KDHE, through its Survey unit, surveys home health agencies for CMS using those conditions.
- The Kansas Medical Assistance Program (KMAP), Medicaid in plain terms, has issued KMAP manuals for home health agencies and the various HCBS waivers. They are updated regularly. While these manuals are aimed at fee-for-service providers, the KMAP manuals are also used by the KanCare MCO’s to identify requirements and billing. There are some face to face assessment requirements stated in the KMAP Home Health Agency manual.

With the number of separate authorities, KDHE recognizes that a full discussion over definitions is very important for the agency, providers and other interested stakeholders to reduce confusion.

While cost for compliance is noted in several comments, KDHE believes the assessment (of the client) requirement is an area that requires some focused and substantive discussion. Several of the comments that KDHE received identified the cost for having a registered nurse conduct an assessment as an impediment. There also seems to be some confusion on the requirement. Currently, there are assessment requirements by certain professionals stated in federal Medicaid, Medicare and KMAP manuals. Somewhat in contrast, the recently promulgated KDHE regulations on home health agencies, using the tri-part statutory division of categories of services, allows a manager of an agency providing supportive services to do the assessment for a client receiving those services. Similarly, if the services being provided were physical therapy, the physical therapist could conduct the assessment under the KDHE home health regulations. The overall point, from KDHE’s view, is that the various assessment requirements need to be discussed to ensure understanding.

KDHE has one last area (for this letter) to mention: agency oversight. KDHE, as the home health licensing agency for Kansas, has enforcement authority. However, part of that authority is the exercise of discretion in doing its enforcement and oversight. KDHE means to exercise that discretion broadly as we discuss the recently promulgated home health agency licensing regulations with its stakeholders since several providers had questions concerning various requirements (admission notes, discharge summaries, supervision of home health aides and verification of visits to name a few.) During the discussions noted above, KDHE wants to, also, discuss electronic visit verification (EVV) by home

Page Three
Letter concerning Home Health Regulations
May 20, 2022

health personnel. The Kansas Department on Aging and Disability Services has a long history with Authenticare as a visit verification system. In addition, Section 12006 of the 21st Century Cures Act will require electronic visit verification by a state Medicaid program for all Medicaid personal care services (PCS) and home health services (HHCS) that require an in-home visit by a provider. Since KDHE is the single-state Medicaid agency for Kansas (see K.S.A. 75-7409) as well as the Kansas Public Health agency handling home health agency licensure, KDHE can see the need to discuss the EVV Medicaid requirement at the same time as defining what services comprise home health services for licensing.

I strongly urge your consideration for participating in the Home Health Agency meetings in June.

Sincerely,

Brian M. Vazquez
General Counsel
Kansas Department of
Health and Environment

Cc: Secretary; Deputy Secretary, Public Health; Medicaid Director