

MINUTES

2022 SPECIAL COMMITTEE ON INTELLECTUAL AND DEVELOPMENTAL DISABILITY WAIVER MODERNIZATION

November 1, 2022
Room 112-N—Statehouse

Members Present

Representative Will Carpenter, Chairperson
Senator Molly Baumgardner
Senator Tom Hawk
Senator Carolyn McGinn
Senator Mike Thompson
Representative Barbara Ballard
Representative John Barker
Representative Bill Clifford
Representative Brenda Landwehr
Representative Susan Ruiz

Members Absent

Senator Richard Hilderbrand, Vice-chairperson

Staff Present

Iraida Orr, Kansas Legislative Research Department (KLRD)
Dayton LaMunyon , KLRD
Leighann Thone, KLRD
Carly Humes, Office of Revisor of Statutes
Jenna Moyer, Office of Revisor of Statutes
Eileen Ma, Office of Revisor of Statutes
Gary Deeter, Committee Assistant

Conferees

Sarah Fertig, Medicaid Director, Kansas Department of Health and Environment
Michele Heydon, Home and Community Based Services Director, Kansas Department for
Aging and Disability Services
Hina Shah, Senior Analyst and Portfolio Strategist, Kansas Health Institute

Roundtable/Working Group Members Participating

Mike Burgess, Director of Policy and Outreach, Disability Rights Center of Kansas
Dr. Evan Dean, Associate Director of Community Services, University of Kansas Center on
Developmental Disabilities
Amy Dean-Campfire, Kansas Department of Corrections
Melody Dowling, Health Services Director, UnitedHealthcare Community Plan

Sarah Feldhausen, Intellectual and Developmental Disability System of Care Administrator,
Aetna Better Health of Kansas
Matt Fletcher, Executive Director, InterHab
Marie Frazee Moore, Aetna Better Health of Kansas
Jean Hall, Director, University of Kansas Institute for Health and Disability Policy Studies
Sara Hart Weir, Executive Director, Kansas Council on Developmental Disabilities (KCDD)
Shane Heit, KVC Kansas
Mark Hinde, Southwest Developmental Services, Inc.
Martha Hodgesmith, KanCare Advocates Network and Kansas Appleseed
Brenda Jackson, Parent/Researcher
Kathy Keck, Parent
Craig Knutson, Policy Analyst, KCDD
Brad Linnenkamp, Self-Advocate
Jawanda Mast, Parent
Jerry Michaud, Chief Executive Officer, Developmental Services of Northwest Kansas
Rocky Nichols, Executive Director, Disability Rights Center of Kansas
Colin Olenick, Self-Advocates Coalition of Kansas
Nanette Perrin, Sunflower Health Plan
Stephanie Rasmussen, Vice-president of Long-Term Services and Supports, Sunflower
Health Plan
Jeri Sickels, Family Member
Brenda Soto, Director of Children's Mental Health and Medicaid, Kansas Department for
Children and Families
Karly Stowe, CVS/Aetna
Emily Shea Tanis, Associate Research Professor, University of Kansas Center on
Developmental Disabilities; State of the States in Intellectual and Developmental
Disabilities
Stephanie Rasmussen, Sunflower Health Plan
Sean Swindler, Project Manager, University of Kansas Center on Developmental Disabilities;
Director of Community Program Development and Evaluation, Kansas Center for Autism
Research and Training
Carrie Wendel-Hummel, Director, University of Kansas Center for Research on Aging and
Disability Options
Nick Wood, Associate Director, InterHab

Others Attending

See [Attached List](#)

TUESDAY, NOVEMBER 1 ALL DAY SESSION

Welcome

Chairperson Carpenter called the meeting to order at 9:03 a.m. and welcomed legislative members, roundtable members, staff, and guests. He outlined the agenda for the day.

Responses to October 13 Requests

Iraida Orr, Principal Research Analyst, Kansas Legislative Research Department (KLRD), presented follow-up information:

- A compilation of response to requests from the September 28, 2022, and October 13, 2022, meetings ([Attachment 1](#));
- A state-by-state chart prepared by KLRD outlining the funding limits for transportation services for Home and Community Based Services (HCBS) Intellectual and Developmental Disability (I/DD) Waivers ([Attachment 2](#));
- A memorandum by KLRD on the role of Navigators as healthcare facilitators as outlined by the Centers for Medicare and Medicaid Services (CMS) and different Navigator types and programs ([Attachment 3](#));
- A copy of the contract awarded by the Kansas Department for Aging and Disability Services (KDADS) to the University of Kansas Center for Research, Inc., for a Waiver Waitlist Study ([Attachment 4](#)); and
- An outline of the community developmental disability organization (CDDO)) eligibility determination process provided by Matt Fletcher, Executive Director, InterHab ([Attachment 5](#)).

Process for Amending or Creating a Home and Community Based Services Waiver

Sarah Fertig, Medicaid Director, Kansas Department of Health and Environment (KDHE), and Michelle Heydon, HCBS Director, KDADS, reviewed the process for submitting a waiver request to the Centers for Medicare and Medicaid Services (CMS).

Ms. Fertig, noting the CMS manual for the process is more than 300 pages long, highlighted the salient features of the process for new, renewal, and amended waiver applications ([Attachment 6](#)). She explained CMS' receipt of an application starts a 90-day clock, during which time CMS must approve the application, deny it, or issue a written request for additional information (RAI). An RAI pauses the 90-day clock until CMS receives the requested updated information; once the State responds to the RAI, a new 90-day clock begins. To avoid a denial of the application if significant problems are identified, a state may also stop the clock by notifying CMS its application is incomplete; when the completed application is resubmitted, a new 90-day clock begins.

According to Ms. Fertig, an application for a new waiver will take at least six months and likely longer, and an RAI should be expected.

Ms. Fertig responded to questions from Committee members as follows:

- The 90-day clock uses calendar days;

- Additional time would need to be built in for CMS to review a new application for an HCBS waiver under provisions of Section 1915(c) of the Social Security Act (§1915(c) waiver), especially if CMS has any concerns;
- Kansas has been operating the HCBS §1915(c) waivers under a demonstration waiver allowed by Section 1115 of the Social Security Act (§1115 waiver), with services administered through the managed care organizations (MCOs). However, since the §1115 waiver has strict budget neutrality spending caps on how federal funds may be spent, placing a new §1915(c) waiver under an §1115 waiver would impact budget neutrality. The State would prefer to move from a §1115 waiver to a §1915(b) waiver, which has no budget neutrality requirements and increased spending flexibility; and
- Under federal law, application and management of Medicaid waivers are directed by the single state agency that oversees Medicaid in each state.

Ms. Heydon reviewed steps involved in the waiver renewal process: engage stakeholders; analyze the fiscal and programmatic impacts of the stakeholder feedback received; write the impacts into the waiver; review of the waiver by KDHE; open the public comment period on the waiver; respond to each comment, regardless of whether a change was made because of the comment; make any necessary edits to the waiver after review of comments; another review by KDHE; and KDHE submits the waiver to CMS to start the 90-day clock ([Attachment 7](#)). Revisions may be made to the waiver as a result of the RAI by CMS, after which the waiver renewal would be approved. Ms. Heydon explained the current I/DD waiver renewal application timeline, which would begin in January 2023 and conclude by July 2024, allotting 180 days for CMS approval after submission of the renewal application. Ms. Heydon noted CMS reports it has had a 300.0 percent increase in workload since the COVID-19 pandemic began but the same number of staff, which accounts for the waiver application approvals taking additional time. She provided an example of the steps and timeline involved in amending current HCBS waivers to extend flexibilities authorized by CMS during the COVID-19 public health emergency.

Ms. Heydon stated all seven Kansas HCBS waivers are in the renewal or amendment process. She noted CMS will not allow amendments to a waiver when it is in the renewal or amendment process, so the State would have to write an additional eighth waiver for Community Supports, which would be time- and labor-intensive.

Members discussed the option of creating a Community Support Waiver and renewing the present Comprehensive I/DD Waiver and whether to incorporate the Autism Waiver into either. Concerns expressed included the possibility not all providers would meet the requirements of the HCBS final settings rule [42 CFR 441.301(c)(4)-(5)], regarding where services are provided, by March 17, 2023, and would need additional time to complete the transition plan, an option under an existing waiver, unlike a new waiver for which all providers would have to meet the settings rule at the time of implementation.

Ms. Heydon responded to questions as follows:

- KDADS is on target for approval of its final settings transition plan by March 17, 2023. The transition plan involves ongoing monitoring to ensure providers and sites are in compliance with the final settings rule;

- If the goal is to serve the most individuals possible on the I/DD waiting list, the State would be better off financially and have more flexibility for those served on the waiver if it keeps its Comprehensive I/DD Waiver and creates a new Community Support Waiver; and
- Some individuals on the Comprehensive I/DD Waiver receive no residential or day services and have only personal care services or personal care attendants. The percentage of such individuals who could move to a Community Supports Waiver is not available.

The Chairperson noted moves to a Community Supports Waiver may not free up Comprehensive I/DD Waiver slots but would provide individuals on the I/DD waiting list who do not need comprehensive services with the limited services needed.

Presentation of Working Group Considerations

Hina Shah, Senior Analyst and Portfolio Strategist, Kansas Health Institute, reported on the discussions and comments of the working group of roundtable members convened by the Committee who met on October 17, 2022, and October 21, 2022, and focused on the components of a Community Support Waiver for consideration by the Committee ([Attachment 8](#)). She explained the document provided, Results of the Roundtable Member Survey and October 17th and 21st Roundtable Workgroups, included input from the CDDOs, targeted case managers, and MCOs and provided extensive appendices to supplement member considerations.

Committee and Working Group Members' Discussion of Working Group Considerations

The Chairperson opened the floor for member discussions based on the considerations included in the working group document. He explained the purpose of the discussion would be to help the legislative members identify services to be included in any proposed waiver legislation.

The Chairperson invited members to comment on the Basic Assessment and Services Information System (BASIS) assessment tool presently used to meet CMS assessment requirements. Comments expressed included:

- The BASIS tool is intrusive and negative, and the annual requirement for assessment could be accomplished with a condensed assessment in many situations;
- The Supports Intensity Scale (SIS) is used by 39 other states. No other state uses the BASIS.
- The BASIS is used to determine the tier level of need and the funding required to meet those needs;
- Other assessment tools are the Medical Functional Eligibility Instrument (MFEI) and a similar tool, the InterRAI;

- Moving to another assessment tool will require significant additional funding; these costs will present a barrier for changing to another assessment tool; and
- Research is needed to determine the most effective assessment tool.

Members agreed to reject the BASIS, but there was no consensus on a replacement assessment tool.

Ms. Shah reviewed the different kinds of services discussed by the Roundtable working group that could be made available through the proposed Community Support Waiver. These services included transportation, supported employment, individual directed goods and services, personal care, respite, therapy, assistive technology, independent living skills/community engagement skills, family/caregiver support and training, financial management services, support broker services, and benefits counseling. Other services that could be considered include home and vehicle modification, behavioral support, service dog training, Supports and Training for Employing People Successfully (STEPS) and community service coordinators, and Work Opportunities Reward Kansans (WORK) services, which includes supported employment and independent living counseling.

Ms. Shah also noted additional components for consideration in creating a Community Support Waiver that were not discussed by the working group but should be considered for the waiver application.

The Chairperson asked for questions from Committee and Roundtable/working group members.

The Roundtable/working group members discussed the wide range of interpretation for self-directed care versus individual budget authority. It was noted individual budget authority might be granted for specific healthcare, technology, and transportation services, or might apply to all services. Self-directed care allows individuals with I/DD to select only the services and supports needed to live independently. It was stated 40 percent of individuals receiving waiver services live with family and have few resources to hire or provide benefits to supplemental personal care providers. Agencies are often better in addressing specific needs and providing personal care.

The Roundtable/working group members urged caution regarding the use of the term “self-determination,” as it has a broader meaning and differs from TARC’s self-determination pilot program in the state. For clarity, it was suggested the term “individual budget authority across all waiver services” be used for the Community Support Waiver to include combined budget and employer authority across all waiver services and noted the TARC self-determination pilot program should be looked at as an example.

Regarding the meaning of “individual goods and services,” a Roundtable/working group member pointed to page 7 of the report, which defines the term as “a service, support, or good that enhances the individuals’ opportunities to achieve outcomes related to full membership in the community.” The eight criteria each service, support, and good must meet are outlined on the same page.

Lunch

Members recessed for lunch from 11:36 a.m. to 1:03 p.m.

Committee Discussion and Consideration of Committee Recommendations to the 2023 Kansas Legislature

Ms. Shah reviewed the morning's discussion regarding the Community Support Waiver and summarized the key points discussed as follows:

- Recommend the state apply for a Community Support Waiver;
- Explore an alternate assessment tool for the BASIS assessment;
- Incorporate the Autism Waiver into the Community Support Waiver;
- Include self-direction, which would mean employer and individual budget authority across all services;
- Ensure inclusion of a person-centered planning process;
- Include a selection of individual goods and services from the list that best aligns with the needs of Kansans;
- Direct KDHE to ensure collaboration with stakeholders, such as those in the Roundtable and working group, as it researches and develops the details of the Community Support Waiver; and
- Ensure the waiver has as much flexibility as possible and, if any caps are determined, they are data-informed.

Ms. Shah noted with direction from the Committee, KDHE and KDADS could dive into the details for the new waiver and have discussions with CMS. She invited members to share other priorities that were raised during discussion.

Further discussion and comments centered around the inclusion of the Autism Waiver in the Community Support Waiver:

- An autism diagnosis is the only requirement for an individual to be placed on the Autism Waiver proposed recipient list. No functional eligibility assessment is completed for placement on the proposed recipient list;
- As of September 30, 2022, there are 428 individuals on the Autism Waiver proposed recipient list, with 58 persons eligible to receive services. There is a limit of 65 slots on the Autism Waiver;

- Children aging out of the Autism Waiver who have a dual diagnosis of autism and I/DD and have had a functional eligibility assessment would be eligible for the I/DD Waiver and would be placed on the I/DD Waiver waitlist;
- Children receiving Autism Waiver services are automatically transitioned to the I/DD waiver waitlist when they age out of the Autism Waiver;
- An autism diagnosis qualifies an individual for early intervention services without being on the Autism Waiver;
- Simplifying navigation through the waiver process would enable parents to make more informed choices for their children; and
- Parental income is not considered for individuals receiving waiver services. Parental income is considered for those on the waiting list for I/DD waiver services, preventing access to non-waiver services such as Medicaid; Early and Periodic Screening, Diagnostic and Treatment services; and case management. If a parent gave up custody of a child or placed a child in an institution, parental income would not be considered for the child to receive services. The Special Income 217 Group exempts parental income to allow eligibility for Medicaid coverage for individuals who would be eligible for Medicaid if they were in a medical institution; would require an institutional level of care in the absence of the provision of HCBS; and will receive §1915(c) services. [Note: This eligibility group is further described in 42 CFR §435.217 and is commonly referred to as the “217 group.”] CMS requires an individual be on a waiver to get Special Income 217 Group eligibility. If a Community Support Waiver was created with no waitlist, parental income could be disregarded for those on the waiver, removing incentive for a parent to give up custody or place their child in an institution. If the Community Support Waiver lacked sufficient funding, resulting in a waitlist, and a Katie Beckett option was not adopted, parental income would be considered for the individuals on the waitlist and would render some ineligible for Medicaid. [Note: The Katie Beckett Medicaid Program established in federal law permits the state to ignore family income for certain children who are disabled and who live at home.]

The Chairperson then moved the discussion to tiered services and funding issues, which elicited the following responses from Committee and Roundtable/working group members:

- A waitlist for the Community Support Waiver is likely because of funding. If the waiver is capped at \$20,000 annually per person and half of the waitlist is served, the cost would be approximately \$40 million. Concerns were expressed regarding inflation and a desire to not have to remove individuals from services if the funding available is reduced;
- If a Community Support Waiver is created, services will essentially be tiered to basic Medicaid, a Community Support Waiver, and the comprehensive I/DD Waiver;
- Tiers may not be necessary, but they do facilitate funding;

- KDADS should provide a fiscal impact statement to the Legislature on all items recommended by the Committee; and
- Before any funding can occur, an individual's functional eligibility must be established to determine the range of services needed.

Members discussed transitioning between the Community Support Waiver and the comprehensive I/DD waiver and caps on the Community Support Waiver. Members noted the range of services considered by the work group, commenting on various ones that could be combined: home and vehicle modification under home-enabling services, and support broker under financial management services. A member suggested widening "behavioral supports" to include applied behavioral analysis (ABA) and behavioral supports, broadening the definition of therapy to include ABA and positive behavioral supports, or expanding parent support and training to add behavioral supports. Another member noted the growing need for behavioral supports, especially in rural areas.

Regarding transitioning between the Community Support Waiver and the comprehensive I/DD Waiver, slots can be reserved in the I/DD Waiver so an individual could return to the comprehensive I/DD Waiver if the Community Support Waiver no longer met his or her needs. CMS would require such action to ensure continuity of services if the lower benefit waiver no longer met an individual's needs.

A request was made for KDADS to provide information to the Legislature on the cost of various levels of annual individual caps on the Community Support Waiver: either aggregated totals for various caps (\$20,000, \$30,000, and \$40,000) or individual caps for each type of services.

Addressing the Roundtable members, who provided unique perspectives and invaluable information, the Chairperson expressed his thanks for their service.

Committee Recommendations

The Chairperson then convened the legislators to offer final recommendations for the Committee Report to the 2023 Legislature. Members agreed to a consensus approval process.

A motion was made by Representative Landwehr and seconded by Senator Thompson to request KDADS provide a fiscal impact statement for each service discussed by the Special Committee for possible inclusion in the Community Support Waiver. Members agreed with the motion.

A motion was made by Representative Barker and seconded by Representative Landwehr to place a \$20,000 annual individual cap on the Community Support Waiver. Members agreed with the motion.

A motion was made by Senator Hawk and seconded by Representative Landwehr to include a statement indicating the Special Committee's support for the Executive Branch to transition the Medicaid managed care system from a §1115 waiver to a §1915(b) waiver. Members agreed with the motion.

Senator Hawk made a motion to consider the dual diagnosis of I/DD and autism when looking at how individuals' needs could be met in the Community Support Waiver. There was no second for the motion. Mention was made that the Autism Task Force Report was made public during today's meeting and members had not had time to review the report. One member noted the Autism Task Force Report needs to be reviewed during the 2023 Legislative Session to determine whether changes should be made to the Autism Waiver, and the programs offered by the Children's Cabinet should be reviewed for any overlap in services.

There was discussion on the possibility of an automatic rollover of those individuals with a dual diagnosis of I/DD and autism from the Autism Waiver to the I/DD Waiver. However, concern was expressed regarding the unknown number of individuals who are dually eligible and how many of them are already on the I/DD waitlist. It was suggested there was a need to wait for completion of the I/DD waitlist study to help assess the need.

A request was made for KDADS to provide an estimate on the number of individuals likely to request self-determination. Concern was expressed that a large number of individuals wanting self-determination could overwhelm the system due to a lack of targeted case managers to assist.

A motion was made by Representative Ballard and seconded by Representative Barker that KDADS and KDHE should continue to study strengths-based assessments, such as the SIS or the MFEI, as alternatives to the deficit-based BASIS assessment tool for the HCBS I/DD Waiver. Members agreed with the motion. The members acknowledged the University of Kansas is still working on the financial portion of the MFEI assessment used to determine funding levels.

A motion was made by Representative Ruiz and seconded by Senator Baumgardner that the Community Support waiver should include "individual budget authority across all services." Members agreed with the motion.

Senator Hawk moved to automatically transition individuals to I/DD waiver services when they age out of services upon completing high school, as done in a couple of states. There was no second for the motion. Concern was expressed that it would set a dangerous precedent to transition these individuals to I/DD waiver services ahead of those who had been on the I/DD waitlist for ten or more years.

A motion was made by Senator Baumgardner and seconded by Senator Hawk that KDADS and KDHE should identify a process to prevent children from being removed from the Autism Waiver proposed recipient list without notification. Members agreed with the motion.

Senator Hawk made a motion to set a goal of reducing the current waitlist by at least 10.0 percent annually. There was no second for the motion. Members agreed with the concept but agreed it would be a realistic goal in two to three years when the waitlist study was completed and there was a better understanding of the waitlist numbers and need.

One member shared data on the continued increase in the number of children with autism and noted the importance of addressing the needs of the autism population before the children begin school. The Chairperson referenced the recently published Autism Task Force Report that will provide background and in-depth information to supplement understanding regarding autism issues ([Attachment 9](#)).

Another member noted the need to address the aging of caregivers and lack of respite care available. The Chairperson noted a Community Support Waiver would help address respite care. The Chairperson stated there were many critical needs, but the Committee needs to begin with what can be done today. Another member noted additional information would be provided during the legislative process and the recommendations of the Special Committee provide an outline of topics the Legislature should consider.

Approval of September 28 and October 13, 2022, Minutes

By motion of Representative Landwehr, seconded by Representative Barker, and unanimous vote of the Committee, the Committee minutes for September 28 and October 13, 2022, were approved.

Adjourn

The meeting was adjourned at 3:05 p.m. No further meeting was scheduled.

Follow-up information regarding transportation costs for the I/DD Waiver was provided by Aetna and UnitedHealthcare after the meeting was adjourned: ([Attachment 10](#)) and ([Attachment 11](#)).

Prepared by Gary Deeter

Edited by Iraida Orr and Leighann Thone

Approved by the Committee on:

January 5, 2023

(Date)