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MEDICAID HOME AND COMMUNITY BASED SERVICES WAIVERS

This memorandum provides information related to Medicaid Home and Community Based Services (HCBS) waivers, current waiver services available in Kansas, and recent legislative changes to reimbursement rates.

Overview of HCBS Waivers

The HCBS waiver program is authorized under Section 1915(c) of the federal Social Security Act. Through the HCBS waiver program, a Medicaid beneficiary can receive a wide range of services designed to allow the individual to live in their home or community rather than receive institutionalized care. Section 1915(c) waivers must be cost neutral, meaning states that operate waivers must ensure the average per capita expenditure for HCBS does not exceed the average per capita cost of services that would have been provided in an institution in lieu of the waiver.

Services under the HCBS waiver program may combine standard medical services and non-medical services. Standard services may include, but are not limited to:

- Case management (support and service coordination);
- In-home care (home health aide and personal care attendants); and
- Habilitation services (both day and residential).

As of August 2021, 47 states, including Kansas, and the District of Columbia have HCBS waivers approved through the federal Centers for Medicare and Medicaid services (CMS). Kansas administers Medicaid through the managed care program KanCare, which was launched in January 2013.

History of HCBS

The federal government enacted Medicaid in 1965. Prior to Medicaid, states often housed individuals with mental health, intellectual, or developmental disabilities in large institutional settings. After the passage of Medicaid, and throughout the second half of the 20th century and into the 21st century, states began to shift toward a model of care that prioritized home and community settings. In 1982, Kansas received authorization to start its HCBS waiver program. The Kansas Mental Health Reform Act of 1990 mandated that community mental

health centers (CMHCs) serve as the primary points of entry into the mental health system, including state institutions.

In 1990, President George H. W. Bush signed the Americans with Disabilities Act (ADA), which prohibits discrimination based on disability. Title II of the ADA prohibits discrimination against individuals with disabilities by public entities, including state and local governments. In 1999, the Supreme Court of the United States ruled in *Olmstead v. L.C.* that the ADA protected the right of individuals with mental disabilities to live in their community rather than institutional settings. The Court wrote that Title II of the ADA required states “to provide community-based treatment for persons with mental disabilities when the State’s treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.” In response to *Olmstead*, CMS issued letters that stipulated states should take reasonable steps to accommodate individuals if treatment professionals determine an individual could live in a community setting with appropriate support services.

In one of those letters, CMS also issued guidance that said states can limit the number of individuals who receive services under an HCBS waiver.

HCBS Waivers in Kansas

Currently, Kansas has seven approved HCBS waivers:

- Autism (AU);
- Frail Elderly (FE);
- Intellectual and Developmental Disability (I/DD);
- Physical Disability (PD);
- Serious Emotional Disturbance (SED);
- Technology Assisted (TA); and
- Brain Injury (BI).

To be eligible for any HCBS waiver, the individual must be financially and functionally eligible for Medicaid. Individuals with income above \$1,177 per month must share in the cost of care, called the “client obligation,” which is paid by the client to a medical provider. In 2021, the Legislature raised the protected income level (PIL) for HCBS from 150.0 percent to 300.0 percent of federal supplemental security income for FY 2022. The PIL is a Medicaid eligibility pathway that enables individuals with income above the Medicaid limit to become HCBS eligible.

Individuals receive services through individual providers, contracted through Managed Care Organizations (MCO). Providers are reimbursed through KanCare for their services. Additional information for each of the HCBS waivers follows.

Autism

The AU waiver provides services to children who have been diagnosed with Autism Spectrum Disorder, Asperger's syndrome, or a pervasive developmental disorder not otherwise specified. Children are eligible for services from the time of diagnosis until their sixth birthday. Autism services are limited to three years; however, individuals may apply for an additional year.

The AU waiver generally has five service categories, which represent different services and respite care. The current rates range from \$3.26 to \$10.87 per 15-minute increment.

As of April 12, 2022, 63 individuals were eligible to receive services under the AU waiver, and 386 were proposed recipients of the waiver.

Frail Elderly

The FE waiver provides services to Kansas seniors as an alternative to nursing facility care. The waiver serves those individuals age 65 and older who meet the Medicaid nursing facility threshold score. Services include personal care, household tasks, and health services.

The FE waiver has approximately 17 service categories, which generally represent various personal care services and life management services. Services vary in reimbursement frequency and range from 15-minute increments for personal care services to once-a-month for more specialized services. For more-frequent services, the rates range from \$2.96-\$4.49 per 15-minute increment. Less-frequent services range from \$17.30 to \$125.04 per occurrence. These types of services range from medication reminders to financial management services.

As of April 12, 2022, 6,241 individuals were eligible to receive services under the FE waiver.

Intellectual and Developmental Disability

The I/DD waiver provides services to individuals five years of age and older who meet the definition of intellectual disability, have a developmental disability, or are eligible for care in an intermediate care facility for individuals with intellectual disabilities. Those with a developmental disability may be eligible if their disability was present before age 22 and they have a substantial limitation in 3 areas of life functioning.

Services for the I/DD waiver are divided into approximately 14 service categories, which generally represent various personal care services and life management services. Services vary in reimbursement frequency and range from 15-minute increments for personal care services to once-a-month for more specialized services.

For more-frequent services, the rates range from \$3.08 to \$8.74 per 15-minute increment. Less-frequent services range from \$17.47 to \$133.91 per occurrence. These types of services range from medication reminders to financial management services.

Two common services are residential supports and day supports. Residential support rates are reimbursed per day. These rates range from \$51.55 to \$223.63. Day supports are reimbursed in 15-minute increments; these rates range from \$2.18 to \$7.03.

As of April 12, 2022, 9,029 individuals were eligible to receive services under the I/DD waiver, and 4,684 were on the waiver waitlist.

Physical Disability

The PD waiver provides services to individuals 16 to 64 years of age who meet the criteria for nursing facility placement due to their physical disability, have been determined disabled by the Social Security Administration, and need assistance to perform activities of daily living.

The PD waiver has approximately 17 service categories, which generally represent personal care and life management services. Services vary in reimbursement frequency and range from 15-minute increments for personal care services to once-a-month for more specialized services.

Personal care services are generally reimbursed at \$3.08 to \$3.56 per 15-minute increment. Home-delivered meals are reimbursed at \$6.04 per meal. Less-frequent services range from \$17.30 to \$125.04 per occurrence. These types of services range from medication reminders to financial management services.

As of April 12, 2022, 6,151 individuals were eligible to receive services under the PD waiver, and 2,135 were on the waiver waitlist.

Serious Emotional Disturbance

The SED waiver provides services to individuals ages 4 to 18 who have been diagnosed with a mental health condition that substantially disrupts the individual's ability to function socially, academically, or emotionally. The waiver is designed to divert the individual from psychiatric hospitalization to intensive home and community based supportive services.

The SED waiver has approximately seven service categories, which represent various therapy types and respite care. These services are generally reimbursed at \$3.26 to \$21.75 per 15-minute increment.

As of April 12, 2022, 3,043 individuals were eligible to receive services under the SED waiver.

Technology Assisted

The TA waiver provides services to people through the age of 21 who require substantial and ongoing daily care by a nurse comparable to the level of care provided in a hospital.

The TA waiver has approximately seven service categories, which represent various attendant care services. These services are generally reimbursed at \$3.61 to \$8.70 per 15-minute increment. The TA waiver includes a few less-frequent services, such as health

maintenance monitoring and financial management services, which are reimbursed at \$76.11 per visit and \$125.04 per month, respectively.

As of April 12, 2022, 665 individuals were eligible to receive services under the TA waiver.

Brain Injury

The BI waiver is a habilitative/rehabilitation and independent living program with an emphasis on the development of new independent living skills and/or relearning of lost independent living skills due to an acquired or traumatic brain injury.

The BI waiver has approximately 16 service categories, which generally represent various personal care services and life management services. Services vary in reimbursement frequency and range from 15-minute increments for personal care services to once-a-month for more specialized services.

For more-frequent services, the rates range from \$3.24 to \$18.99 per 15-minute increment. Less-frequent services range from \$17.30 to \$125.04 per occurrence. These types of services range from medication reminders to financial management services.

As of April 12, 2022, 870 Kansans were eligible to receives services under the BI waiver.

Recent Changes to HCBS Provider Reimbursement Rates

2020 Legislative Session

The Legislature added \$6.4 million, including \$2.7 million from the State General Fund (SGF), to increase the Specialized Medical Care service rate for the TA waiver. The Legislature also added \$22.1 million, including \$9.0 million from the SGF, for a 5.0 percent increase in I/DD waiver service rates in FY 2021.

2021 Legislative Session

During the 2021 Legislative Session, the Legislature included the following items in the approved budget:

- \$5.5 million, including \$2.0 million SGF, to provide a 5.0 percent increase in the provider reimbursement rates for the I/DD waiver for the last three months of FY 2021;
- \$31.0 million, including \$12.4 million SGF, to continue the 5.0 percent increase in the provider reimbursement rates for the I/DD waiver from FY 2021 and provide an additional 2.0 percent increase for FY 2022;
- \$5.3 million, including \$1.8 million SGF, in FY 2021 and \$20.0 million, including \$8.0 million SGF, for FY 2022 for additional funding for BI waiver services; and

- \$16.1 million, including \$6.2 million SGF, for the TA waiver for FY 2022, with language directing this funding to be used to increase the provider reimbursement rate for the Specialized Medical Care services code from the rate of \$31.55 per hour to \$43.00 per hour for in-home Medicaid Care Registered Nurse/Licensed Practical Nurse nursing services for the TA waiver.

2022 Legislative Session

During the 2022 Legislative Session, the Governor included several items in her budget recommendation related to the HCBS waivers:

- \$23.2 million, including \$9.3 million SGF, to standardize personal care attendant services among the HCBS waivers, for FY 2023 to assist in recruiting and retaining attendants; and
- \$1.7 million, including \$665,049 SGF, to increase the T1000 Specialized Nursing code to \$43.00 per hour for the I/DD waiver, for FY 2023, to bring the code in line with increase made to the Technology Assisted wavier for FY 2022.

During consideration of the budget, the Legislature approved the following items in the final budget:

- \$122.2 million, including \$48.9 million SGF, to provide a 25.0 percent reimbursement rate increase, excluding the T1000 Medicaid code for specialized nursing care, for providers of HCBS I/DD waiver services for FY 2023, with language requiring the Kansas Department for Aging and Disability Services to provide a report to the joint Legislative Budget Committee regarding salaries and wages for the direct support workforce;
- \$11.8 million, including \$4.7 million SGF, to provide a 10.0 percent reimbursement rate increase for providers of HCBS FE waiver services for FY 2023;
- \$7.7 million, including \$3.1 million SGF, with language to increase the reimbursement rate for the T1000 Medicaid code for specialized nursing care from \$43.00 per hour to \$47.00 per hour for FY 2023; and
- \$2.5 million, including \$1.5 million SGF, to increase the amount provided to community developmental disability organizations to fulfill their role in assessing individuals for the HCBS I/DD waiver for FY 2023.