

Minutes

Senate Interim Committee on Children and Youth

House Interim Committee on

Aging, Children and Youth, Legislative and Military Affairs

Meeting Jointly

Tuesday, July 9, 2019

The Senate Interim Committee on Children and Youth and the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs met jointly on Tuesday, June 4, 2019, at 10:00 a.m., at the State Capitol, Room 130, Little Rock, Arkansas.

Committee members present: Senators Bart Hester, Chair; Mathew Pitsch, Vice-Chair; Alan Clark, Breanne Davis, Stephanie Flowers, Gary Stubblefield and David Wallace. **Representatives** Charlene Fite, Chair; Sonia Eubanks Barker, Vice-Chair; Craig Christiansen, Denise Garner, Don Glover, Jasen Kelly, Julie Mayberry, Tippi McCullough, Rebecca Petty, Jay Richardson, Keith Srape, Stu Smith and Danny Watson.

Non-committee members present: Senators Bob Ballinger, Linda Chesterfield, Jonathan Dismang, Scott Flippo and Kim Hammer. **Representatives** Stan Berry, Harlan Breaux, Jim, Dotson, Dan Douglas, Jon Eubanks, Kenneth Ferguson, David Fielding, Vivian Flowers, Jack Fortner, Michelle Gray, David Hillman, Lane Jean, Jack Ladymen, Fredrick Love, John Maddox, Reginald Murdock, Clint Penzo, Aaron Pilkington, Chris Richey, Dan Sullivan, Dwight Tosh and Jeff Wardlaw.

Representative Fite called the meeting to order and upon order she announced that today's meeting will move to MAC Room A to accommodate the large number in attendance.

Approval of Minutes: June 4, 2019 [Exhibit C]

Senator Stubblefield made a motion for approval of the meeting minutes of June 4, 2019, and Representative Watson seconded the motion. Without objection the motion was approved.

Update on the Eligibility Assessment Tool by the Department of Human Services (DHS)

[Exhibit D]

Representative Fite recognized Mr. Mark White, Deputy Director, Division of Aging, Adult, and Behavioral Health Services, DHS. Mr. White provided a PowerPoint presentation on "Living Choices Assisted Living and the Arkansas Independent Assessment (ARIA)" and The Overview – "Living Choices Assisted Living Eligibility":

- Living Choices is a 1915(c) Home & Community-Based Services Medicaid Waiver. It provides access to assisted living facilities for:
 - Individuals aged 65 and older; and
 - Individuals aged 21 and through 64 who have physical disabilities
- Living Choices currently serves 1,008 clients in 59 assisted living facilities

- Clients must meet financial, medical, and functional eligibility requirements
- Clients must meet the requirements for nursing facility admission at the intermediate level of care

Nursing Facility Intermediate Level of Care

- To meet this functional eligibility requirement, a client must satisfy at least one of the following:
 - Requires limited hands-on assistance with at least 2 of the activities of daily living (ADL) of transferring/locomotion, eating, or toileting
 - Requires extensive or total hands-on assistance with at least 1 of the ADLs of transferring/locomotion, eating, or toileting
 - Has a diagnosis of Alzheimer's Disease or related dementia, and is cognitively impaired so as to require substantial supervision because he or she engages in behaviors that pose a serious threat to their health or safety
 - Has a diagnosed medical condition requiring daily monitoring by a licensed medical professional that would be life-threatening if untreated

Independent Assessment

- Federal law requires the state to use an Independent Assessment to determine whether clients meet the requirements for nursing facility admission at the Intermediate level of care
- Effective January 1, 2019, the state began using the Arkansas Independent Assessment (ARIA) to assess eligibility for Living Choices
- OptumHealth Care Solutions, Inc. (Optum) is the Vendor selected by DHS to implement and administer ARIA
- Optum was selected by competitive procurement in 2017, and began administering ARIA in 2018 for other DHS populations
- ARIA uses Tier Levels (0,1,2, and 3) to describe Level of Care, so as to aid care planning and service authorizations
- Tiers differentiate populations by need still using the same DHS Level of Care criteria currently used to determine functional eligibility for Long Term Service Support programs and nursing facility (NF) care

Overview Changes

- In December 2018, the Arkansas Legislative Council gave final approval to reforms of the Living Choices and ARChoices Medicaid Waiver programs
- The reforms included adoption of ARIA as the Independent Assessment tool used to assess eligibility, and revision of the eligibility criteria to reflect the new assessment tool
- The underlying criteria for the requirements for nursing facility admission at the Intermediate level of care did not change

In addition, Mr. White provided that of the 331 people who have been assessed for eligibility for the assisted-living program this year through May 30th, 44% were found to be ineligible. Those found to be ineligible included 48% of the 165 residents assessed this year who had previously been found eligible after assessments using ArPath, and 41% of the 166 new applicants who were assessed. Of the 3,047 Arkansans assessed for eligibility for ARChoices, 31% were found to be ineligible. This

included 27% of those who had been previously found to be eligible and 37% of the new applicants. Mr. White stated in the Assessment Quality Review process that DHS will review every Living Choices and ARChoices case in which an active beneficiary was denied eligibility as a result of an assessment. Every denial of an active beneficiary since January 1st will be reviewed by a DHS nurse. A total of 776 assessments from January until June will be reviewed. While this is a process that DHS is utilizing, some recipients can ask for their services to continue while appeals are pending, but many do not exercise that option because DHS tells them they are responsible for paying for the cost of their services if the appeal is denied. Mr. White stated that over the past three weeks, DHS has reviewed 287 of the assessments and hopes to complete the rest of them by the end of the month.

The agency will contact recipients to clarify any discrepancies between the Optum assessment and the previous assessment conducted using the ArPath tool. The department can spot an error that led to a disqualification, fix the mistake, and reinstate the recipient's benefits. Also, in other cases it may have Optum perform another assessment of the recipient at no additional cost to the state. The department has been working with Optum to improve the training of the firm's nurses who perform the assessment. Those not meeting their quality requirements were fired.

Optum was paid up to \$25.5 million from July 1, 2017, through June 30th of this year, with all but \$7.7 million of that coming from the federal government.

Representative Fite asked if there are any other sources used other than the assessment and how can we ensure that those sources are included in the assessment. Mr. White stated that one section is devoted entirely to the caregiver and in addition Optum is to include providers, caregivers, family members, and any other documents that will support the assessment process. If for any reason the assessor is not trained to properly assess, then there will be staff changes made.

Representative Mayberry asked if there has been any oversight in the 287 assessment that DHS had to review, and will Optum have any penalties for these oversights. Mr. White stated that there are provisions within the contract that address those issues and he would have to follow up to look at those provisions. Representative Douglas expressed concerns for the assessments as well, and asked if there is some cognitive testing performed by Optum and if so, are the assessors qualified to perform the testing. He also mentioned that there is only one assessor for the River Valley and Northwest Arkansas area. Mr. White stated that it's a requirement that the assessments are performed by a registered nurse for accurate and professional judgment. The department is working on making changes to the contract performance requirements before it submits a further extension to the Legislative Council.

Representative Fite asked would it not be more cost efficient and beneficial all around if the department not grandfather in everyone already living in a facility and making the necessary improvements needed for everyone moving forward. Mr. White stated that the federal law requires them to conduct yearly reviews and secondly, that would also require a change to the waiver; which has to be done both through the state, rule promulgation process, and also, Centers for Medicare and Medicaid Services approval.

Senator Hester asked of the 776 assessments under review, how many have lost services. Mr. White replied he would have to get that information to him. Once they receive their denial they can ask for their services to continue while the review is ongoing. Senator Hester reminded the committee that the assessments are part of a plan to reduce state spending on the traditional Medicaid program to help pay the cost of expanding the benefits to non-disabled adults with incomes of up to 138 percent of the poverty level. He added that sometimes the legislature has to do things that are sometimes tough because legislators are responsible with taxpayers' money.

Representative Hammer requested a copy of the Independent Assessment that is required by CMS and Representative Fite requested that information be forward to all committee members.

Representative Fite allowed testimony from those who signed up to speak for or against this issue or who signed up for informational purposes only.

Representative Hammer also made a recommendation that the contract be referred to JPR or Legislative Audit for review on an expeditious status before it comes up for review by the Legislative Council. Senator Stubblefield made a motion to expedite the review of the contract and Representative Garner seconded the motion and without objection the motion passed.

Department of Human Services, Division of Children and Family Services (DCFS) [Exhibits E – E4]

Representative Fite recognized Mischa Martin, Director, DHS, DCFS. Ms. Martin reviewed the Quarterly Performance Reports for the 2nd and 3rd Quarters for SFY 2019 and the Overturned Investigations Reports for December 1, 2018 and June 1, 2019. She also briefly reviewed the Annual Family Preservation Services Report for SFY 2019.

Arkansas State Police, Crimes Against Children Division Annual Report 2018, Major Jeff Drew, Commander [Exhibit F] **Arkansas State Police, Crimes Against Children Division, Quarterly Reports, July-September 2018** [Exhibit F-1] **and October-December 2018** [Exhibit F-2] **and January-March 2019** [Exhibit F-3]

Representative Fite recognized Major Drew, Commander, Crimes Against Children Division. He provided a review of all the quarterly and annual reports.

Without any further business, the meeting adjourned at 12:36 p.m.