



1915(c) Home and Community Based Services Waiver Redesign Task Force

Community Integration

FULFILLING THE PROMISE OF *OLMSTEAD*

August 23, 2021

Presenter

Jeff Edwards, Director
Kentucky Protection & Advocacy

Kentucky Protection & Advocacy

- Kentucky's designated Protection & Advocacy (P&A) System
- Congress created the P&A System to protect and advocate for individuals with disabilities
- We provide legally-based services statewide; our office is centrally located in Frankfort
- We are client directed



Our Federal Authority

- Pursue legal, administrative, and other appropriate remedies or approaches
- Investigate incidents of abuse or neglect
- Provide information and referral services
- Monitor places where individuals live/receive services
- Educate policymakers

Olmstead v. L.C.

- A landmark 1999 U.S. Supreme Court decision that held unjustified institutionalization is discrimination based on disability
- Requires community placement when it's appropriate, not opposed by the affected individual, and the placement can be reasonably accommodated
- Our clients want to live, work, and receive services in the community like everyone else

1915(c) Waivers and *Olmstead*

- Many states, including Kentucky, use Medicaid 1915(c) Waivers to provide community-based services and supports
- Kentucky has six 1915(c) Waivers *
 - Acquired Brain Injury: brain injury
 - Acquired Brain Injury Long Term Care: brain injury
 - Home and Community Based (HCB): physical disabilities
 - Model II: ventilator
 - Michelle P: intellectual/developmental disabilities (I/DD)
 - Supports for Community Living (SCL): I/DD

* See Task Force Materials, June 21, 2021, DMS Presentation for more detailed information



Recent Positive Changes to the Waivers – Applauding DMS

- 300% patient liability standard
- Services provided in hospital settings
- Clarifying the Participant Directed Services (PDS) criteria for family members who provide waiver services
- Covering PDS employee onboarding costs

Waiver Problems that Persist

- HCB PDS pay rate of \$11.52 gross per hour
- Lack of Direct Support Professionals (DSPs)
- Lack of services in certain waivers
 - SCL needs nursing services
 - HCB needs residential services
 - Habilitative therapies
 - Transportation
- Redesigning Exceptional Supports*
- Lack of support and guidance for providers
 - Maintain quality providers and staff

* See 2020 Exceptional Support Waiver Services Task Force Recommendations

Is Kentucky in violation of *Olmstead*?

- Waiting lists must move at a reasonable pace
- Kentucky has added zero new waiver slots in the last two enacted budgets
- Long, persistent waiting lists* that barely move:
 - The Michelle P waiting list exceeds 7,000
 - The SCL waiting list exceeds 2,800

* See Task Force Materials, June 21, 2021, DMS Presentation for more detailed information

Action Items

- Fund additional waiver slots
 - Waiver redesign does not impact those who have been sitting on waiting lists—some for more than ten years
- Address the waiver problems that still persist
 - HCB PDS pay rate
 - Lack of DSPs
 - Lack of services in certain waivers
 - Redesign of Exceptional Supports
 - Provider support
- Create a Serious Mental Illness (SMI) Waiver

Next Steps

- Invite individuals with disabilities to testify at a Waiver Redesign Task Force meeting

