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MEMORANDUM

TO: Robert Stivers, President of the Senate
David Osborne, Speaker of the House
Members of the Legislative Research Commission

FROM: Senator Julie Raque Adams, Co-chair
Representative Steve Riley, Co-chair
Exceptional Support Waiver Services Task Force

SUBJECT: Findings and Recommendations of the Exceptional Support Waiver Services Task Force

DATE: November 23, 2020

In a memorandum dated June 5, 2020, the Legislative Research Commission established the Exceptional Support Waiver Services Task Force. The task force was established to study and make recommendations regarding 1) new exceptional support services and payment models that will allow waiver service providers to provide the level of care necessary to support high-intensity individuals; 2) creating efficiencies within the Cabinet for Health and Family Services to ensure that participants receive high-quality exceptional supports when they are needed without delay or interruption; 3) creating efficiencies within the Cabinet for Health and Family Services that support quality care and outcomes; 4) which critical outcomes can be measured and used to improve the exceptional support service model; and 5) how federal, state, and local resources are being used to optimize these outcomes and how resources can be better coordinated or redirected to meet the needs of high-intensity waiver participants in the state.

The 15-member task force began meeting in July 2020 and convened five times during the 2020 Interim. The task force heard testimony from nearly two dozen individuals, state agencies, and advocacy groups on various topics, including the exceptional support application and prior

authorization process, service limits, the unmet needs of waiver participants, reimbursement methodologies, and service provider concerns.

In accordance with the June 5, 2020, memorandum, the task force submits the following findings and recommendations to the Legislative Research Commission for consideration. These findings and recommendations are based on the testimony provided to the task force during the 2020 Interim. This memorandum serves as the final work product for the task force.

Findings

1. The Supports for Community Living (SCL) exceptional support services program fails to adequately support individuals with high-intensity needs and fails to adequately compensate providers who care for these individuals. The SCL exceptional support services program, instead prioritizes cost-savings over meeting the needs of qualified individuals and fairly compensating providers.
2. The exceptional supports application process is overly burdensome and unnecessarily complicated which may deter individuals, who might qualify for services, from seeking the supports they need.
3. Under the current SCL waiver, many waiver participants lack access to adequate consultative clinical and therapeutic services (CCT). The availability of CCT services was significantly reduced as part of Kentucky's transition from the SCL 1 to the SCL 2 waiver. This has left participants who require intense, long-term supports after stabilization with few options for care in their communities and resulted in a significant increase in applications for exceptional support services for increased CCT units.
4. The ongoing Covid-19 pandemic and ensuing state of emergency have delayed the Cabinet for Health and Family Services' Medicaid waiver redesign efforts. In February 2017, the Cabinet for Health and Family Services initiated efforts to modify and redesign Kentucky's six 1915(c) home and community-based services (HCBS) waivers. The goals of the waiver redesign efforts include enhancing quality of care, implementing consistent definitions across all waivers, identifying and selecting a universal assessment tool, implementing cost containment, implementing individualized budgeting, and optimizing case management to support person-centered planning and to ensure conflict-free case management as required by federal regulations. In April 2017 the cabinet contracted with Navigant to conduct an assessment of the state's various waiver programs. Navigant submitted its report, including numerous recommendations, to the cabinet in August 2018. However, due to the change in administrations and the ongoing Covid-19 pandemic, the cabinet has halted work on the redesign and has not set a date to resume work on this project.
5. Kentucky could significantly increase SCL waiver and exceptional support service expenditures without violating the federal Centers for Medicare and Medicaid Services (CMS) budget neutrality requirements for 1915 (c) HCBS waivers. CMS guidelines require that 1915(c) HCBS waivers demonstrate that the cost of care in the community is equal to or less than the cost of institutionalized care. In Kentucky, the current aggregate cost per capita, per month for providing services in an institution is \$29,306. The current aggregate cost per

capita, per month for providing services in the community through the SCL waiver is \$6,785, or less than one-quarter of the cost of institutionalized care.

Recommendations

The task force recommends that the Kentucky General Assembly take the following actions during the 2021 Regular Session:

1. Through the adoption of a concurrent resolution, establish a task force to study the redesign of all 1915(c) HCBS waivers during the 2021 Interim and to encourage the Cabinet for Health and Family Services and the Department of Medicaid Services to postpone any waiver services rate changes until at least 2022.
2. Through the adoption of a joint resolution, direct the Cabinet for Health and Family Services to study the potential impacts of implementing or contracting for long-term crisis transition services.
3. Through the adoption of a joint resolution, direct the Cabinet for Health and Family Services to study alternatives to institutionalization, including the possible development of a high-intensity group home model for adults with intellectual or developmental disabilities and complex medical needs through a pilot program to serve at least 12 individuals in four- or six-person group homes with at least a one-to-one staff to resident ratio.
4. Through the adoption of a joint resolution, direct the Cabinet for Health and Family Services to explore strategies for reducing the number of individuals currently residing in intermediate care facilities.
5. Through the adoption of a joint resolution, direct the Cabinet for Health and Family Services to develop strategies to better utilize Kentucky's Medicaid State Plan services to meet the needs of individuals with an intellectual or developmental disability and complex medical needs.
6. Through the adoption of a joint resolution, direct the Cabinet for Health and Family Services to reform the provision of exceptional support services to SCL waiver participants. Reform efforts should include the following:
 - a. Adopting a single, standardized assessment tool with demonstrated reliability and validity;
 - b. Streamlining the SCL exceptional supports application process by reducing administrative burdens, adjusting application timelines, and allowing for the backdating of exceptional support approvals to the date of application submission;
 - c. Extending the SCL exceptional support prior authorization period for nonclinical support services from 6 months to 12 months;
 - d. Improving the SCL referral system to ensure that providers are not deterred from accepting high-intensity referrals;
 - e. Simplifying the SCL exceptional supports billing procedures;
 - f. Reforming the current SCL exceptional supports rate methodology to ensure that it is truly cost-based, with a particular focus on one-to-one and two-to-one residential staffing arrangements;

- g. Researching the implementation of a tiered rate structure for case management based on acuity and needs of the individual;
 - h. Restoring SCL consultative clinical and therapeutic services (CCT) service unit limits to SCL 1 waiver levels;
 - i. Permitting the use of SCL exceptional supports for nonmedical transportation; and
 - j. Establishing a new SCL level of care for waiver participants whose needs cannot be met in an SCL Residential Level 1 or Level 2 setting.
7. Enact legislation to provide targeted funding to SCL waiver service providers to incrementally increase direct service provider wages to at least \$15 per hour.