

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

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Reviewing the Compensation of Payroll Agents for Home and Community Based Waiver Programs

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Chairman Morris and members of the Committee, I am Margaret Zillinger, Director of Community Supports and Services, Health Care Policy at the Kansas Department of Social and Rehabilitation Services (SRS). Thank you for the opportunity to provide testimony regarding the Legislative Post Audit that was conducted by the Legislative Division of the Post Audit related to the compensation that is made to payroll agents for the Home and Community-Based Waiver programs. This 100-hour performance audit was to address the question: Are there less costly options for processing payments to those who provide services under the Home and Community Based Waiver programs?

Home and Community-Based Waivers give states the opportunity to develop programs funded by Medicaid and services for groups of individuals that offer services to people in their home as opposed to an institutional setting. Kansas provides community-based services to Medicaid consumers through six waivers. SRS manages five of the waivers, including the waiver for persons with physical disabilities, while the Kansas Department on Aging manages the frail elderly waiver. This audit focused on the Home and Community Based Physical Disability Waiver (HCBS/PD) and the waiver for the Frail Elderly (HCBS/FE).

During the 1989 Legislative Session, HB 2012 was passed (K.S.A.36-7,100), which requires that consumers age 16 years of age and older be allowed to self-direct attendant care services funded under the HCBS waivers. Individuals who choose this service delivery option are responsible for recruiting, training, and managing their attendants. Approximately 80% of consumers who receive services through the HCBS/PD waiver choose to self-direct their attendants.

The Centers for Medicare and Medicaid Services (CMS) give states the authority to provide services through HCBS waivers. They also state that states may not reimburse a consumer directly for services that they receive. Therefore, to allow individuals to maintain control of the recruiting, training and managing their attendants in Kansas, payroll agents are used and enrolled as Medicaid providers. This LPA focused on the two Medicaid waivers which utilize payroll agents to the greatest extent, HCBS/PD and HCBS/FE.

This was a 100-hour audit, so just five agencies that provide payroll agents services were visited. There are 35 providers enrolled to provide payroll agent services for individuals on the HCBS/PD waiver alone. In visiting this limited number of payroll agents, there is question if factors such as variance in the number of individuals served as well as the level of service provided to those individuals was taken into account. Payroll agents provide a wide range of

services for individuals. Services include:

- Payroll - The taking of time sheets and calculating the amount of pay owed to the attendant, including the amount of taxes to be withheld. This also includes validating time sheets in some cases. If for any reason Medicaid would do a post pay review of a payroll agent, that agency would be held accountable for the amount billed and paid. If there is a reason for recouping the funds paid, it will come from the payroll agent and it is their responsibility to recover the payments from the individual.
- Medicaid billing - Submitting claims to Medicaid on behalf of the individual.
- Reporting - Generating reports on services used by individuals such as the total units and dollars billed.
- Cash Flow - Ensuring that there is enough money available to pay attendants regardless of when Medicaid actually reimburses.
- Education of Individuals - Many agents provide education to individuals regarding the reimbursement system. Education is provided on the use of time sheets and reporting of abuse by attendants, hiring reliable staff, training of staff, and dismissal of attendants.
- Local Availability of Assistance - Individuals have a local contact when there is an issue of attendants not receiving payment or any time sheets issues that may arise.
- Employer of Record - This is the term used by the IRS to determine a person's tax status and liability. A person can either be a self-employed contractor responsible for paying one's own benefits and liabilities or working through an agency who then is the employer of record. Some of the various withholdings involve federal and state taxes, deposits and reports, the employer's share of Social Security and Medicare taxes, state and federal unemployment insurance premiums, state disability insurance premiums, Workers' Compensation costs, fringe benefits, vicarious liability for employee negligence, and Equal Employment Opportunity (EEO) regulations.

SRS responded to LPA regarding the report that was submitted, which was attached to the final report. I would like to review those with you today.

LPA Recommendation #1: To ensure that Kansas' Medicaid Program isn't paying more than is necessary for payroll-related service, SRS and KDOA should review the responsibilities and level of service required of payroll agents in Kansas to be sure that Kansas' requirements are in line with what other states are requiring, including whether clients, instead of payroll agents, should serve as the employer of record.

SRS Response: Without having payroll agents as the employer of record, there are two alternatives.

1) If the state becomes the employer of record, the state would then be liable for items that

payroll agents now have responsibility, such as workers' compensation, unemployment and liability. SRS would have concern with any action that might indicate attendants are actually state employees and the resultant state responsibility for employee benefits.

2) Individuals receiving services as the employer of record would be the other alternative. The report outlined some issues with this, including the ability of individuals to carry out all of the requirements of being an employer and correctly paying employer taxes.

In the LPA's review of other states using payroll agents, three of the states used as examples were states that are involved in the "Cash and Counseling" demonstration projects through CMS. In demonstration projects, requirements that apply to the majority may be waived for a period of time to conduct the demonstration. Demonstration waivers are normally in place for a short period of time, five years, and can be expanded if successful. Further research would need to be conducted to determine if any items were waived regarding payments being made to consumers or payroll agents that would effect withholdings in the states that were referenced in the LPA report. As Kansas pursues its own "cash and counseling" waiver for the Working Healthy population we will explore in greater detail these payroll agent models.

LPA Recommendation #2: To ensure that Kansas' Medicaid Program isn't paying more than is necessary for payroll-related service, SRS and KDOA develop a process for competitively bidding payroll-related services for self-directed care.

SRS Response: SRS agrees that this option should be researched further. The report suggests that reasonable fees generally would be 6%-10% of the amount billed based on the level of service provided. Areas of consideration would be:

- Levels of reimbursement based on services provided for the individual outside of submitting claims to Medicaid, i.e. assistance with recruitment of staff.
- Setting a maximum amount that could be withheld for administrative functions.
- Setting an optimum number of payroll agents, as this does vary from state to state.

Conclusion

We appreciate the information LPA provides to us. In completing our review of the audit, SRS is following up on the recommendations made and continues to research what other states are doing regarding payroll agent services. SRS, continuously evaluates the system and looks for ways to improve the current process.

Thank you again for the opportunity to discuss the LPA Audit on Payroll Agents with you. This concludes my testimony, and I am happy to stand for any questions from the Committee.