



February 11, 2025

TO: Representative Averkamp and
Members of the House Committee on Welfare Reform

FR: Matt Fletcher, Executive Director, InterHab

RE: Proposed Amendment for HB 2240

Chairman Averkamp and members of the committee, thank you for the opportunity to share the multiple concerns of Kansas families and professionals who care for persons with intellectual and developmental disabilities (IDD) regarding several proposed changes to the IDD service network that the Kansas Department for Aging and Disability Services has announced. I would also like to proposed suggested amendment language to HB 2240 that would ensure improved outcomes regarding these concerns.

KDADS' Proposed Changes for the IDD system:

KDADS is planning multiple large-scale systems change initiatives for the IDD service network. They intend to implement these simultaneously over the next two years. They have not adequately included, and do not have the support of, service providers or the larger stakeholder community.

Beginning in July 2025, KDADS intends to make the following system changes:

- Change the assessment tool (from BASIS to MFEI) and process for how all Kansans with IDD will have their level of care determined.
- Overwrite the existing five-tiered funding structure for provider reimbursement and replace it with three tiers of funding and one capped enhanced rate.
- Dismantle the existing agency-based Targeted Case Management network with the expectation that new non-agency-based TCM providers will spring up to provide the vital service. This may cause significant and widespread gaps in TCM coverage across the state.
- Require many of the 27 regional Community Developmental Disability Organizations (CDDOs) to undergo significant organizational restructuring or cease operations.
- Make sweeping changes to how Day Services are provided to Kansans with IDD across the state.
- Restrict provision of center-based work opportunities (workshop settings) to Kansans with IDD after six months of participation, regardless of those individuals' choices in where they want to work.
- Remove small group work opportunities for Kansans with IDD from eligibility to receive funding.

KDADS has developed each of these systems change initiatives largely without meaningful input from providers and families. Their plans are deficient as a result. It is necessary to "press pause" on these changes and engage in a collaborative planning process between providers, families, legislators and KDADS in developing improved proposals.

KDADS Stakeholder Engagement is Lacking:

While KDADS has held a number of public-facing meetings on systems change initiatives, the Department has failed to engage in meaningful collaboration with families and professionals. Each of KDADS' proposed initiatives were developed largely without any significant input from those who will be most impacted by them. Proposed

changes were revealed to stakeholders in a developed state and stakeholders were asked to provide reactions. Attempts to provide reactions during those public-facing meetings were often confounded by technological barriers that prevented

many participants from submitting questions and comments. Most notably, a December 17 public session held by KDADS to brief the stakeholder community left dozens of questions posed by participants unanswered and a January 21 public session had to be canceled in its entirety because of technical issues.

KDADS has also failed to adequately include the Legislature in the development of their systems change initiatives. KDADS shared very little information with the Legislature during its 2024 session, even though KDADS was far from finalizing these proposals. During the October 9 legislative Special Committee on IDD Targeted Case Management, KDADS was unable to answer many of the questions posed by members of that committee, and the Department's responses to requested information also fell short. We are aware that KDADS has recently begun to share information with the Legislature, which appears to be largely in response to widespread concerns now being expressed by families and professionals across the state.

Federal Conflict of Interest Concerns:

On January 16, 2014, CMS released final regulations regarding home and community-based services (HCBS) requirements. Otherwise known as the HCBS Medicaid Settings Final Rule, those regulations aimed to improve the quality of HCBS programs, promote person-centered planning, and reinforce CMS's commitment to ensuring that individuals receiving services under various federal programs could fully engage in their communities and access services in the most integrated settings of their choosing. A component of those regulations included ensuring that case management is delivered without conflicts of interest.

CMS has pushed states to respond to TCM conflict of interest concerns since that time. Some states chose to require that service providers divest from case management provision. A similar approach in Kansas could cause many of the largest providers of TCM in our state to eliminate their TCM programs. This would undoubtedly cause significant disruption to TCM in many parts of the state. However, it is important to note that there have been a variety of state responses to conflict of interest that have been approved by CMS. The limited options that KDADS has proposed to date do not reflect the full array of responses from other states. Among the options that have yet to be adequately considered for Kansas:

- Allowing many regions of the state that fall into "shortage area" categories to continue to provide agency-based TCM with additional oversight provided by KDADS, such as annual approvals and third-party mediation and grievance resolution.
- Developing vigorous safeguards and oversight within KDADS to allow TCM to continue to be provided in the system much the same as it currently is.
- Creation of a TCM program manager within KDADS to oversee TCM processes and outcomes, promote quality, & negate conflict of interest.
- Development of a locally controlled administrative services organization to affiliate with Targeted Case Managers where conflict of interest is potentially present to allow those TCMs to continue to provide service to the same individuals on their caseloads.

InterHab's organizational membership is comprised of many of the largest service providers across Kansas. Among our membership, more than 70% of service providers also maintain TCM programs. All of the TCM programs would be in jeopardy if our state chooses to force service providers to divest from TCM provision. Forced divestiture on such a large scale across Kansas is unprecedented and will have an enormous impact on TCM service capacity. If you can imagine a heat map of geographic regions of our state that will be impacted due to providers divesting from TCM, please imagine a map in which all areas of the state would be affected. More than 56% of our organizational members report that they would divest from the provision of TCM if forced to choose between service provision and case management. That would result in the disenfranchisement of more than 1,533 Kansans with IDD from the case management choices they have made for themselves.

Our state is already experiencing capacity shortages of TCM in several regions across the state. KDADS' plan will sacrifice established capacity for the unsubstantiated hope that new capacity will be developed. Our members report inadequate

TCM capacity within their regions to absorb individuals who would lose their case managers, with over 65% of providers reporting little to no additional TCM capacity in their areas.

We believe that the state should submit a plan to CMS that preserves agency-based TCM, as other states have done. The Special Committee on TCM included that recommendation in its findings as well. We are hopeful that KDADS will go back to the drawing board and include families and providers in a collaborative process to develop a Kansas-specific solution.

MFEI Level of Care Assessment and IDD Funding Structure Overhaul:

There is widespread support for the adoption of a new level of care assessment tool. However, as in the scenario above, KDADS' proposed plan for implementation is so flawed that the larger stakeholder community cannot get behind it. It is important to note that KDADS ignored the work of a multidisciplinary group it convened beginning in 2013 and that subsequently met for more than 5 years. That workgroup, which endorsed usage of the interRAI-based MFEI tool, did not recommend corresponding changes to the IDD funding structure.

Instead of heeding the recommendations of that multi-year examination, KDADS convened a second internal workgroup that provided them with the recommendations that underpin their current proposed implementation of the MFEI tool along with substantive changes to funding for the IDD system. If they had included providers in their second review of MFEI implementation, we could have helped them understand the unworkability of several pieces in their current proposal. The fact that they have had to delay implementation twice now and have also made two substantial changes to their accompanying plan to change the entire funding structure for IDD services, indicates that their plan was not well-developed to begin with.

80% of CDDOs surveyed by InterHab report that they are not ready to implement the new MFEI tool by July 1. Over 91% of providers surveyed indicated that they have not been provided sufficient information by KDADS to adequately plan for either the new MFEI tool or the changes to the IDD funding structure. Providers are struggling to calculate fiscal impacts from these changes, and no feasibility study has been performed by KDADS on impacts to providers. Among the providers that have tried to calculate impacts, the following types of losses have been reported:

- “We would lose up to 20% of our total HCBS IDD residential support revenue/month.”
- “We have estimated we will lose \$100,000 in the first year.”
- “We anticipate a decrease of \$162,000.”
- “\$30,000.00 annual reduction in revenue.”
- “We would lose approximately 4.5% of our HCBS income.”

Further, KDADS' proposed implementation of the MFEI tool has ignored the ultimate end user of the process – individuals and families. The new assessment will take approximately twice as long to complete. CDDOs who are tasked with carrying out a significant portion of the new assessment report that the time to complete will not appreciably reduce over time, due to the excessive requirements that KDADS has built into the process. CDDOs offered to significantly reduce the requirements of the assessment but that offer was declined by KDADS. Documentation requirements for the new assessment are considerably more extensive and are still somewhat unclear. For example, in order for CDDOs to attempt to determine the full list of required documentation, they had to complete an online training provided by KDADS and pay particular attention to the verbal presentation as all required documentation was not present on the accompanying slides.

“Unbundled” Day Services:

KDADS has announced that it will submit new IDD HCBS Waiver definitions for services that fall under the Day Services category to CMS. These new definitions have been ‘unbundled’ meaning that instead of the current blanket definition for Day Services, a new series of definitions will be used for discrete activities which fall under the category of Day Services. These new ‘unbundled’ definitions were developed largely without any substantive input from stakeholders or providers.

Further, these definitions unnecessarily restrict Kansans with IDD from some services and settings that they have chosen to best meet their personal needs and goals. For example, the provision of center-based work opportunities (workshops) will be arbitrarily restricted after six months of participation, regardless of the choice the individual in service makes. Small group work opportunities for Kansans with IDD have been eliminated from eligibility to receive funding.

It is important to note that the provision of center-based work and small group work opportunities are separate issues than the usage of 14c subminimum wage certificates offered through the US Department of Labor. 14c certificates are in use by only a dozen providers in Kansas. The Legislature provided transition funds for those providers in the 2024 Legislative Session. KDADS' intention through their unbundled Day Service definitions is to impact the global offering of center-based work, which expands far beyond that small subset of 14c providers.

Kansans with IDD within every region of the state engage in center-based work opportunities, and communities in your district most likely benefit from workshop programs that provide meaningful work opportunities to Kansans with IDD. KDADS will arbitrarily cap participation in those programs at 6 months. This will negatively impact thousands of Kansans with IDD who have chosen these work opportunities to best meet their needs and goals.

Other states have successfully responded to CMS in establishing Medicaid Final Settings Rule compliance plans without placing 6-month caps on center-based employment. Why would Kansas choose to restrict access to a service option that thousands of Kansans have selected for themselves and that provides meaningful opportunities to work?

Providers report that the fractionalizing of Day Services will be very difficult for them as it will impact the pattern of reimbursement to these organizations, will require more 'on-demand' delivery of a greater number of services and will place a greater burden to provide one-to-one services in more diverse settings. More than 56% of providers InterHab surveyed indicated they do not have enough staff to adequately carry out the new unbundled Day Service definitions proposed by KDADS. More than 65% report inadequate additional resources, such as vehicles, for these new definitions.

Please help us improve KDADS' IDD Systems Change Proposals:

Our goal is not to indefinitely delay any resolution of these issues. Rather, we hope that a legitimate planning process that is inclusive of families, providers and legislators will occur thanks to legislative intervention. The greatest concentration of subject matter expertise on these issues has yet to be tapped by KDADS in their planning. Inclusion of families and providers will only improve each of KDADS' proposed systems change initiatives.

We are ready to come to the table with meaningful, concrete recommendations to improve KDADS' proposals. InterHab has contracted with two separate consulting entities with national expertise to provide guidance and input. InterHab's members have formed three internal work groups comprised of subject matter experts to develop recommendations. What we need is the opportunity to shape KDADS' proposals for the better.

Proposed Amendment to HB 2240:

We respectfully request that the committee consider amending HB 2240 to include language that will require that KDADS receives legislative approval before they can implement their proposed changes to the Kansas IDD service network. We suggest the following language:

"On and after July 1, 2025, no state agency shall seek or implement any changes to funding structures, day services or targeted case management services for persons with intellectual or developmental disabilities unless the legislature expressly consents to, and approves of, such with affirmative action."