LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes of the 2nd Meeting
of the 2021 Interim

July 16, 2021

Call to Order and Roll Call

The 2nd meeting of the Legislative Oversight & Investigations Committee was held on Friday, July 16, 2021, at 1:00 PM, in Room 131 of the Capitol Annex. Representative Jason Nemes, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Jason Nemes, Co-Chair; Senators Jason Howell, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Brandon J. Storm, Reginald Thomas, and Max Wise; Representatives Lynn Bechler, John Blanton, Ken Fleming, Angie Hatton, Joni L. Jenkins, and Steve Riley.

Guests: Lisa D. Lee, Commissioner, Kentucky Department for Medicaid Services; Pam S. Smith, Director, Division of Community Alternatives; Kelli Rodman, Executive Director, Office of Legislative and Regulatory Affairs; Amy Staed, Executive Director, Kentucky Association of Private Providers.

LRC Staff: Gerald W. Hoppmann, Committee Staff Administrator; Committee Analysts Van Knowles, Shane Stevens, Greg Daly, Chris Hall, Jeremy Skinner, William Spears, Joel Thomas, Jacob Blevins; and Ashley Taylor, Committee Assistant.

Minutes for June 10th, 2021

Upon motion by Senator Nemes and second by Representative Bechler, the minutes for the June 10, 2021, meeting were approved without objection.

Staff Report: *Supports for Community Living Study*

Legislative Oversight and Investigations staff members Van Knowles and Shane Stevens presented a summary of staff's work since March 2017, which included an analysis of Supports for Community Living (SCL) rates and spending trends from 2004-2017, as well as a review of the Navigant rate study.

Navigant's rate study developed a recommended rate model, which included consolidation and standardization of provider reimbursement rates. The model was constrained by the Department for Medicaid Services (DMS) requirement that it be cost neutral, which resulted in a model that did not accurately represent true costs of providing

care. The Navigant model also relied heavily on current wage data provided via a survey of service providers, which likely depressed its cost estimates. DMS indicated that a budget increase would be necessary to standardize rates and services across all waivers. Since further redesign of these rates is not expected until 2022 or later, staff proposed to close the SCL study without a formal report, but that the committee may wish to consider authorizing a new study after redesign has been operational.

The memorandum and presentation slides are available on the Legislative Oversight and Investigations Committee webpage.

In response to a question from Senator Carroll expressing concern about preserving the historical value of staff's work without a formal report, Mr. Knowles stated that the 2018 staff update, as well as the 2021 memorandum is available to the public. Both memos include detailed information and analysis, which can be used for purposes of moving forward.

In response to a question from Representative Nemes, Mr. Stevens confirmed that the rate methodologies have not been published by DMS since 2001. All of the applications and amendments have been approved despite not having the required codified and published methodology for creating and renewing them. Mr. Stevens stated that staff were unaware of any affected party challenging the federal approval, nor is staff aware of statements from the current presidential administration that it plans to review previous approvals.

Commissioner Lee and Ms. Smith presented slides describing Home and Community-Based Services (HCBS) waivers and actions related to their redesign. Commissioner Lee noted that changes to waivers require care so that the members receive the services they need and explained the purpose of HCBS waivers. Members receive both regular Medicaid services and additional HCBS services such as attendant care. There are over 25,000 members among the six waivers. The Michelle P. Waiver is similar to SCL but does not have a residential component. SCL has 19 percent of all waiver members but accounts for 41 percent of all waiver spending.

Ms. Smith pointed out that the Michelle P. Waiver waiting list times shown in the Legislative Oversight staff presentation had not been updated since her previous discussion with Senator Carroll. She described several of the goals of waiver redesign through 2018. She also summarized waiver redesign activites to date, which included ongoing stakeholder engagement, moving service authorization to the cabinet and case managers, publishing the rate study with recommendations, drafting waiver applications and regulations, and moving grievances and appeals to the cabinet ombudsman's office.

Commissioner Lee explained that the Navigant study addressed all six waivers and looked at program administration and reimbursement rates. If the rate recommendations

had been implemented in the existing structure within the current budget, funds would have been shifted from one provider group to another. Providers expressed concern, so DMS decided to pause on redesign and see what could be done within the current framework. Changes need to be made, but there are always budgetary constraints. Recently, the American Rescue Plan Act (ARPA) made additional one-time funds available for waiver programs. The funding cannot be used for continuing purposes.

Ms. Smith said that ARPA funds would be used to revisit and possibly redo the Navigant study, to assist with building crisis services, to conduct a feasibility study on possibly adding new waivers such as severe mental illness, and to obtain project management assistance.

In response to a question from Senator Thomas about additional waiver slots for the Michelle P. waiver program and the SCL waiver program, Commissioner Lee said that the next budget request would address the waiver population and make recommendations to continue serving the population in the best and most efficient manner possible.

In response to a question from Senator Carroll, Ms. Smith was not certain how much the Navigant contract had cost and would have to verify the actual amount, but she thought it was around $6 million over a 3-year period. She also stated that she would provide this information to Senator Carroll. Senator Carroll commented positively on the stakeholder involvement process but noted that not much progress had been made so far.

In response to a question from Senator Carroll about using the Navigant study, Commissioner Lee said that DMS should look at assessments and rate methodology as well as a child specific assessment. Rate methodology should be consistent across waivers. Providers might choose to serve only the higher-paying waiver if rates differ. Ms. Smith described person-centered planning as a way to ensure that each member gets the services they need, with the goal that all members of all waivers have equal access.

In response to a question from Senator Carroll about the growing responsibilities of case managers, Ms. Smith stated that DMS had been looking at case management and is considering whether there should be a limit on a case manager's caseload and a way to pay for case management based on each member's needs.

Senator Carroll commented positively about the responsiveness of DMS officials and their priorities. He said that the financial component of the waivers needs to change before some of their ideas can be implemented.

In response to questions from Representative Jenkins, Ms. Smith explained that the federal share is about 70 percent. She said some providers have been innovative with tools such as telehealth, but the waivers have lost some providers. DMS is looking at services

that were used during the pandemic, including some new services that were authorized under pandemic-related federal guidelines, to decide what changes can be made.

Representative Nemes called Amy Staed, Executive Director of the Kentucky Association of Private Providers (KAPP), to the testimony table. She explained that KAPP is a nonprofit organization representing waiver providers. KAPP employs over 9,000 Kentuckians and supports over 10,000 individuals with intellectual and developmental disabilities.

Ms. Staed stated that prior to 2018, SCL waiver providers had not had a rate increase in 14 years. COVID-19 has had a significant impact on waiver providers according to a May 2021 survey. She explained that 91 percent of respondents reported they experienced a significant revenue reduction. The average revenue loss was $682,000.

Ms. Staed explained the majority of other providers reported significant workforce problems even when offering a sign-on bonus. Residential providers that provide 24-hour care have employees that are working over 100 hours per week due to not being able to fill shifts. Direct care work is emotionally and physically demanding, and high turnover can have a negative effect on individuals receiving services. This is not a new problem, but with COVID-19, it is now at a critical level. There are active providers who have capacity but are turning down referrals because they do not have adequate care staff.

Ms. Staed spoke about onboarding employees. Providers must do background checks, drug screens, and trainings. A background check might cost about $50, and many times the individual will apply for the job, the employer will do the background check, and the applicant will never show up or will quit the first day, meaning the employer is out that cost.

Ms. Staed said that providers cannot address the wait lists until they have more direct care workers, and waiver providers cannot offer more than $10 to $11 per hour, because the reimbursement rate does not support that increase. The only way to increase wages is to increase reimbursement rates because providers are entirely Medicaid funded and they have no other way to bring in income so that they can raise wages.

Ms. Staed compared the costs of home and community-based care and institutional care, explaining that Kentucky created the waivers to save money. Both of these services offer the same level of care, and this population will always need care and assistance from the state. She urged legislators to consider long-term increased funding for the programs.

Representative Nemes asked Ms. Staed whether the Navigant report was supposed to address the concerns she discussed. Ms. Staed responded yes and offered to go into more detail if needed. Representative Nemes did ask for more detail and also acknowledged he would like the Commissioner to speak on this as well.

Ms. Staed explained that she was on the rate review committee and also participated in the Navigant report. She said this was a closed topic and she was not allowed to solicit feedback from her members about rates that would affect them. There was a budget neutrality constraint placed upon Navigant that made it only possible to shift around the dollars being spent for waivers that were significantly underfunded.

In response to a question from Representative Nemes about the Navigant report, Ms. Staed spoke about her experience with the rate review committee. Participants were not allowed to discuss what happened at the meetings, so she was not able to get feedback from providers. Navigant also had to work within the existing budget, so it was only possible to shift dollars around. Navigant sent a cost survey to members, but the questions did not allow providers to accurately report their cost of doing business. In addition, Navigant would frequently tell providers that their responses could not be correct and needed to be revised.

In response to statements by Ms. Staed, Commissioner Lee speculated that the prior administration had intended the budget to stay within the amount currently allocated to waivers. Ms. Smith said that the rate study information was kept confidential to avoid misinterpretation by others who were not participating. There was a pilot cost survey and multiple trainings. She said she has the rate survey data and communications, and she had seen no requests to providers to change their answers, so she asked Ms. Staed to let her know of any specific cases. Ms. Staed said the rate study was difficult for smaller providers that had not participated in one before, especially with respect to the amount of information requested.

In response to a question from Senator Thomas about labor shortages and wages, Ms. Staed said that restaurants had the option to raise prices to cover increased wages. However, waiver providers depend on what Medicaid pays and cannot raise prices, and most providers depend entirely on Medicaid. There was a bill in the last legislative session to increase direct care wages to $15 per hour.

In response to a question from Senator Thomas about his reading of the executive summary of the Navigant study, Ms. Smith said that budget neutrality was mandated by DMS leadership in place at that time, and that budget neutrality is not a viable option. Additional funding is necessary in order to improve the waiver programs.

Representative Nemes commented on the long-term need for a rate increase and the role of unemployment insurance funds and rules in creating a labor shortage. However, in the shortterm, he stated that problems with unemployment need to be fixed in order to incentivize people to return to work. For example, he discussed the low workforce participation rate and suggested that those who do not show up for interviews should lose their unemployment.

In response to a question from Representative Nemes about the change from 100 percent to 300 percent of the participant liability, Ms. Smith explained that income standards are considered when applying for a waiver, which factors into the amount a member has to contribute to the cost of their care, called the "patient liability." As a result of increasing the threshold from 100 percent to 300 percent of the income standard, participants have had lower liability payments.

In response to a question from Senator Nemes about the definition of a qualified employee, Ms. Staed said that the qualifications for a direct care worker include being over the age of 18 and passing a background check and drug screen. Senator Nemes commented on the skilled labor shortage, which causes a disconnect between job openings and the skill necessary to fill those job openings.

Senator Carroll described his organization's difficulty hiring sufficient staff, as well as the cost of advertising. He commented on the effect of unemployment payments as a factor for the apparent economic upturn, which will not last.

In response to a question from Representative Blanton suggesting the Navigant study did not provide anything usable, Commissioner Lee said that some of Navigant's recommendations had been implemented, and the report led to important conversations. Ms. Smith said that Navigant also helped revise Medicaid's stakeholder engagement process, and its report provided a starting point for future work. She added that 35 percent of the one-time ARPA funds will address workforce and provider development. Direct care workers are intimately involved in the members' lives and in helping them move toward their goals, and some awareness of that came from the Navigant study process.

Representative Blanton commented about the value of what state government is spending on reports by outside companies compared with using those funds on other needs. He questioned whether this is a good use of taxpayer dollars. Representative Nemes indicated that the committee might take up this issue.

Representative Jenkins said that it takes special people to work with one of the most vulnerable populations. The salary issue is something that everyone should be concerned about. The economy has changed since the pandemic. The decision whether to go back to work is very complex given the current child care situation.

In response to questions from Senator Howell, Ms. Staed said that KAPP represents small rural providers, and all the providers who have had to close were in rural areas. Rules require residential providers to give notice and stay open until all residential members have received another placement. Senator Howell inquired further about the placement of those residents at facilities that go out of business. Ms. Staed said that it is difficult to find placements, so sometimes members are placed in an institution instead, which is an

undesirable option. However, according to Ms. Smith, the cabinet makes efforts to find referrals. For example, cabinet staff are assigned immediately upon a provider's notice to close to work with the provider and case managers to find placements, whether the provider is residential or not.

In response to questions from Representative Nemes, Ms. Smith said that DMS currently has 154 enrolled providers to serve about 13,000 people. The hardest hit waiver providers are in the Home and Community Based waiver, especially adult day programs and home health agencies. Some counties have more providers than others, and urban counties do not always have enough, though rural areas have more issues, depending on type of provider and which waiver it is.

Senator Carroll expressed concern regarding investments that are being made with the current economy. He questioned the impacts of federal dollars that are being used for dictating current wages.

Representative Nemes read a text from a provider in Louisville who expressed frustration at the many job applicants who do not show up as a result of government competition.

The meeting was adjourned at 2:45 p.m.