

Senior Care Task Force: WGA – Quality of Care and Protective Services

Discussion: Adult Care Home Surveys and Fines

Mar. 8, 2022
9:00am-10:30am
WebEx

Facilitator: Hina Shah - KHI **Note taker:** KHI

Attendees: **Working Group Members:** Bill Persinger, Valeo Behavioral Health; Rep. Charlotte Esau; Rachel Pirner, Triplett Woolf Garretson, LLC; Camille Russell, Long-Term Care Ombudsman; Ernest Kutzley, AARP; Tracy Davies, Washburn University; Chrisy Khatib, DCF; Jan Kimbrell, Silver Haired Legislature; Lea Chaffee, Kansas Adult Care Executives; Deborah Merrill, Kansas Advocates for Better Care; Debra Zehr, Leading Age Kansas; Carter Olson, Long Term Care Administrator
Supplemental Experts: Lacey Hunter & Stephanie Volle, KDADS; Steve Anderson, Medicaid Inspector General; Lane Williams, Disability Rights Center
KHI Staff: Hina Shah, Emma Uridge
KLRD Staff: Leighan Thone
KLOIS Staff: Charles Peters

Reviewed Documents

- Agenda
- SWOT Analysis (Strengths, Weaknesses, Opportunities, Threats)

Agenda:

9:00AM	Welcome and Introductions
9:10AM	Topic Discussion <ul style="list-style-type: none">– Lacey Hunter, Commissioner Survey Certification Credentialing at KDADS– Stephanie Volle, Legal Division Manager at KDADS– Steve Anderson, Medicaid Inspector General– Lane Williams, Disability Rights Center
9:50AM	Revisit SWOT Analysis
10:25AM	Administrative Updates and Next Steps
10:30AM	Adjourn

Minutes

Agenda item: Introductions / Opening Remarks / Review Agenda

Discussion:

Hina Shah provided a review of the agenda and outlined working group roles

- Ground Rules Reviewed
 - Come ready to discuss and compromise.
 - Keep remarks succinct and on topic.
 - Don't hesitate to ask clarifying questions.
 - Start and end on time.
- Group Introductions and Prompt: "What is one word that comes to mind when you hear adult care home surveys and fines?"
 - Bill Persinger: Quality
 - Deborah Merrill: Difficult
 - Lea Chaffee: Burdensome
 - Debra Zehr: Broken
 - Ernest Kutzley: Necessary
 - Chrisy Khatib: Mysterious
 - Rachel Pirner: Prevention
 - Jan Kimbrell: Watchdog
 - Carter Olson: Destructive, draining, or outdated.
 - Tracy Davies: Adversarial
- Vision Statement:
 - "Older Kansans will have access and the ability to choose and receive high-quality, person-centered services wherever they reside."

Agenda item: Topic Discussion - Adult Care Home Surveys and Fines

Discussion:

Lacey Hunter, Commissioner for Surveys, Licensing, and Credentialing, KDADS

Data requests from previous meeting: Provide aggregate data on intake reports by facility staff vs residents?

- Aggregate Data for total # of complaints
 - Jan 2022: 863
 - Jan 2021: 686
 - Jan 2020: 827
 - Jan 2019: 953
 - Jan 2018: 1044
- Abbreviated Investigation: A complaint investigation stemming from a complaint made to the hotline
 - Results From Investigation
 - In Compliance
 - Out of Compliance
 - Had an Incident of Past Non-Compliance
- Complaint Severity Levels
 - Multi-priority
 - Immediate Jeopardy
 - Non-Immediate Jeopardy High
 - Immediate Jeopardy Medium
 - Non-Immediate Jeopardy Low
 - Non-Immediate Jeopardy Administrative Action

- No Action Necessary
- Referral
- Key Points from Discussion
 - KDADS does not track individuals who make complaints to the hotline.
 - Complaint information is protected by law.
 - KDADS does not log each complaint and its relevancy.
 - KDADS has discussed internally about adjusting triage of complaints when receiving multiple or duplicate complaints from a facility.
 - 2022's 863 complaints cannot be separated when it is employee reported, facility reported, and/or employee reported on behalf of the facility, etc.,

Nurse Aide Registry

- There are 3 actions that can result from a referral to KDADS Legal of a CNA and/or CMA
 - Case Closure Letter
 - Admonishment Letter
 - Notice of Finding
 - This is the only action that has the potential to result in an employment prohibition entry on the Kansas Nurse Aide Registry
- Number of Referrals
 - 2021: 52 referrals, 22 had action issued
 - 2020: 77 referrals, 26 had action issued
 - 2019: 166 referrals, 75 had action issued
- Key Points from Discussion
 - Any time a notice of finding is issued, which is the only action that can result in prohibition, nurse aides are afforded the right to appeal. Individual will go to Office of Administrative Hearings (OAH), which did not hold hearings in 2021 due to COVID-19.
 - Currently, there is not enough staff and resources to hold hearings.
 - OAH had to focus on Medicaid related areas and obligations to the Department for Children and Families (DCF).
 - For those we intend to put on the registry, KDADS is still waiting for individual to exhaust all appeal paths available to them.
 - Temporary Nurse Aides (TNAs) cases are handled the same way as all nurse aides.
 - Feds don't see TNAs separate from CNAs since a TNA will work in the capacity of a CNA.
- Chat Commentary
 - As a family member of a resident in LTC and in contemplating which center provided is the safest, we have depended on the publishing of surveys and the fines levied in helping to determine quality and safety concerns for placement for our family member. It is our watchdog. We depend on those statistics, and we also depend on our ability to make complaints when necessary and have some confidence they will be investigated by a third-party and not just the facility.
 - I find as an administrator that I can find unpublished incident reports that are not on the CMS nursing home compare page - but are listed in the administrator KDADS web apps facility directory. Nursing home in county, but nothing on CMS site. Problem is that this is something KDADS should advocate for. Facility is a 2-star facility based on a 4-year-old report.

General Overview of Federal and State Survey Process

- Entrance Conference
 - Meet with administrator
 - Explain Purpose of Visit
 - Informal Dispute Resolution (IDR) Policies
 - Daily Interaction and Provider Policy
 - Ask for resident roster and personnel forms
- Tour
- Sample Selection (residents)
 - Get overview of how care is being provided to that cross-section
- Information gathering (talk to staff, residents, reaching out to ombudsmen), which can take several days.
- Exit Conference
 - List potential findings & non-compliance areas.
- Exit Date
 - When investigation is officially over
 - Final report
- Scope and Severity Grid: If found to be non-compliant, KDADS grade to what degree they were non-compliant (A-L)
 - (A, B, C) = no actual harm, potential for minimal harm).
 - (D, E, F) = no harm, but potential for harm)
 - (G, H, I) = harm has occurred, but no immediate jeopardy)
 - (J, K, L) = Immediate jeopardy to the health and safety of the resident is indicated)

 - (A, D, G, J) = Isolated Incident to one resident
 - (B, E, H, K) = Pattern with more than one resident involved
 - (C, F, I, L) = Facility-wide issue

Statement of Deficiencies is issued

- State Licensed Facilities
 - Not required to issue Letter of Correction for each deficiency
 - Only required if KDADS issues a Correction Order
 - 14-days to correct the deficient practice
 - KDADS will revisit to make sure correction has taken place
- Federally Licensed Facilities
 - Required to issue Letter of Correction for each deficiency above first level of harm

Overview of Survey Fines and Penalties

- State Licensed Facilities
 - Civil Monetary Penalty (CMP)
 - State level Determination
 - Democratic process
 - \$500/day/per citation
 - Capped at \$2,500
 - KDADS can double citation if deficiency was previously cited in the previous 18-months
 - Harm level or above, CMP can get up to \$5,000/day

- Capped at \$10,000
- Federally Licensed Facilities
 - CMS is the only agency that can issue CMP on behalf of CMS
 - If facility waives appeal rights, CMP is reduced by 30%
 - Carter: How many appeals are successful?
- Surveyors are RNs
 - 7 field surveyors for state licensed facilities.
 - 3 currently filled
 - Survey 457 facilities
 - 8 new FTE positions requested in KDADS budget
 - 62 field surveyors for federally licensed facilities.
 - 31 are filled
- Key Points from Discussion
 - Do surveyors have a chance to recommend a letter grade on the scope and severity grid in addition to the official decision? Final decision is made by the surveyor or team, and it is reviewed by the director and any others up the chain depending on the severity level.

Steve Anderson, Medicaid Inspector General

- Attorney General's Office is a consumer of surveys
 - Notified through KDADS referral process for criminal investigation
 - AGs office makes 6 referrals a year to KDADS for issues with surveys
 - Received reports the same time law enforcement does
- Fines
 - Effective
 - Hard on small, not for profit homes
 - Large, Corporate-owned homes consider fines a business expense
 - One-size-fits-all system for determination of fines
- Unannounced surveys are important
 - Staff may know well in advance that the surveyors are coming
 - Facilities may add staff to the facility to hide that they are understaffed.
- Proposed Recommendation
 - Executive summaries should be apart of the survey process for the public.
 - Surveys contain a lot of legal jargon, difficult for public to consume.
 - Executive Summary sums up the report in 2-3 paragraphs.
- Key Points from Discussion
 - Working group members express they know a general 3–6-month timeline for when a survey will take place but never the day state is coming. Concern was brought up on national level that corporations in charge of facilities will have employee work as a surveyor and go back to corporation and tip-off facilities for when survey team will be on site.

Lane Williams, Disability Rights Center

- Office Is based in Topeka
- Provide Legal Advocacy Services for people with Disabilities living in licensed facilities
- Under Federal Statute, the center can investigate ANE for those with disabilities.
 - Need probable cause to investigate
- Center has authority to go to facilities unannounced to monitor facilities for signs and instances of ANE
 - Make visits to OSH and LSH and IDD facilities in Parsons and Topeka
 - Monitor 10 nursing facilities for mental health in Kansas
 - Also visit Board and Care Homes
 - Unique facilities
 - Don't provide treatment for mental health conditions
- Meet with Admin Staff for issues center is aware of
- Meet In common areas to meet with residents, or privately if resident requests this

Chatbox Commentary

- DRC is very helpful to fill a gap since Long-Term Ombudsmen are not authorized to serve the Nursing Facility Mental Health residents

Agenda item: Revisit SWOT Analysis – Highlighted Portions Added During Meeting

Strengths	Weaknesses	Opportunities	Threats
<ul style="list-style-type: none"> • KDADS survey team's process/department • Surveys are the best way to have accountability and presence of objective • Availability of survey results to families of current residents timely and comments from the administration on those results in writing with opportunity to comment directly with administrative staff as to those results • Passion of long-term care workers (overall). • Facility reports are posted on the KDADS website and available for the community to review. 	<ul style="list-style-type: none"> • The state is under-staffed and often cannot meet requirements for frequency of surveys • Reduce length of time between surveys. • Oppressive regulations that do not end up really helping residents distract from actual resident care/rights. • No power to change regulations/fines. These are set and enforced at the national level. • Lack of transparency • Greater public transparency of both federal and state results • The system is based on an antiquated adversarial, punitive model rather than a modern quality improvement collaborative model. • Admin jumps from one facility to another potentially after deficiencies noted at previous jobs. Exposing new facilities to risks. • Use Civil Money Penalties (CMP) for resident benefits rather than supporting failing entities. • Accountability for bad actors to protect those doing their job well CMP appeals process • Advocate for CMS support and reporting 	<ul style="list-style-type: none"> • Feedback line/technical assistance and guidance • Once fully staffed, greater opportunity for nuanced outcomes; increase collaboration and communication (increase state response); facilitate reporting in timely manner • National Academies of Science, Engineering and Medicine (NASEM) study that may provide recommendations for improvements in the LTC facility setting • Work together to ensure residents in adult care homes are receiving quality care • Increase number of surveyors • Increased accountability to plans of correction • Directed plans of correction to include required training and education for repeat infractions • Career development and partnerships with educators • Need more surveyors for nursing homes and state licensed only facilities • The window of time to correct deficiencies that are not related to actual harm seems short as many of these need to be addressed on system level. • Reform of nursing home oversight at federal level. 	<ul style="list-style-type: none"> • The vicious cycle of enforcement, fines, ability of homes to improve and how that always impacts resident care. Focus on the negatives instead of rewarding and lifting resources for positive. • Federal survey process is required surveyors act upon required process • Lack of surveyor workforce available • Staffing • The lack of qualified surveyors and support staff to timely address family concerns of care at a facility. One surveyor covering more than half the state geographically in person is impossible and having to rely on insurance case managers to supply that info needed seems not a good answer.

		<ul style="list-style-type: none"> • There is variability in the interpretation of deficiencies among regions. • Reviewer and review consistency • Add an executive summary to summarize the events. 	<ul style="list-style-type: none"> • Lack of multidisciplinary survey teams • Encroachment of large multistate for-profit nursing home companies and private equity interests
<p>Key Themes</p> <ul style="list-style-type: none"> • KDADS survey team – processes and department operations • Survey tools can lead to accountability and development/awareness of objectives 	<p>Key Themes</p> <ul style="list-style-type: none"> • State understaffing • Regulations not really helping residents, rather they are distracting from improving care and rights • Lack of state/local control; limitations with federal rules and fines • Lack of transparency and accountability • Need for a more modern, quality-based model 	<p>Key Themes</p> <ul style="list-style-type: none"> • Increase # of surveyors • Increased accountability • Use plans of correction to increase education/training • Career development/educational partnerships • Federal-level reform of oversight processes • Collaborative work on quality • Increase consistency of enforcement across regions/surveyors 	<p>Key Themes</p> <ul style="list-style-type: none"> • Requirements of federal survey process; cycle of fines/enforcement • Not enough surveyors • Staffing

Agenda item: Administrative Updates and Next Steps

Discussion:

- Next Meeting: March 22, 2022
- Next Meeting Topic: Recommendation Development for Adult Care Home Surveys and Fines
- Potential date for the next Senior Care Task Force meeting
 - May 26, 2022, Thursday before Memorial Day.
 - WGs will provide progress updates

Data Request for KDADS

- How many CNAs were put on the registry this past year? (Consider providing 2-3 years of data)
- Report aggregate data on number of intake report by facility staff vs resident, by month, and by complaint type. Of intake reports, how many have a deficiency attached?

Questions for KDADS

- Is KDADS running into issues with staff from agencies causing difficulties for facilities in repeat fashion?
- For Lacey, is there difficulty in recruiting people to be surveyors? Why only half positions filled?
- How many NF surveyors do you have and how many AL surveyors are in the department? If you are getting 8 new positions, will the work in both? Do you have vacancies?
- Due to vacancies, does the work look more routine and less individualized due to the volume of work? If resources improve, can surveyors be more individualized to improve quality?
- Is there consideration of having other professional, licensed persons not just RNs hired and doing the site surveys?
- It would also be helpful to understand how plans of correction are evaluated by KDADS.
- Do the surveyors who attend the facility for observations have a chance to recommend a letter grade on the scope and severity grid in addition to the official decision? Just wondered as many who survey seem to have different interpretations from their past experiences as providers in facilities.
- Please speak to when the CMPs are stopped based on when the facility provides plan of correction and when surveyors are available to come back for resurvey.
- While technical assistance cannot be provided during survey, is there a plan for KDADS to implement more regulatory technical assistance through program staff?
- For change of ownership and bankruptcies, what is the impact on fines and findings from previous surveys? Also, how are fines collected or dropped when new owners take over?

Regulatory and Enforcement Practices – Centers for Medicare and Medicaid Services

- How many facilities appeals for deficient practices are successful?
 - Context: Federally licensed homes get a 30% reduction in Civil Monetary Penalties if they waive the right to appeal for any listed deficiencies noted during a survey.

Information Requests

- What is the latest research out there for this topic? What are other states doing?

Closing Statements

“What is one thing you want to highlight from SWOT or what you have heard today about Home Surveys and Fines?”

- Working group wants to keep in mind scalability for all sized facilities, and to recognize that staffing levels and limited resources need to be addressed to provide a good level of care. Improvement can be made in problem areas, and as the task force looks at preventing abuse, neglect, and exploitation, and being protective, working group needs people to understand what that means by Implementing more education and training. Group hopes to improve the culture of industry to make it less adversarial and establish a feedback loop with surveyors.