



February 2, 2024

TO: Representative Brenda Landwehr and
Members of the Bob Bethell Joint Committee on HCBS and KanCare Oversight

FR: Matt Fletcher, Executive Director, InterHab

RE: Common Sense Approaches to Federal Mandates

Chair Landwehr and members of the committee, thank you for the opportunity to provide written comments for the February 2nd hearing of this Committee. We appreciate the hard work of members during this busy legislative session.

As we shared with this committee last August, the Kansas IDD service network faces potential significant upheaval depending on how our state responds to federal mandates such as the Medicaid HCBS Settings Final Rule as well as conflict of interest concerns raised by the Centers for Medicare and Medicaid Services (CMS). We believe that KDADS is actively searching for the best manner to respond to these challenges.

The Medicaid HCBS Settings Final Rule “requires states to review and evaluate Home and Community-Based Services (HCBS) settings, including residential and nonresidential settings. States are required to analyze all HCBS settings where HCBS participants receive services to determine current compliance with the Rule.”¹

Additionally, CMS has raised concerns regarding potential conflict of interest within the IDD service network, in both the state’s Community Developmental Disability Organization (CDDO) and Targeted Case Management (TCM) systems. The state’s CDDOs determine eligibility for entry into the IDD system and connect Kansans with IDD to service provision resources. Targeted Case Management “assists the person and support network to identify, develop, select, obtain, coordinate, utilize and monitor paid services and natural supports.”²

We believe that CMS concerns regarding conflict of interest stem from how the Kansas IDD service network has organically developed in communities across our state, which often resulted in organizations shouldering multiple roles in order to ensure that all parts of the system remained functional. CMS appears to prefer pushing a restructuring of our system to force separation of service provision, gatekeeping and case management.

It is important to note that considerable effort was expended by legislators, IDD service providers and CDDOs more than a decade ago in developing an agreed-upon mitigation solution for potential conflict of interest within the CDDO system. That solution, a regular state-facilitated peer review process, has been utilized for years with CMS acknowledgement.³

It is also important to note that entities that operate CDDOs as part of a larger organizational structure have voluntarily instituted additional strategies to mitigate potential conflict of interest, including instituting organizational firewalls and outsourcing of CDDO functions when possible.

1 HCBS Settings Final Rule, Kansas Department for Aging and Disability Services website. <https://kdads.ks.gov/kdads-commissions/long-term-services-supports/hcbs-waivers>

2 Targeted Case Management, Johnson County Community Developmental Disability Organization website. <https://www.iocogov.org/department/community-developmental-disabilities-organization/service-providers/targeted-case-management>

3 Kansas Administrative Regulations 30-64-20, KS Secretary of State website. https://sos.ks.gov/publications/pubs_kar_Regs.aspx?KAR=30-64-20&Srch=Y

Kansas maintains a diverse Targeted Case Management system for Kansans with IDD. The system includes both organization-based and independent TCM. The TCM system developed organically within communities as a response to the needs of persons supported by the service network. However, available TCM capacity remains brittle in many areas of the state. Poorly-designed responses to CMS conflict of interest concerns within the TCM system could therefore seriously undermine its stability resulting in Kansans with IDD losing their case managers.

CMS has pushed states to respond to TCM conflict of interest concerns for nearly a decade.⁴ Many states have chosen to force service providers to divest from provision of case management. Such an approach could cause many of the largest providers of TCM in Kansas to eliminate their TCM programs. This would undoubtedly cause significant disruption to TCM in many parts of the state.

InterHab's members urge that the state look for common sense approaches to federal mandates that would avoid upheavals to the system's oversight or service delivery systems. It is clear, from examining other states, that a wide range of allowable strategies have been approved by CMS as responses to the Medicaid HCBS Settings Final Rule.⁵ We support strategies that increase community inclusion opportunities for Kansans with IDD without sacrificing established elements of the service network that meet the needs of individuals with complex physical or behavioral health conditions.

Similarly, we believe that Kansas can respond to CMS conflict of interest concerns without employing draconian measures that would upend the CDDO and TCM systems. We are aware of other states that have successfully employed such strategies, and CMS itself has acknowledged multiple means of TCM conflict of interest mitigation, including placing "appropriate firewalls in place" and ensuring that "there is robust monitoring and oversight".⁶

We respectfully request that this committee express its desire for such common sense approaches to be applied in response to federal mandates such as the Final Rule, or oversight concerns such as conflict of interest. The members of InterHab remain committed to seeking out common sense solutions and will gladly assist our state partners in developing such responses.

Thank you, again, for the opportunity to provide these comments and for your service to our state.

4 'Conflict-Free Case Management' on a Collision Course with Integrated Care, The Health Lawyer Volume 28 Number 4, April 2016.

5 Statewide Transition Plans, Medicaid.gov website. <https://www.medicaid.gov/medicaid/home-community-based-services/statewide-transition-plans/index.html>

6 Balancing Incentive Program, Summary of Conflict-Free Case Management, West Virginia Department of Health and Human Services. <https://dhhr.wv.gov/bms/Programs/WaiverPrograms/CFM/Documents/Balancing%20Incentive%20Program%20Summary%20of%20Conflict-Free%20Case%20Management.pdf>