



To: Special Committee on Government Overreach and the Impact of COVID-19 Mandates
From: Rachel Monger, Vice President of Government Affairs, LeadingAge Kansas

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Testimony Concerning New COVID-19 Vaccine Exemption and Unemployment Eligibility Language

LeadingAge Kansas is the state association for not-for-profit and faith-based aging services. We have 160 member organizations across Kansas, which include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living, homes plus, senior housing, low-income housing, home health agencies, home and community-based service programs, PACE and Meals on Wheels. Our members serve more than 25,000 older Kansans each day and employ more than 20,000 people across the state.

Our association strongly opposes the new CMS rule mandating COVID-19 vaccination for health care workers as a Condition of Participation in Medicaid or Medicare. It is an ill-conceived government action, that will have serious negative consequences for the entire healthcare system and the people it serves. Unfortunately, absent a legal victory striking down the new rule, our nursing homes have no choice but to comply. 70% of the revenue in long term care comes from the Medicare and Medicaid programs. Losing federal funding due to non-compliance with the vaccine mandate would annihilate long term care in Kansas.

While we support the intention behind 22rs2356 and 22rs2357 we have serious concerns regarding the proposed language and whether it conflicts with the CMS mandate rule. We are also concerned about the financial burden that will be placed on our providers through the UI system.

COVID-19 Vaccine Medical Exemption

The CMS vaccine mandate allows providers to grant medical exemptions for the COVID-19 vaccine. The rule outlines specific criteria that must be met by the requesting employee in order for the provider to grant the exemption. The CMS criteria is narrower than the broad language contained in 22rs2356. CMS requires the medical exemption request contain

documentation by a licensed practitioner, acting within their scope of practice, providing a recognized clinical contraindication for taking a COVID-19 vaccine. The CMS rule also does not allow for a medical exemption based on risks to an individual who resides with the employee.

We are very concerned that passage of this medical exemption language will force nursing homes into the impossible position of violating CMS regulations and losing federal funding or violating state medical exemption law and facing steep costs in litigation from the newly created statutory right to sue. Either option will close their doors.

COVID-19 Religious Belief Exemption

The majority of LeadingAge Kansas members are faith-based and believe very strongly in religious liberty. Our concern with the proposed religious exemption language is not its prohibition on questioning the sincerity of a person's religious beliefs. Our concern is that it may preclude our providers from following EEOC guidance referenced by CMS that asks providers to distinguish between religious belief and personal preference or political and social philosophy.

Expansion of Unemployment Eligibility

We are very concerned with the proposed language that would grant employees the right to unemployment if their exemption or accommodation request is denied by their employer. Nursing homes must follow CMS regulations concerning exemptions and accommodations for the COVID-19 vaccine mandate. Expanding unemployment claims for denied exemption requests would cause unfair financial strain on providers who are obligated to follow federal rules and regulations. We also share others' concerns that this expanded unemployment benefit will encourage frivolous exemption applications that will financially benefit bad-faith actors through unemployment payments and litigation threats.

We appreciate and support the efforts of this Committee to challenge the federal government's mandate on COVID-19 vaccines. We also offer our full support for the legal challenges mounted by Attorney General Schmidt to overturn the mandates. Unfortunately, unless and until these mandates are overturned, our providers' hands are tied. They must comply or lose federal funding and close their doors. We ask that the legislature not place nursing homes in the untenable situation of choosing which laws to violate and shouldering the cost for following a federal edict they have no control over.