To: Representative Will Carpenter, Chair and Members, House Health and Human Services Committee
From: Kylee Childs, Director of Government Affairs, LeadingAge Kansas
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LeadingAge Kansas is the state association for not-for-profit and 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, home 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.

Opponent Testimony on HB2718

We appreciate the intent of HB2718 to preserve resident choice of pharmacy. Resident autonomy is a core principle in long-term care. However, as drafted, HB2718 creates significant regulatory conflict, operational risk, and patient safety concerns across multiple adult care home licensure types.

The bill grants a resident the right to select a pharmacy *"regardless of the type of medication distribution system used by the adult care home"* and prohibits fees tied to that choice. While well-intentioned, this language fails to account for the extensive federal and state regulatory obligations imposed on providers, particularly nursing homes, and creates ambiguity in state-licensed assisted living and other private-pay settings.

Nursing Homes: Federal & State Licensed

Nursing homes operate under a comprehensive federal regulatory framework enforced by CMS. Two key federal regulations are central here:

- 42 CFR § 483.10 – Resident Rights
- 42 CFR § 483.45 – Pharmacy Services

Resident Rights Are Explicit, But Not Unlimited

42 CFR § 483.10 clearly enumerates specific resident rights, including:

- The right to choose a physician,
- The right to participate in care planning,
- The right to privacy and dignity,
- The right to voice grievances without retaliation.

These rights are explicitly stated and survey enforced. Notably absent from § 483.10 is any explicit right to choose a pharmacy regardless of whether that pharmacy can meet nursing home pharmacy service regulations. That omission reflects the balance federal regulators have intentionally struck between:

- Protecting resident autonomy, and
- Ensuring provider accountability for safe medication systems.

CMS guidance, including the S&C 06-16 memo addressing pharmacy choice, recognizes resident choice, but only within the framework of regulatory compliance. It does not elevate pharmacy choice above the provider's legal obligations.

Provider Responsibility Under 42 CFR § 483.45
Under 42 CFR § 483.45, nursing homes must:

- Provide pharmaceutical services ensuring accurate acquiring, receiving, dispensing, administering, and monitoring of all medications;
- Employ or obtain a licensed pharmacist;
- Conduct monthly drug regimen reviews;
- Maintain emergency medication access;
- Ensure compliant labeling, storage, documentation, and quality assurance systems.

Importantly, federal law places full responsibility on the provider, not the pharmacy, for compliance. If a pharmacy fails to meet requirements, the provider is cited. A nursing home cannot delegate away its regulatory accountability simply because a resident chooses a different pharmacy.

Conflict Created by HB2718
HB2718 risks creating two major conflicts:

1. It Suggests an Absolute Right to Pharmacy Choice
By granting pharmacy choice "regardless of the type of medication distribution system," the bill could be interpreted to require acceptance of pharmacies even if they cannot integrate into the provider's federally required medication system. Unlike physician choice, which is explicitly protected in § 483.10, federal law does not provide an unfettered right to pharmacy choice that supersedes pharmacy services compliance obligations.

2. It Ignores the Provider's Non-Delegable Duty
If a chosen pharmacy cannot:

- Support consultant pharmacist oversight,
- Provide timely emergency medications,
- Meet packaging and labeling systems necessary for safe administration,
- Participate in drug regimen review processes,

the provider remains liable.

HB2718, without amendment, risks creating an unfunded mandate to accept pharmacies that may compromise regulatory compliance, exposing nursing homes to citations, civil monetary penalties, and survey deficiencies.

State-Licensed Adult Care Homes:
Assisted Living, Residential Health Care, Home Plus, Boarding Care, Adult Day

Unlike nursing homes, these settings are governed primarily by Kansas state regulations through KDADS. While regulatory structures differ, one principle remains consistent: *The provider is responsible for safe medication administration and compliance.*

State regulations require:

- Administration of medications according to physician orders,

- Proper documentation and recordkeeping,
- Safe storage and security,
- Staff competency and training,
- Policies to prevent medication errors.

These settings often rely on medication packaging systems such as unit-dose or bubble packaging to:

- Reduce medication errors,
- Ensure shift-to-shift accountability,
- Control narcotics,
- Maintain documentation accuracy,
- Mitigate diversion risk.

Operational Impact of Packaging Differences

If a resident selects a pharmacy that dispenses medications in traditional bottles rather than unit-dose packaging:

- Staff must manually count medications at shift changes,
- Narcotic reconciliation risk increases,
- Documentation burden increases,
- Medication error exposure increases,
- Liability exposure increases.

In assisted living and similar private-pay settings, providers do not have large administrative infrastructures to absorb significant additional workload.

HB2718 prohibits fees tied to pharmacy choice but does not clarify whether a provider may recover documented additional administrative costs resulting from materially increased medication management workload. Without clarification:

- Providers may be forced to absorb unrecoverable labor costs;
- Staffing strain may increase;
- Medication error risk may rise.

Core Regulatory Conflict Across All Licensure Types

Across all adult care home types, the consistent legal principle is: *The provider, not the pharmacy, is legally responsible for medication safety and regulatory compliance.*

HB2718 does not clarify that resident pharmacy choice must operate within the boundaries of state and federal regulatory obligations. For nursing homes, 42 CFR § 483.45 makes the provider fully accountable for pharmaceutical services. CMS and state surveyors cite the provider, not the pharmacy, when deficiencies occur. For state-licensed settings, KDADS regulations similarly place compliance responsibility on the provider. Without amendment, HB2718 creates tension between:

- Resident choice, and
- The provider's non-delegable compliance duties.

Recommended Amendments

LeadingAge Kansas recommends amendments that balance resident autonomy, regulatory compliance, and medication safety.

1. Compliance Guardrail
Clarify that resident pharmacy choice is permitted only if the selected pharmacy can meet and support the provider's compliance with all applicable federal and state laws and regulations governing pharmacy services. This ensures that:

- Federal nursing home requirements remain intact;
- State regulatory compliance is preserved;
- Providers are not forced into noncompliance.

2. Administrative Cost Clarification for Private Pay Settings
Allow providers to charge a reasonable administrative fee for private-pay residents when a resident's selected pharmacy utilizes a medication packaging or delivery method that requires additional staff time, workflow modification, oversight, or operational resources necessary to maintain compliance with federal and state regulations and to ensure safe medication administration. Such fees should:

- Be reasonably related to the additional resources required to maintain regulatory compliance and minimize the risk of medication errors associated with differing medication packaging or delivery systems;
- Be applied in a nondiscriminatory manner;
- Be clearly disclosed in advance in the resident agreement or fee schedule;
- Not be structured or imposed to discourage a resident's choice of pharmacy.

This ensures providers may recover legitimate workload costs without creating punitive surcharges.

Conclusion

LeadingAge Kansas supports resident choice. However, HB2718 as drafted:

- Conflicts with federal nursing home regulations;
- Creates survey and citation risk;
- Increases medication error exposure;
- Imposes unrecoverable administrative burdens on private-pay providers;
- Fails to recognize the distinct regulatory frameworks governing different licensure types.

We respectfully request amendments that:

1. Clarify that pharmacy choice cannot supersede state and federal compliance requirements; and
2. Allow reasonable administrative cost recovery in private pay settings when a resident's selected pharmacy utilizes a packaging or delivery method that requires additional staff time, workflow modification, oversight, or other operational resources necessary to maintain regulatory compliance and ensure safe medication administration.

With these amendments, the Legislature can preserve resident autonomy while protecting patient safety, regulatory compliance, and the operational stability of Kansas adult care homes.
Thank you for your consideration.