

# CERTIFICATE OF NEED TASK FORCE

## Minutes of the 2nd Meeting of the 2023 Interim

July 17, 2023

### Call to Order and Roll Call

The second meeting of the Certificate of Need Task Force was held on July 17, 2023, at 10:30 AM in Room 171 of the Capitol Annex. Representative Russell Webber, Chair, called the meeting to order, and the secretary called the roll.

### Present were:

Members: Representative Russell Webber, Co-Chair; Senator Donald Douglas, Co-Chair; Senator Karen Berg, Senator Stephen Meredith, Senator John Schickel, Representative Lindsey Burke, Representative Daniel Elliott, Representative Marianne Proctor, and Representative Susan Witten.

Guests: Senator Gex Williams; Betsy Johnson, President, Executive Director, Kentucky Association of Health Care Facilities; Tim Veno, President, LeadingAge Kentucky; Evan Reinhardt, Executive Director, Kentucky Home Care Association; Liz Fowler, Chief Executive Officer, Bluegrass Care Navigators; David Cook, Chief Executive Officer, Hosparus; Nancy Galvagni, President, Kentucky Hospital Association; Jim Musser, Senior Vice President, Policy and Government Relations, Kentucky Hospital Association; and Judy Taylor, Kentucky Ambulance Providers.

LRC Staff: DeeAnn Wenk, CSA, Logan Bush, and Becky Lancaster.

### Approval of Minutes

A motion to approve the minutes of the June 19, 2023, meeting was made by Senator Schickel, seconded by Senator Meredith, and approved by voice vote.

### Nursing Facilities

Betsy Johnson, President, Executive Director, Kentucky Association of Health Care Facilities (KAHCF), discussed the types of long-term facilities that are subject to certificate of need. She gave policy reasons for certificate of need and provided examples of other states' certificate of need laws.

Tim Veno, President, LeadingAge Kentucky, discussed the implementation of certificate of need as a tool, the fragile infrastructure of nursing facilities, and gave support for the legislators to review all data and testimony regarding certificate of need.

In response to questions and comments from Senator Berg, Mr. Veno stated that the Cabinet for Health and Family Services (CHFS) does an annual inventory of the census of available beds with payor sources. Ms. Johnson stated that the data from the annual inventory of available beds is broken down by county. Mr. Veno stated that with lower census data, he has not heard of access problems for Medicaid, Medicare, or private-pay patients in long-term care facilities.

### Home Health Agencies

Evan Reinhardt, Executive Director, Kentucky Home Care Association (KHCA), discussed home health agency types, the certificate of need determination methodology, the market space and unstable industry of home health, the differences between the Kentucky and Indiana certificate of need programs, solutions to maintain the certificate of need, and the desired increase in reimbursement rates for home health.

In response to questions and comments from Representative Webber, Mr. Reinhardt stated that employee turnover is high due to the inability to pay competitive wages for staff, low Medicaid reimbursement rates, and the sometimes stressful interpersonal nature of the job.

In response to questions and comments from Representative Proctor, Mr. Reinhardt stated that home health agencies utilize standard quality metrics.

In response to questions and comments from Senator Meredith, Mr. Reinhardt stated that costs to deliver home health services are fixed. He stated there is a two-tiered system for private pay and Medicaid or Medicare patients but some agencies also operate a safety net model at a loss for more acute patients. He stated that delivering more services in the home or community as opposed to a brick-and-mortar facilities would reduce the cost of healthcare.

In response to questions and comments from Senator Douglas, Mr. Reinhardt stated that home health operators cover the entire state, there are certificate of need holders in each county, and that home health operators deliver services in the patient's home. He stated that a licensed provider is restricted to a specific county, the amount that agencies can pay staff is fixed, and the certificate of need review process evaluates the home health provider saturation in the market to reduce competition for staff.

In response to questions and comments from Senator Berg, Mr. Reinhardt stated that the Office of Inspector General released data that shows there are counties with an adequate number of home health agencies but an inadequate number of home health staff. He stated that most home health patients have Medicaid or Medicare and the home health industry does not rely disproportionately on private pay patients for resources.

In response to questions and comments from Representative Witten, Mr. Reinhardt stated that there are home health patients ready for services but not enough staff to deliver the services needed. He stated that KHCA is working on staff recruitment, retention, and coordination of existing staff.

In response to questions and comments from Senator Schickel, Mr. Reinhardt explained that provider licensure and certificate of need govern two different processes.

In response to questions and comments from Representative Burke, Mr. Reinhardt stated that the removal of the certificate of need in Indiana has not negatively impacted hospice services, hospital services, and nursing home services because the industries are much larger in Kentucky. He stated that it takes approximately 48 hours for a patient to access nursing home care and it may take weeks or months to access home and community-based services. KHCA's goal is for patients to have access to home and community-based services within 48 hours.

### **Hospice Services**

David Cook, Chief Executive Officer, Hosparus, discussed specific aspects of care unique to

hospice care, and the critical benefit of hospice. Liz Fowler, Chief Executive Officer, Bluegrass Care Navigators, discussed the need for certificate of need to help prevent fraud, abuse, and profiteering in hospice care. Mr. Cook discussed the role of certificate of need in hospice care to keep costs low by maintaining a high standard of quality and integrity, the daily rates set by the federal government, and the lower quality of care found in states when the certificate of need laws are removed.

In response to questions and comments from Senator Berg, Ms. Fowler stated that the proliferation of private equity companies buying private medical practices to increase profit margins is a problem. Mr. Cook stated many patients do not know about all the services that are a part of the robust hospice services.

In response to questions and comments from Representative Proctor, Ms. Fowler stated that there are many quality measures that hospice is federally required to report and Kentucky continually out performs the national average on many. Mr. Cook stated that people in crisis often do not know about all the services provided by hospice, therefore any services provided seems positive to them.

In response to questions and comments from Senator Meredith, Ms. Fowler stated that a strong certificate of need encourages hospices to admit patients at the right time to decrease spending.

### **Hospitals, Health Services, and Equipment**

Nancy Galvagni, President, Kentucky Hospital Association, discussed the context and importance of the certificate of need for healthcare access and safety, Medicaid's and Medicare's lack of federal payments to fully pay for the coverage of treatments requiring cost shifting by hospitals, how a certificate of need ensures continuity of care, the two levels of certificate of need review, proposals for changes to the certificate of need, and the services that should continue using the formal certificate of need review process.

In response to questions and comments from Senator Meredith, Ms. Galvagni stated that Kentucky has one of the highest numbers of licensed hospital beds per 1,000 population, ahead of Ohio and Indiana, and that reducing administrative costs would decrease the costs of healthcare and the burnout of the workforce.

In response to questions and comments from Representative Proctor, Ms. Galvagni stated that the Northern Kentucky region is a part of the Cincinnati metropolitan statistical area with multiple hospitals and adequate access for people in that area. She stated that the St. Elizabeth Hospital is a safety net provider, one of the largest Medicaid providers in Kentucky.

In response to questions and comments from Senator Douglas, Ms. Galvagni stated that there is not a higher reimbursement rate to hospitals with a certificate of need, Kentucky is the 43rd lowest paid state by Medicare, hospital reimbursement rates are almost entirely government set, a certificate of need does not cover physician care, and the burden of regulation on physicians from the federal government is driving physicians out of private practice.

In response to questions and comments from Senator Berg, Ms. Galvagni stated that rural hospitals must be financially sound to attract physicians and the certificate of need provides stability to hospitals to recruit and retain staff and physicians.

## **Adjournment**

There being no further business, the meeting was adjourned at 12:15 PM.