



**Bob Bethell Joint Committee on
Home and Community Based Services and KanCare Oversight
November 25, 2013**

Good Morning Madam Chairperson and members of the Committee. Thank you for the opportunity to present testimony about access and quality of services provided under KanCare. My name is Rocky Nichols. This morning I appear before you on behalf of the Big Tent Coalition, which is the largest cross-age, cross-disability advocacy organization. The Big Tent Coalition (BTC) is a grassroots coalition of dozens of organizations as well as people with disabilities, seniors, friends, family members, advocates, and service providers.

We are here today to sound some significant warning bells about several issues that collectively appear to show a disturbing shift in state policy. We are asking this committee to weigh in and advocate to change this direction. We implore you to help protect the lives of Kansans with disabilities. If our understanding of the proposed changes is correct, it would bring our worst fears about KanCare to life. If you recall, stakeholders in the disability community warned this the Legislature that if HCBS Medicaid Waiver services were included in KanCare the profit motive of managed care would work in a symbiotic manner with the state's desire to restrict expenditures. We told you that we were afraid that KanCare would be used as a tool to push people out of services, to restrict access to services, and to make it harder to access life affirming HCBS services. Unfortunately, if our understanding of the changes are correct, then those fears may be coming true.

These fears are why the Big Tent Coalition published the report entitled "Going All In Why Gamble with the lives of Kansans?" back in January 2011. This gamble has happened. Kansans with disabilities appear to be losing. In that report, the Big Tent Coalition called for excluding, or "carving out," all HCBS Waiver services from KanCare. That did not happen. All Waivers but DD were "carved in" (or included in KanCare), and DD is now set to be "carved in" beginning January 1, 2014.

Discriminating Against Kansans with Mental Illness on the PD Waiver:

- Excluding Kansans from the PD Waiver just because they have SPMI (Serious and Persistent Mental Illness).
- Concern that the state will also apply an even broader standard to restrict all people who happen to be diagnosed with a "mental illness" from the PD Waiver. " (see KDADS Physical Disability Wait List Verification form).

There appears to be a significant shift in the way in which the Physical Disability (PD) Waiver rules are being interpreted and carried out that is discriminatory against Kansans with mental illness. This also appears to go against the wording and intent of the Kansas Administrative Regulations. The PD Waiver issues addressed in this testimony were discussed in a public meeting by state officials at the Money Follows the Person Steering Committee or they come from discussions stakeholders have had with state agency staff. This information was shared with and confirmed by multiple stakeholders at last Thursday's Big Tent Coalition meeting. We sincerely hope that the state is simply mistaken in its new interpretations and that incorrect or incomplete information has been shared by the state of Kansas with stakeholders. However, until the Brownback Administration clarifies these issues and definitively ensures that all stakeholder concerns will be effectively and fully alleviated, then this Committee has a significant problem on its hands.

The way the PD Waiver has operated until now:

Someone who has physical disabilities serious enough to qualify for the PD Waiver, and happens to have a significant mental illness (known as SPMI) previously received PD Waiver services. This is of course both logical and in the best interest of Kansas. Just because a Kansan who has quadriplegia and uses a power chair for mobility also happens to have a significant mental illness should not prevent them from accessing long-term care services. The person still requires services necessary to accommodate their disability such as help to get out of bed, bathing, cooking, grocery shopping, etc., and doing activities of daily living that most Kansans take for granted. While Community Mental Health Centers can do great things, they don't provide long-term care services to help people with physical disabilities. If you exclude someone from the PD Waiver just because they happen to have a serious mental illness and they would otherwise be eligible for the PD Waiver it is discrimination, plain and simple.

The way the PD Waiver appears to be changing in the future:

The state appears to be changing the way it operates and implements the PD Waiver program by not allowing those who happen to have a diagnosis of mental illness or perhaps significant mental illness (SPMI) to access the PD Waiver. As we understand it, this change would be devastating for Kansans who have significant physical disabilities and also happen to have a severe mental illness. The state might try to say that the PD Waiver is written in such a way that "technically" they should have been operating the PD Waiver in this way previously. We disagree. This is simply creating a new barrier to services. These unnecessary barriers are being created or re-interpreted by state bureaucrats; they hurt Kansans with disabilities and discriminate against those who have serious mental illness.

The Kansas Administrative Regulations (K.A.R.'s) speak to primary diagnosis and how it may impact qualification of the PD Waiver. However, K.A.R. 30-5-58 (qqqq) specifically defines the term "primary diagnosis" to mean "the most significant diagnosis *related to the services rendered.*" The "services rendered" on the PD Waiver are NOT mental health services. They are long-term care supports to accommodate the person's physical disabilities. Therefore, the "most significant diagnosis related to

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the services rendered” is clearly intended to be the diagnosis related to their physical disability, NOT their mental illness. The K.A.R. has the force and effect of law and the state must abide by it. Even if the state can develop a theory to justify why they can still make this change under the current regulation defining primary diagnosis, it doesn’t change the fact that doing this is discriminatory. The state SHOULD NOT change the way the PD Waiver program has operated for years. The state should not exclude those who otherwise would qualify for the PD Waiver just because they also happen to have a serious mental illness (SPMI). Again, this is discriminatory. It will hurt people with disabilities and result in forcing people into expensive institutions like nursing facilities which cost taxpayers more money.

As we read the PD Waiver application to CMS and K.A.R. 30-5-58 (qqqq), one can clearly meet the physical disability requirements of the PD Waiver, be determined disabled by social security standards, happen to have SPMI, and still be served on the PD Waiver. In fact, when the state submitted its PD Waiver application in 2013, it used the exact same language in the 2010 application regarding this issue. There has been no change in the language. However, it is a change in direction, and a negative one. Even if the state were continue to re-interpret the language of its own PD Waiver application to CMS, the K.A.R. clearly states that the primary diagnosis must be “related to the services rendered.” All the state would have to do is inform CMS that it will continue to serve those who have SPMI and are otherwise eligible for and meet the assessment criteria of the PD Waiver. However, it appears that the state is choosing to reinterpret its own language to exclude Kansans who happen to have SPMI from the PD Waiver. The language in both the CMS 2010 and 2013 application is poorly worded, but the state can clearly do the right thing and NOT CHANGE the net effect of the way the PD Waiver operates.

Concern with the KDADS new Physical Disability Wait List Verification Form:

The Kansas Department for Aging and Disability Services is now sending a “Wait List Verification Form” to applicants on the PD waiver wait-list (see attached). This form asks all individuals on the wait-list if they have been diagnosed with a “mental illness.” If the person indicates that they do have a mental illness, the form asks follows-up questions including what is the mental health diagnosis, the date of any diagnosis, if the individual has been to a “County Mental Health Center or Doctor,” and the date of such visit. This form is even worse in that it asks simply if the person has any “mental illness.” That could be over 20% of the Kansas population according to the US Surgeon General and NIMH (National Institute for Mental Health). This form does nothing to reveal if the individual has an “SPMI” determination or if it is the person’s “primary diagnosis.” Yet this form is clearly being used to determine if a person meets PD waiver eligibility. We fear that answers on this form related to mental illness will be unjustifiably used to remove individuals who report a mental health issue from the PD waiver wait list. We fear that answers on this form related to mental illness will be unjustifiably used to remove those who report a mental health issue from the PD waiver wait list.

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Making it harder to access Medicaid and PD Waiver by Refusing to do PD Waiver Assessments and making it harder to have prompt Eligibility determinations:

We are also concerned about the changes that appear to be happening which make it harder for persons to be assessed for the PD Waiver and gain access to Medicaid. This is yet another unnecessary barrier being created or re-interpreted by state bureaucrats that will hurt Kansans with disabilities.

Federal law makes clear that the state must provide everyone applying for Medicaid and its services, including Waiver services, an assessment and then provide services in a reasonably prompt manner, defined as less than 90 days (42 USC 1396a). However, from what the disability community has heard in discussions with state agency personnel, and second hand from those knowledgeable with the Aging Disability Resource Center (ADRC) assessment process, the system appears to be changing to create barriers to be assessed which will delay and help deny access to services.

How the Assessment system worked before:

Those applying for the PD Waiver were previously assessed in person (currently by ADRCs) to see if they meet the PD Waiver requirements. This in-person assessment is critically important. It helps determine the person's physical impairments and provided hands on support to navigate the Waiver process. The person could then be found to meet the definition of a disability according to the "Social Security Standards" (Appendix B, B-1(b) of State of Kansas PD Waiver application to CMS). The person was not forced to obtain an official determination letter from Social Security because this typically takes over a year and the Medicaid Act required assessments be completed in a reasonably prompt period of time, generally defined as within 90 days. Instead, the State of Kansas would previously perform an eligibility determination and apply the Social Security "standards" of what constitutes a disability (a process called "presumptive medical eligibility"). In fact, we believe the state has always been required to do this assessment per the aforementioned federal citation in order to ensure reasonably prompt services. Because the state realized that Social Security was not going to issue a determination within 90 days, the state was required to have the assessment completed in this time period. States have set up these formal "presumptive medical eligibility" processes to ensure they conform to these requirements. This system ensured that the person was assessed for the Waiver quickly, had a determination regarding Medicaid eligibility, and barriers were reduced rather than created for individuals.

How the Assessment system appears to have changed for the worse:

Now we hear that people are being told that they must have their determination letter from Social Security **before** they can qualify for PD Waiver services. We hear this anecdotally and KDADS own form asks this specific question (see attached)! Keep in mind that Kansas' PD Waiver application does not require a determination letter from Social Security and the federal law requires a reasonably prompt determination (generally defined as within 90 days), which of course Social Security cannot

do. The attached KDADS "verification form" asks the person to check whether or not they have "been determined physically disabled by Social Security." Equally troubling is that we have heard second hand from those knowledgeable with the ADRC assessment process that the ADRCs are being told that they cannot even do in-person assessments for the PD Waiver unless the person has already received their determination letter by Social Security. Instead, we are told that they are being directed to simply refer consumers with physical disabilities to Kansas Department for Children and Families instead of conducting a timely PD Waiver assessment. If true, this would be a significant and negative change in policy that runs contrary to federal law. These in-person assessments conducted by ADRCs for the PD Waiver are critical. They ensure that people receive a prompt assessment and access to the Waiver. If done correctly, ADRC assessments can help the person navigate the process and assist the state to prove that it is assessing consumers with disabilities in a "reasonably prompt" manner as required by federal law. Instead of telling the ADRC's not to do assessments until a determination is made by Social Security, the state should fund the ADRCs to do the in-person assessments and at the same time assist with navigation and the presumptive medical eligibility process. This would demonstrate good faith adherence to the reasonable promptness standard. It would also help people with disabilities who are doing the right thing and trying to live in the community with PD Waiver supports. All of this saves taxpayers money by avoiding far more expensive institutions. Remember, Nursing Facilities are an entitlement under federal law. Every action has a reaction. If you make it harder to gain access to community based PD Waiver services, you will force people in expensive institutions and waste taxpayer dollars.

The State Must Quickly Fix the Underserved Developmental Disability Waiting list by Ensuring that all those with DD get all their needs met, not just those who cleared the waiting list after January 1, 2014:

The attached Kansas City Star Editorial and Topeka Capitol Journal article provide context regarding the problem with the so-called "underserved" waiting list and why it needs to be addressed quickly. Thus far, the state has only stated that it will not add new people to the so-called underserved waiting list starting January 1, 2014. The state's response is insufficient and inherently unequal. While those who happen to clear the DD Waiting List after January 1, 2014 will get all their needs met, those who have been forced to languish for years on this illegitimate "underserved" waiting list within the DD Waiver will suffer and wait even longer.

There are two issues with the DD Waiting List that require immediate attention. This committee must ask KDADS to work collaboratively with stakeholders to solve these issues immediately.

Not Serving the DD Waiver Numbers Promised to CMS – First, the State of Kansas has not been serving the number Kansans with DD that they promised CMS for the last five years. This is a problem. Kansas is not supposed to have a waiting list AT ALL unless and until it has satisfied the number of Kansans with DD it promised CMS. Under federal law Kansas must provide services with "reasonable promptness" to everyone with DD until it meets the number promised CMS in the DD

Waiver application. According to testimony provided by KDADS Secretary Sullivan at the last meeting of this Committee, *Kansas appears to be serving nearly 1000 fewer Kansans with DD than they promised CMS (952 is the actual number)*. We have to rely on what the Secretary told this Committee because unfortunately Kansas stopped producing the monthly DD Waiver Report which detailed these numbers. By definition, someone on the “underserved” waiting list should not count as filling a slot because they were not provided all the services to which they were entitled.

Kansas Operates an Illegitimate and Illegal Waiting List Within the DD Waiver (the “underserved” waiting list) – Kansas technically maintains two waiting lists for its DD HCBS Waiver: the unserved waiting list and the so-called “underserved” waiting list. Those who are in the unserved category (3,271 people according to the last numbers we were able to get from the Department) are Kansans who have been found eligible for the ID/DD HCBS Waiver. They are placed on the waiting list and they wait until their slot is available. Waiting time to clear this “unserved” waiting list can be upwards of 5-7 years. You would think that waiting up to 7 years to clear the DD unserved waiting list would be bad enough, but it gets worse. After you clear this waiting list, Kansans can be told that there is not enough funding to serve all their needs and they are offered only SOME of the services which they need and are entitled. That, or by the time they clear the waiting lists, so much time has passed that their needs change and they require additional services. They then go on a second waiting list, called an “underserved waiting list,” where they wait for upwards of 7 or more years. Once someone clears the first, or “unserved” waiting list, they are entitled under federal Medicaid law to all needed services, even if the person’s needs change. By virtue of being placed on the “underserved” waiting list, these 1,890 individuals are being denied the services they are entitled to under the law. We have talked personally with former Medicaid directors, national experts in disability and Medicaid and even officials at CMS. Everything we have been told is that a state cannot operate a waiting list within a HCBS Waiver, which Kansas is doing with the so-called “underserved” waiting list. **Between both the unserved and underserved waiting lists Kansans can wait over 12 years just to get the services they need!**

The next two charts show the extend of the problem regarding the State of Kansas not serving the number of Kansans with DD promised to CMS and the so-called “underserved” waiting list.

HCBS DD Waiver Year	Number Promised to be Served	Number Actually Served	Total Unfilled Slots (<u>not</u> including underserved)	"Under- Served" Waiting List	Total Unfilled Slots <u>Including</u> "underserved" waiting list
Yr. 1 7/1/2009- 6/30/2010	8352	7798 *	<554>	1725	<2279>
Yr. 2 7/1/2010 - 6/30/2011	8652	8230 *	<422>	1666	<2088>
Yr. 3 7/1/2011 - 6/30/2012	8952	8286 **	<666>	1728	<2394>
Yr. 4 7/1/2012 - 6/30/2013	9252	8423 **	<829>	1890	<2719>
Yr. 5 7/1/2013 - 6/30/2014	9552	8600 ***	<952>	1890	<2842>

* From final CMS-372 Report (18 month lag time from close out date to publication)

** From SRS/KDADS DD Waiver Report

*** According to Sec. Sullivan Testimony to KanCare Oversight

Waiting List - The following are the most recent Waiver numbers DRC Kansas could obtain (as the monthly DD Waiver reports have not been pushed regularly since April/May of 2012):

Developmental Disabilities Waiting List <i>as of May 2, 2013</i>			
Unserved		Underserved	
Adults	Children	Adults	Children
1553	1774	1606	284
TOTAL = 5217			

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Community Services and Programs Commission
New England Building
503 South Kansas Avenue
Topeka, KS 66603-3404



Phone: (785) 296-3773
Fax: (785) 296-0256
wwwmail@kdads.ks.gov
www.kdads.ks.gov

Shawn Sullivan, Secretary
Gina Meier-Hummel, Commissioner

Sam Brownback, Governor

November 12, 2013

Dear Consumer,

You are receiving this letter because you have been identified as an individual who has been waiting for PD services. If you qualify, this program will provide in home assistance with your personal care needs, such as bathing and preparing meals that may help you to remain in your home instead of going to a nursing home.

Beginning in November, you will be contacted by Kansas Department for Aging and Disability Services (KDADS) to confirm you are still interested in receiving PD waiver or other services operated by KDADS. In order to ensure we are contacting the right individual, please complete the attached self-assessment questionnaire and return it to the address provided below:

Attention: KDADS PD Waiting List
Community Services & Programs Commission
New England Building
503 South Kansas Avenue, 3rd Floor
Topeka, KS 66603-3404

You can also contact KDADS directly upon receiving this letter at 785-296-0648, or by faxing 785-296-0256, or emailing the self-assessment to (HCBS-KS@kdads.ks.gov). Upon receiving this letter, please contact KDADS or submit your completed self-assessment within 10 working days of the date of this letter. If you do not return the self-assessment or contact our office within the 10 business days, KDADS will send you a notice to remove your name from the active waiting list as "unable to contact".

Thank you for your interest in receiving PD waiver services, we look forward to hearing from you soon.

Sincerely,

A handwritten signature in cursive script, appearing to read "Aquila Jordan".

Aquila Jordan, Director
Home & Community Based Programs
Community Services & Programs Commission
Kansas Department for Aging and Disability Services

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Community Services and Programs Commission
New England Building
503 South Kansas Avenue
Topeka, KS 66603-3404



Phone: (785) 296-3773
Fax: (785) 296-0256
wwwmail@kdads.ks.gov
www.kdads.ks.gov

Shawn Sullivan, Secretary
Gina Meier-Hummel, Commissioner

Sam Brownback, Governor

PHYSICAL DISABILITY - WAIT LIST VERIFICATION FORM

Contact Date: _____

KDADS Staff: _____

The following information is needed to confirm that you are still interested in receiving Home and Community Based Services through the Physical Disability Program. To be eligible for services, you must meet three levels of eligibility:

- Functional Eligibility (Assessment completed by ADRC)
- Program Eligibility (questions to be asked below)
- Financial Eligibility (Medicaid Eligible, Kansas Medical Assistance Program)

Name: _____ DOB: _____ KAMIS ID: _____
First and Last Name Date of Birth

Address: _____ City, State Zip: _____

Phone Number: _____ Cell: _____ Email: _____

I am currently receiving Medicaid or KanCare I have applied for Medicaid or KanCare _____

Medicaid ID# _____ KanCare Health Plan: Amerigroup Sunflower United Health Care

Self-Assessment

I am at least 16 - 64 years old

I have been determined **physically disabled** by Social Security

If YES, diagnosis? _____ Date _____

If NO, have you applied for disability benefits with Social Security? Yes, Date _____ No

I have been diagnosed with a mental illness

If YES, diagnosis? _____ Date _____

If YES, have you been to a County Mental Health Center or Doctor? Yes, Date _____ No

I have been diagnosed with a developmental disability or severe emotional disturbance

If YES, diagnosis? _____ Date _____

If YES, have you been to a Community Developmental Disability Organization? Yes, Date _____ No

I am unable to perform my daily living activities and need assistance with activities such as bathing, cooking, toileting, transportation, cleaning, laundry, and mobility

For Internal Use Only

FAI in last 365 days? Yes No Date ____/____/____ Score _____ Eligible? Yes No

No 3160 to ADRC Sent ____/____/____ Score _____, Date _____, Eligible? Yes No

3160 to DCF Sent ____/____/____ 3160 to MCO Sent ____/____/____ Removed from Waiting List ____/____/____

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Posted on Sat, Nov. 16, 2013

Kansas must do more for citizens with disabilities

Advocates for Kansans with disabilities have contended for years that the long waits families endure before receiving essential services are immoral. Now they are suggesting that the state's neglect of its most vulnerable citizens may be illegal.

No one is headed to court at this point, but Gov. Sam Brownback's administration would do well to heed the warning from the Disability Rights Center of Kansas.

As the center has pointed out, the state made a commitment to serve 9,552 disabled citizens this year when it applied for a waiver to use federal Medicaid funds for home- and community-based services for the disabled population.

But Kansas has fallen far short of that commitment. Although the administration has unfortunately stopped publishing monthly reports, an official told a legislative committee this year that about 8,600 persons were being served. That is 952 fewer than what the state promised the federal government.

There's another problem. Besides a list for people waiting to receive any services, Kansas also maintains a list of citizens who receive some services but not everything they've been approved for. For instance, someone might be cleared for a day care program but not for an aide to help out at night. The "underserved" list has about 1,890 persons. According to the Disability Rights Center, it violates the state's agreement with the federal Medicaid program.

Kansas' neglectful treatment of citizens with disabilities isn't new. The backlog began around 2000 and has continued under four governors. To its credit, the Brownback administration is the first in a long time to try to whittle it down. It is capturing \$37 million in savings from the KanCare health program and using it to provide services to 650 additional Kansans with physical or developmental disabilities over the next two years.

"It's my effort and desire to get those waiting lists pulled down as rapidly as we can," Brownback said.

Still, more than 5,000 people are now on lists to receive some services. Some families wait a decade or longer.

One on the underserved list is Steven DeCock, 25. He has Down syndrome and functions at the level of a preschooler. The state pays for an aide to help him at home 86 hours a month.

That worked well enough while DeCock attended school. But since 2009, he has been at home full time. His mother works, and DeCock is tended by his grandmother, who is 70 and has health problems of her own.

The family is asking for more at-home help or for DeCock to be enrolled in a day care program. But years go by with no word from the state.

"It gets a little harder every year," said his mother, Mary Beth DeCock. She worries about the day when her mother can no longer manage personal care for a 250-pound man.

"I'm trying to find a job working at home or I'll have to go on welfare and not have a job," DeCock said.

That is not a choice she should have to make. But it's typical of dilemmas confronted by many Kansas families.

Brownback's administration has said that, beginning in January, it will stop putting new people on the underserved list. But that won't help people already on the list, like the DeCock family.

The governor seems sincere about wanting to lessen a long-festering problem. He and the Republican-controlled Legislature are in a bind because they gave up too much revenue in income tax cuts. The state is not adequately funding schools and services now, and that will get worse if Republicans retain the tax cuts.

But Rocky Nichols, executive director of the Disability Rights Center, notes that Kansas receives millions of dollars in federal Medicaid money based in part on its promise to serve a certain number of citizens with disabilities — a pledge it isn't keeping.

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"They're on the hook," Nichols said.

Kansas officials dispute that they're in violation of any law or contract.

"We're starting to get a handle on this," said Angela De Rocha, spokeswoman for the Kansas Department of Aging and Disability Services.

But families in need of services have waited much too long already. The state must find a way to honor its commitment to the Medicaid program — and to the citizens who have nowhere else to turn.

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Friday, November 22, 2013

Kansas advocacy group doubts legality of disability waiting list

State agency grappling with legacy of waiting lists covering 5,200 people

Posted: October 25, 2013 - 5:24pm

By Tim Carpenter

timothy.carpenter@cjonline.com

The state for the past four years failed to comply with targets for delivery of services to developmentally disabled people by leaving slots vacant and violated U.S. law by providing only partial benefits to people enrolled in programs, a Topeka advocacy organization said Friday.

Documents obtained by the Disability Rights Center of Kansas showed 3,300 developmentally disabled Kansans who qualified for Medicaid services continue to be denied aid while the state left empty between 422 to 829 slots they were obligated to fill from 2009 to 2013.

The number of vacancies grew each the past four years, which contributed to delays of up to five years to begin receiving home- and community-based aid.

In addition, the advocacy group concluded the state was out of compliance with federal law by maintaining an underserved category of 1,900 people who were receiving some but not all services applicable to their disability. The number of underserved individuals in Kansas has expanded in each of the past two years.

"They are harming people with intellectual and developmental disabilities two different ways, and it's causing irreparable harm," said Rocky Nichols, executive director of the Disability Rights Center.

"They're harming them on the front end in by not serving the number of slots promised," he said. "What compounds insult to that injury is that, once they're clear of the waiting list, they are oftentimes put on a new waiting list within the program."

Under federal law, Nichols said, states can maintain waiting lists for disabled people who have yet to be admitted into Medicaid programs. Admission is on a first-come, first-served basis depending on state and federal financing.

He said states must follow through with promises to the federal government to serve a set number of disabled people. In the past year, Kansas pledged to fill 9,552 slots, but filled only 8,423. States can't, under federal law, maintain a second-tier list for the underserved, Nichols said.

Angela de Rocha, spokeswoman for the Kansas Department for Aging and Disability Services, said officials with the state government and the federal Centers for Medicare and Medicaid Services were aware of apprehension about the legality of Kansas' underserved waiting list.

"The state's aware of it. CMS is aware of it," De Rocha said. "People can say it is illegal, but that doesn't move us forward in solving the problem."

The immediate strategy will be to cease placing enrollees on the underserved waiting list in January, she said. If full services are extended to those added to the system, it is unclear how quickly the backlog of unmet demand will be cleared by the state.

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De Rocha said another goal was to pull 650 people from the larger 3,300-person waiting list for Medicaid disability services.

The \$18 million to accomplish that reduction was a dividend from enactment of the KanCare initiative that applied managed care to the state's Medicaid system.

Waiting lists were inherited by Gov. Sam Brownback upon taking office in 2011. The lists appear to have been formed in 2000 under Republican Gov. Bill Graves and continued under the leadership of Democratic Govs. Kathleen Sebelius and Mark Parkinson.

Nichols said he wasn't aware of another state operating an underserved waiting list and wasn't certain how the flaw in the Kansas network was allowed to persist.

The cost of closing the underserved gap will be in the millions of dollars, Nichols said, but the state has an obligation to address the problem.

"We're hoping the state does the right thing and there will not have to be litigation," he said. "I can tell you this, there's 2,000 potential plaintiffs who are forced to suffer on this illegal, so-called underserved waiting list."

The U.S. Department of Health and Human Services has been investigating the state's waiting lists. Federal officials met with Brownback administration staff members in response to complaints filed against the state by disabled people and their advocates.

Tim Carpenter can be reached at (785) 295-1158 or timothy.carpenter@cjonline.com. Follow Tim on Twitter [@TimVCarpenter](https://twitter.com/TimVCarpenter). Read [Tim's blog](#).

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