

## Opponent Testimony

### **HB 2240 - Requiring legislative approval of any Medicaid state plan, state plan amendment, demonstration or waiver that expands coverage or increases cost to the state**

#### **Senate Committee on Government Efficiency**

**Tuesday, March 11, 2025**

Chair Erickson and Members of the Committee,

The Kansas Department for Aging and Disability Services is opposed to HB 2240 as it could restrict the ability to execute the agency's mission to provide safety net services.

**The underlying bill requires legislative approval prior to amending and submitting state plans, and prior to implementing new federally funded programs which could result in delays in funding or an inability to accept new funding. KDADS has successfully brought in millions of dollars in federal funds to the state to enhance or expand services, particularly in the behavioral health area. State plans, and their corresponding amendments, new federal regulations which may require a waiver, and new program opportunities typically do not correspond to Kansas legislative calendar.**

There is already legislative oversight of Home and Community Based Services Waivers that KDADS administers as those require legislative appropriation. An example would be the addition by the House Social Services Budget Committee to launch the new Community Supports Waiver in FY 2026.

There is similar legislative oversight for entitlement State Plan Amendments as those are handled through consensus caseloads which has legislative representation. Non-entitlement State Plan Amendments that need additional appropriation should, for the most part, follow an appropriation process now, even if eventually adopted by caseloads. An example would be the Targeted Case Management rate increase enhancement last year. Other changes in other programs which draw down new federal funds or impact state funds are also reviewed during the agency's budget process.

**Unfortunately, the amendment added in the House Welfare Reform Committee will impede KDADS ability to apply for the new Community Support Waiver this fall and ultimately put all HCBS waivers and the 60% federal funding stream at risk.** The amendment states that no state agency shall seek or implement:

*(2) 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 changes by an act of the legislature.*

*(b) (1) When the legislature is not in session, a state agency may request approval from the legislative coordinating council to authorize a medicaid state plan, state plan amendment, state demonstration or waiver or changes to funding structures, day services or targeted case management services for persons with intellectual or developmental disabilities.*

*(2) Pursuant to K.S.A. 46-1202, and amendments thereto, the legislative coordinating council may approve or refuse an agency's request or designate a standing committee or special committee to review an agency's request and make recommendations to the legislative coordinating council based on the committee's review.*

HB 2240 puts approval of the Community Supports Waiver (CSW) at risk by restricting the state's ability to comply with federal Medicaid requirements, particularly in areas like conflict-free case management and IDD service modernization. The highly anticipated Community Supports Waiver was initially a recommendation of the 2022 Special Committee on IDD Waiver Modernization and would be a supplemental waiver to the current comprehensive IDD Waiver providing lighter touch services. This would allow for a reduction in the number of individuals on the waiting list for the current

comprehensive IDD Waiver, which sits at 4,370 as of January 15, 2025. The legislature further encouraged KDADS to act swiftly in applying for the CSW via budget provisos in FY24 and FY25.

In order to successfully apply for the CSW, the state must comply with requirements from the federal Centers for Medicare and Medicaid Services (CMS). The state is currently under a Corrective Action Plan (CAP) for non-compliance with CMS which failure to remediate would result in potential loss of federal funds for all Home and Community Based Services (HCBS) Waivers. Changes to day services and resolving the conflict of interest in Targeted Case Management are part of the CAP. As reiterated to the state by CMS, any new waiver application must fully comply with the Home and Community Based settings rule. While a Corrective Action Plan allows the State's existing waivers to remain in place while the state works toward compliance, any new waiver or waiver renewal must fully meet federal HCBS requirements at the time of submission.

CFR 441.301(c)(6)

*(6) Home and Community-Based Settings: Compliance and Transition:*

(i) States submitting new and initial waiver requests must provide assurances of compliance with the requirements of this section for home and community-based settings as of the effective date of the waiver.

(ii) CMS will require transition plans for existing section 1915(c) waivers and approved state plans providing home and community-based services under section 1915(i) to achieve compliance with this section, as follows:

(A) For each approved section 1915(c) HCBS waiver subject to renewal or submitted for amendment within one year after the effective date of this regulation, the State must submit a transition plan at the time of the waiver renewal or amendment request that sets forth the actions the State will take to bring the specific waiver into compliance with this section. The waiver approval will be contingent on the inclusion of the transition plan approved by CMS. The transition plan must include all elements required by the Secretary; and within one hundred and twenty days of the submission of the first waiver renewal or amendment request the State must submit a transition plan detailing how the State will operate all section 1915(c) HCBS waivers and any section 1915(i) State plan benefit in accordance with this section. The transition plan must include all elements including timelines and deliverables as approved by the Secretary.<sup>1</sup>

KDADS has engaged extensively with stakeholders, including the 2023 IDD renewal workgroups on unbundling services, conflict of interest, and assessment changes, as well as ongoing CSW town halls, the CSW Technical Advisory Group, and regularly scheduled monthly webinars and open office hours covering proposed waiver updates. The IDD modernization webpage documents these efforts, and feedback has already influenced policy decisions. Additionally, KDADS continues to work with Interhab in ongoing workgroups, is implementing a Family Advisory Group, and remains committed to collaborative policy development. Since the last time this bill was heard, KDADS has engaged with Interhab on a series of workgroup meetings to review Interhab's recommendations around modernization efforts. Those three workgroups have had their initial meetings and subgroups are being formed and will meet over the next two months to finalize recommendations so the agency can move forward in applying for the CSW. HB 2240 would hinder this progress, making it harder for Kansas to balance compliance with stakeholder needs.

Every Medicaid waiver amendment, renewal, or new waiver must undergo a public comment process, ensuring that individuals, families, and providers have a formal opportunity to provide feedback. CMS requires states to document and respond to all substantive comments before approval, often leading to further revisions based on stakeholder concerns. This process ensures transparency and holds states accountable for addressing public input before CMS grants approval. HB 2240 would add unnecessary legislative delays on top of this existing federal requirement, further complicating an already rigorous review process.

If HB 2240 becomes law, in order for KDADS to successfully apply to CMS for the Community Supports Waiver, we would need to go to the Legislature or LCC for approval of:

- 1) Applying for a new waiver
- 2) Changes to Targeted Case Management to be in compliance with the CAP so that we can be approved for a new waiver

- 3) Changes to rate structure based on switching assessment tools as recommended by the 2022 Special Committee on IDD Modernization
- 4) Changes to day services to be in compliance with the CAP so we can be approved for a new waiver

If any of those changes are not approved in a timely fashion, then launch of the CSW in FY26 will be jeopardized. We're already on a tight time frame and families have been counting on this new waiver to help reduce the waiting list and receive needed services.

**Ultimately, without timely review and approval by the legislature of changes needed to come into compliance with the CAP, the 60% federal funding match is at risk for all HCBS Waivers and all current HCBS Waivers must be renewed by July 1, 2029. For only the current comprehensive IDD Waiver in FY24, federal share was \$368,755,523. For all seven current HCBS Waivers, the federal share in FY24 was \$626,042,546.**

Thank you for the opportunity to provide testimony.

Respectfully,

Secretary Laura Howard  
Kansas Department for Aging and Disability Services

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<sup>i</sup> [https://www.ecfr.gov/current/title-42/part-441/subpart-G#p-441.301\(c\)\(6\)](https://www.ecfr.gov/current/title-42/part-441/subpart-G#p-441.301(c)(6))