



Presentation to the 2022 Senate Interim
Committee on Human Services, Mental Health and
Recovery for June Legislative Days

OFFICE OF DEVELOPMENTAL DISABILITIES SERVICES

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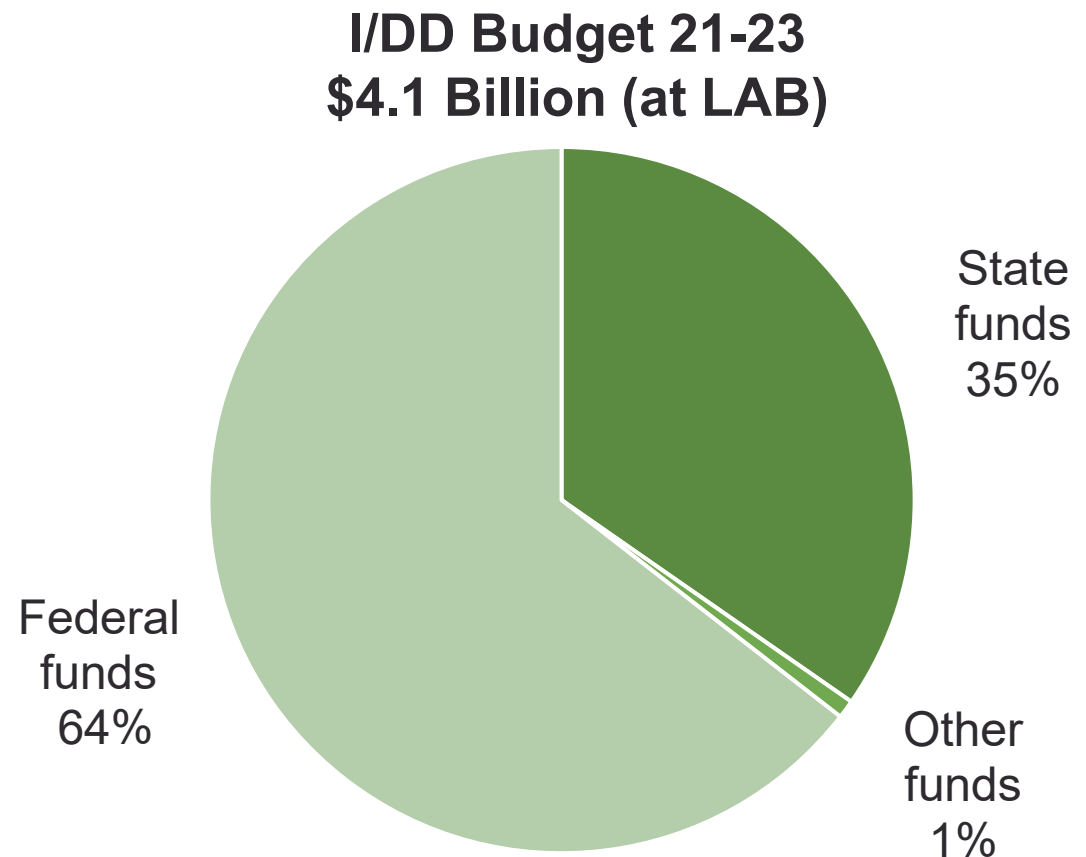
ODDS overview: Who we are

- Oregon's system of supports for people with **intellectual and developmental disabilities (I/DD)** provides supports across the lifespan.
 - Built on critical partnerships between the state, local governments, nonprofits, provider agencies, self-advocates and families.
- **Vision:** People and families access quality supports that are simple to use and responsive to their strengths, needs and choices, while they live and thrive as valued members of their community.
- **Mission:** ODDS, stakeholders and the developmental disabilities community come together to provide services, supports and advocacy to empower Oregonians with intellectual and developmental disabilities to live full lives in their communities.



ODDS overview: Authority and funding

- Federal and state governments fund services for people with intellectual and developmental disabilities.
- Federal funds come through the Centers for Medicare and Medicaid Services (CMS).
- CMS regulates overarching requirements all states must follow.
- States design their own programs following CMS regulations.
- The Oregon Health Authority works with ODDS to ensure compliance with CMS regulations.



ODDS overview: K Plan

- In 2013, the Oregon Legislature directed services for people with I/DD to be primarily provided under the Community First Choice Option, also called the K Plan.
- Oregon is unique because ODHS uses the K Plan to fund most services for people with I/DD, older adults and people with physical disabilities.
- **Oregon chose the K Plan because it:**
 - Allows states to provide services to support people to live and work in the community and avoid institutionalization.
 - Requires states to serve all eligible people based on need (no caps or waiting lists).
 - Increased the federal match for services by 6%, which today represents millions of dollars for services.



Current federal regulations: Paying parent caregivers

- **42 CFR § 441.505**

Individual's representative means a parent, family member, guardian, advocate, or other person authorized by the individual to serve as a representative in connection with the provision of CFC services and supports. This authorization should be in writing, when feasible, or by another method that clearly indicates the individual's free choice. An individual's representative may not also be a paid caregiver of an individual receiving services and supports under this subpart.

- Under normal circumstances, parents of minor children in Oregon are considered the child's representative as part of their parenting role.
- An 1135 waiver, available only during a federally declared public health emergency (PHE), is the only authority that can waive this CFR.



COVID-19 public health emergency: ODDS action

ODDS acted quickly to implement several policy changes to protect vulnerable children and adults. In January 2021, ODDS implemented processes to allow parents of minor children to be paid caregivers.

- **Oregon's approved 1135 language: Use of Representatives to Render 1915(k) Services**
 - Pursuant to section 1135(b)(1)(A) of the Act, CMS approves a waiver of 42 C.F.R. 441.505 to temporarily allow payment for 1915(k) attendant services and supports rendered by an individual's representative provided that the state makes a reasonable assessment that the caregiver is capable of rendering such services. This waiver will ensure that medically necessary services are furnished in the event the traditional provider workforce is diminished or there is inadequate capacity due to the public health emergency.
- CMS issued additional flexibilities during the PHE to allow states to forego standard CMS processes to attain quick approval to implement temporary and emergency actions.

COVID-19 public health emergency: ODDS action

Federal approval for this emergency option will last for the duration of the federal public health emergency (PHE).

- The current PHE is set to expire July 15, 2022.
- CMS has again committed to giving states at least 60-day advance notice before ending the PHE.
 - This notice was **not** given 60 days before July 15.
 - We expect CMS to extend the PHE timeline again and will communicate that out as soon as that information is announced.

There are many other 1135 emergency flexibilities that will also need to be ‘undone’ when the PHE ends.

- The ability to complete Level of Care evaluations and Individual Support Plans (ISPs) virtually.
- Use of verbal authorization or email signatures for ISPs.

ODDS history

- Before the K Plan, CIIS waivers provided the only Medicaid funded in home services to children.
- So far as ODDS is aware, paying parents to be caregivers for their children wasn't considered when the CIIS waivers were initiated (late 2000s).
- That remained the case even after attendant care services were removed from the CIIS waivers and moved to the K plan in 2013.

Important clarifications

- Financial relief or income assistance is outside the scope of Medicaid services. Medicaid provides health coverage and disability related services to eligible children and adults.
- ODDS services are provided to the eligible person, in this case the child, not the child's parent.
- Oregon does not consider parental income for children when determining Medicaid financial eligibility for I/DD services.



Current situation: Temporary option

Qualifications

- Child meets eligibility criteria for one of the CIIS waivers.
- Child's needs assessment identifies a minimum of 240 attendant-care hours/month.
- This figure demonstrates a high level of support needs — at least 8 hours per day.
- About 700 children currently qualify.

About 300 children in Oregon receive paid care from their parents or guardians under this emergency exemption.

To be a paid provider parents must:

- Meet basic requirements, such as passing a background check and following all applicable Oregon rules.



Seeking a solution: ODDS actions

- Listened to DD advocates with a variety of opinions and perspectives on this issue.
- Engaged in ongoing discussions with CMS and OHA to consider options.
- Consulted with the Department of Justice.
- Researched the evolution of these policy discussions in Oregon and with CMS.
- Consulted other states and researched their policies.
 - Arizona, Minnesota, Colorado, Louisiana, Tennessee, California
- Analyzed data and budget information.
- Responded to questions from legislators, media and partners.



ODDS overview: Children's Services

In order to be eligible for most ODDS services, an individual must:

- Have an intellectual disability, or
- Have a developmental disability, and
- Meet financial eligibility for Medicaid services.
 - Oregon uses an option to disregard parental income when considering financial eligibility for children.

For the CIIS waivers, eligibility requirements vary:

- Medically Involved – Requires care similar to what is provided in a Nursing Facility.
- Medically Fragile – Requires care similar to what is provided in a Hospital setting.
- Behavioral – Require care similar to what is provided for other ODDS services for children with behavioral challenges.



ODDS overview: Children's Services

Children eligible for services: 10,133

- Total number of children receiving in-home supports or in CIIS: **4,333**
 - In-Home Supports: **3,957**
 - Children's Intensive In-Home Services (CIIS): **376**
 - Medically involved waiver: 181
 - Medically fragile waiver: 97
 - Intensive behavior waiver: 98

Other services:

- Children's Residential Services: 135
- I/DD Children's Foster Care: 308
- Host Homes: 6

The remaining children are considered "case management only."



Seeking clarification: CMS guidance

- Oregon was an early adopter of the K Plan in 2013.
 - Discussions at that time focused on transitioning adults with I/DD and their family caregivers from the Support Services Brokerage system to the K Plan.
- In later years, when discussions on paying parents of minor children were raised, CMS guidance was interpreted to mean it was not possible under the model Oregon used for the K Plan.
- That interpretation remained in place, even in discussion with CMS earlier this year.
- Additional follow-up with CMS indicated that there are options available for allowing parents to be paid to provide care for their minor children.
- Prior to the pandemic, **few states allowed** paying parents to care for their children.
 - During the pandemic, many states received emergency exemptions to allow this temporarily.
 - Many states are now also considering making this option permanent.
 - CMS guidance has evolved to support states in these efforts.
- **ODDS can work with OHA and CMS to identify the appropriate Medicaid authority as eligibility and other key questions are addressed by the Legislature.**

Next steps: Primary policy questions

- Will Oregon permanently create the ability to remove and delegate a parent's I/DD service decisions-making authority for their minor child, so that parent can become a paid caregiver?
- Which children will be eligible to participate in a permanent program?
- How will Oregon consider parents who are being paid to provide care if allegations of child abuse arise while the parent is being paid?
- What policy changes will be delegated to the ODDS rule making process and which will be made by the Legislature?
- What is the budgetary impact based on eligibility and other policy decisions?
- What happens for parents that are currently being paid if the PHE ends before Legislative direction is given and ODDS receives formal approval from CMS to continue this option?



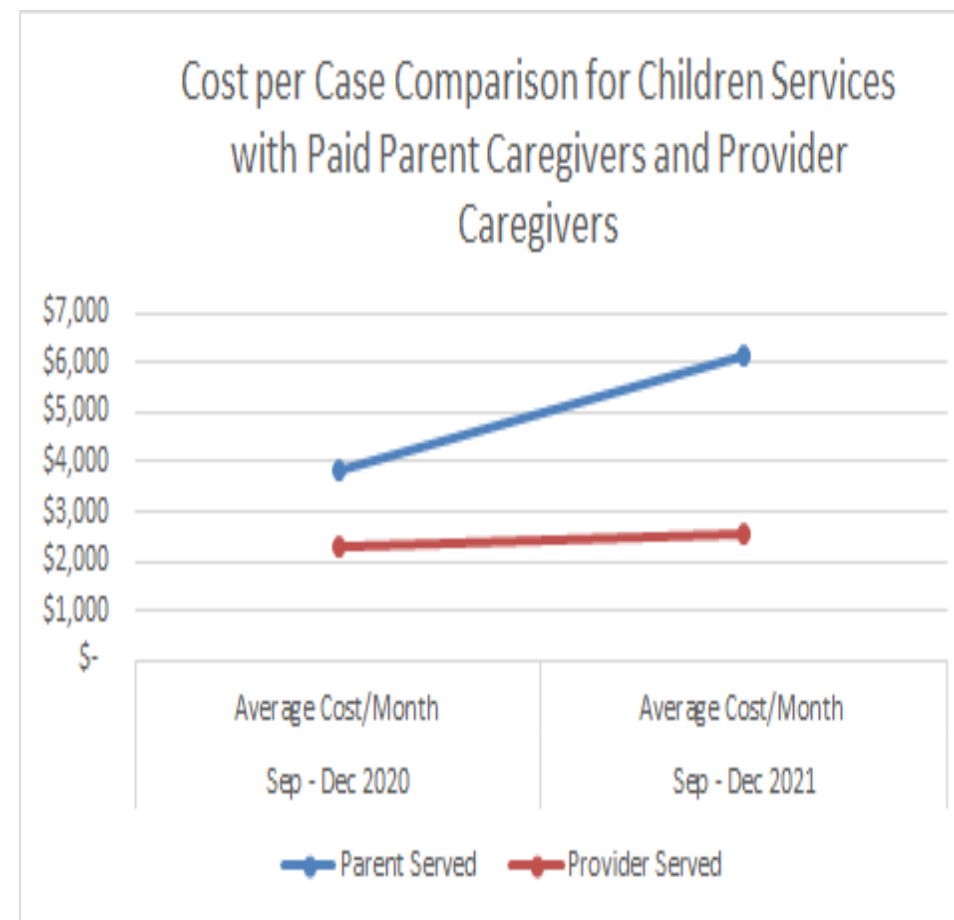
Next steps: Budget

For the children receiving services from their parent/guardian:

- Before the temporary 1135 approval went into effect in January 2021, the average monthly cost for in-home services for these children was \$3,843.
 - An average 270 hours/month were used.
- After January 2021, the average monthly cost for in-home services for these children increased to \$6,106.
 - An average of 447 hours/month were used.

Other factors

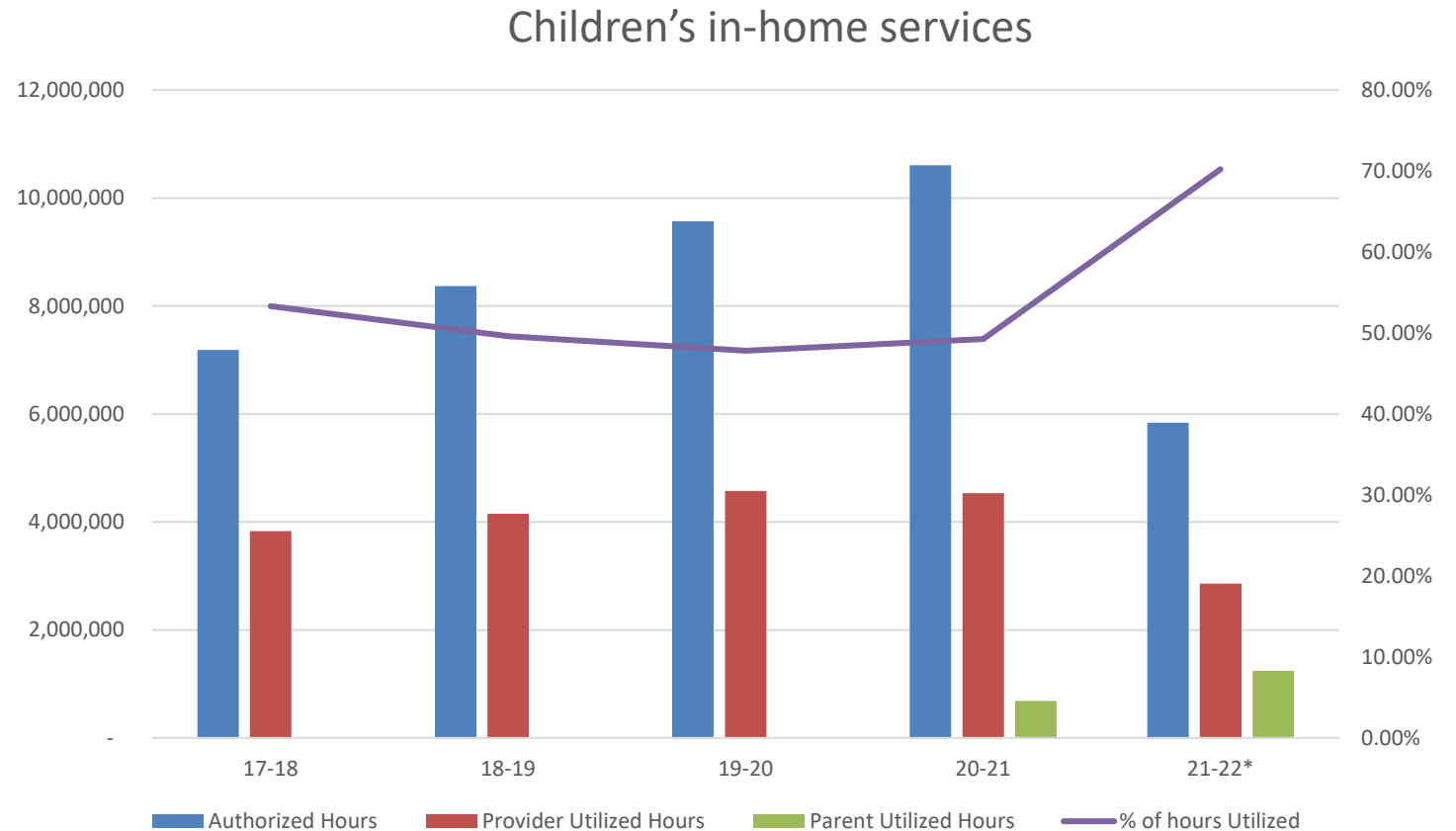
- Personal support worker (PSW) wage increases, and COVID-19 rate increases for direct support professional providers went into effect during this time.
- With COVID-19, overtime authorization could be done locally for PSWs.
- Hospitalizations for these children may have decreased during this time. ODDS is gathering that data.



Next steps: Budget

The Department of Administrative Services (DAS) and the Legislature base the ODDS budget on previous in-home hours used not on the hours allotted.

- This is the budgeting methodology used for children and adults and across ODHS programs, including APD.





Questions?

Email us: DD.DirectorsOffice@dhsoha.state.or.us

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