

# **1915C HOME & COMMUNITY BASED SERVICES WAIVER REDESIGN TASK FORCE**

## **Minutes of the 5th Meeting of the 2021 Interim**

**October 18, 2021**

### **Call to Order and Roll Call**

The 5th meeting of the 1915c Home & Community Based Services Waiver Redesign Task Force was held on Monday, October 18, 2021, at 1:00 PM, in Room 129 of the Capitol Annex. Representative Steve Riley, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Julie Raque Adams, Co-Chair; Representative Steve Riley, Co-Chair; Senators Danny Carroll, Stephen Meredith, and Dennis Parrett; Representatives Daniel Elliott, Norma Kirk-McCormick, and Pamela Stevenson.

Guests: Representative Kimberly Moser; Representative Mark Hart; Sharon Raymond; Sherry Pickett; Scott Romano; Grayson Kemplin and Frankie Huffman, Members of the Protection and Advocacy for Persons with Developmental Disabilities (PADD) board; Pam Smith, Director, Division of Community Alternatives, Department for Medicaid Services, Cabinet for Health and Family Services; Steve Shannon, Executive Director, Kentucky Association of Regional Providers; Amy Staed, Executive Director, Kentucky Association of Private Providers; Jane Stahl, Executive Director, NeuroRestorative Kentucky; and Kelly Upchurch, Legislative Chair, Kentucky Association of Adult Day Centers.

LRC Staff: Chris Joffrion, Hillary Abbott, and Amanda DuFour.

### **Approval of Minutes**

A motion to approve the September 2021, minutes was made by Senator Meredith, seconded by Representative Kirk-McCormick, and approved by a voice vote.

### **The Importance of Waiver Services and Barriers to Care**

Sherry Pickett, mom of waiver recipient Matthew, and a parent advocate discussed the challenges Matthew faces and the challenges she faces as Mathew's caregiver. Ms. Pickett discussed the complex needs Matthew has and the struggle to find and keep caregivers for the amount they are paid by the waiver.

Sharon Raymond, mom of Jessie, discussed Jessie's experience as a person on the autism spectrum, who does not qualify for waiver services and the need for waiver reform to include people like Jessie. Ms. Raymond stated that Jessie's complex and volatile behavior issues had made options for keeping her in the community limited. Ms. Raymond stated that they face frequent worker turnover due to the intensity of Jessie's behavior which also limits her ability to stay in a community residential home. Ms. Raymond stated that more options for persons with complex needs, need to be incorporated into waiver programs.

### **The Rights of Individuals with Intellectual and Developmental Disabilities**

Representative Mark Hart, Scott Romano, and members of Protection and Advocacy for Persons with Developmental Disabilities (PADD) Grayson Kemplin and Frankie Huffman spoke about the need for a disabled person's bill of rights legislation that will put into law, more expansive rights for persons with disabilities. Mr. Romano stated that his adult daughters who are waiver recipients struggle to have their needs met and rights respected since they are of legal age but have the functioning capability of a child. Mr. Romano added that the bill of rights would help adult family care provider's better advocate for the rights of their relatives better than what is currently available to guardians and family care providers. Mr. Kemplin stated that many people with disabilities cannot advocate their rights for themselves and he feels having a bill of rights in place will give a voice to those people. Representative Hart stated that he is proposing legislation for the 2022 Regular Session that creates a disabled person's bill of rights and is using Mr. Kemplin, Mr. Huffman, and Mr. Romano's input to guide the language of the bill.

In response to questions and comments from Senator Meredith, Mr. Kemplin stated the bill of rights would be a statement to the commonwealth that persons with disabilities have rights, as any other person, and should be taken seriously.

### **Waiver Services Reimbursement Rate Changes: An Overview of the Rate Setting Process and Recommendations**

Pam Smith, Director, Division of Community Alternatives, Department for Medicaid Services (DMS), Cabinet for Health and Family Services (CHFS) presented an overview of provider reimbursement rates, how rate are set, how rates can be improved, and DMS's rate recommendations including, an update to the current rate setting methodology and reimbursement rates, a review of Kentucky's full 1915(c) HCBS service menu, an increase in training of case managers, providers, and participants, a consideration of a tiered payment methodology, and extra support for providers.

In response to questions and comments from Senator Meredith, Ms. Smith stated that she does not know when the timeline for a new reimbursement rate study will begin but stated that once the rate study does begin it could take several years. Ms. Smith stated that DMS has conducted two internal surveys with providers and DMS will use American Rescue Plan Act (ARPA) funds to begin collecting reimbursement rate data.

In response to questions and comments from Representative Riley, Ms. Smith stated an interim rate increase is possible but Centers for Medicare and Medicaid (CMS) requires proof of a rate methodology that shows why the rates need to be increased temporarily.

In response to questions and comments from Senator Adams, Ms. Smith stated that the deadline to spend the ARPA dollars is March 21, 2024, and that while the guidelines were distributed, Kentucky did not receive approval from CMS to begin using the ARPA funds until September 2021.

### **Update on Enhanced Federal Medical Assistance Percentage (FMAP) Spending Plan**

Pam Smith, Director, Division of Community Alternatives, Department for Medicaid Services (DMS), Cabinet for Health and Family Services presented an update on the enhanced FMAP spending plan, the timeline for implementation, and how DMS plans to use enhanced FMAP funds.

In response to questions and comments from Senator Meredith, Ms. Smith stated that she will follow-up with the committee on a potential FMAP reduction.

### **Waiver Services Reimbursement Rate Changes: Recommendations for Changes from the Prospective of Providers**

Jane Stahl, Executive Director, NeuroRestorative Kentucky discussed labor shortage challenges facing NeuroRestorative including 124 open positions, 12 clinical and 3 licensed nurse openings. Ms. Stahl stated that NeuroRestorative clinical and administrative staff are working as direct support providers (DSP) to fill the labor shortages, averaging 1000 clinical hours and 1500 salaried hours per month in covering DSP shifts. Ms. Stahl stated that this is unsustainable and provider reimbursement rates must be increased.

Kelly Upchurch, Legislative Chair, Kentucky Association of Adult Day Centers presented an overview of the labor challenges facing adult day centers across the Commonwealth and reported to the task force that at least 4 centers have closed since the pandemic began. Mr. Upchurch also stated that unless there is at least a ten percent increase in provider reimbursement rates, adult day centers will continue to close down permanently.

Amy Staed, Executive Director, Kentucky Association of Private Providers stated that to meaningfully address the waiver waitlist, the labor shortage must be addressed first which can only be done by increasing reimbursement rates. Ms. Staed stated that wages and reimbursement rates are so low that there are not enough providers to serve the participants that are currently on waivers let alone taking on new participants from the waitlist. Ms. Staed stated that there is not time for another rate study nor is there is need

for another rate study; immediate funding is needed. Ms. Staed stated that a twenty-five percent increase in the provider reimbursement rates across all waivers will be enough in the short term to stave off collapse. Ms. Staed stated that the Appendix K fifty percent rate increase for SCL and ABI residential service models must be made permanent without an exclusion for day services. Ms. Staed stated that in the long term, regular rate analysis should be conducted, cost-of-living adjustment should be made annually, and priority funding for a robust, qualified workforce should be ensured.

Steve Shannon, Executive Director, Kentucky Association for Regional Providers stated that more money is needed now or else providers are going to stop being able to provide services and participants will not get their needs met. Mr. Shannon stated that as a collective, providers from KARP, KAPP, NeuroRestorative, and KAAD request that CHFS utilize HCBS-only ARPA funds to implement rate increases for all waivers, that the general assembly appropriate approximately \$279 million in the 2022 budget to implement a 25 percent increase across all waivers in 2022, and that CHFS make the fifty percent Appendix K increase for SCL and ABI residential services permanent without the exclusion for day centers maintain the current definition of attendant care as defined in 907 KAR 7:010.

In response to comments from Senator Meredith, Mr. Shannon stated that he agrees that the cost of doing nothing to more than the remedy.

### **Adjournment**

There being no further business, the meeting was adjourned at 3:30 p.m.