

Lions, Tigers, and Payment to LRI, Oh My!

A Case Study in State Approaches
to Payment of Legally Responsible
Individuals

Today's State Speakers

Illinois

- Becky Dragoo, IL Department of Aging, Deputy Director
- Jennifer Hebel, IL Department of Aging, Special Assistant for Research

Minnesota

- Jeanine Wilson, MN Dept. of Human Services, Supervisor Home Care and Self-Directed Services Team
- Diane Benjamin, MN Dept. of Human Services, Home Care and Self-Directed Services Policy Lead

Iowa

- LeAnn Moskowitz, IA Dept. of Health and Human Services, LTSS Policy Specialist

Legally Responsible Individual (LRI) – CMS Policy

- **State Plan Personal Care Services:** 42 CFR §440.167 prohibits payment to LRI
- Payments for personal care or similar services delivered by LRI are not eligible for Federal Financial Participation.
- **LRI is defined in state law, but typically includes the parent of a minor child or a spouse**
- LRI typically does not include relatives and parents of an adult beneficiary- including a parent who also may be a legal guardian

CMS allows payment to LRI in 1915(K) and 1915(j) for personal care services

CMS 1915(c) Technical Guide, Item C-2-d and C-2-e, provides the framework and criteria for payment to LRI, legal guardians and relatives



Illinois Department on Aging

To **serve** and **advocate** for older Illinoisans and their caregivers by administering **quality and culturally appropriate programs** that promote partnerships and encourage **independence, dignity, and quality of life.**

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Illinois Persons Who Are Elderly Waiver

Provider-directed 1915(c)
HCBS waiver

Older Adults Age 60+
Non-medical personal
care services

Approximately 134,849
individuals served
56,912 MCO

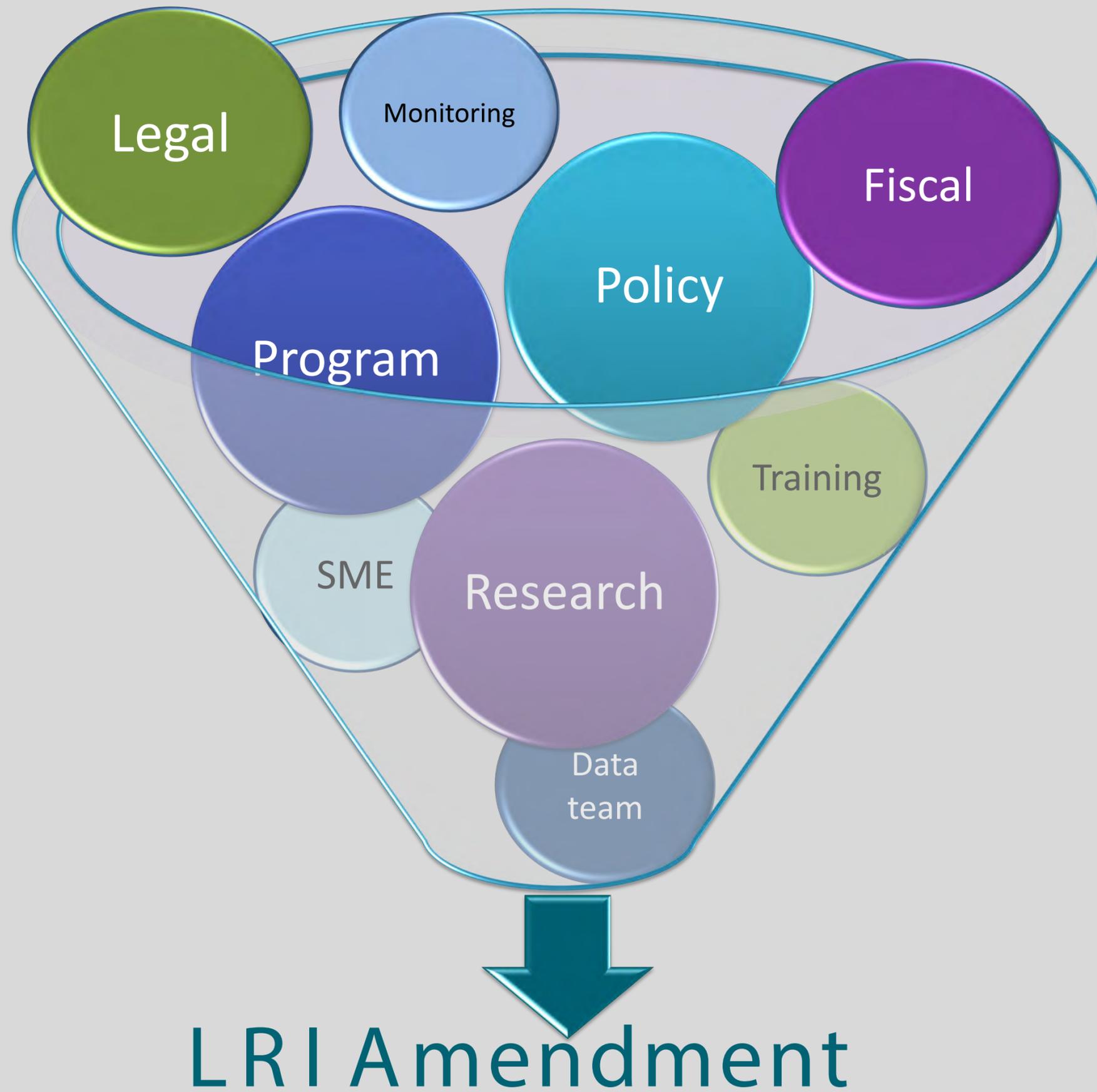
13 Planning and Service
Agencies (PSA)

346 INH Contracts

Allows non-legally
responsible family
members as Family Home
Care Aides (FHCA)

How Did We Get Here?

Like everything else, COVID-19 & Appendix K



LRI Amendment

All Hands on Deck!

Using an Interdisciplinary Systems Thinking Approach to Improve Outcomes



Illinois Appendix K Flexibilities

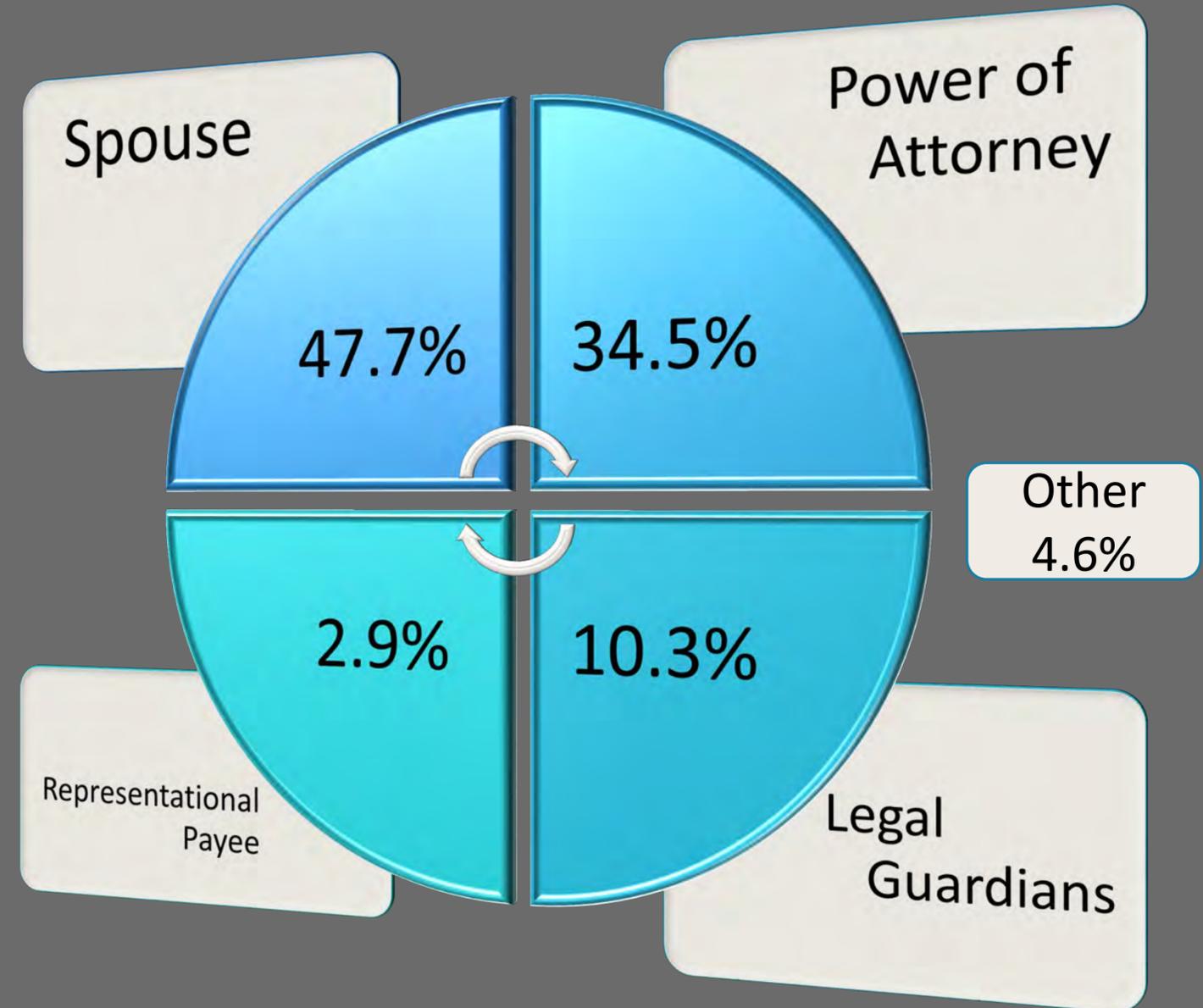
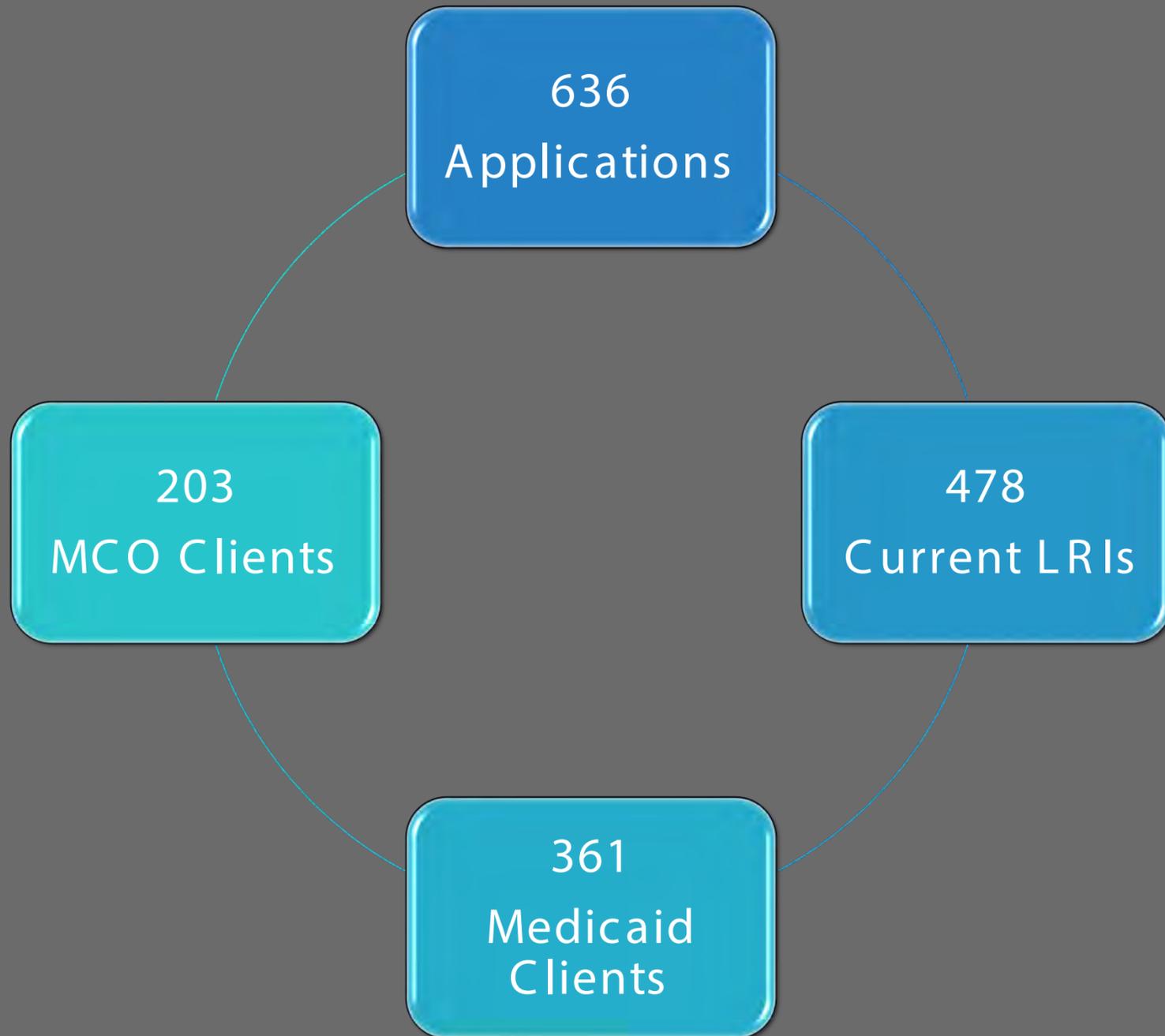
- Spouses, legal guardians, power of attorneys, and representational payees could provide in-home care
- APS background check for potential LRIs
- LRIs hired through provider agencies (optional)

As the pandemic wound down.....

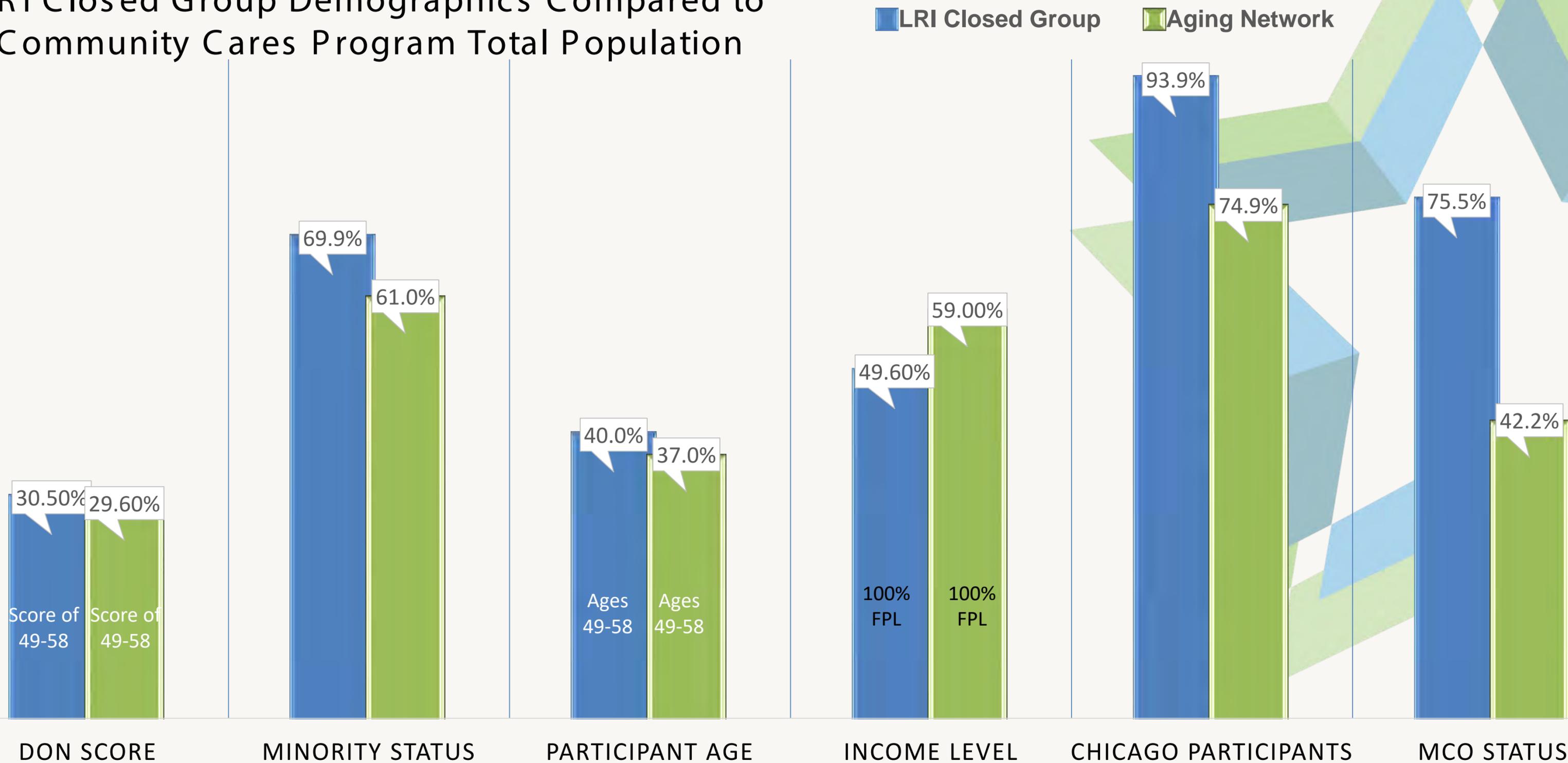
What do we do with the current LRIs?

LRI Universe: Participant Status Snapshot

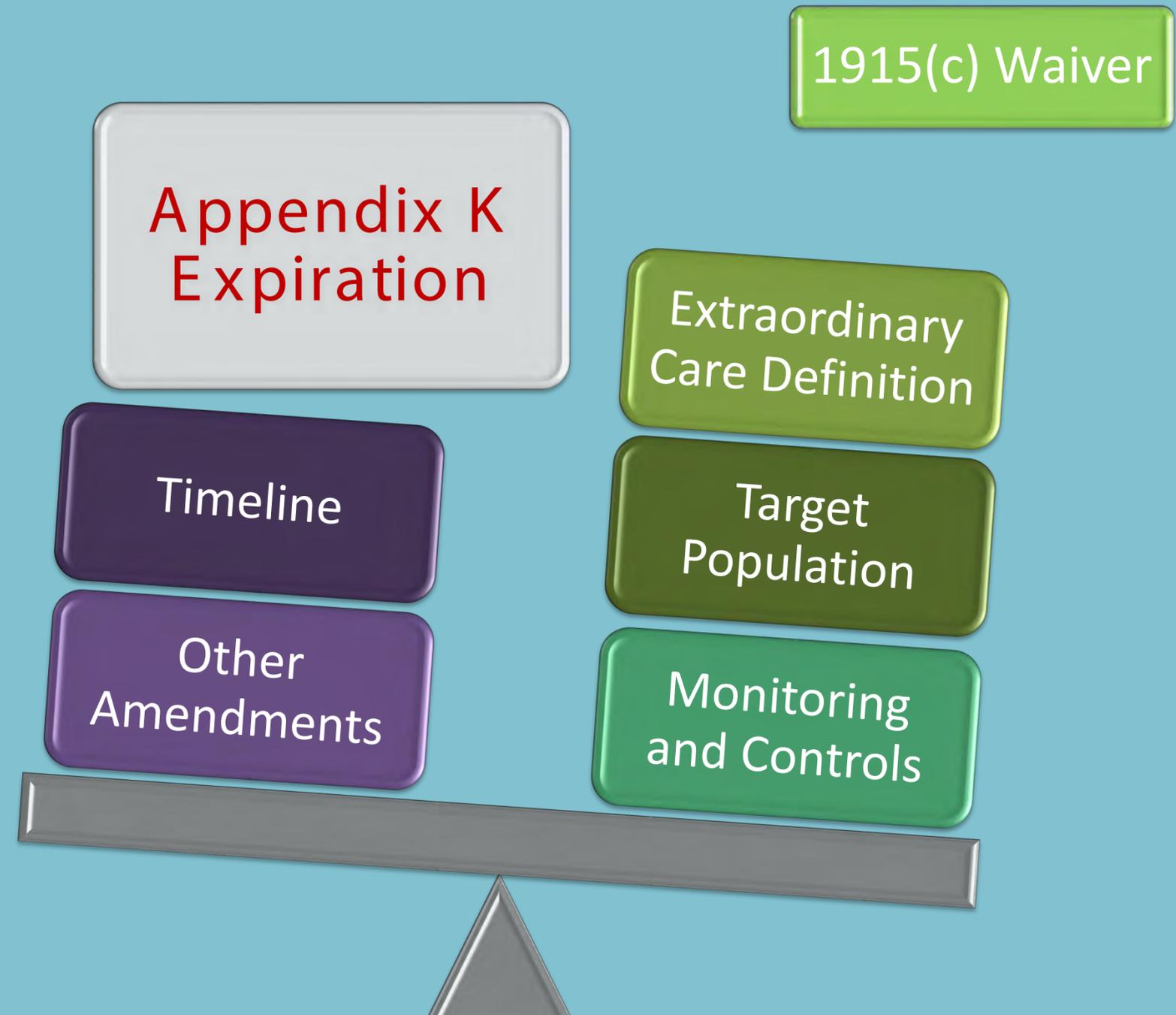
As of July 2023



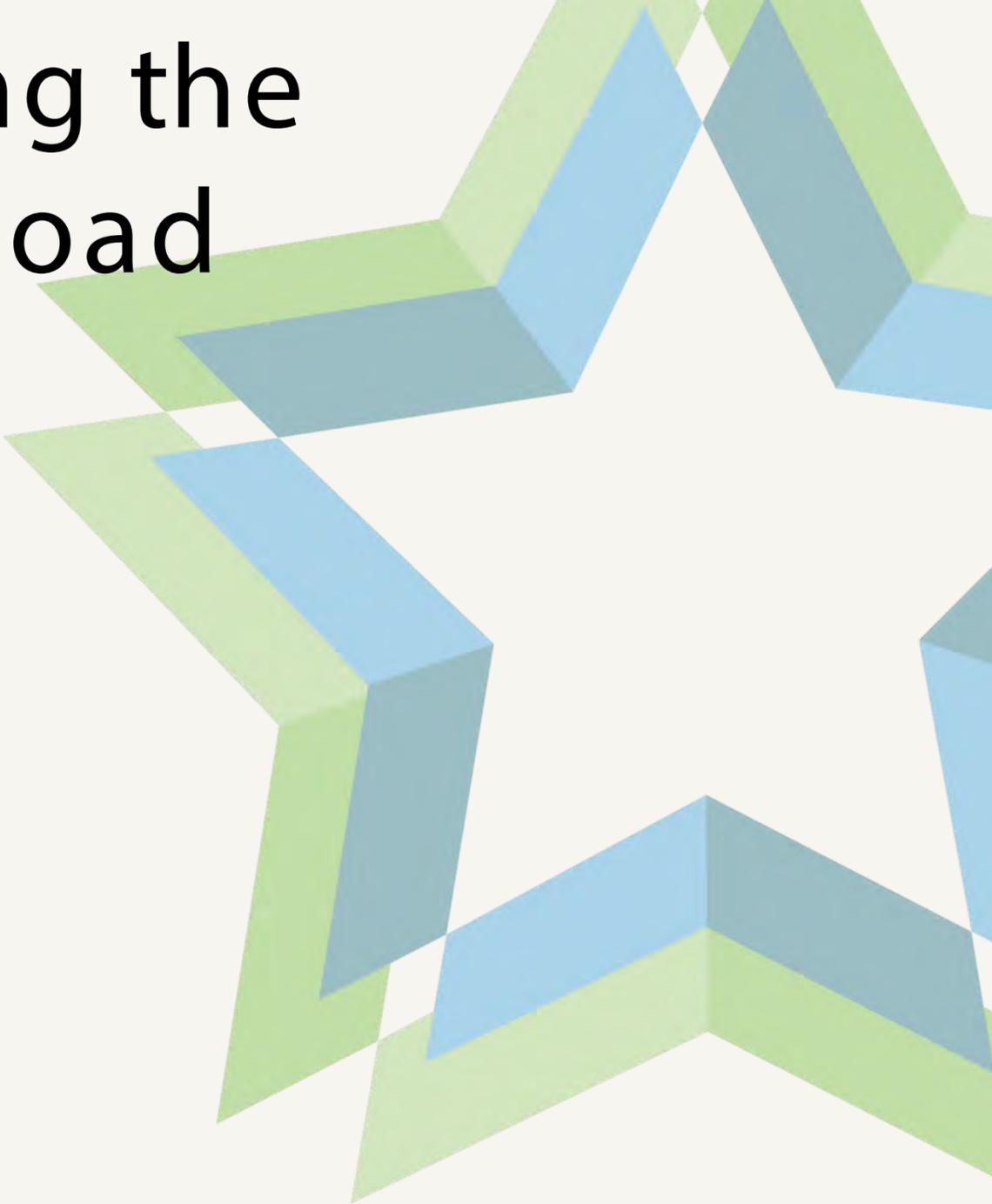
LRI Closed Group Demographics Compared to Community Cares Program Total Population



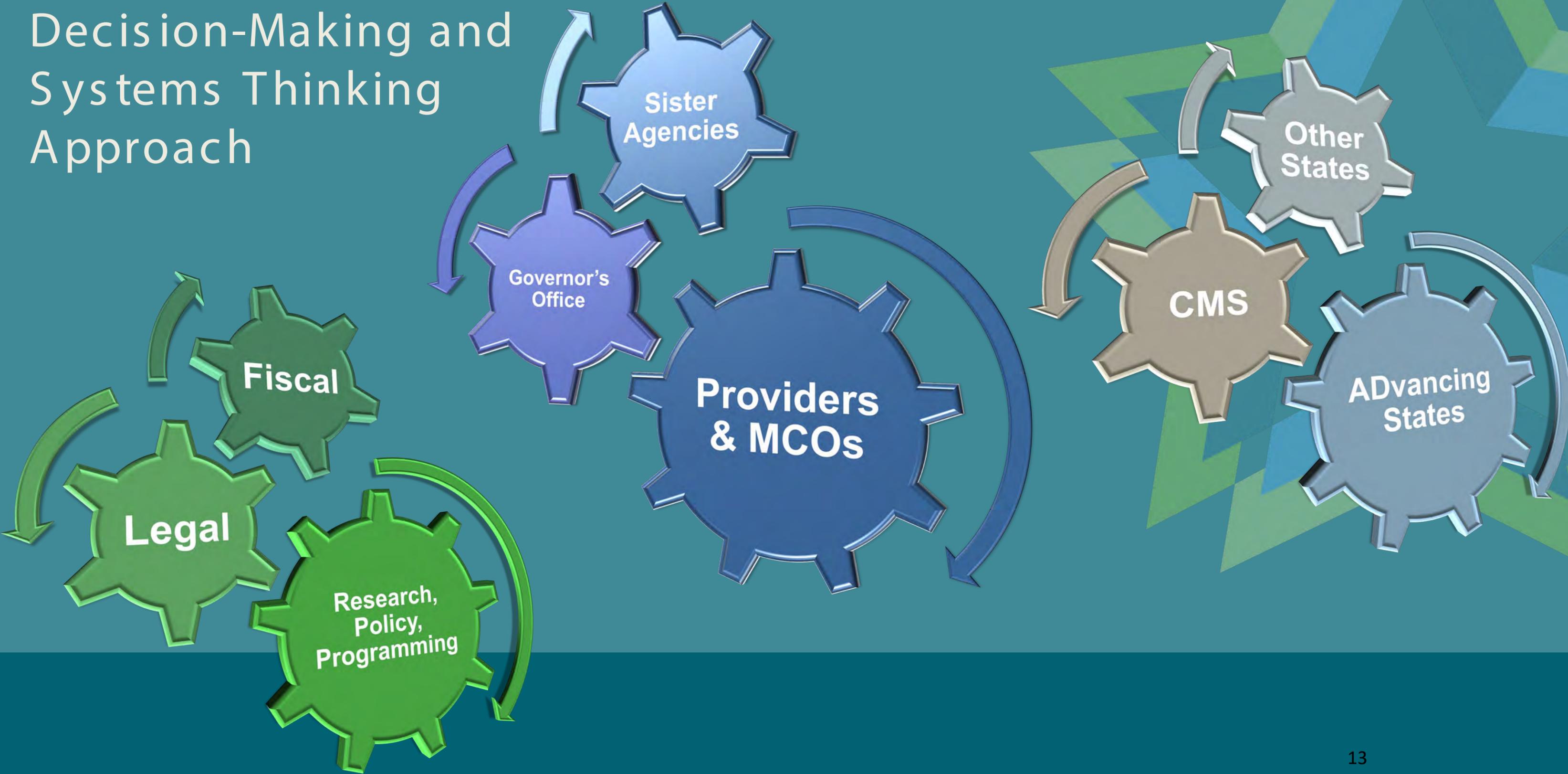
Research Questions



Following the Policy Road



Interdisciplinary Decision-Making and Systems Thinking Approach





Why Pursue Permanent LRI?

Workforce

Participant choice

Alignment with other Illinois waivers

Protecting participants with current LRIs

Data driven, evidence based

Policy Shifts in Response to SMD #23-004 (Aug. 2, 2023)

Extension of 1915(c) Home and Community-Based Services Waiver Appendix K Expiration Dates

Closed Group/May 2023

- Closed Group
- Estimated \$3.88 million increase to CCP budget
- Estimated \$3.3 million loss of FFP
- Parallel to new waiver LRIs

Current Status

- Currently working on waiver amendment to add LRI
- Jan 1, 2024
- Emergency and permanent rules

2023 Home and Community-Based Services Conference



Twenty years of payment to legally responsible individuals (LRI) for personal assistance support

Jeanine Wilson, RN, PHN, Diane Benjamin, RN, PHN

Legally responsible individual (LRI) for a minor

Minnesota defines “parent”:

- Adoptive parent
- Biological parent
- Stepparent
- Legal guardian of a minor

Legally responsible individual (LRI) for an adult

Minn. Stat. § 626.5572, Subd. 4:

- “Caregiver” does not include unpaid caregiver

Statutory authority

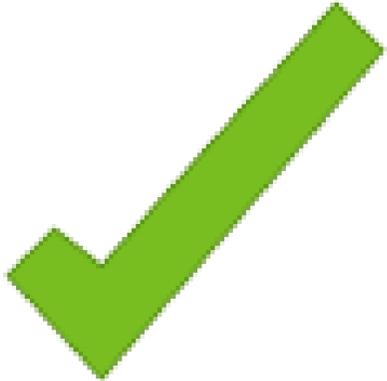
- CDCS: federally approved waiver plans
- CFSS: Minn. Stat. §256B.85, subd. 7 (8)

Person-centered practices

- Statutory obligations
- Honoring the person's choice of worker
- Family members know them best
- Family members already providing the care
- Systemic workforce shortage
- Culturally and linguistically appropriate care
- Worker must meet all qualifications

Covered tasks

Non-covered tasks



Can do



Agency cannot bill for

Typical parenting tasks



Covered if children that age typically do not need help



Not covered if children that age typically do need help

Example age-appropriate dependency chart

DRESSING, LTC SD

SCORE	CATEGORY	COMMENTS	R1	R2
00	Independent/age-appropriate dependency.		FIELD 38	
01	Intermittent supervision or reminders. May need physical assistance with fasteners, shoes or laying out clothes.		<input type="checkbox"/>	<input type="checkbox"/>
*02	Constant supervision, but no physical assistance. (Age appropriate for 0-48 months)		<input type="checkbox"/>	<input type="checkbox"/>
*03	Physical assistance or presence of another at all times, but child physically is able to participate. (Age appropriate for 0-36 months)		DEPENDENCY?	
*04	Totally dependent on another for all dressing. Child physically is unable to participate. (Age appropriate for 0-12 months)		<input type="checkbox"/>	<input type="checkbox"/>

[DHS eDoc 3428C: Determination of Age-Appropriate Dependencies for Children who use Long-Term Care](#)

Hour limitations

minor child = child under the age of 18

- biological
- adopted
- stepchild
- legal guardianship

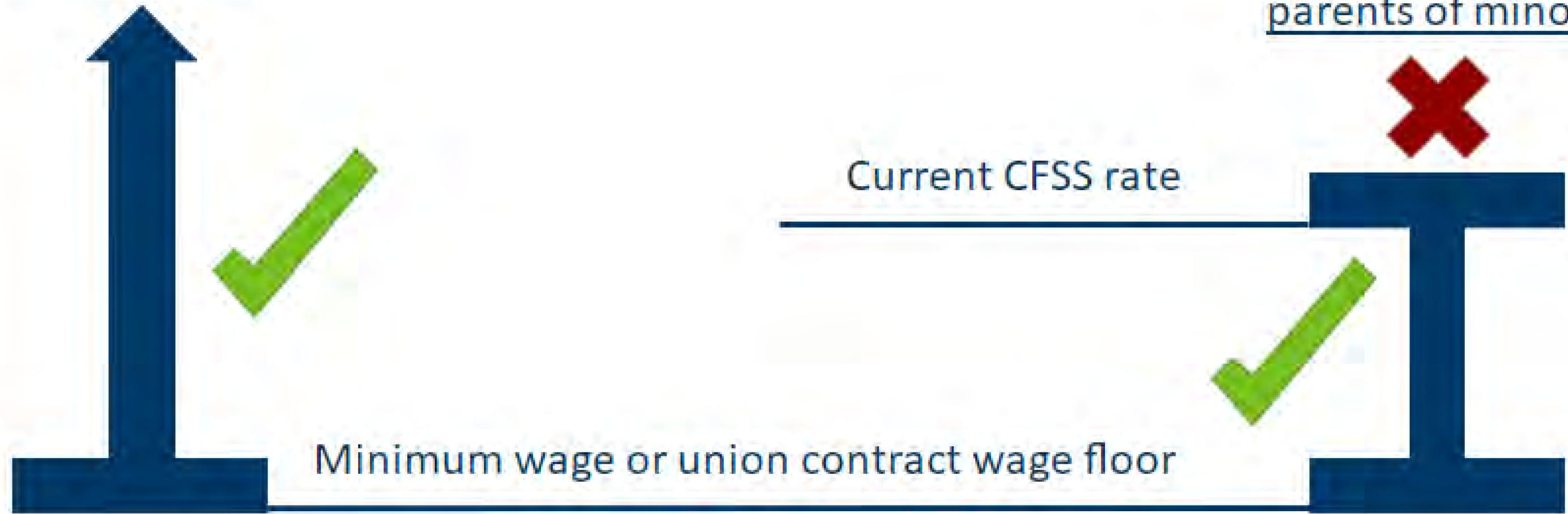


If multiple parents provide services, each one is limited to 40 hours per week

Limits on wages

Most workers

Spouses and
parents of minors



Oversight requirements

- CDCS:
 - case manager
 - semi-annual visit
 - quarterly reviews
- CFSS:
 - case manager or consultation services provider
 - Semi-annual review

Minnesota Contact Information

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HCBS Waivers
and
Legally Responsible Individuals
as Caregivers

HCBS 2024 Conference

Presented by: LeAnn Moskowitz, LTSS Policy Specialist, Program Manager, Iowa Medicaid



Overview

- ❖ Iowa's HCBS Waivers
- ❖ Appendix K Authority -Adding parents of minors and spouse as caregivers
- ❖ Services provided by Legally Responsible Individuals (LRI)
- ❖ Extraordinary Care
- ❖ State Requirements, Controls and Oversight

Iowa's 1915(c) HCBS Waiver Programs

- AIDS/HIV
- Children's Mental Health
- Brain Injury
- Elderly Waiver
- Health and Disability
- Intellectual Disability
- Physical Disability Waiver

Parents of Minors and Spouses as Caregivers during the COVID-19 PHE

- Pre-PHE Legal representatives excluding parents of minors and spouses were allowed to be paid caregivers under the Consumer Directed Attendant Care (CDAC) service and the self-direction program, the Consumer Choices Option (CCO).
- During the PHE, IA requested Appendix K flexibility to allow parents of minors and spouses to be paid caregivers under the CDAC service and CCO.
- Submitted 1915(c) waiver amendments to permanently allow parents of minors and spouses to be paid caregivers under the CDAC service and the self-direction program, the Consumer Choices Option (CCO) post PHE.
- Administrative Rule will be amended to allow parents of minors and spouses to receive payment for CDAC services or services provided under CCO.

Services Provided by LRI

Consumer Directed Attendant Care (CDAC)

Activities performed by a person to help a member with self-care tasks which the member would typically do independently if the member were otherwise able. Includes non-skilled service activities such as: Dressing, bathing, transferring and ambulating, toileting, peri-care, catheter assistance, meal preparation, assistance with eating, housekeeping, administering medications, wound care, assistance going to work and assistance with job related tasks while at work, assistance with tasks that require cognitive or physical assistance such as budgeting or scheduling, communication assistance, and using transportation essential to the health and welfare of the member.

Consumer Choices Option (CCO) Self-Direction Program

- The consumer choices option (CCO) provides a member with a flexible monthly individual budget that is based on the member's service needs as established in the member's service plan
- The member has the authority to purchase goods and services to meet their assessed needs and goals and may choose to employ providers of services and supports.

CDAC - Agency	CDAC - Individual	Participant Directed – Consumer Choices Option (CCO)
Enrolled with Iowa Medicaid and the MCOs	Enrolled with Iowa Medicaid and the MCOs	CCO employee is hired by the participant
<p>Member:</p> <ul style="list-style-type: none"> • Determines CDAC workers duties. • Determines CDAC agency reimbursement. • Schedules CDAC workers. • Trains and supervises CDAC workers. 	<p>Member:</p> <ul style="list-style-type: none"> • Determines Individual CDAC workers duties. • Determines Individual CDAC provider’s reimbursement. • Schedules employees. • Trains and supervises employees 	<p>Member:</p> <ul style="list-style-type: none"> • Recruits and hires employees. • Verifies employee qualifications. • Specifies additional employee qualifications. • Determines employee duties. • Determines employee wages and benefits. • Schedules employees. • Trains and supervises employees
<ul style="list-style-type: none"> • Legally Responsible Person (Spouse or parent of minor) • Relative • Legal Guardian 	<ul style="list-style-type: none"> • Legally Responsible Person (Spouse or parent of minor) • Relative • Legal Guardian 	<ul style="list-style-type: none"> • Legally Responsible Person (Spouse or parent of minor) • Relative • Legal Guardian

Legally Responsible Individuals

Extraordinary Care

- The service planning team determines the need for and the types of activities to be provided by the legally responsible person.
- This includes reviewing if the needed services are “extraordinary.”
 - Any services which are activities that a legally responsible individual would not ordinarily perform in the household on behalf of a person without a disability or chronic illness of the same age and are necessary to assure the health and welfare of the member and are necessary to avoid institutionalization would be considered extraordinary.
- A legally responsible person may also be paid for services that are not considered extraordinary.

Legally Responsible Individuals

- A member's relative or legal guardian may provide services to a member.
- Payments may be made to any relative including a parent of a minor, spouse, or a legal representative of the member.
 - Legal representative means a person, including an attorney, who is authorized by law to act on behalf of the medical assistance program member but does not include the spouse of a member or the parent or stepparent of a member aged 17 or younger.
- The person who is legally responsible for a member may be a Consumer Directed Attendant Care (CDAC) provider or an employee under the Consumer Choices Option (CCO) program.

Legally Responsible Individual Requirements

- LRI must have the skills needed to provide the services to the member.
- The service plan must address how the case manager will oversee the service provision to ensure care is delivered in the best interest of the member.
- The rate of pay and the care provided by the LRI is identified and authorized in the member's service plan that is authorized and monitored by a case manager.
- Service plans are monitored to assure that authorized services are received.
- CCO excludes services provided in the family home by a parent, stepparent, legal representative, sibling, or stepsibling **during overnight sleeping hours** unless the parent, stepparent, legal representative, sibling, or stepsibling is awake and actively providing direct services as authorized in the member's service plan.
- When the member's guardian or legal representative is a paid CCO employee, payment authorization for optional service components must be delegated to a representative.

Legally Responsible Individual Administrative Rules

441-IAC 79.9(7) Incorrect payment.

a. Except as provided in paragraph 79.9(7)“b,” medical assistance funds are incorrectly paid whenever an individual who provided the service to the member for which the department paid was at the time service was provided the parent of a minor child, spouse, or legal representative of the member.

b. Notwithstanding paragraph 79.9(7)“a,” medical assistance funds are not incorrectly paid when an individual who serves as a member’s legal representative provides services to the member under a home- and community-based services waiver consumer-directed attendant care agreement or under a consumer choices option employment agreement in effect on or after December 31, 2013.

For purposes of this paragraph, “legal representative” means a person, including an attorney, who is authorized by law to act on behalf of the medical assistance program member but does not include the spouse of a member or the parent or stepparent of a member aged 17 or younger.

Legally Responsible Individual Administrative Rules

Whenever a legal representative **acts** as a provider of consumer-directed attendant care as allowed by 441—paragraph 79.9(7)“b,” the following shall apply:

1. The payment rate for the legal representative must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department;
2. The legal representative may not be paid for more than 40 hours of service per week; and
3. A contingency plan must be established in the member’s service plan to ensure service delivery in the event the legal representative is unable to provide services due to illness or other unexpected event.

Legally Responsible Individual Oversight

For fee-for-service members:

- Case Managers are responsible for ensuring the provision of services by a legally responsible individual is in the best interest of the member through service monitoring.
- Post utilization audits on waiver services verify that payments are made only for services rendered and that services rendered match the service plan
- The waiver authorization system compares the submitted claims to the services authorized in the plan of care prior to payment. The claim will not be paid if there is a discrepancy between the amount billed and the rate of pay and units authorized in the plan.

For Managed Care enrollees:

- MCOs are responsible for ensuring the provision of services by a legally responsible individual is in the best interest of the member and that payments are made only for services rendered.
- Post utilization audits on waiver services verifying that payments are made only for services rendered and that services rendered match the service plan.

Contact

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Questions?

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Thank You For Attending

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