

Developmental Disabilities Advisory Committee

Meeting Minutes

November 14, 2024

I. Call to order:

Mike Browne called to order the regular meetings of the DD Advisory Committee at 10:10 am on Thursday, November 14, 2024 at the Nebraska State Office Building, Meadowlark Lower Level Conference Room, 301 Centennial Mall South, Lincoln, NE.

II. Roll call:

The following persons were present:

Advisory Members Present: Dorothy Ackland, Mike Browne, Dianne DeLair, Jennifer Hansen (arrived at 10:15), Kristen Larsen, Jennifer Miller, Cris Petersen, Lorie Regier (arrived at 10:30), Debbie Salomon, Mark Shriver, Joe Valenti, Angie Willey

Advisory Members Absent: Lisa Pruitt, Linda Clemens, Cathy Martinez, Suzanne Wahlgren

DHHS Staff: Tony Green, Tyla Watson, Jenn Clark, Kristen Smith, Colin Large

Other individuals present: Edison McDonald, ARC of Nebraska

III. Approval of Agenda.

➤ Motion made by Joe Valenti to approve the agenda as presented. Motion seconded by Cris Petersen. Motion carried following roll call vote of all members present:

- All in Favor: Dorothy Ackland, Dianne DeLair, Kristen Larsen, Jennifer Miller, Cris Petersen, Debbie Salomon, Mark Shriver
- All Opposed: None
- Abstain from voting:

IV. Approval of Meeting Minutes:

➤ Motion made by Joe Valenti to approve the minutes as presented. Motion seconded by Cris Petersen. Motion carried following roll call vote of all members present.

- All in Favor: Dorothy Ackland, Dianne DeLair, Kristen Larsen, Jennifer Miller, Cris Petersen
- All Opposed: None
- Abstain from voting: Debbie Salomon, Mark Shriver

V. Elimination of the Waitlist - Comprehensive Blueprint

➤ HANDOUT: Home and Community-Based Services Waiver Transformation: "Access for all" updated 11/06/2024.

➤ Discussion/Questions from the Committee:

- Can parents of people on the waitlist be assured that if the assessment of their child indicates a higher need than currently projected in the waitlist elimination financial projection.

- There is currently sufficient funding in the current projections to meet the needs of everyone on the list today.
- In future years as people come and go if that would change, the department would need to request additional funds.
- Can the committee have a list of the proposed Statute and Regulation changes that will be sought in the next Legislative Session.
 - The only statute the division is currently looking at submitting a possible amendment for is removing the 850 cap on the Family Support Waiver.
 - Regulations changes to regulations, there are not part of the legislative process. All regulation changes go through public comment. Ideally the committee will be able to review any regulations before going out to public comment. If the meeting schedule doesn't allow the Department would share with the committee as soon as available.
- Are you proposing the elimination of the comprehensive waiver and if so, what will replace it to allow for adult individuals that are not adjudged Priority 1 but assessed at a 'need level' indicating the need for higher levels of staffing support? Without the comprehensive waiver, how would they fund their residential service including group, SLP or living at home?
 - No, the Division is not considering the elimination of the Comprehensive Developmental Disabilities Services Waiver.
- Myers and Stuafter presented a Summary of Recommendations that included (5) overarching points (strengthen residential service options, staffing policy adjustments, reimbursement methodology adjustment, assessment practice modernization, and establish consistent person-centered practices.) Could the Department provide specifics on whether they took those recommendations and if so, how? And if Not, why not?
 - Strengthening Residential Service Options:
 - As part of the upcoming waitlist elimination amendment, DDD will seek to unbundle Residential Habilitation into Continuous Group Home, Shared Living, Host Home, and Youth Continuous Home. This will allow to better tailor service definitions and provider requirements.
 - Staffing policy adjustment:
 - The division has been working to allow Legally Responsible Individuals to provide HCBS waiver services within measured parameters.
 - The division has begun conversations with providers to discuss intermittent services and how they may be able to better support.
 - Reimbursement methodology adjustment:
 - Rates have been increasing on an annual basis.
 - The unbundling of Residential Habilitation will be a first step in ensuring that rates are uniquely tailored to each service setting.
 - Assessment practice modernization:
 - As recommended, the division is currently replacing ICAP with the interRAI-ID and the interRAI ChyMH-DD.
 - Establish consistent person-centered practices:
 - DDD continues to utilize Charting the LifeCourse tools as a part of the Person-Centered Planning Process; and

- As a part of the upcoming waitlist elimination amendment, seeking approval for a retirement service. This will hopefully allow for people to have an additional service option as they age.
- Example: If you have a participant that wants to live on their own, however the guardian does not agree/know that the participant is not able to live independently safely.
 - There needs to be a conversation between the team/SC/Guardian to discuss what steps we might be able to work towards to meet their goal.
- What if someone is on the comprehensive waiver and their need changes, will they have to move out of their home.
 - If someone is in a residential setting today and their assessment shows they move tiers on the comp waiver. No one is going to force them out of their home. However, the team needs to address what is preventing change. There needs to be conversations with the team and a plan to explore more independent options
- How are being going to pay for housing? Is there going to be more affordable housing?
 - Most people receiving waiver services pay for their housing with Social Security and/or Public Housing Programs – such as HUD. DD does not pay for housing.
 - Affordable Housing is an ongoing issue many states are currently working through.
- Myers and Stauffer proposed five residential service types and the Department only selected three. Why?
 - The department has chosen to unbundle residential habilitation into Continuous Group Home, Shared Living, Host Home, and Youth Continuous Home. Independent Living and Supported Family Living already exist in the Comprehensive, Day, and Family Support Waiver service array.
- Could you provide clarity around the term “Natural Supports” and describe how that applies to adult I/DD individuals?
 - Natural supports are relationships that people have in their everyday life, such as family, friends, neighbors, and co-workers.
 - An example of this would be someone going to church and another church member picking them up and given them a ride to church. Not paid, just two members going to church together.
 - Another example would be a spouse reminding their spouse to take their medication.
- Without addressing frontline DSP wage rates, regardless of the proposed plan to eliminate the waitlist, what rate adjustments level will DHHS DD Division support?
 - The Division will implement any rate adjustments passed in the next Legislative session.
- Could you review the “validation process” of the new interRAI assessment tool? The ICAP, through apparently not being able to be updated is a ‘known quantity’ for parents and guardians of I/DD individuals and has seemingly done a sufficient job through the years. A detailed review of the validation

methodology would be extremely helpful including what you would be looking for in not moving forward with the inteRAI tool.

- Meyer and Stauffer is currently planning on being at the December meeting to provide an update.
- There are a large group people currently receiving exception funding, which generally means that you do not have an adequate tool.
- Comment on Handout: One place in the report shows that the waiver will go to public comment in November (pg.19) in another it says January (pg. 16).
 - This should be January. Pg 19 is an error. The report will be updated.
 - The implementation date has not changed.
- Service definitions for day services 35 hours currently set to week. Could there be a way to make this more flexible in the waiver services so you could use an average of 35 hours over a few weeks or a month? Some weeks we have tons going on one week and the next there is tons going on.
 - Division will discuss to see if there is way to make this service more flexible while remaining budget neutral.

VI. Public Comment:

➤ **Edison McDonald, ARC of Nebraska**

- Handout provided – Bill amendment suggestions.
- Verbal comments - Impact on residential services continues to be a large issue. I like the improved plan however it still needs work. We need to protect a path to residential services. We have what Tony is telling us now. We don't have a guarantee unless it is in Statute. If it isn't in statute it doesn't exist. Handout is proposed amendments the ARC would like to propose and would like to make sure committee is aware and hopefully supports. For those not familiar with the legislative process, the base is the current statute, anything underlined is new to the statute and what's crossed out is to be stricken. The added Mediated process comes from Education. They have someone who is neutral come in when they have troubles. I don't know what Mediated process would look like to DD. I would expect MMI would have some of the professional expertise needed for this. Fixing issues with Priority 1. We have to address some of the gaps. We see folks that are in that priority 1, those definitions currently listed doesn't always capture all of those that it should. Regarding provider rates discussed, saying the average rate, we aren't always talking about the same thing. What is being provided by provider, and what we tend to talk about is the base formula. What is the base assumed wage in the formula? What provider report is what they are paying but is that higher than the assumed wage in the rate setting. Providers are taking money out of those other sections to pay the rate they are paying. Would like the committee to support these recommendations.

VII. Elimination of the Waitlist – Policy changes

- HANDOUT: Elimination of Waitlist – Related Policy Changes PowerPoint.
- Committee Comments:
 - Supported Employment – I would encourage you to not eliminate 14c/sheltered workshop. There are still some providers that have 14c certificates. Bolstering

- supported employment doesn't eliminate sheltered workshops. We are going to encourage people to.
- What we set up in the waiver will guide what we do in the regulations.
 - Division asked during the last meeting the committee expressed interest in looking at a lower retirement age. What would be an appropriate age in your opinion?
 - Could there be an exception process, example if you have someone that has early onsite Alzheimer's?
 - We are having two conversations. There are the majority and there is the minority. Equating someone who is working at a grocery store to someone that never could, how could be put a number on this. The profound end is in the completely form of life. I don't know if that needs to be applied.
 - 55 years old w/ an exception for health.
 - Would encourage the division to speak to providers because these have been communicating a need for a retirement services.
 - Employment Exploration: Why is the family support waiver not included in this.
 - Employment support is provided by Vocational Rehabilitation/Education for those under 21.
 - Community integration is 35 hours on the day waiver. Is there any way to adjust that limit so they can receive additional supports after the school hours.
 - Currently under the Comprehensive waiver Supported Family Living can be used outside of the home if the majority of the services are being delivered in the home.
 - Regarding adjusting hours on Community Integration, the division will explore/continue discussions. We may not be able to absorb in the existing budget. Will need to review.
 - Expand Participant Support Network – How do we defined ordinary care?
 - This is something that every state has to decide for themselves.
 - The amount of care a parent of minor children would have to provide for a non-disabled child.
 - Example provided I have two children. Both need help getting dressed in the morning. One is disabled and takes an hour to get ready. My other child of same age takes 30 minutes. That extra 30 minutes would be above the "ordinary care" that you would need to provide for any child.
 - Idaho just repealed paying families/guardians because of fraud. I would encourage the division to make sure there is appropriate oversight as we move forward with considering this.
 - Remote Monitoring for Independence
 - Would encourage it be expanded from just participant and guardian to the team.
 - This is an example of trying to help providers be able to deliver services and potentially be able to provide services.
 - Do you have to get special permission to use cameras from CMS?
 - When using cameras you could potentially limit a participants right to privacy. We currently look at it as a rights restriction and review as one.
 - Do we have the definition of youth continuous home?

- Not directly, but yes. Residential Habilitation is being unbundled. The definition is the same just the age limit is different.
- Shared living in not included for children?
 - If a child can't be served in a home with intermitted care, going to another family home would not necessarily be appropriate. The goal is to keep children in their homes and wrap services around them so they can stay in their homes.
 - Comment: Wrap around services sounds great in theory. However, we've been waiting a year for services. Providers won't take minors. There is definitely a gap. All of it sounds great but it isn't the reality.

VIII. Committee meeting length and frequency

- There are a lot of initiatives going on. The committee discussed the need to more frequent and longer meetings as the committee has consistently been running over on time.
- Motion made by Mike Browne and second by Mark Shriver to holding monthly meetings through June 2025. Motion carried following roll call vote of all members present:
 - All in Favor: Dorothy Ackland, Mark Browne, Dianne DeLair, Jennifer Hansen, Kristen Larsen, Jennifer Miller, Cris Petersen, Debbie Salomon, Mark Shriver
 - All Opposed: None
 - Abstain from voting: None
- Motion made by Cris Petersen to extend the meeting time from 10:00-2:00 PM to 9:00-2:00 PM. Motion Seconded by Joe Valenti. Motion carried following roll call vote of all members present:
 - All in Favor: Dorothy Ackland, Mark Browne, Dianne DeLair, Jennifer Hansen, Kristen Larsen, Jennifer Miller, Cris Petersen, Debbie Salomon, Mark Shriver
 - All Opposed: None
 - Abstain from voting: None
- Meetings to be held the 2nd Wednesday of each month at the 5220 South 16th Office:
 - December 11, 2024
 - January 8, 2025 – Hybrid
 - February 12, 2025 - Hybrid
 - March 12, 2025
 - April 9, 2025
 - May 14, 2025
 - June 11, 2025

IX. Criteria for the Process of providing information and receiving the response.

- Per Nebraska statute 83-1212.05(5): The department shall inform the committee of proposed systemic changes to services for persons with developmental disabilities at least thirty days prior to implementation of the changes so that the advisory committee may provide for a response to the proposed changes. If the director determines that circumstances require implementation of the changes prior to such notice, the department shall inform the advisory committee as soon as possible. The advisory committee, in partnership with the director, shall

establish criteria for the process of providing the information and receiving the response. Director Green checking with the committee to confirm the committee is in agreement with receiving the information.

- Committee would like the Director to provide an email electronically to the full committee.

X. Adjournment: Committee meeting ended at 2:25 PM

Next Meeting:

Wednesday, December 11, 2024

DRAFT

Bill 1

83-1216.

Department; duties; services; legislative intent; priorities.

(1) The department shall administer the medicaid home and community-based services waivers upon application approval by the federal Centers for Medicare and Medicaid Services. The amount of funding for any person receiving services shall be determined using an objective assessment process developed by the department and approved by the federal Centers for Medicare and Medicaid Services. The objective assessment formula will be publicly published on Nebraska DHHS's Website and will be subject to approval by the Nebraska Governors Developmental Disability Advisory Board (or Interested Parties Stakeholder Group as required by the Access Rule). The tool may not decrease an individual's budget to the point it removes them from a setting. Residential settings must be provided as an option to those in Priority 1,2,3, and 5. Residential settings must also be considered as an option for those in Priority 4 and Priority 6 under the consideration of the Objective Assessment Process. A request for a re-determination from an individual or family member or guadian under this tool shall be completed within 30 days. The Assessment and Process must be person centered and designed with consideration of their ISP. The Objective Assessment Process will have an Independent Mediated Review Process which will be administered outside of the Department.

(2) The department shall provide directly or by contract service coordination to Nebraska residents found to be eligible for specialized services. The individual or legal representative shall have a choice as to what entity provides these services. (annual review? Rights document?)

(3) It is the intent of the Legislature that the department take all possible steps to maximize federal funding. All Nebraska residents eligible for funding for specialized services through the department shall apply for and accept any federal medicaid benefits for which they may be eligible and benefits from other funding sources within the department, the State Department of Education, specifically including the Division of Rehabilitation Services, and other agencies to the maximum extent possible.

(4) The priorities for funding the medicaid home and community-based services waivers under this section are as follows:

- (a) The first funding priority of the state shall be responding to the needs of persons with developmental disabilities in immediate crisis due to caregiver death, homelessness, or a threat to the life and safety of the person, family member, or others residing in the same household, or general public. The Department will create a form and process for an expedited request for consideration of Priority 1 Status. This form will be responded to by the department within 5 calendar days from the date of original submission.;
- (b) The second funding priority of the state in responding to the needs of persons with developmental disabilities shall be for persons that have resided in an institutional setting for a period of at least two twelve consecutive months and who are requesting community-based services and those who are at risk for placement in juvenile detention centers, other institutional settings, or out-of-home placements;
- (c) The third funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving wards of the department or persons or who have ever been placed under the supervision of the Office of Probation Administration by the Nebraska court system who ~~are~~ transitioning upon age nineteen with no other alternatives as determined by the department to support residential services necessary to pursue economic self-sufficiency;
- (d) The fourth funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving persons transitioning from the education system upon at any point after attaining eighteen twenty-one years of age or having departed the education system to maintain skills and receive the day services necessary to pursue economic self-sufficiency or independence as fits with their ability;
- (e) The fifth funding priority of the state in responding to the needs of persons with developmental disabilities shall be, upon approval by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, for serving a dependent of a member of the armed forces of the United States who is a legal resident of this state due to the service member's military assignment in Nebraska; and
- (f) The sixth funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving all other persons by date of application.

83-1216.02.

Insufficient funds to provide services; department; duties; termination.

(1) If the department determines that there are not enough funds available to provide services to all eligible individuals under subdivision (4)(d) of section 83-1216, the department shall provide day services to individuals who:

(a) Are transitioning from the education system upon attaining Eighteen twenty-one years of age on or after July 1, 2019; and

(b) Are determined by the department to be otherwise eligible for the day services in accordance with the Developmental Disabilities Services Act.

(2) The department shall provide services comparable to the day services the individual would have received pursuant to subdivision (4)(d) of section 83-1216 if funds were available.

(3) No later than September 15 of each year, the director shall provide electronic notification to the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature of the estimated number of individuals needing services under subsection (4) of section 83-1216 and the net additional resources necessary to provide services to all eligible individuals under subsection (4) of section 83-1216 other than subdivision (f) of such subsection.

~~(4) This section terminates June 30, 2025.~~

Bill 3

It is the intent of the Legislature to appropriate 2 \$XXX,XXX,XXX from the XXX Fund for fiscal year 2023-24, to Agency No. 25, 3 Department of Health and Human Services, Program No. 424, Developmental 4 Disability Aid, to tie Provider Rates to 150% of the Nebraska State Minimum Wage. This will be reviewed and updated every two years with data from Provider Cost Reports from the Fiscal Year immediately preceding.