

**PRELIMINARY
MINUTES**

**SPECIAL COMMITTEE ON HOME AND COMMUNITY BASED SERVICES
INTELLECTUAL AND DEVELOPMENTAL DISABILITY WAIVER**

October 21-22, 2021
Room 112-N—Statehouse

Members Present

Senator Richard Hilderbrand, Chairperson
Representative Will Carpenter, Vice-chairperson
Senator Molly Baumgardner
Senator Rick Billinger
Senator Beverly Gossage
Senator Tom Hawk
Representative Barbara Ballard
Representative Brenda Landwehr
Representative Megan Lynn
Representative Susan Ruiz
Representative Troy Waymaster

Staff Present

Matthew Moore, Kansas Legislative Research Department (KLRD)
Iraida Orr, KLRD
Connor Stangler, KLRD
Scott Abbott, Office of Revisor of Statutes
Amelia Kovar-Donohue, Office of Revisor of Statutes
Eileen Ma, Office of Revisor of Statutes
Donola Fairbanks, Committee Assistant

Conferees – October 21

Russell Nittler, Senior Manager, Outreach and Presumptive Medical Disability Team, Kansas
Department of Health and Environment (KDHE)
Amy Penrod, Commissioner of Aging and Disability Services and Programs, Kansas
Department for Aging and Disability Services (KDADS)
Matt Fletcher, Executive Director, InterHab
Nick Wood, Associate Director, InterHab
Craig Knutson, Policy Analyst, Kansas Council on Developmental Disabilities
Mike Burgess, Director of Policy and Outreach, Disability Rights Center of Kansas
Colin Olenick, Legislative Liaison, Self Advocate Coalition of Kansas
Sean Swindler, Director of Community Program Development and Evaluation, Kansas
Center for Autism Research and Training
Tracy Schinzel, Private Citizen
Dr. Bongi Wenyika, Private Citizen

Roberta Brecheisen, Private Citizen
Lori Feldkamp, President/Chief Executive Officer (CEO), Big Lakes Developmental Center
Colin McKenney, CEO, Starkey, Inc.
Michelle Crumpton, Direct Support Professional, Big Lakes Developmental Center
Stephanie Rasmussen, Vice President of Long-Term Supports and Services, Sunflower Health Plan
Rachel Neumann, Director of Operations, COF Training Services, Inc.

Conferees – October 22

Sarah Fertig, State Medicaid Director, KDHE
Amy Penrod, Commissioner of Aging and Disability Services and Programs, KDADS
Mike Burgess, Director of Policy and Outreach, Disability Rights Center of Kansas
Stephanie Rasmussen, Vice President of Long-Term Supports and Services, Sunflower Health Plan

THURSDAY, OCTOBER 21 ALL DAY SESSION

The Chairperson called the meeting to order. Introductions of Committee members and staff followed.

Presentation of HCBS I/DD Waiver History

Connor Stangler, Research Analyst, Kansas Legislative Research Department (KLRD), reviewed the research documents relevant to the Medicaid Home and Community Based Services (HCBS) Intellectual and Developmental Disability (I/DD) waiver. ([Attachment 1](#)). Mr. Stangler outlined a history of the mental health treatment for the I/DD population, in particular that a shift in treatment from institutionalized care to community-based care occurred in the 1960s and 1970s. There was a downward trend in serving this population in state hospitals, with 1,959 individuals with I/DD served in a state hospital setting in 1974 and 900 in 1991.

Mr. Stangler reviewed individuals served through the I/DD waiver, stating the waiver provides services to individuals five years of age and older who meet the definition of intellectual disability, have a developmental disability, or are eligible for care in an intermediate care facility for individuals with intellectual disabilities. Those with developmental disability may be eligible if their disability was present before age 22 and they have a substantial limitation in 3 areas of life functioning. As of September 2021, a total of 9,107 individuals were eligible to receive I/DD waiver services and 4,563 were on the waiting list.

Mr. Stangler reviewed the reimbursement rates for various I/DD waiver services, as well as recent legislative funding additions.

Mr. Stangler deferred Committee members' questions regarding the reason the minimum age for the I/DD waiver is five years to state agency staff and questions regarding the funding structure and provider rates to KLRD fiscal staff.

Matthew Moore, Fiscal Analyst, KLRD, reviewed historical I/DD waiver approved expenditures for FY 2011 through FY 2022 ([Attachment 2](#)). Additionally, he presented the status

over a ten-year time period for the Physical Disability (PD) and I/DD waivers waitlists and the proposed recipient list for the Autism waiver ([Attachment 3](#)).

Mr. Moore stated, prior to 2014, there were two lists of I/DD populations: unserved, meaning those receiving no services, and underserved, meaning those receiving partial services. The Centers for Medicare and Medicaid Services (CMS) determined an underserved list for those receiving partial services was not permitted because, once an individual was added to the waiver, the individual was entitled to all available I/DD waiver services based on individual need.

Mr. Moore responded to Committee members questions as follows:

- Additional funding and freezes for the I/DD waiver will be presented on October 22, 2021;
- Mr. Moore will check on the availability of waitlist data prior to 2012;
- The Frail Elderly waiver does not have a waitlist. KDADS has a monthly report on the number of individuals receiving waiver services each month; and
- Mr. Moore will provide information on whether the 14 service categories under the I/DD waiver are also available under the PD and other HCBS waivers.

HCBS I/DD Waiver Financial Eligibility

Russell Nittler, Senior Manager, Outreach and Presumptive Medical Disability Team, Kansas Department for Health and Environment (KDHE), presented information on the I/DD waiver eligibility process, including both financial eligibility and functional eligibility ([Attachment 4](#)) ([Attachment 5](#)). Mr. Nittler provided testimony on how a person qualifies for a HCBS waiver. To qualify for a HCBS waiver, an individual must meet both the functional and financial eligibility requirements.

Mr. Nittler noted the Medicaid financial eligibility requirement is often satisfied if an individual qualifies for Supplemental Security Income (SSI) from the Social Security Administration (SSA) (Title 16 of the Social Security Act). The SSI program is for individuals who do not have enough work quarters to qualify for Social Security Disability Insurance (SSDI). Persons who have been approved for SSI often qualify for Medicaid (Title 19 of the Social Security Act). A person who instead has been approved for SSDI may need to meet a spenddown (deductible) before qualifying for Medicaid.

Mr. Nittler explained the functional assessments are completed by community developmental disability organizations (CDDOs) upon application by an individual for HCBS I/DD waiver services. If a waiver slot is available for the individual, KDADS requests a provisional plan of care from the CDDO. The functional assessment must have been completed within the preceding year. Once the functional assessment and provisional plan of care are completed, KDHE makes a financial eligibility determination.

Mr. Nittler stated, when looking at financial eligibility for HCBS waivers for persons over the age of 19, KDHE first looks at whether the individual meets the SSA disability standards.

Persons over the age of 19 must meet the functional eligibility rules of the SSA. Persons under the age of 19 do not need to be determined disabled by SSA disability standards; they must satisfy only the functional eligibility requirement with assessment conducted by the CDDO.

For persons over the age of 19 who are not recipients of SSI, Mr. Nittler noted there is a financial calculation to determine HCBS waiver eligibility. The financial calculation reviews both (1) resources, which are capped at \$2,000, and (2) monthly income. When monthly income exceeds \$2,382 (the HCBS income standard), the client is responsible for a monthly client obligation (cost share) paid to the appropriate provider ([Attachment 6](#)). After the cost share is paid, the HCBS provider bills the managed care organizations (MCOs) for the balance of the services. Mr. Nittler stated, with new higher HCBS income standard as of July 1, 2021, very few consumers have a client obligation.

Mr. Nittler noted, per CMS rules, there is no resource limit for children under the age of 19 to qualify for HCBS I/DD services. The income or resources of the parents do not count in determining financial eligibility for a child. The child's income is counted to determine financial eligibility and is usually only a Social Security check.

Mr. Nittler stated the date KDHE determines the individual meets the functional and financial eligibility and has a provisional plan of care is the start date for receipt of I/DD benefits. At this point, the provisional plan of care is provided to the MCO, and the MCO creates a service plan between the individual and providers.

Following his presentation, Mr. Nittler responded to Committee members' questions as follows:

- Financial eligibility for Medicaid is based on two things: resources (assets) and monthly income. Resources are capped at \$2,000, but there are exemptions such as a vehicle or a home in which the individual resides. A resource is viewed as actual cash available to the party and other items including whole life insurance with a cash value (term life insurance is exempt) and certain burial plans (irrevocable burial plans valued at \$10,000 or less are most likely exempt); and
- When a member, due to a disability, is unable to write a check for the client obligation, a guardian, conservator, or other appropriate person may be identified to assist the individual. The question as to who assists in identifying the need, appropriate person, or both, to assist was deferred for a response from the Kansas Department for Aging and Disability Services (KDADS).

HCBS I/DD Waiver Functional Eligibility

Amy Penrod, Commissioner of Aging and Disability Services and Programs, KDADS, presented information regarding the HCBS Waivers and specifically the I/DD waiver ([Attachment 7](#)). Ms. Penrod stated the HCBS was authorized by Congress in 1983 with the addition of Section 1915(c) to the Social Security Act, giving states the option to receive a waiver of Medicaid rules governing institutional care. Each state designs its waiver program by choosing the maximum number of participants, the populations to be served, and the waiver services available. The waiver programs must cost no more than institutional care but still provide adequate and reasonable provider standards to meet the needs of the target population.

The waiver program must protect the health and welfare of the participants and ensure that each participant has an individualized and person-centered plan of care.

Ms. Penrod noted Kansas has seven HCBS waivers. The I/DD waiver provides HCBS services to individuals aged five and older who have an intellectual or developmental disability, or both. The I/DD waiver allows individuals with I/DD to stay in their homes and communities and receive services that maintain their mental and physical health. Ms. Penrod summarized the various types of services an individual may be eligible to receive on the I/DD waiver.

Ms. Penrod explained the HCBS I/DD waiver functional eligibility process. She noted the role of the 27 CDDOs in Kansas, as required by the Kansas Developmental Disabilities Reform Act is to serve as the single point of entry for I/DD waiver services. The CDDO assigned to an individual's area conducts the functional assessment for the individual. A map of the CDDO service areas was included in the testimony. Additionally, the CDDOs coordinate access to services and supports, assist individuals in selecting their service options, provide information and referral services, maintain a network of affiliate providers, do capacity planning, and maintain contact with individuals on the HCBS I/DD waitlist.

Ms. Penrod stated individuals enrolled in HCBS waivers are reassessed annually for continued eligibility. To remain eligible, individuals must use at least one service monthly, participate in an annual assessment, update their person-centered plan at least once annually, and update the KanCare application as requested.

Ms. Penrod responded to Committee members' questions as follows:

- States have the flexibility to tailor their waiver programs to certain populations. Kansas decided at some point to include children aged five and older;
- Under the Appendix K flexibilities created during the public health emergency, if an individual does not use at least one HCBS I/DD benefit each month, the individual cannot be removed from the waiver. In the usual circumstances, if the individual does not receive at least one waiver service per month, the MCO will call to ask why the service was not used and determine whether the plan of care needs to be adjusted to meet the needs of the individual;
- A diagnosis of developmental disability must be made by a licensed health care professional before the age of 22. An individual on the I/DD waitlist would already have been diagnosed;
- If a citizen living overseas moves back to the state and has documentation of an overseas diagnosis of I/DD, the individual may be able to receive assistance;
- The date of application and the date determined eligible would be used to determine the date the individual would be added to the waitlist;
- An individual is eligible to apply for KanCare and HCBS waivers on day one of residing in Kansas;
- There is not much risk of border hopping by out-of-state individuals to get on the Kansas I/DD waitlist as the wait time is currently 9.5 years;

- At least twice per year, KDADS works with MCOs to confirm there is accurate information for those who are on the waitlist and that the parties wish to remain on the waitlist;
- The veracity of documentation for the application is reviewed by program managers; and
- Kansas is reviewing how other states determine their waitlists.

Agency Presentation on the I/DD Waitlist

Ms. Penrod provided testimony regarding participation in the I/DD waiver ([Attachment 8](#)). She provided statistics on the I/DD waiver waitlist, waiver caseload history, and waitlist history. As of August 2021, 9,107 were enrolled in the waiver, 4,563 were on a waiting list, 9.5 years was the longest wait, and 70.0 percent of the population waiting for the I/DD waiver were receiving Medicaid services.

Ms. Penrod stated, with the change in programming to add the I/DD waiver population to KanCare, the I/DD underserved list ended in December 2013. All the individuals on the underserved list began receiving all I/DD waiver services to meet their needs.

Ms. Penrod noted the criteria for waitlist crisis requests and exception requests, which remove individuals from the waitlist and onto I/DD waiver services. To access the I/DD waiver services through a crisis exception, specific circumstances of confirmed abuse, neglect, or exploitation must exist as identified and documented by law enforcement or the Department for Children and Families (DCF). Alternatively, the crisis can be that the individual is at significant, imminent risk and can perform serious harm to themselves or others.

Responding to a question, Ms. Penrod stated approximately 50 individuals per quarter (200 annually) bypass the waitlist due to crisis or exception.

Ms. Penrod also provided demographics for those on the I/DD waiver and those on the waitlist.

Ms. Penrod explained that Louisiana developed a tiered approach to eliminate its waitlist. The tiered approach is based on the urgency of need for services instead of using a first-come, first-served approach. The state developed a tool, Screening for Urgency of Need, which creates five tiers of service. Individuals on the emergent and urgent tiers are offered the most appropriate services and supports. Those on the three lower-level-of-need tiers are placed on a registry to be reassessed at predetermined intervals. Louisiana has five I/DD waivers, with three for children and two for adults. Kansas has one I/DD waiver. Ms. Penrod stated there is a 10.0 percent Federal Medical Assistance Percentage (FMAP) enhancement pending CMS approval. Kansas has requested approval for a waitlist study as part of its plan for the 10.0 percent FMAP enhancement, which, once approved by CMS, will be competitively bid. The goal of the study is to understand who is on the waitlist, as well as current and future needs. This study will provide data so that a plan of action may be developed. During questioning, Ms. Penrod highlighted that current system capacity is limited and, if funding was available to add individuals to the waiver from the waitlist, the current system capacity could not serve everyone.

Comments were given by the Committee regarding the Louisiana model and the current Kansas waitlist.

In response to Committee members' questions, Ms. Penrod stated:

- Individuals on the HCBS I/DD waiver are not receiving all of the service hours allocated to them in their plans of care because of a lack of workers to provide the services. It would cost more than \$200 million to clear the waitlist, but the services could not be provided because of a lack of system capacity;
- Approximately 20-30 individuals on the waitlist die per year;
- Approximately 70.0 percent of individuals on the I/DD waitlist are on KanCare. KanCare eligibility is based on financial eligibility only. Some may not qualify for KanCare because of parental income. KanCare is based on household income, whereas HCBS waiver eligibility is based on the individual's income. Those on the waitlist are functionally eligible but do not receive HCBS I/DD waiver services because they are on the waitlist;
- About 200 to 250 individuals per quarter are removed from the I/DD waitlist for crisis or exception;
- Regarding the number of individuals on the waitlist who do not have a need, Ms. Penrod stated all individuals on the waitlist are qualified as functionally eligible at the time they are placed on the waitlist. There is not differentiation as to when the need would occur for the individual. The advantage of the waitlist study is to determine the level of need and the time frame for the need to allow time to get capacity in place; and
- With one I/DD waiver, the State cannot just add those who need fewer services. All services available under the I/DD waiver must be made available to the individual as needed. Other states have different I/DD waivers that offer a reduced level of services.

Presentations from Providers and Organizations on the I/DD Waitlist

Matt Fletcher, Executive Director, and Nick Wood, Associate Director, InterHab, ([Attachment 9](#)) provided testimony. In the preceding four months, InterHab members developed a series of recommendations and had recently provided a report to the legislators. They highlighted four items: historical context, the results of an InterHab study of individuals on the waitlist, an analysis of what other states have done to address their waitlist challenges, and a five-step plan to resolve the waitlist.

Mr. Fletcher began by providing historical context. In 1995, Kansas enacted the Kansas Developmental Disabilities Reform Act. Mr. Fletcher shared his view that the system has been underfunded since the late 1990s. Since 2000, inflation has increased by 63.86 percent, and provider rates have increased by 35.20 percent. The waitlist was last empty in the late 1990s.

Mr. Fletcher noted InterHab's survey from June 2021 to August 2021 included 39.6 percent of waitlist individuals and 58.10 percent of Kansas counties. The survey found:

- The average age of a person on the waitlist was 21.28 years old;
- Individuals under the age of 17 make up 45.17 percent of the waitlist, with a majority living at home with at least one parent; and
- Transition-age individuals (ready to leave high school, return to the community, or both) or in young adulthood account for 36.0 percent of the waitlist.

Mr. Fletcher stated the survey identified the following top ten services needed:

- Day Services (structured activities available during the day);
- Recreation Access and Support (connection to naturally occurring life-enriching activities);
- Case Management (assistance connecting to resources and advocating for the person);
- Employment (searching for, obtaining, and retaining a job in the community);
- Transportation (access to the community);
- In-Home Supports (paid assistance in the home, often referred to as personal care services or personal assistive services);
- Medical Appointment Management (assistance making and attending medical appointments);
- Behavior Analysis/Support (assistance with managing complex behavioral health challenges);
- Mental Health Support (counseling and therapeutic resources); and
- Affordable Housing (clean, safe and accessible housing in the community).

Mr. Wood noted InterHab staff had reviewed all 50 states' I/DD waivers and selected 5 (Missouri, Wisconsin, California, Washington, and Massachusetts) with promising practices that could be adopted in Kansas. Mr. Wood stated InterHab urged caution with Louisiana practices, as there had been a lawsuit settled out of court and concern that a registry is the same as a waitlist. The Louisiana registry currently has 16,000 individuals. InterHab's research indicates that Kansas is the only state with a comprehensive waiver, which offers residential and day services, 24 hours a day, 7 days a week. All other states have more than one waiver, and they are community support waivers rather than comprehensive waivers. Mr. Wood reviewed the

I/DD waivers and waitlist status in Missouri, Wisconsin, California, Washington, and Massachusetts and described an I/DD waiver service alternative, a community support waiver.

Mr. Fletcher stated InterHab recommends the creation of an I/DD System Modernization Task Force to accomplish the following five steps:

- Restore capacity in existing I/DD provider network through a series of funding increases;
- Develop service alternatives to the current I/DD HCBS waiver and provide enhancements to existing service options;
- Localize response efforts to serve waitlisted individuals;
- Provide funding for a planned drawdown of individuals on the waitlist; and
- Establish ongoing funding adjustments for provider network stability and to avoid a future waitlist.

Mr. Fletcher and Mr. Wood provided a copy of Interhab's *Strategic Roadmap; Eliminating the I/DD Waiting List/Addressing I/DD Capacity Erosion* ([Attachment 10](#)).

Craig Knutson, Policy Analyst, Kansas Council on Developmental Disabilities (KCDD), presented a history of how the KCDD was created and its role ([Attachment 11](#)). Mr. Knutson recommended Kansas conduct a statewide survey to determine the population that needs services, the entry point into the system, and the services the population may need now, as well as the short- and long-term future. Currently, 24 percent of caregivers are age 60 and older themselves and may need services to meet their needs in the short-term. On a per capita basis, Kansas spends less than other states for individual and family supports. Kansas ranks 40th in the nation on total fiscal amounts spent on I/DD services. ([Attachment 12](#)) Kansas needs to expand its offerings of individual and family supports. The KCDD also recommends that a statewide Waiting List Navigator position be created to assist the I/DD population and their families in connecting with resources to help prevent potential crisis situations while persons wait for I/DD services. The KCDD further recommends addressing system capacity issues.

Mike Burgess, Director of Policy and Outreach, Disability Rights Center of Kansas, recommended the state conduct a survey and create a task force to study the waitlist, with the results of the survey and task force informing the creation of a plan ([Attachment 13](#)). He also recommended the task force remain in place longer than the planning period to monitor outcomes. He stated he believes one issue the waitlist faces today is a lack of transparency, especially concerning those entering the system from crisis or exemption. He recommended a focus on reducing future needs of the population and provided some examples of current efforts and possible future changes. He commented on the current capacity issues, incomplete plans, costly impact of crisis care, state plan stagnation, ability to transition between waivers, and location of services in relation to the individual.

Colin Olenick, Legislative Liaison, Self Advocate Coalition of Kansas, presented virtual testimony regarding how the waitlist impacts those who are waiting for services and requested

the Committee find a way to end the waitlist ([Attachment 14](#)). He shared that he was on the waitlist after graduating from high school (2003) until he joined the I/DD waiver in 2007.

Sean Swindler, Director of Community Program Development and Evaluation, Kansas Center for Autism Research and Training, and the Kansas University Center on Developmental Disabilities (KUCDD), presented virtual testimony ([Attachment 15](#)). Mr. Swindler testified that KUCDD had two grants in the past year to review data around certain populations and their interaction with the system. One grant was to review the transition from school services to community services. The other grant was to review employment during transition in Kansas.

Mr. Swindler stated, after engaging 70 stakeholders, they found the waitlist drives the decision-making around the future of the I/DD population. The review showed once school is completed at either age 18 or 21, if there is a gap in services due to the waitlist, the living skills the individual learned during the school years are lost. The families and individuals do not know when they will come off the waitlist. There is a lack of information about who is on the waitlist and how crisis care is impacting the system. The waitlist is driving fragmented service silos. KUCDD joined others in recommending that a task force be created.

The conferees responded to Committee members' questions as follows:

- Mr. Swindler noted challenges being faced by the I/DD population include workforce needs, integrated employment needs, and the need to be more involved in the community;
- Mr. Burgess noted the impact of guardianships on this population in Kansas and stated many individuals with I/DD do not need guardianships when they turn 18 years of age but could benefit from "supported decision-making," which has been implemented in a number of other states; and
- Mr. Fletcher stated the special services referenced in the survey would be services not currently offered under the comprehensive I/DD waiver that individuals might need.

Lunch

The Committee recessed for lunch at 12:21 p.m. The Chairperson called the meeting to order at 1:41 p.m.

Presentations from Individuals on the I/DD Waitlist

Tracy Schinzel, private citizen, provided testimony on her personal experience as a parent and the financial decisions she is making regarding qualifying for Medicaid for her child to access services. She advocated for the end of the waitlist. ([Attachment 16](#))

Dr. Bongsi Wenyika, private citizen, provided virtual testimony on her personal experience as a parent of a teenager who will need I/DD waiver services upon transitioning from school to the community at age 21 but is facing a wait time of about eight years to receive I/DD waiver services. ([Attachment 17](#))

Roberta Brecheisen, private citizen, provided virtual testimony on her personal experience as the parent of an adult child with intellectual disabilities upon relocating back to Kansas, which required applying for HCBS services and being on a waitlist of about ten years. Her concern was that of an aging parent and estate planning for her child. ([Attachment 18](#))

The following individuals provided written-only testimony:

- Anna Slattery, private citizen ([Attachment 19](#)); and
- Tera Jackson, private citizen ([Attachment 20](#)).

The Committee asked clarifying questions of the individuals regarding their experiences.

Agency Presentation on the I/DD Workforce

Ms. Penrod, KDADS, presented testimony on workforce and provider networks ([Attachment 21](#)). Nationally, the demand for direct care workers is growing, as these workers assist older adults and individuals with disabilities with essential daily tasks to allow individuals to age and receive care in place. She provided the national perspective on the number of available jobs anticipated in the next ten years and the median pay, as well as the trends in Kansas.

Ms. Penrod stated KDADS and KDHE submitted a joint FMAP Enhancement spending plan to CMS on July 9, 2021, that would provide enhanced federal funding for HCBS through a one-year 10.0 percent increase to the share of state Medicaid spending contributed by the federal government through 2024. The three areas targeted in the spending plan are workforce, employment, and access to care. For workforce improvements, the plan seeks to improve retention and recruitment of direct support workers, provide training grants, and design a career ladder for the direct support workforce.

In response to Committee members' questions, Ms. Penrod provided the following answers:

- The State sets the floor reimbursement rate for providers, and the MCOs have the flexibility to increase the rate;
- The FMAP plan was submitted to CMS on July 9, 2021, and is pending approval. If the plan is approved by CMS, the funding will be permitted to be drawn down for one year, but the spending window is through March 2024. The workforce issue is nationwide and any bonus program is assistive but not a long-term solution.

Presentations by Providers and Organizations on the I/DD Waiver Workforce

Lori Feldkamp, President and Chief Executive Officer (CEO), Big Lakes Developmental Center, presented virtual testimony. She commented on the need to address the waitlist and the I/DD service system's lack of capacity to expand services. She discussed the challenges of both retaining and recruiting the workforce and the pay increases and bonus incentives implemented to help address those challenges ([Attachment 22](#)). She reviewed strategies that could be implemented over several years to improve workforce shortages and reduce the waitlist.

Colin McKenney, CEO, Starkey, Inc., presented virtual testimony. He stated Starkey has made a long-term commitment to serving adults with intellectual disabilities. He discussed the workforce capacity issues and the need for retention and recognition of the longevity of employees within the system ([Attachment 23](#)). He noted Starkey, Inc., has about one-third of its positions vacant at a time when more skilled workers are needed due to additional COVID-19-related challenges.

Michelle Crumpton, Day Service Coordinator, Big Lakes Developmental Center, Inc., presented virtual testimony. She testified regarding the impact of the increased workload on the staff, including the variability of the workload, compensation, and staffing hours ([Attachment 24](#)),

Stephanie Rasmussen, Vice President of Long-Term Supports and Services, Sunflower Health Plan, presented testimony regarding the experiences of the Sunflower Health Plan. Sunflower serves 53.0 percent of the individuals on the I/DD waiver and 84.0 percent of the individuals in intermediate care facilities. Sunflower is experiencing changes in service availability for providers due to workforce challenges. She presented testimony on proposed solutions around supports from technology to workforce staffing models. ([Attachment 25](#))

Rachel Neumann, Director of Operations, COF Training Services, Inc., presented testimony from a personal and provider perspective. She discussed the changes her agency has undertaken to right-size the agency, increasing benefits, and providing shift pay differentials ([Attachment 26](#)).

The following individuals provided written-only testimony:

- David Livingston, CEO, Aetna Better Health of Kansas ([Attachment 27](#));
- Robin Griffin-Lohman, CDDO Director, Tri-Ko ([Attachment 28](#)); and
- Melody Dowling, Health Services Director, UnitedHealthcare Community Plan ([Attachment 29](#)).

Adjourn

The meeting was adjourned at 3:35 p.m. The meeting will reconvene on October 22, 2021, at 9:00 a.m.

FRIDAY, OCTOBER 22 ALL DAY SESSION

The Chairperson called the meeting to order at 9:03 a.m. and welcomed members, staff, conferees, and guests.

Overview of Previous Day

Connor Stangler, KLRD, presented a brief overview regarding the status of answers to Committee questions from the previous day. KDHE provided additional information on exempted

assets. Further information on waitlist versus waiver assets would be provided later. KDADS provided an overview of the HCBS program which led to a question regarding the waitlists in surrounding states. Mr. Stangler provided a link to the Kaiser Family Foundation's FY 2018 data regarding the waitlists in surrounding states. KDADS confirmed this was the most recent data available. HCBS waiver programs operate differently state-by-state, so the data was not an exact match for comparison to the Kansas waitlist. KDADS will need to follow up on Louisiana I/DD waiver data, how many persons have passed away while on the Kansas I/DD waitlist, the number of crisis exemptions granted annually in Kansas, and how many individuals have come off the waitlist and entered institutional care. KDADS shared several documents regarding the FMAP enhancement plan: the cover letter ([Attachment 30](#)), executive summary ([Attachment 31](#)), spending plan ([Attachment 32](#)), letter from KDHE to CMS with additional information ([Attachment 33](#)), the compendium ([Attachment 34](#)), and a partial approval letter from CMS to KDHE ([Attachment 35](#)). KDADS did not have data to address a request regarding closures due to vaccine mandates and workforce issues. KDADS provided facility closure information for calendar year 2021: two adult care home facilities closed in quarter one, four closed in quarter two, and three closed in quarter three ([Attachment 36](#)).

Mr. Stangler responded to questions from Committee members.

Reimbursement Rate History and I/DD Waiver Funding Overview

Matthew Moore, KLRD, presented information regarding reimbursement rate history and an I/DD waiver funding overview ([Attachment 37](#)). He stated there are traditionally two types of appropriations: one to move individuals off the waitlist and the other to increase reimbursement rates for providers. From 2011 to 2017, Mr. Moore could not identify any reimbursement rate increase. Beginning in 2018, there have been increases each fiscal year.

Mr. Moore responded to questions from Committee members.

Agency Presentation on I/DD Waiver Reimbursement Rates

Amy Penrod, KDADS, provided an agency presentation on I/DD waiver reimbursement rates ([Attachment 38](#)). Waivers are funded with a mix of state funds and a federal share calculated bases on Kansas' FMAP. The federal formula considers the average personal income in the state in comparison to the national average. In states with lower per capita income relative to the national average, the federal government pays a larger portion of Medicaid costs. For state fiscal year (SFY) 2022, Kansas received a FMAP of approximately 60.0 percent from the federal government. (The 10.0 percent FMAP enhancement is not included in this amount.)

Ms. Penrod provided an overview of the I/DD waiver funding, noting that the KDADS budget captures the waiver costs while medical costs are reflected in the KDHE budget. Details of how the waiver works in the managed care system were reviewed, including flexibilities around the traditional "fee for service" model. The managed care minimum rates, which the State sets, from 2017 forward for each service were provided.

Ms. Penrod responded to questions from Committee members.

Overview of Budget Neutrality

Sarah Fertig, State Medicaid Director, KDHE, presented virtual testimony regarding how budget neutrality works ([Attachment 39](#)). Medicaid is a federal and state partnership. The federal partner is CMS. CMS approves the Kansas Medicaid state plan and pays approximately 59.0 percent of Kansas Medicaid costs. Traditionally, Medicaid uses a fee-for-service model. However, different models can be used by receiving approval under a waiver authorized under Section 1115 of the federal Social Security Act. In January 2013, under a Section 1115 waiver, Kansas began a managed care model (KanCare). The long-term services and supports for individuals on the I/DD waiver were not initially included but those individuals did transition into the managed care system in early 2014. On January 1, 2019, the second five-year Section 1115 waiver (KanCare 2.0) began. KanCare 2.0 runs from January 1, 2019, through December 31, 2023, with three MCOs, which cover roughly 95.0 percent of the Kansas Medicaid beneficiaries.

Ms. Fertig stated the core of a Section 1115 waiver is that the program operated under a Section 1115 waiver cannot cost more federal dollars than the federal government would have contributed to the state Medicaid program without the Section 1115 waiver. This is called budget neutrality.

Ms. Fertig explained CMS calculates and sets the limit on the amount of federal funds Kansas receives for Medicaid. The federal funding limit is currently set for January 1, 2019, through December 31, 2023, for the entire Medicaid population. To calculate the federal funding limit, CMS created two groups of KanCare beneficiaries. One group consists of adults and children including pregnant women and caretaker adults. The other group consists of those who are Aged, Blind and Disabled and in Long-Term Care. CMS determines a per member, per month (PMPM) limit for each individual in each of the two groups. CMS sets this rate, which is not adjusted throughout the life of the waiver regardless of changes to state law or Kansas' Medicaid State plan, unless CMS agrees to revise the cap. The PMPM limits are the state's Section 1115 waiver budget neutrality caps. Therefore, when adjustments are made to the program, such as changing provider rates, there is a potential impact to the budget neutrality calculation. However, some changes were made recently that did not impact budget neutrality, such as providing rate increases outside of MCO capitation payments or changes in the protected income level.

Ms. Fertig noted Kansas would be at risk of not receiving federal matching funds for any costs above the budget neutrality cap. CMS could put the State on a corrective action plan if it appeared the State would exceed its budget neutrality cap. If at the end of the Section 1115 waiver period the budget neutrality cap was exceeded, the excess federal funds must be returned to CMS.

Ms. Fertig stated, in 2018, CMS calculated the current Kansas budget neutrality cap which reduced the cap below what Kansas had expected for the five-year period covering KanCare 2.0. The MCO privilege fee was increased from 3.31 percent to 5.77 percent effective January 1, 2018, but CMS gave Kansas credit for only 4.54 percent, resulting in a reduction of the cumulative budget neutrality cap of \$234.0 million. A pause in eligibility redeterminations during KanCare 1.0 when the State refocused Clearinghouse efforts on processing new applications impacted the budget neutrality cap for Adults and Children, resulting in a reduction in the cap for that group of \$139.5 million. KDHE is currently preparing a proposal to request CMS review the budget neutrality calculation for KanCare 2.0 on these two issues.

Ms. Fertig responded to questions from Committee members.

Presentations by Providers and Organizations Regarding I/DD Reimbursement Rates

Mike Burgess, Disability Rights Center of Kansas, presented testimony from an advocate's perspective on the I/DD reimbursement rates ([Attachment 40](#)). He reviewed the recent history and how recent changes have benefited the HCBS I/DD system. He then provided some recommendations for the Committee to consider. First, he reviewed two types of choices for direction of services. One option is agency-directed, where services are selected for an individual by an agency. The agency is then responsible for hiring providers and coordinating the care. The other option is self-directed, where the individual chooses a provider to oversee the payment of the person providing services, but the individual selects the persons who will provide their services per the plan of care. Mr. Burgess recommended review of the supported employment rate to balance the pay of the service provider with the overhead costs of the CDDO. He also recommended adding to the system an automatic review of the service provider rates. The Disability Rights Center of Kansas would support KDADS bringing in a national consultant to provide technical assistance with studying the need to adjust rates.

In response to Committee members' questions, Mr. Burgess stated it would take at least five years of increased rates and planning to address workforce capacity. The KDADS waitlist study will help identify the needs in each catchment area. He also noted children with I/DD who are also in foster care are eligible for the I/DD waiver.

Stephanie Rasmussen, Sunflower Health Program (Sunflower), presented testimony by revisiting the topic of how a functional needs determination is made by one of the 27 CDDOs with whom Kansas contracts ([Attachment 41](#)). It is a two-step process where (1) a determination is made that the individual has an intellectual or developmental disability that meets the state and federal definition and (2) the individual has enough functional need to qualify for waiver services. A standardized assessment is used to make the determination. This BASIS assessment looks at three things: daily medical needs, day-to-day living skills, and behavioral support needs. Each of the assessments results in a tier score evaluation, with tier one being the highest need and tier five being the lowest need. It is assumed for individuals under 18 that parents or foster parents are providing the certain supports in their role as a parent. Individuals over age 18 are eligible for all services, including day and residential services. State policy allows for a "super" tier score to be applied if an individual demonstrates extraordinary need.

Ms. Rasmussen noted Sunflower had implemented the state rate increases for I/DD waiver services that occurred in calendar year 2021. The first increase was a 5.0 percent increase effective April 1, 2021, for all I/DD HCBS waiver services and the second was an additional 2.8 percent effective July 1, 2021. The rate increases have been helpful, but providers have indicated significant issues exist related to direct caregiver position openings and a lack of interested applicants.

Ms. Rasmussen stated Sunflower continues to have alternative payment contracts with four, large I/DD providers, which include agreed-upon rates for supporting persons with I/DD who have challenging behavior. Sunflower is also working on a pilot project with two I/DD providers to engage in a value-based payment arrangement for successfully supporting persons with I/DD to obtain competitive employment.

Ms. Rasmussen responded to questions from Committee members.

Lunch

The Committee recessed for lunch at 11:33 a.m. The Chairperson called the meeting to order at 1:04 p.m.

Recommendations

Chairperson Hilderbrand requested comments and recommendations on the I/DD waitlist, the I/DD workforce, and I/DD waiver reimbursement rates and funding.

The Committee generally agreed the State should explore how to move individuals from the HCBS I/DD waiver waitlist to the waiver.

After discussion, the Committee agreed to the following recommendations:

- *A motion was made by Representative Landwehr and seconded by Representative Ballard to recommend the Legislative Coordinating Council consider approving a task force or committee, with a similar structure to the 2020 and 2021 Special Committees on Kansas Mental Health Modernization and Reform, to study modernization of the HCBS I/DD waiver. The motion carried.*
- *A motion was made by Representative Ballard and seconded by Representative Ruiz to recommend the Legislature provide funding for HCBS I/DD waiver providers to give direct care support workers pay raises as an incentive to retain more long-term employees. The motion carried.*
- *A motion was made by Representative Ruiz and seconded by Representative Ballard to request KDADS provide recommendations to the House Committee on Social Services Budget and the Senate Committee on Ways and Means Subcommittee on Human Services for increases to the personal care attendant and supportive employment reimbursement rates. The motion carried.*
- *A motion was made by Representative Ruiz and seconded by Senator Hawk to request KDADS conduct an analysis of the targeted case management rates of the HCBS I/DD waiver and compare them to those of the Supports and Training for Employing People Successfully (STEPS) Program and report its findings to the House Committee on Social Services Budget and the Senate Committee on Ways and Means Subcommittee on Human Services. The motion carried.*
- *A motion was made by Senator Gossage and seconded by Senator Baumgardner to recommend the Legislature identify areas in the budget to reduce expenditures in order to provide increased funding for HCBS I/DD waiver expenditures. The motion carried.*
- *A motion was made by Senator Gossage and seconded by Representative Waymaster to recommend the Legislature study how other states have addressed HCBS waitlists through restructuring those programs under different*

waiver authorities and the State's options for its HCBS I/DD waiver. The motion carried.

- *A motion was made by Senator Hawk and seconded by Senator Gossage to request KDADS and KDHE collect and provide information on the actual services individuals on the HCBS I/DD waitlist currently need, and separately collect and provide information on the actual services individuals on the HCBS I/DD waiver currently use. The motion carried.*
- *A motion was made by Senator Gossage and seconded by Representative Ballard to recommend the Legislature consider providing individual budget authority to I/DD waiver participants who self-direct their services. The motion carried.*
- *A motion was made by Representative Waymaster and seconded by Senator Gossage to request KDADS evaluate whether projects, particularly state infrastructure and consultant services, identified in its HCBS temporary 10.0 percent FMAP plan may be funded with pandemic-related American Rescue Plan Act (ARPA) funding. If projects may be funded with ARPA funding, then the Committee recommends the agency submit its plans to the Health and Education advisory committee of the Strengthening People and Revitalizing Kansas (SPARK) Task Force for consideration. The motion carried.*
- *A motion was made by Senator Hawk and seconded by Representative Landwehr to recommend the Legislature explore legislation to provide automatic annual adjustments for the HCBS I/DD waiver reimbursement rates. Should the Legislative Coordinating Council approve an I/DD waiver task force or committee, such committee should explore potential legislation. The motion carried.*

Matthew Moore, KLRD, summarized the list of recommendations made by the Committee.

The Chairperson thanked Committee members, staff, and conferees for their assistance and participation.

The Chairperson adjourned meeting at 3:15 p.m.

Prepared by Donola Fairbanks

Edited by Elizabeth Cohn and Iraida Orr

Approved by the Committee on:

October 20, 2023

(Date)