

Home and Community-Based Waiver

In accordance with federal law, the Department for Medicaid Services (DMS), Cabinet for Health and Family Services (CHFS) must notify the public of its intent to submit to the Centers for Medicare and Medicaid Services (CMS) any extension, renewal or amendment to any previously approved waiver which includes substantive changes in waiver services or operations. The intended changes must be made available for a 30-day public comment period prior to submitting the renewal, amendment or extension to CMS.

The current Home and Community Based Services Waiver expires on June 30, 2015 and a renewed waiver must be submitted and approved by July 1, 2015. No waiver participant will lose services due to this renewal and all services currently being provided will be available in some form to the waiver participants. Modifications in the renewal application include mandated changes to meet the new federal requirements (final rule).

Specific changes to the waiver as it is currently operationalized include the following:

I. ASSESSMENT:

Based on the intent of the final rule, Kentucky has opted to completely separate service provision, including case management, from the assessment and plan of care process. The Department for Aging and Independent Living (DAIL) will now function as the independent assessment agency conducting all assessments and reassessments and developing or amending the plan of care. DAIL will incorporate person centered planning principles in developing plans of care. It is the expectation that the participant, friends and family and providers will all participate in a plan of care meeting to develop the plan. In addition, Kentucky is revising the assessment tool used to determine level of care for the waiver. Kentucky has adapted the Wisconsin tool, a validated instrument, to use not only in the waiver but also for all DAIL programs including state funding aging and disability programs and Older Americans Act programs.

II. CASE MANAGEMENT:

In the renewal application, Kentucky clearly defines case management and identifies expected standards and functions each case manager is expected to meet. Kentucky also defines Conflict-Free Case Management to meet regulatory requirements.

- **Conflict-Free Defined:**

Conflict-free case management requires that a provider, including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider, who renders case management to an individual must not also provide another waiver service to that same individual, unless the provider is the only willing and qualified provider in the geographical area (within 30 miles of the participant's residence)

III. SERVICES:

All services that are currently being provided will continue to be provided. However, several of the current services have been blended and/or renamed. In addition, Kentucky is increasing the provider base for many of the services to enhance access.

Two new services, **Home Delivered Meals** and **Personal Emergency Response Systems (PERS)** will be added to the waiver renewal. Home Delivered Meals will now be available in the waiver. Meal providers will be certified by DAHL following Older American's Act nutrition guidelines. Participants may not access Home Delivered Meals and Case Management services only or receive Home Delivered Meals if they are receiving Attendant Care at the same time the meal would be delivered. Advocates have encouraged the addition of PERS as a means to prevent hospitalizations and nursing home placements. PERS will cover both installation and monthly fees for individuals who are left alone for periods of time and who are considered at risk.

The **Respite** service definition has been slightly changed for clarification purposes and separated into specialized and non-specialized services. The non-specialized service can only be provided as a participant directed service. The specialized respite includes oversight by an RN and is offered in the traditional model.

Personal Care and Homemaking services will be blended into one service, **Attendant Care**, and will be available in the traditional model. **Home and Community Supports** will continue as a participant directed service. Attendant Care will no longer be limited to individuals who live with a caregiver.

Adult Day Health hours of operation will be expanded to allow the provision of services for families who work alternative shifts.

Physical, speech, and occupational therapies will no longer be offered as waiver services. Medicaid state plan coverage for these services has been significantly expanded, so waiver participants can more easily access therapies through state plan providers.

IV. Participant Directed Services

Kentucky is creating a new service for participant directed services that empowers the waiver participant as the employer by combining support, financial management and advisory services into one overall service. Participant Directed Services Coordination (PDC) will provide coordination and assistance to the PDS participant as an advisor and fiscal manager but places more responsibility on the employer (participant) to manage service delivery.

Termination from PDS Option:

If the PDC Advisor feels that the participant is in immediate danger or the health, safety and welfare of the participant is at risk, the PDC Advisor will immediately contact the

Department and request assistance in transferring the participant to a qualified traditional waiver provider. In addition, the PDC Advisor shall immediately notify appropriate agencies and authorities regarding any suspected abuse, safety or neglect allegations.

If the PDS Option participant, employee or representative has exhibited abusive, intimidating or threatening behavior or if monitoring activities reflect the member's needs are not being met in accordance with the approved Plan of Care (POC), and/or the participant or representative can't accurately meet the requirements of serving as an employer, the PDC Advisor will work with the consumer or the designated representative to resolve the issues and develop a corrective action plan. The PDC Advisor will monitor the progress of the corrective action plan and resulting outcomes. If the member is unable to resolve the issue, or unable to develop and implement a corrective action plan within sixty (60) days of identification of the issue, the PDC Advisor will notify the Department and request the withdrawal of the PDS Option for the participant. If approved by the Department, the participant will be provided with written information regarding the traditional program and available providers and will be given thirty (30) days to obtain a traditional provider, with assistance from the PDC Advisor. The PDC Advisor shall document the reason for the PDS option withdrawal, actions taken to assist the member to develop a prevention plan and the outcomes.

Background Checks, Training and Drug Testing:

Employees must meet the same requirements as traditional providers and complete all required training and pass all applicable background and drug checks. The participant as the employer is responsible for the cost of obtaining background checks, drug testing and all cost associated with training.

Family Members as Employees:

Immediate family members may serve as employees if it does not replace the natural support system and the family member is qualified and authorized by the Department to provide the service.

Family Members as Representatives

A non-legal or legal representative may be freely chosen by an adult waiver member to direct waiver services. This representative may not be hired as an employee to provide any of the directed waiver services. The representative may be an immediate family member of the waiver participant. The representative must undergo the same criminal background check, Administrative Office of the Courts (AOC) as identified for employees.

V. Home and Community Based Settings (HCBS) Final Rules

In compliance with the HCBS federal final rules, the following requirements have been added to the waiver renewal:

Person-Centered Planning Process

- The individual will lead the person-centered planning process where possible. The individual's representative should have a participatory role, as needed and as defined by the individual, unless State law confers decision-making authority to the legal representative. All references to individuals include the role of the individual's representative.
- Includes people chosen by the individual.
- Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions.
- Is timely and occurs at times and locations of convenience to the individual.
- Reflects cultural considerations of the individual and is conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with § 435.905(b) of this chapter.
- Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.
- Offers informed choices to the individual regarding the services and supports they receive and from whom.
- Includes a method for the individual to request updates to the plan as needed.
- Records the alternative home and community-based settings that were considered by the individual

Service Plan Requirements

- The person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports
- Reflect that the setting in which the individual resides is chosen by the individual. The State must ensure that the setting chosen by the individual is integrated in, and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.
- Reflect the individual's strengths and preferences.
- Reflect clinical and support needs as identified through an assessment of functional need.
- Include individually identified goals and desired outcomes.
- Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of 1915(c) HCBS waiver services and supports.
- Reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies when needed.

- Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with § 435.905(b) of this chapter.
- Identify the individual and/or entity responsible for monitoring the plan.
- Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation.
- Be distributed to the individual and other people involved in the plan.
- Include those services, the purpose or control of which the individual elects to self-direct.
- Prevent the provision of unnecessary or inappropriate services and supports.

Setting Requirements*

- The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
- The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
- Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- Facilitates individual choice regarding services and supports, and who provides them.
- Home and community-based settings do not include the following:
 - (i) A nursing facility;
 - (ii) An institution for mental diseases;
 - (iii) An intermediate care facility for individuals with intellectual disabilities;
 - (iv) A hospital; or
 - (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the

State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

*Setting requirements will be implemented over the course of five years, as addressed in the statewide transition plan, which can be viewed at the following link:

<http://chfs.ky.gov/NR/rdonlyres/BD631EBB-FC6E-4492-B8F9-44DF9F27387F/0/KYStatewideTransitionPlanFINAL.pdf>.