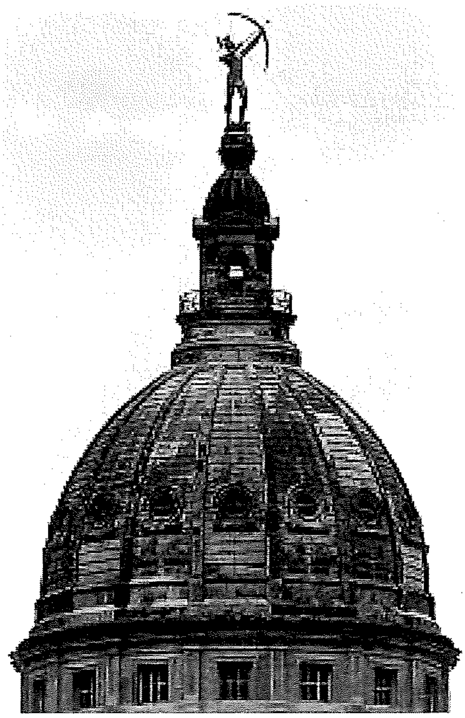

NEW RULES COMING FROM THE US DEPARTMENT OF LABOR IN 2015

CHANGES THAT COULD OCCUR!

- **Direct support workers may no longer be allowed to work more than 40 hours per week.**
- **Direct support workers may no longer be allowed to work for more than one consumer.**
- **Direct support workers may no longer be allowed to work through more than one agency.**

What should you do?

Call the Department of Labor and ask them to delay the new rules for 12-18 months!

Tell them how this rule effects you!

Dept. of Labor
1-866-487-9243

Call the Governor to let him know how this rule effects you! Tell the Governor,

"Do not cut services!"

Governor's Office
1-877-579-6757

Kansas
Department for Aging
and Disability Services

Federal policies threaten Kansas self-directed home based care

Potential impact of new U.S. Department of Labor rules on Kansas consumers and workers

The United States Department of Labor (DOL) issued a Final Rule which requires that entities with fiscal involvement in Medicaid Home and Community-Based Services (HCBS) act as "joint employers" thereby reversing the decades old Fair Labor Standards Act's "companionship exemption". The rule will create new, very strict overtime requirements for supportive homecare workers and personal care attendants, also known as Direct Service Workers (DSWs). **This new rule is scheduled to go into effect January 1, 2015 and will have a dramatic impact on HCBS services in Kansas.**

Historically, prior to these new rules, the companionship exemption defined DSWs as domestic workers and allowed them to work over 40 hours without triggering overtime. This allowed many Kansas HCBS consumers to "self-direct" their care by providing the consumer the ability to hire and schedule whomever they wanted without restricting the worker to a 40 hour work week in order to avoid overtime requirements. This helped consumers recruit and maintain workers by providing their informal and formal workers flexibility. It also helped limit the number of people coming in and out of a consumer's home that were required to provide the necessary level of care. Finally, this also allowed cost-effective supports like sleep-cycle support to be paid on a per night basis, rather than per hour. These new rules will make personal care attendants and supportive homecare workers who work more than 40 hours per week eligible for overtime benefits.

The administrative side of self-direction is handled by a Financial Management Service (FMS) provider and the funding is provided by the state through managed care organizations (MCOs). The new rule will make the state of Kansas, MCOs and the FMS provider joint-employers along with the consumer. This will put these entities squarely on the hook for the increased costs.

This new rule will create potential unintended consequences in many areas described below:

- **Impacts over 42 percent of our KanCare members who receive HCBS services.** The new rules may impact approximately ***11,000 KanCare*** members who self-direct personal attendant care and home-based services in their homes. These members are individuals with intellectual and developmental disabilities, people with physical disabilities, and the frail elderly. Because of these current services, all of these individuals are able to continue to live in their homes.

- **Puts sleep-cycle support services at risk for around 1,400 Kansans.** To maintain current sleep-cycle services under the new rules, it is estimated to ***cost more than $30 million in all funds, or $21,428 per consumer.*** The new rule could force a reduction in plans of care hours and services, including sleep cycle support. Sleep cycle support helps 1,400 Kansans remain in their homes and avoid institutional settings, which are both more restrictive and more costly to the state and to the federal Medicaid program. The effect of the rule threatens to undo a decade's worth of effort to maintain disabled individuals in the least restrictive environment necessary to meet their needs.

- **<u>Increases the administrative burden on consumers and their families.</u>** *Currently, each Kansas consumer has on average 1.5 workers*. Proposed changes will require more supportive homecare workers and personal care attendants to provide services on plans of care, increasing the management burden on self-directed consumers. Family members will find it difficult to maintain outside employment because they will have to fill the gaps in care that occur when service workers' hours are restricted.

- **<u>Creates workforce shortages.</u>** Providing adequate staffing is already a challenge in all areas of the state. There may not be enough supportive homecare workers and personal care attendants available to provide services and support consumer needs under the proposed DOL ruling. Limiting workers' hours in this way will affect the ability of consumers to find qualified staff, especially in sparsely populated, rural and frontier communities. According to a FMS provider in Osage City, "*Consumers frequently struggle to find DSWs to hire, especially in rural areas. Additional rules will make this task more challenging. If consumers are unable to hire workers, they will be forced to move in to nursing facilities or worse, go without the care and support they need to lead healthy lives.*"

- **<u>Reduces earning potential for approximately 15,000 Direct Service Workers.</u>** The likely immediate effect of the new rule will be to limit Direct Service Workers work hours to 40 hours per week. Current supportive homecare workers and personal care attendants will then have an incentive or need to leave for a different job due to this limitation. ***According to a recent survey, up to 20% of Kansas DSWs regularly work more than 40 hours per week.***

- **<u>Negatively impacts 40 Kansas small businesses.</u>** FMS providers will be responsible for increased administrative costs resulting from monitoring of hours to ensure compliance. The 40 hour per work week restriction will place an enormous burden on the agency directed program, which also has difficulty finding workers. ***100% of participating survey respondents (FMS Providers) indicated that this rule could potentially harm their business***. One provider reported that "*this will affect us tremendously and could be detrimental to our consumers and our organization. We are a small organization and all of our staff members wear many hats. The extra monitoring of consumers/DSW activities that would be involved with the monitoring of hours and overtime, working for more than one consumer, travel time and activities that would be considered "medical", would definitely require more staff and higher FMS rates to cover the costs.*"

- **<u>Reduces state resources for waiting list reduction.</u>** The impact of the rule change is estimated at more than **$36 million ($I5 million SGF**). If costs increase, the state will be hampered in its efforts to reduce the waiting list for these services. ***These resources alone would be enough to bring <u>870 individuals</u> off of the HCBS/IDD waiting list or <u>1,800 individuals</u> off the HCBS/PD waiting list.***

As stated previously, the new DOL rules, if not amended, waived or exempted, will work strongly against the principal of maintaining individuals in the least restrictive environment necessary to meet their needs and force our consumers into more restrictive institutional settings. We want to avoid the great deal of harm these new rules will do to Kansas consumers who receive personal attendant care and home-based services.

Please help us by contacting the U.S. Department of Labor at 1-866-487-9243 or <u>http://webapps.dol.gov/contactus/contactus.asp?agency=WHD</u> and ask them to:

- Exempt Kansas' self-directing HCBS consumers from the new rules.

- Delay the Final Rule from going into effect in order to help Kansas effect an orderly transition to meet the requirements of the administrative interpretations of the new rule and the law.