

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Minutes of the 1st Meeting of the 2021 Interim

June 2, 2021

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Appropriations and Revenue was held on Wednesday, June 2, 2021, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Jason Petrie, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Christian McDaniel, Co-Chair; Representative Jason Petrie, Co-Chair; Senators Tom Buford, Danny Carroll, Morgan McGarvey, Stephen Meredith, Michael J. Nemes, Robin L. Webb, and Stephen West; Representatives Lynn Bechler, Danny Bentley, John Blanton, Randy Bridges, Myron Dossett, Joseph M. Fischer, Ken Fleming, Kelly Flood, Chris Fugate, Al Gentry, Robert Goforth, Mark Hart, Angie Hatton, Jason Nemes, Ruth Ann Palumbo, Melinda Gibbons Prunty, Josie Raymond, Brandon Reed, Sal Santoro, James Tipton, and Lisa Willner.

Guests: Amy Staed, Executive Director, Kentucky Association of Private Providers (KAPP); Lisa Lee, Commissioner, Department for Medicaid Services (DMS), Cabinet for Health and Family Services; Pam Smith, Director, Division of Community Alternatives, DMS, Cabinet for Health and Family Services; John Hicks, State Budget Director, Office of State Budget Director; Sandy Williams, Deputy Executive Director, Kentucky Infrastructure Authority (KIA); Dale Suttles, President, Sunrise Children's Services; and Andy Weeks, Board Chair, Sunrise Children's Services; and John Sheller, Attorney, Sunrise Children's Services.

LRC Staff: Jennifer Hays, Grant Minix, and Chase O'Dell.

Status Update on Kentucky's Michelle P. and Supports for Community Living (SCL) Medicaid Waiver Programs

Amy Staed, Executive Director, KAPP; Lisa Lee, Commissioner, DMS, Cabinet for Health and Family Services; and Pam Smith, Director, Division of Community Alternatives, DMS, Cabinet for Health and Family Services, provided a status update on Kentucky's Michelle P. and SCL Medicaid Waiver Programs.

In response to a question from Representative Petrie, Amy Staed testified that the SCL waiver costs on average of \$215 per day per person to provide care, whereas

Intermediate Care Facilities costs \$1,275 per day. She testified that the level of care patients receive is the same.

In response to a question from Representative Petrie, Ms. Staed stated that the waitlist to provide these services is large. The average time on the SCL waitlist for urgent cases is 3.64 years and 7.16 years for future planning cases. In response to another question from Representative Petrie, Ms. Staed testified that the SCL waitlist is almost triaged, so that an eligible individual is evaluated to determine if their needs are urgent or for the future. The Michelle P. waiver waitlist is first come, first serve, and DMS has gone through the waitlist to ensure that individuals on the waitlist are eligible for services.

KAPP surveyed its members in May, 2021, which revealed that providers have been significantly impacted in revenue and workforce as a result of the COVID-19 pandemic. These providers often operate on thin margins. Only 2.8 percent of providers are fully staffed, with 50 percent of providers being critically understaffed. Private provider wages are tied to the reimbursement rate. In 2019, the direct support professional turnover rate was 47 percent for private providers. This high turnover is due to low wages and the emotionally and physically demanding nature of the work.

Ms. Staed testified that waitlist issues cannot be addressed without addressing the staffing crisis. It is impossible for providers to raise wages without a corresponding reimbursement rate increase. KAPP would like for DMS to utilize the estimated \$96 million in American Rescue Plan funds coming to Kentucky for Home and Community Based Services (HCBS) to help private providers recruit and retain direct support professionals and to help providers recover from COVID-19 related losses. KAPP also wants to see long-term funding strategies implemented in the next budget to address the HCBS workforce crisis.

In response to a question from Representative Petrie, Ms. Staed testified that many states have inflation and wage components built into their reimbursement rate for providers, resulting in wages which remain steady with other sectors.

In response to a question from Representative Tipton, Ms. Staed stated that the SCL waiver program received a 10 percent reimbursement rate increase in the 2016 or 2017 budget. Other Medicaid waiver programs have not received a reimbursement rate increase.

In response to a question from Senator Meredith, Ms. Staed testified that while individuals in intellectual disability institutional settings may be able to transition out of institutions, private providers would not have the workforce to care for additional slots.

In response to a question from Representative Prunty, Ms. Staed said that the workforce issue is related to extra payments for unemployment insurance. While workforce problems have existed previously, they have gotten significantly worse because of the

pandemic. She continued to say that individuals are either not coming back to work or are going to work in another sector for higher wages.

In response to a question from Representative Goforth, Ms. Staed testified that residential waiver providers typically lease or own the houses for individuals to live in. Individuals who receive supplemental security income are required by the federal government to pay their fair share for room and board. Providers are allowed by statute and regulation to charge for room and board, which includes utilities and food. State guardianship and oversight agencies make sure that providers are charging fair rates. Residential reimbursement for providers is roughly \$300 per day for 24 hour care.

Commissioner Lee testified that DMS is developing a plan to spend the one-time enhanced HCBS funds to expand, enhance, and strengthen the HCBS programs. The current administration started to continue the waiver redesign started by the previous administration. This has been paused due to push back from providers. An additional \$43 million will be needed to go forward with the redesign. Appropriations from the state will be needed to meet the state match required for the enhanced HCBS funds from the Centers for Medicare & Medicaid Services.

Director Smith testified that the Michelle P. and SCL waivers still have waitlists. The Michelle P. Waiver had 7,441 individuals on the waitlist at the end of April 2021. The SCL waiver had 2,886 individuals on the waitlist at the end of April 2021. DMS is in the process of allocating an additional 175 slots for the Michelle P. waiver. An average of 78 individuals per month are added to the Michelle P. Waiver waitlist. In 2021, 350 individuals have been allocated slots.

In response to a question from Senator Carroll, Ms. Smith stated that it is unlikely that anyone added to the Michelle P. and SCL waiver waitlists after 2016 would not meet eligibility requirements.

In response to a question from Representative Petrie, Commissioner Lee testified that for the Michelle P. waiver an additional 25,000 slots ought to be funded and made available. Ms. Smith stated that for the SCL waiver an additional 2,500 to 3,000 slots would need to be funded and made available for each individual who needs services to receive them. In response to another question from Representative Petrie, Ms. Smith testified that there is a workforce shortage and that a large infusion of individuals to the waiver programs would present an issue. Ms. Staed testified that the state could fund an additional 250 SCL slots and 500 Michelle P. slots. She continued to say that the state should build up the workforce through rate increases in the first year of the next budget and release the additional slots in the second year.

Senator Carroll advocated for raising the reimbursement rate slightly so that providers could pay higher wages and more slots could be filled.

In response to a question from Senator Meredith, Ms. Staed stated that training for direct support professionals is handled by the College of Direct Support, which is not provider-based. She continued to say that community college credits could be a great way to attract people to the field.

Current Status of Broadband Deployment

John Hicks, State Budget Director, Office of State Budget Director and Sandy Williams, Deputy Executive Director, KIA, discussed the Current Status of Broadband Deployment.

Director Hicks testified that in the 2021 Regular Session, the General Assembly appropriated \$300 million from the American Rescue Plan Act's State Fiscal Recovery Fund to broadband deployment and infrastructure development. Of the \$300 million appropriation, \$250 million is dedicated to unserved and underserved broadband areas. The remaining \$50 million is for economic development and commercial industry customers. Of the \$250 million, \$50 million can be awarded through April 2022.

KIA is going to release a request for information (RFI) prior to releasing a request for proposal (RFP), with the purpose of asking providers, municipalities, and other government agencies for ideas, comments, and suggestions. Stage one of the process will then begin with the release of the RFP for notice of intent to apply and an initial map of unserved areas. Stage two of the process will begin with the release of the RFP for long application and an updated eligible unserved areas map. Project selection will be guided by statute, towards projects in unserved areas where local, state, or federal funds are not designated or are inadequate.

Timelines for the project are still under consideration. Stage one application is expected to be released in July. The federal government says that federal funds must be obligated by December 31, 2024. Expenditures must be completed by December 31, 2026.

In response to a question from Representative Blanton, Director Hicks testified that the broadband deployment fund is not related to Kentucky Wired, rather its purpose is to connect broadband services directly to homes and businesses who need it.

In response to a question from Senator McDaniel, Director Hicks stated that a subject matter expert employed by Kentucky Wired is on the committee for the planning of the deployment of broadband. He continued to say that Kentucky Wired will not be able to apply for funds and will not execute last mile fiber. In response to another question, Director Hicks stated that private sector groups will not be on the planning committee in order to keep potential applicants at arms-length for the procurement process.

In response to a question from Representative Petrie, Director Hicks testified that the planning committee has not solicited information from industry providers before doing the RFI. He continued to say that the RFI will allow this to be done in a formal process. The RFI should go out within the next few weeks.

In response to a question from Senator Buford, Director Hicks testified that the RFI process will be used to gather information from local providers. The RFI will be out within the next few weeks. The RFI process will be used to assure an equal and comprehensive participation by potential applicants and providers to ensure equity. It is not anticipated that future emergency regulations will add much to the statutory structure or the federal program structure already in place. Provider input will be used to develop the RFP.

In response to a question from Representative Tipton, Director Hicks testified that the total cost of broadband deployment to the unserved and underserved will not be known until project applications are received. In response to another question, Director Hicks stated that recoupment requirements will be involved with the distribution of federal funds. Performance accountability will be a part of the upfront application development process.

Representative Fleming encouraged the KIA to involve the private sector in the beginning of the process. In response to a question from Representative Fleming, Director Hicks assured that Kentucky Wired is precluded by statute from receiving any of the funds. He continued to say that the RFI process will provide information on qualified applicants and will comply with statute.

Senator Webb expressed her concern for avoiding duplicity and making an efficient use of funds received and services provided.

In response to a question from Senator West, Director Hicks testified that the award to Kentucky for the State Fiscal Recovery Fund is \$2.183 billion. The federal government has released 50 percent of those funds to Kentucky, which has mostly been appropriated by the General Assembly. The second half of these funds, which have not yet been received from the federal government, is roughly equivalent to the amount that remains to be appropriated from the State Fiscal Recovery Fund. Director Hicks testified that he has not heard of any additional rounds of American Rescue Plan funding.

In response to a question from Representative Bechler, Director Hicks stated that the statute says that funds cannot be awarded to Kentucky Wired.

In response to a question from Representative Petrie, Director Hicks testified that KIA will soon have a timeline of when projects may be expected to be completed. Representative Petrie stressed the importance of mapping to the success of the project.

Sunrise Children's Services Scope and History of Services

Dale Suttles, President, Sunrise Children's Services; Andy Weeks, Board Chair, Sunrise Children's Services; and John Sheller, Attorney, Sunrise Children's Services, testified on Sunrise Children's Services scope and history of services.

Mr. Suttles testified that Sunrise Children Services, or what was called the old Baptist Homes for Children, has been around since 1869. In the 1970s, the Commonwealth partnered with the institution to begin caring for children in the state's custody.

Sunrise Children's Services cares for wards of the state, abused and neglected children, and children removed from their homes by child protective services and placed with the Department of Community Based Services, who partners with Sunrise. Sunrise offers programs including therapeutic foster care, residential treatment, psychiatric residential treatment facilities, family services, and foster-to-adopt. Almost 600 foster children with Sunrise have been adopted. Sunrise also provides an independent living program for children aging out of the foster care system. Sunrise has always been a faith-based organization.

Mr. Sheller testified that Sunrise Children's Services has had a contract with the Cabinet for Health and Family Services for almost 50 years. The most recent contract was the 2019 to 2020 contract. Efforts began to renew the contract in the spring of 2020, but Sunrise was unsuccessful in getting the contract renewed. The organization has been operating without a contract for nearly a year. The Cabinet has continued to work with and reimburse Sunrise. In March of 2021, the Cabinet advised Sunrise that it would discontinue its relationship with the organization and discontinue the referral of children beginning July 1, 2021, unless the contract was signed. Mr. Seller testified that Sunrise is being asked to comply with a regulation that was repealed in November 2019. Sunrise Children's Services is asking that its first amendment rights be respected going forward.

In response to a question from Representative Petrie, Mr. Suttles testified that the Sunrise Children's Services revenues from the Cabinet for Health and Family Services this year total \$16 million. In response to another question, Mr. Suttles stated that total expenses this year have totaled \$22,228,000. There has always been a shortfall, which Sunrise covers through raising funds via programming or private funders and reimbursements from the Kentucky Baptist Convention.

There being no further business, the meeting adjourned.