



To: Rep. Brenda Landwehr, Chair, and Members, House Health and Human Services Committee  
From: Rachel Monger, President/CEO, LeadingAge Kansas  
Date: February 15, 2024

LeadingAge Kansas is the state association for not-for-profit and other mission-focused aging services. We have 150 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.

### **Testimony in Opposition to HB 2784**

#### **Part I: Continuing Care Retirement Community (CCRC) and Adult Care Home Statutes**

##### **Adding CCRCs to the definition of “adult care home” will have negative unintended consequences for independent living residents and CCRCs.**

LeadingAge Kansas is opposed to adding “continuing care retirement community” to the definition of “adult care home” in K.S.A. 39-923. We are extremely concerned about making adult care home laws and regulations applicable to our independent living and 55+ housing buildings, facilities, and residents. It will be extremely burdensome for independent living residents who will be subject to adult care home regulations and inspections through KDADS and the Fire Marshal. It will be burdensome to KDADS whose inspection and regulatory footprint must expand to individual homes, duplexes, apartments, wellness centers, restaurants, chapels and many other types of public areas found on a CCRC campus. It will be extremely burdensome to CCRCs who must now comply with various extreme codes, inspections and regulatory requirements that accompany an adult care home designation. It is also an unfair burden to CCRCs when adult care home requirements will not be evenly applied to similar senior living developments and condos that are built outside of a CCRC campus model.

The harm caused by this section of HB 2784 far outweighs any perceived benefit. A CCRC may have licensed adult care homes on its campus (e.g. nursing home or assisted living), and the current regulatory and inspection system for those specific buildings is in full effect. Adding CCRCs to the definition of an adult care home is completely unnecessary to achieving the purported aims of the bill, and we request that it be removed.

**The new definition of CCRC is confusing and ill-fitting.**

The definition of “continuing care retirement community” in HB 2784 does not capture the core definition of a CCRC, is unclear about whether it requires a set number of specific licensed settings and has an ill-fitting description of a typical CCRC campus. As implied by the name, CCRCs provide multiple levels of care to serve resident needs all in one setting. Requiring a specific number of care levels or licensure categories for a CCRC misses the core purpose of a care continuum and strangles much needed innovation around how and where we deliver services to seniors.

We believe the following is a clearer and more accurate description of a continuing care retirement community:

“Continuing care retirement community” means a place or facility that provides two or more levels of care on a single campus to avoid the need for residents to relocate to a separate place or facility as they advance through the continuum of aging care needs. As used in this subsection, the term “campus” means a place where continuing care is furnished and may include one or more physical plants on a primary or contiguous site or an immediately accessible site.

**Changing CCRC financial reporting and registration to April 1<sup>st</sup> is extremely burdensome, arbitrary, and unnecessary.**

Under current statute, CCRCs are required to submit their required financial disclosure statements and audit reports within four months of the completion of their fiscal year. This requirement is written to accommodate the various fiscal years found in private business operations. By changing the due date for all financial filings to April 1<sup>st</sup>, HB 2784 will force all CCRCs to comply with a calendar fiscal year. Not only is this an unnecessary requirement, but it is also extremely expensive and burdensome.

We assume the April 1<sup>st</sup> deadline is connected to internal KDADS deadlines around the nursing home provider tax program, in which CCRCs are included as a 1/6<sup>th</sup> payment tier. CCRCs and the CCRC registration statute long pre-existed the nursing home bed tax scheme, as do CCRC business operations, fiscal years, legal contracts, and the actuarial underpinnings of life care contracts. Forcing these businesses to conform with internal KDADS timelines for a completely separate and unrelated provider tax statute is senseless and destructive.

We have received no reports from providers or regulators that the current CCRC reporting timelines based on a provider’s fiscal year has caused any actual problems with the nursing home bed tax system. Any perceived convenience of moving to an April 1<sup>st</sup> reporting period is far outweighed by the upheaval, expense, and government overreach when forcing businesses to change their fiscal year.

**CCRCs must retain due process rights if denied certification as a CCRC**

Under current statute, a CCRC must be given due notice and hearing if the commissioner finds they are out of compliance with the statute and will not be re-certified as a CCRC under Kansas law. A CCRC suddenly being unable to hold itself out as a CCRC to consumers and business partners in Kansas has serious implications for its finances and operations. Our current CCRC statute acknowledges this reality

by providing due process for providers to correct any mistaken or unfair conclusions that led to their de-certification. We strongly oppose the removal of CCRC due process rights under Kansas statute.

## **Part II: Quality Care Assessment Program (also known as the nursing home bed tax)**

While we certainly understand the desire to ensure compliance and integrity within the nursing home bed tax program, every change HB 2784 makes to K.S.A. 75-7435 is both illegal under CMS requirements and financially devastating to the smallest and most rural nursing homes in the state. If HB 2784 is enacted in its current form, CMS will not approve our bed tax program going forward. This will leave a \$50 million hole in the Kansas Medicaid program. If left unfilled this will lead to devastating Medicaid rate cuts to nursing homes and kick off a new wave of nursing home closures around the state. In the extremely unlikely event that the proposed changes in the nursing home bed tax rates could pass CMS muster, it would still lead to financial devastation and closures of our smallest, most rural and most vulnerable nursing homes. Despite the claims in its title, HB 2784 raises bed tax rates for CCRCs and high Medicaid volume nursing homes by 144%. It raises the bed tax rate for nursing homes with less than 40 beds by 389%. Small nursing homes are especially vulnerable to high bed tax rates not just because they don't have the capital necessary to front the state of Kansas a large amount of cash for their federal funding schemes. It's also devastating to them because their small number of licensed beds usually guarantees that they will never be able to bill enough Medicaid days to earn their bed tax payments back through daily Medicaid billing. The perversity of Kansas robbing small rural nursing homes of resources in order to get more federal Medicaid dollars for other larger nursing homes cannot be overstated. We strongly oppose.

We also strongly oppose moving the current regulatory definitions of "continuing care retirement community", "high Medicaid volume skilled nursing facility", and "small skilled nursing facility" into statute. The reason these special designations are in regulation is to avoid the exact problem we are encountering in HB 2784. Any changes made to the definition of these tiers will have a potentially devastating affect on individual providers as well as the continued viability of the bed tax itself. The regulatory process ensures that any changes made in this area are first vetted by experts on the many CMS requirements for the program, and that an ample amount of time is provided for stakeholders and lawmakers to weigh in and ask important questions.

### **There is a much simpler solution to "The CCRC Problem"**

Traditionally, CCRCs are a nonprofit business model, and that is still largely true today. Up until a few years ago, LeadingAge Kansas members made up most of the registered CCRCs in Kansas. Over the years the CCRC registration list has swelled, and our members now make up a minority of CCRCs in Kansas. This shift has been allowed to happen because our CCRC statute does not contain a clear definition of CCRCs, and also contains language that allows nearly any aging service provider to register as a CCRC if desired.

As the state association that has represented actual CCRCs in Kansas for 70 years, we support the dual aim of tightening loopholes in CCRC statutes and better ensuring the integrity and efficacy of the nursing

home bed tax program. From our experienced point of view, there is a straightforward fix for both issues.

**Our recommendation:**

- **Add a clearer definition of “continuing care retirement community” into K.S.A. 40-2231**
- **Delete the following language from K.S.A. 40-2231(b):** Continuing care contract shall also mean an agreement of any other provider who voluntarily applies for a certificate pursuant to K.S.A. 40-2235.

We believe that with these statutory amendments, the state can more easily clean up the CCRC registration list. Once the registration list is cleaned up, the issue of too many providers falling under the special bed tax tier for CCRCs will also be resolved.