

MINUTES

SPECIAL COMMITTEE ON INTELLECTUAL AND DEVELOPMENTAL DISABILITY WAIVER

August 7, 2023
Room 112-N—Statehouse

Members Present

Senator Beverly Gossage, Chairperson
Representative Les Mason, Vice Chairperson
Senator Rick Billinger
Senator Michael Fagg
Senator Pat Pettey
Senator Ronald Ryckman
Representative Barbara Ballard (via Webex)
Representative David Buehler
Representative Will Carpenter
Representative Bill Clifford
Representative Christina Haswood

Members Absent

All members present.

Staff Present

Dayton LaMunyon, Kansas Legislative Research Department
Megan Leopold, Kansas Legislative Research Department
Jenna Moyer, Office of Revisor of Statutes
Carly Humes, Office of Revisor of Statutes
Gary Deeter, Committee Assistant

Conferees

Michele Heydon, Commissioner, Long Term Services and Supports, Kansas Department for
Aging and Disability Services
Dr. Evan Dean, Associate Director of Community Services, Kansas University Center on
Developmental Disabilities
Holly Creamer, Regional Director, Kansas Behavioral Supports
Matt Fletcher, Executive Director, InterHab
Nick Wood, Associate Director, InterHab
Lori Feldkamp, President and CEO, Big Lakes Development Center
Doug Wisby, President and CEO, Multi-Community Diversified Services
Kevin Fish, Executive Director, AbilityPoint
Colleen Himmelberg, CEO, Cottonwood Incorporated
Rachel Neumann, Chief Operating Officer, COF Training Services

Michael Fitzpatrick, President and CEO, CLASS LTD
Sara Hart Weir, Executive Director, Kansas Council on Developmental Disabilities
Colin Olenick, Legislative Liaison, Self Advocate Coalition of Kansas
Grant Kozisek, private citizen
Laura Kozisek, private citizen
Dolores Kitchin, private citizen
Rick Elskamp, private citizen

MONDAY, AUGUST 7 ALL DAY SESSION

Welcome

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

Presentation on I/DD Waiver Rates

Michele Heydon, Commissioner, Long Term Services and Supports, Kansas Department for Aging and Disability Services (KDADS), provided an overview of the Home and Community Based Services (HCBS) waivers that provide Medicaid-reimbursed services to individuals with intellectual and developmental disabilities (I/DD) in their homes and communities instead of an institutional setting ([Attachment 1](#)). She outlined the requirements of the I/DD Waiver program, which was established in Kansas in 1991. A person diagnosed with I/DD may be eligible for waiver services after being assessed by a Community Developmental Disability Organization (CDDO).

Ms. Heydon then traced the process by which the state establishes a payment amount to be paid to providers delivering services to individuals on the waiver. Each service has a specific reimbursement rate associated with it, which is paid to the provider through a Managed Care Organization (MCO). The Kansas Department of Health and Environment (KDHE) contracts with the MCOs and KDHE sets a per-member per-month capitation floor rate from which providers can negotiate with the MCOs to receive a higher rate. Ms. Heydon explained how services are billed and the process to increase rates. She provided details regarding the current tiered service rates for FY 2024, the I/DD waiver rate history, and the statutorily required biennial rate study, last completed in 2016.

Ms. Heydon responded to members' questions:

- Waiver eligibility is based on the individual's income instead of family income;
- The I/DD Waiver serves over 9,000 individuals with a wait list of over 5,000;
- There may be a large, unidentified population of individuals with I/DD who have not contacted a CDDO to indicate a need for services;

- An individual on the waiver is eligible for an entire range of services, whether or not the services are needed, as well as any needed services offered on the state Medicaid plan; and
- Because an I/DD individual may not need all services offered on the existing I/DD Waiver, KDADS is developing a Community Support Waiver to serve individuals requiring less intensive supports, enabling the agency to reduce the wait list.

Update on I/DD Waiver Study

Dr. Evan Dean, Associate Director of Community Services, Kansas University Center on Developmental Disabilities (KUCDD), reviewed the status of the planned HCBS Waiver Study ([Attachment 2](#)). He noted KUCDD's core functions are to research, train, assist the community and disseminate information. Dr. Dean stated the two-fold aim of the project is to collect and analyze existing waitlist data and to collect information on needed supports for those on the waitlist.

Dr. Dean reported the initial results of KUCDD's initial data collection and analysis: 4,831 individuals are currently on the waitlist for the I/DD Waiver with an average wait time of 5 years and a maximum wait time of 11 years. Currently, 2,344 individuals are on the wait list for the Physical Disability (PD) waiver for an average wait time of 1 year and a maximum wait time of 14 years. He provided a chart that indicated the birth years for individuals on both waitlists, and provided information on the most common reasons for being removed.

Next, Dr. Dean spoke to KUCDD's second project goal of analyzing data on the existing waitlist and the supports needed by those individuals through a survey. As he described, data collected through the survey will focus on the demographics, experiences, and supports needed by individuals on the wait list. This information will then be used to forecast future service needs. Dr. Dean then presented information from other states that have waitlists. Of the 35 states contacted with I/DD waivers, 15 states responded. Of the 21 states with PD waivers, 10 states responded. All states that responded have a variety of services and supports for those on the waitlists. Four states (Wisconsin, Missouri, North Dakota, and Alabama) have eliminated waitlists.

Dr. Dean answered members' questions:

- Caregivers of individuals on the I/DD Waiver waitlist do not currently receive services;
- Other states have an average wait time of six years for their I/DD waivers;
- Individuals on the I/DD waitlist receive educational services while they are still in school, which are not equivalent to the services offered on the I/DD Waiver;
- The survey will be sent via email to 20 percent of those on the waitlist, and KUCDD will follow up via phone or in person if a response is not received;

- Only one other state has a longer waitlist than Kansas; and
- The survey will randomly cover the entire state of Kansas.

Update on Community Support Waiver

Ms. Heydon returned to explain the proposed Community Support Waiver (CSW), which would provide less intensive supports than those offered on the current comprehensive I/DD waiver ([Attachment 3](#)). She compared the proposed services on the CSW with the services offered on the current comprehensive waiver. Ms. Heydon offered cost estimates for the CSW, which range from \$72 million all funds, including \$29 million from the State General Fund (SGF) to \$149 million all funds, including \$40 million SGF. Ms. Heydon reported KDADS is awaiting approval from the Centers for Medicare and Medicaid Services (CMS) to use Federal Medical Assistance Percentage (FMAP) savings to write the waiver application, with the goal of submitting the application to CMS by October 2025 and offering services beginning March 2026.

Ms. Heydon responded to members' questions:

- The I/DD waitlist may decrease as individuals requiring fewer services join the CSW instead of waiting for the comprehensive waiver;
- KDADS proposes adding individuals from the waitlist to the CSW over several years to develop provider capacity over time; and
- Individuals may receive services through the CSW while on a waitlist for the comprehensive waiver or until they require the more intensive services offered on the comprehensive waiver.

Presentation on I/DD Waiver Rates by Individuals, Providers, and Organizations

Holly Creamer, Regional Director, Kansas Behavioral Supports, outlined the services provided by the agency and listed the challenges faced in providing these services, including unreimbursed transportation, ongoing training costs, unreimbursed case management, and, for families, waiting for I/DD or Autism waiver services ([Attachment 4](#)). Ms. Creamer commented that the current applied behavioral analysis reimbursement rate is not sustainable.

Matt Fletcher, Executive Director, InterHab, expressed gratitude for the recent increase in funding for the I/DD population. Mr. Fletcher expressed concern for chronic underfunding caused by irregular updates in provider reimbursement rates ([Attachment 5](#)). Mr. Fletcher cited the 1995 Kansas Developmental Disabilities Reform Act, which promises to provide "adequate and reasonable funding," and the uneven record of funding that has not kept pace with inflation or client needs. Mr. Fletcher said this shortfall can be addressed by conducting regular funding reviews of the I/DD service system, and he recommended the biennial rate study include a review of competitive staff compensation, staff training, a quality assurance program, risk management and insurance costs, and program management/coordination. Mr. Fletcher stated regular funding adjustments are critical to employ and retain direct-support professionals to deal with the complex needs of I/DD individuals.

Nick Wood, Associate Director, InterHab, outlined key components to be included in a rate study ([Attachment 6](#)). Mr. Wood explained inflationary indexes are only a beginning and an acceptable rate study must be flexible enough to include the wide range of factors impacting costs to I/DD Waiver service providers, such as regional differentials, increasing workforce capacity, flexible transportation policy, and administrative factors.

Lori Feldkamp, President and CEO, Big Lakes Development Center, expressed gratitude for the recent 25 percent reimbursement rate increase, which has enabled her to attract and retain direct support professionals; however, the benefit has been offset by inflationary increases to other administrative costs ([Attachment 7](#)). To address these shortfalls, she recommended regular increases in the HCBS reimbursement rates. Responding to a question, Ms. Feldkamp replied that 88 percent of her clients are on Medicaid.

Doug Wisby, President and CEO, Multi-Community Diversified Services, stated the 25 percent reimbursement rate increase has been helpful in recruiting and retaining staff, but regular reassessment of reimbursement rates is needed to provide sustainability in services and management costs ([Attachment 8](#)). Responding to a question, he replied that almost 100 percent of his agency's clients are supported by Medicaid.

Kevin Fish, Executive Director, AbilityPoint, reported the reimbursement increase for Targeted Case Management (TCM) has enabled the agency to address financial shortfalls and allows plans for expanding services to clients. He explained that about 65 percent of a Targeted Case Manager's time is billable, provided information on the value of TCM to individuals with I/DD, and recommended the new rate study not only cover the costs but offer incentives for building service capacity ([Attachment 9](#)).

Colleen Himmelberg, CEO, Cottonwood Incorporated, emphasized her support for a new rate study that will build on the recent reimbursement rate increase and offer ongoing stability for agencies that provide services for the I/DD population ([Attachment 10](#)).

Rachel Neumann, Chief Operating Officer, COF Training Services, expressed gratitude for the 25 percent reimbursement rate increase and encouraged members to work toward a rate schedule that will keep pace with rising costs. She noted in the last two decades inflation has increased by 57 percent while I/DD rates have only increased by 22 percent. She recounted personal stories of working as direct care staff, commented on the increased costs of services, and recommended a rate adjustment system that regularly analyzes and adjusts rates in relation to inflation and regulatory expectations ([Attachment 11](#)).

Lunch

Members recessed for lunch from 12:03 p.m. to 12:45 p.m.

Continuation of Presentation on I/DD Waiver Rates by Individuals, Providers, and Organizations

Michael Fitzpatrick, President and CEO, CLASS LTD, reviewed the present I/DD rates and explained the current model which assigns a tier to each individual on the I/DD Waiver based on an individual's medical needs and behaviors. Mr. Fitzpatrick explained the

reimbursement rate decreases as an individual's behaviors are considered managed and their tier decreases; however, the lower reimbursement rates do not cover the cost to keep the behaviors managed. He offered a series of recommendations to make the reimbursement rate reflect the different levels of care ([Attachment 12](#)).

Sara Hart Weir, Executive Director, Kansas Council on Developmental Disabilities, offered three recommendations to address the reimbursement rate disparity between rates and costs:

- Provide more flexibility and choice for self-advocates and families by improving rates for self-direction and independent budget authority so family caregivers can receive reimbursement;
- Provide rate parity for self-directed individuals in relation to provider-directed services; and
- Address the work-force crisis by increasing wages for service providers ([Attachment 13](#)).

Responding to a question, Ms. Weir replied more resources for one-on-one services are needed, such as coaches for those experiencing work conditions for the first time.

Colin Olenick, Legislative Liaison, Self Advocate Coalition of Kansas, emphasized the importance of independent budget authority for self-directed individuals ([Attachment 14](#)). Mr. Olenick said the CSW would help reduce the present waiting list for those on the I/DD waiver.

Grant Kozisek, private citizen, recounted his experience as a brother to an individual with severe developmental disabilities ([Attachment 15](#)). Mr. Kozisek traced the impact of limited Social Security Disability income, increased expenses, and the option of receiving services in group homes and day programs.

Laura Kozisek, private citizen, supplemented Mr. Kozisek's testimony by emphasizing the special care required to care for her disabled son, the importance of transportation, and currently available resources ([Attachment 16](#)).

Dolores Kitchin, private citizen, related her personal story in dealing with her son's disabilities.

Conferees responded to questions as follows:

- Commissioner Heydon replied that MCOs may contract with out-of-state providers to serve individuals on the I/DD waiver. Ms. Kozisek responded such option is complex and time-consuming;
- Ms. Kozisek said when an individual ages out of educational services, transportation is available for medical services, but not for other purposes;
- Regarding Mr. Elskamp's written testimony, Ms. Kozisek explained that 10 percent above the reimbursement rate was provided for ancillary services; and

- Ms. Kozisek replied quarterly reports to CMS provide regular evaluation of a program's effectiveness and any self-directed budget program must be approved by CMS.

Written-only testimony was provided by the following:

- Rick Elskamp, Citizen, concerning barriers and difficulties Mr. Elskamp and his family have faced ([Attachment 17](#));
- Molly Kennis, Vice President of Operations for Arizona, Colorado, and Kansas, Mosaic ([Attachment 18](#)), concerning the biennial rate study and other concerns related to I/DD Waiver service reimbursement rates; and
- Ms. Heydon, regarding projects completed and awaiting approval from CMS using federal funding available pursuant to the American Rescue Plan Act for the purpose of expanding HCBS services ([Attachment 19](#)).

Committee Discussion and Recommendations

Members extensively discussed issues such as independent budget authority and expanding transportation in preparation for recommendations to the 2024 Legislature.

Members made the following recommendations:

- In developing a methodology for the biennial rate study, KDADS should satisfy the following requirements:
 - Incorporate appropriate inflationary indexes as part of its examination of service costs;
 - Examine all service-related costs;
 - Adjust all five elements that are included in KSA 39-1806 based on inflationary data;
 - Examine all services within the I/DD system, including those services not delivered via the HCBS I/DD Waiver; and
 - Recommend an increase to at least cover inflationary increases experienced during the previous fiscal year;
- In conducting the biennial rate study, KDADS should review reimbursement rates utilizing actual cost data, similar to the process for rebasing nursing facility rates;
- KDADS should continue developing the Community Support Waiver, accelerating the timeline where possible;
- KDADS should consider including individual budget authority in its upcoming renewal application for the existing comprehensive I/DD Waiver;

- KDADS should explore the creation of a community support program to precede CMS approval for the Community Support Waiver; and
- KDADS should explore options to provide non-medical transportation for individuals on the waiver and waiting list, including reimbursement or development of a transportation system, and should provide a cost estimate of such options.

Adjourn

The Committee adjourned at 2:15 p.m.

Prepared by Gary Deeter

Edited by Dayton LaMunyon and Megan Leopold

Approved by the Committee on:

November 20, 2023

(Date)