

Participant Directed Services (PDS) Frequently Asked Questions

July 1, 2024

- 1.) If a Participant's guardian received pre-pandemic approval to provide PDS services under HCB2 and then transitioned to MPW post-pandemic does their previous Legally Responsible Individual (LRI) approval follow them to the new waiver or do they have to resubmit an exemption request under the new waiver?

DAIL response: The Participant in this situation would not have to resubmit to the LRI exemption review process.

- 2.) Is the "Legally Responsible Individual (LRI) Application Attestation" form going to be an online-only (MWMA) form, a printable online (MWMA) form or a separate form to print, complete and upload?

DAIL response: The "Legally Responsible Individual (LRI) Application Attestation" document is a separate form to complete and upload to MWMA.

- 3.) Will information regarding the LRI process presented on 06/14/24 be available to Participants & PDS Representatives (Reps.) before they must submit their LRI PDS employees for an exemption review?

DAIL response: Yes. The DMS webinars regarding the LRI review process for case managers & Participants are available online.

<https://www.chfs.ky.gov/agencies/dms/dca/waivers/LRIReviewParticipants.pdf>

- 4.) Are Foster Parents considered LRIs?

DAIL response: While Foster Parents are considered LRIs, they cannot be paid PDS employees due to receiving payment from the state for the provision of foster care.

<https://bit.ly/KYPDSFosterCare>

- 5.) Does drug testing apply to PDS employees?

DAIL response: Per the PDS FAQ dated 05/20/24 (page 8) drug testing will only apply to employees of traditional services.

- 6.) Has the Respite year been changed to Level of Care (LOC) year from calendar year for all waivers?

DAIL response: Yes. All waiver applications have been updated so that the respite benefit period aligns with the LOC year.

- 7.) Are Reps. under the MPW required to undergo the same background checks as they are under HCB2?

DAIL response: Yes. The requirements for PDS representatives are the same across all waivers with the PDS option.

8.) Are PDS employees under the MPW who provide transportation required to provide proof of a valid driver's license and automobile liability insurance?

DAIL response: Yes. Per the MPW waiver application dated 05/01/24, "If the employee provides transportation, the employee must be legally licensed to operate the transporting vehicle and obey all applicable State laws while operating the vehicle."

9.) Are two parents in the same household limited to 40 hours per week combined across all waivers?

DAIL response: DAIL/DMS intent is that the household limit will be applied across all HCBS waivers and regulations. Additionally, both parents would need go through the LRI exemption approval process.

10.) Why is it the case manager's responsibility to train staff on Electronic Visit Verification (EVV) when we do not even have access to it? Wouldn't it make more sense for the FMA to teach them how to use it?

DAIL response: The CM's responsibility is to make sure that the Participant or their Rep. are fully informed that they must submit time according the EVV guidance available in TRIS. The agency should have a policy addressing and an acknowledgement of training received, and topics covered to be signed by the Participant or their Rep. Also, if the Participant or their Rep. have not sufficiently trained their employees regarding proper use of EVV then a Corrective Action Plan (CAP) and additional remedial training may be required. The PDS CM agency should work collaboratively with the Participant's PDS FM agency to identify areas of concern. EVV training resources are located at:

<https://www.chfs.ky.gov/agencies/dms/Pages/training.aspx>

<https://register.gotowebinar.com/recording/2017726295348918283>

<https://mobilecaregiverplus.com/training/>

11.) If a PDS employee inappropriately bills and is paid who does DMS recoup from?

DAIL response: If an overpayment is identified as the result of an administrative (OIG) or criminal fraud investigation (OAG) then the overpayment may be recouped from the person who caused the overpayment (i.e., Participant or PDS employee). If an inappropriate payment is made due to agency error the overpayment would be recouped from the CM agency. CMs should be diligent in identifying inappropriate billing activities and actions that would constitute fraud, waste or program abuse (FWA) in order to protect the Participant from avoidable employer liabilities. Report fraud whenever suspected, file incident reports for exploitation and issue CAPs for FWA behaviors.

12.) Will Community Mental Health Centers (CMHCs) still be responsible for completing the annual assessment for LOC?

DAIL response: Yes. The CMHCs will continue to complete MPW assessments but they must be conflict-free. The participant's CM cannot also be the person who completes their MPW assessment.

13.) Does a telehealth visit have to be a video call or does a telephone call suffice?

DAIL response: To qualify as a telehealth visit contacts must meet all the requirements outlined in the PDS Case Management Training presented on 06/14/24 – see Slides 15 & 16.

14.) If a participant has PDS employees and an incident occurs during that service does the PDS employee file the incident?

DAIL response: No. PDS employees cannot file incident reports in MWMA that is a CM responsibility. The PDS employee should receive training from the Participant or Rep. regarding reportable incidents and the employee should report or cause the incident to be reported, such as by the Rep. or natural support, to the CM. The CM is responsible for training the Participant or their Rep. regarding appropriate incident reporting according to the Incident Reporting Instructional Guide issued by DMS on 06/04/21. The guide is located at:
<https://www.chfs.ky.gov/agencies/dms/dca/Documents/irinstructionalguide.pdf>

15.) Regarding the self-assessment discussed earlier (PDS Employer Responsibilities Review Tool) - where do we find that form?

DAIL response: The form has not yet been released. Once it has been finalized and made available online a notice will be sent out.

16.) Can the case management agency require the participant either change to traditional or discharge them after 30 days?

DAIL response: No. Not without cause and without following the process outlined in the PDS Case Management Training presented on 06/14/24 – see Slides 26 & 27.

17.) What if a PDS case management agency is unable to locate a willing Financial Management Agency (FMA)?

DAIL response: DMS is in the process of enrolling a statewide FMA provider to meet the demand for Financial Management Services. An announcement will be made once the agency is in place.

18.) Please clarify – Is the PDS employee documentation that is not supposed to be uploaded into MWMA to be kept by the PDS employer or the PDS Case Manager for auditing purposes?

DAIL response: While PDS employers may maintain an employee file the CM agency needs to have a copy available for auditing. Participants may be selected for audit who no longer receive services at the time of the audit and if the PDS agency cannot document compliance due to a lack of employee verifications then they may be subject to recoupment. It is the responsibility of the CM agency to verify the Participant employer has fulfilled their background, assessment and training obligations and has provided documentation to the CM. PDS employee files should be maintained separately from Participant files whether paper or electronic but be easily accessible on demand for audits and monitoring.

19.) Did the presentation on 06/14/24 state the CM is selected from within the participant's county?

DAIL response: No. This is what was communicated, "Participants select a certified waiver provider that serves the county in which they reside to provide their PDS case management." Provider agencies serve multiple counties but may not service the county the Participant lives in that is why DAIL maintains a provider directory. It is located at:
<https://www.chfs.ky.gov/agencies/dail/Documents/HCBWaiverProviderDirectory.pdf>

20.)When will the updated or new PDS documents be available?

DAIL response: Some forms are still being revised. The new PDS contract has been released and is available on the DAIL website at:

<https://www.chfs.ky.gov/agencies/dail/Documents/Employee-Provider%20Contract.pdf>

Notices will be sent out as additional forms are released.

21.)Do FMAs have any responsibility to provide EVV training to employers or employees?

DAIL response: FMAs should work collaboratively with CM agencies to identify instances of inappropriate or ineffectual use of EVV to document and justify services for reimbursement. Any identified issue should be communicated to the CM for remedial education of the Participant or their Rep. and/or issuance of CAPs. The terms of such information sharing should be outlined in detail in the Memorandum of Understanding between the CM agency and the FMA.