

2019 NOVEL CORONAVIRUS ILLNESS (COVID-19) GUIDANCE

TITLE: Joint Guidance for Health Care Worker Designation for Community Service Providers Serving Persons with Disabilities

DATE: April 17, 2020

TO: Secretary Laura Howard and Clay Britton, Governor Laura Kelly's Chief Counsel

FROM: Sherry C. Diel, KDADS Interim Chief Counsel

SUMMARY: Governor Laura Kelly's Designation of "Health Care Worker"

GUIDANCE: **Joint Guidance: Families First Coronavirus Response Act Exception for Health Care Workers for Community Service Providers Serving Persons with Disabilities**

On March 28, 2020, Governor Laura Kelly issued a statewide "stay home" order in conjunction with the Kansas Essential Function Framework (KEFF) for COVID-19 response efforts. Community service providers provide critical services to Kansans with disabilities. In the "stay home" order, Governor Kelly recognized the significance of the work of community services providers to persons with disabilities, including the essential activities that should continue to be provided and that travel is allowed in order to provide and receive those services. The provision of these services is even more critical during the ongoing coronavirus (COVID-19) emergency.

On March 30, 2020, the Kansas Department for Aging and Disability Services (KDADS) issued a Guidance for Community Service Providers Performing Essential Functions, which clarifies that services provided by community service providers to persons with disabilities in Kansas are essential services under KEFF.

"Persons with disabilities" or "Kansans with disabilities" include people: (1) who are blind, deaf, deafblind, or hard of hearing; (2) with disabilities that are physical, developmental, or intellectual; (3) with substance use disorders; (4) with mental illness; or (5) who are served by the Home and Community Based Services (HCBS) Waiver programs administered by KDADS. Kansans with disabilities receive essential services for their life, safety and welfare funded through KDADS' programs. These essential services are provided through an intricate network of authorized contract and subcontracted community service providers.

Recently enacted federal legislation, the Families First Coronavirus Response Act (FFCRA), recognizes the essential nature of work conducted by health care providers. The FFCRA allows health care providers

and emergency responders to be exempted from the expanded sick and family leave benefits otherwise established by the FFCRA. To assist employees and employers in understanding their rights under FFCRA, the U.S. Department of Labor (DOL) recently issued a guidance document.

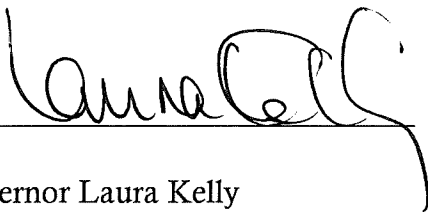
This DOL guidance states that "a health care provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity." This definition includes "any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility." Finally, this definition includes **"any individual that the highest official of a State or territory, including the District of Columbia, determines is a health care provider necessary for that State's or territory's or the District of Columbia's response to COVID-19"**.

Kansas faces a critical staffing shortage of workers providing community services to persons with disabilities during the state of emergency and catastrophic health emergency. Secretary Howard has requested designation of such workers as health care providers who are temporarily exempted from certain leave benefits to ensure they are available to protect the health of Kansas citizens with disabilities.

Based on the DOL guidance and the essential nature of services and supports to people served in the disabilities system, Governor Laura Kelly concludes that an "Health Care Worker" designation shall include workers providing community services to persons with disabilities or engaged in functions required in order to continue the provision of services to persons with disabilities. These workers are identified by different titles but perform essential tasks to maintaining individuals with disabilities in their home communities and are direct employees of either the individual or an agency that is affiliated with an authorized community-based disability organization. Such Health Care Workers are health care providers and are thus exempt from the paid sick leave and expanded family and medical leave provisions of the FFCRA.

Governor Kelly and Secretary Howard appreciate the sacrifice and commitment of Health Care Workers and their dedicated service to Kansans with disabilities.

Dated: April 3, 2020



Governor Laura Kelly



Laura Howard, Secretary
Kansas Department for Aging and Disability Services