



Kentucky Department for Medicaid Services Home and Community Based Waiver Renewal Official Response to Formal Public Comment from October 5 – November 6, 2020

Between October 5, 2020, and November 6, 2020, the Department for Medicaid Services (DMS) received formal public comment regarding the renewal of Kentucky’s Home and Community Based (HCB) waiver. HCB is a 1915(c) Home and Community Based Services (HCBS) waiver that provides services to individuals aged 65 and older or individuals of any age who have a physical disability.

To continue providing HCB services, DMS must renew the waiver with the Centers for Medicare and Medicaid Services (CMS). DMS held the formal public comment period to allow stakeholders to provide feedback on updates proposed in the HCB renewal application. This document provides the DMS response to stakeholder comments submitted during the public comment period.

Below you will find a few definitions to help you understand the DMS Response.

Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
DMS assigned a number to each set of comments to help us track them.	This section identifies the type of stakeholder(s) who made the comments (providers, caregivers, etc.)	This is where you will find the public comments. DMS grouped and summarized comments.	This is where you will find the DMS response to each set of comments.	This section lists any changes DMS made to the amended HCB application based on the comments received.

Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
Covered Services				
CS1	Provider	PDS Care Coordinator Commenter suggested allowing PDS Care Coordinators to conduct face-to-face visits	To protect the health, safety, and welfare of the waiver participant, DMS will not change the proposed	

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		<p>with waiver participants once a quarter and telehealth during the other two months as "it would help agencies with budgeting and safety of staff."</p>	<p>requirement for case managers and PDS Care Coordinators to conduct face-to-face visits with the participant monthly, however, DMS will evaluate whether telehealth visits qualify as "face-to-face." Regardless, at least one visit every three (3) months must take place at the participant's current place of residence during normal waiver operations.</p> <p>DMS acknowledges face-to-face visits increase the risk to participants and case managers/PDS Care Coordinators during the ongoing COVID-19 pandemic. DMS has made temporary changes to the HCB waiver through Appendix K of the 1915(c) HCBS waiver application to allow case managers and PDS care coordinators to conduct all visits via phone or using remote options (such as FaceTime, Skype, etc.), so long as the method used allows for direct interaction between the waiver participant and the case manager (email or leaving a message is not considered interactive). This temporary policy update will remain until Appendix K expires or is discontinued at which time providers will receive at least 48-hours' notice.</p>	
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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
CS2	Provider	<p>Non-Specialized Respite vs. Specialized Respite Commenter asked for clarification on the inclusion of personal service agencies as a provider type for Non-Specialized Respite. Does this include "Skilled Respite or just Non-Skilled Respite since PSA is not a skilled provider?"</p>	<p>The commenter is correct. While DMS proposed adding personal service agencies as a provider type for Non-Specialized Respite, Specialized Respite can only be provided by Adult Day Health Care or Home Health due to the skilled nature of the service.</p>	
CS3	Advocates	<p>Waiver Services and Hospital Settings Commenters appreciated the addition of language in the HCB waiver allowing waiver services to be provided in acute hospital settings when the hospital cannot meet the participant's health, safety, and welfare needs.</p> <p>One commenter asked for clarification: "DMS lists communication and behavioral needs as examples of services, but we are reading this request to include other services like attendant care."</p>	<p>DMS thanks you for your feedback. This policy update includes all waiver services a participant may need during their hospital stay. When participants and/or their caregivers encounter this situation, they or their case manager/PDS Care Coordinator should contact DMS for further guidance.</p>	
CS4	Advocate Provider	<p>Home Delivered Meals Commenters appreciated the addition of frozen meals to the definition of Home Delivered Meals.</p>	<p>DMS thanks you for your feedback.</p>	

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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
CS5	Other Stakeholder	<p>Home Delivered Meals Commenter requested the addition of chilled meals to the definition of Home Delivered Meals.</p>	<p>DMS thanks you for your feedback. DMS will add “chilled meals” to the definition of Home Delivered Meals. It is important to note all Home Delivered Meals, regardless of whether they are hot, frozen, or chilled, must meet nutritional requirements as outlined in 907 KAR 7:010.</p>	<p>Home Delivered Meals definition in Appendix C of HCB revised to include language allowing chilled meals.</p>
CS6	Provider	<p>Non-Specialized Respite Commenter appreciated the proposal to allow Adult Day Health Care providers to deliver Non-Specialized Respite in-home.</p> <p>"This change will have a positive impact almost immediately for the participants and caregivers and help to build and sustain the ADHC's who are providing direct essential services."</p>	<p>DMS thanks you for your feedback.</p>	

Provider Access				
Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
PA1	Providers	<p>Certified Waiver Case Management Agency Provider Type Commenters asked for clarification on what is considered a Certified Waiver Case Management Agency.</p> <p>"...Will the change for PSA agencies to do both attendant care and respite also include the option for PSA to do case management?"</p> <p>"Is it the intention of the Cabinet to also include Personal Service Agencies as Certified Case Management Agencies?"</p> <p>"Does home health meet the provider specifications for service?"</p>	<p>No, DMS does not intend to include personal service agencies as certified waiver case management agencies.</p> <p>Home health agencies who meet the requirements outlined in the Certified Waiver Case Management Agency provider type can be providers of case management.</p>	
PA2	Provider	<p>Personal Service Agency Provider Enrollment Commenter asked, "In order for a PSA to enroll, will they be required to be Medicare certified?"</p>	<p>No, personal service agencies do not need to be Medicare certified to enroll as a 1915(c) HCBS waiver provider.</p>	
PA3	Provider	<p>Expansion of PDS Care Coordinator Service Commenter welcomed the addition of community mental health centers as a provider type for PDS Care Coordinator and Financial Management Services.</p>	<p>DMS thanks you for your feedback.</p>	

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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
PA4	Provider	<p>PDS Care Coordinator Provider Types Commenter asked for the reasoning behind the change in provider types for PDS Care Coordinator.</p> <p>The current HCB waiver lists four provider types for PDS Care Coordinator: Center for Independent Living, Adult Day Health Care, Home Health Agencies, and Area Agencies on Aging and Independent Living.</p> <p>The proposed HCB waiver released in October 2020 lists three provider types for PDS Care Coordinator: Community Mental Health Center, Area Agency on Aging, and Center for Independent Living.</p>	<p>While the currently approved HCB waiver lists Adult Day Health Care and Home Health Agencies as provider types for Participant Directed Coordination (known as PDS Care Coordinator in the amended HCB waiver released in October 2020), Adult Day Health Care and Home Health Agencies have never been providers of this services.</p> <p>The provider types for PDS Care Coordinator in the amended HCB waiver have been updated to better reflect which agencies provide this service today and to expand the provider base to include Community Mental Health Centers.</p> <p>PDS Care Coordinator is bundled with financial management services at this time. DMS is unable to unbundle these services and add additional provider types without a sound rate methodology.</p> <p>DMS conducted a comprehensive study of 1915(c) HCBS waiver reimbursement rates between November 2018 and September 2019 as part of 1915(c) HCBS waiver redesign, which identified an updated rate methodology for these services.</p>	

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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
PA5	Provider	<p>Unbundling of Case Management and Financial Management Agency Several commenters expressed concern about the separation of Case Management and Financial Management and requested DMS keep the services bundled.</p> <p>"Undue burden is placed on the Medicaid Participant maintaining communication with two agencies, rather than one. A major benefit of keeping the FMS with the Case Management Agency is that information is shared across both departments and makes it much easier to detect and prevent fraud and abuse from occurring. Cohabitation provides greater accuracy, quicker responses, and a more personal relationship with the client."</p>	<p>In the proposed HCB waiver application released in October 2020, DMS is not separating case management for PDS, known as PDS Care Coordinator services, from financial management services. DMS is unable to unbundle these services and add additional provider types without a sound rate methodology.</p> <p>DMS conducted a comprehensive study of 1915(c) HCBS waiver reimbursement rates between November 2018 and September 2019 as part of 1915(c) HCBS waiver redesign, which identified an updated rate methodology for these services. DMS will re-examine the rate study findings when waiver redesign resumes. No date for resuming waiver redesign has been determined.</p>	

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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
PA6	Provider	<p>Clarification on Regulations Commenters requested a copy of 907 KAR 2:015 for review. The regulation is cited in the provider qualifications for personal service agencies which state:</p> <p>"The agency must meet certified waiver provider qualifications as defined in 907 KAR 2:015."</p>	The KAR citation is incorrect. It should be 907 KAR 7:005.	DMS replaced references to 907 KAR 2:015 in the waiver application with 907 KAR 7:005.
PA7	Other Stakeholder	<p>Home Delivered Meals Provider Qualifications The commenter asked for clarification on the Kentucky Administrative Regulation referenced in the Certified Waiver Provider definition.</p> <p>"The waiver states that home-delivered meal providers must meet "certified waiver provider qualifications as defined in 907 KAR 7:010. The certified waiver provider qualifications appear to be in 907 KAR 7:005."</p>	Home Delivered Meals providers must meet all certified waiver provider qualifications which are defined in both 907 KAR 7:010 and 907 KAR 7:005.	DMS adjusted certified waiver provider qualifications to reflect the need to meet qualifications in both 907 KAR 7:010 and 907 KAR 7:005.

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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
PA8	Other Stakeholder	<p>Out of State Providers for Home Delivered Meals The commenter expressed concern that the definition and provider requirements of Home Delivered Meals could exclude out of state providers and recommended waiver language be amended.</p>	<p>All Home Delivered Meals providers must meet the requirements in 907 KAR 7:010 and 907 KAR 7:005 to provide this service, regardless of whether the provider is located in Kentucky or another state.</p>	
PA9	Providers	<p>Community Mental Health Center Provider Types Commenters requested community mental health centers be added as provider types for the following services: Case Management, PDS Care Coordinator, Non-Specialized Respite, Personal Assistance/Attendant Care, Home and Community Supports, and Adult Day Health Care.</p>	<p>The amended HCB waiver released in October 2020 expands the provider types for PDS Care Coordinator and Non-Specialized Respite to include community mental health centers.</p> <p>Case Management is open to Certified Waiver Case Management agencies, which means any community mental health center can provide case management if it meets the certification requirements listed in the Certified Waiver Case Management Agency provider type.</p> <p>To provide Adult Day Health Care services, a community mental health center would need to be licensed by the Office of the Inspector General and certified by DMS to provide the service.</p>	<p>Community mental health centers have been added as provider type for Attendant Care in Appendix C of HCB.</p>

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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
PA10	Providers	<p>Services Provided by Community Mental Health Centers Commenters requested community mental health centers be allowed to assist participants in accessing Home Delivered Meals, Goods and Services, and Environmental and Minor Home Modifications.</p>	<p>DMS will add community mental health centers as a provider type for Attendant Care services.</p> <p>Community mental health centers cannot provide Home and Community Supports directly to participants as this is the PDS version of Attendant Care and can only be delivered by PDS employees. If a CMHC chooses to provide PDS Care Coordinator services, it is responsible to bill this service and pay the PDS employees who provide it.</p> <p>Community mental health centers can assist participants in accessing Home Delivered Meals, Goods and Services, and Environmental and Minor Home Modifications by offering Case Management and/or PDS Care Coordinator services.</p>	

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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
PA11	Providers	<p>PDS Care Coordinator and Financial Management Commenters expressed concern over the bundling of financial management and PDS Care Coordinator services as it results in both services being provided by the same agency.</p> <p>"I believe that this waiver amendment makes positive progress in allowing CMHC and Centers for Independent Living to also provide financial management, but this is still not enough case management options for a waiver with a completely depleted provider network."</p>	<p>PDS Care Coordinator and financial management services are billed together in the currently approved HCB waiver application and DMS is unable to unbundle these services without a sound rate methodology.</p> <p>DMS conducted a comprehensive study of 1915(c) HCBS waiver reimbursement rates between November 2018 and September 2019 as part of 1915(c) HCBS waiver redesign, which identified an update rate methodology for these services. DMS will re-examine the rate study findings when waiver redesign resumes. No date for resuming waiver redesign has been determined.</p>	
PA12	Provider	<p>Provider Certifications Commenter asked for clarification on the "every two years or more frequently if needed" language regarding provider certifications. The commenter also requested DMS consider a 3 or 5-year certification for providers without issues related to the health, safety, and welfare of individuals.</p> <p>"This will lessen the burden on DMS as well. Potential issues can be identified during yearly monitoring that already is taking place."</p>	<p>DMS will not extend recertification beyond two years. DMS will determine whether a provider requires certification more frequently than every two years based on provider performance, incident reports, and complaints and grievances.</p>	

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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
PA13	Provider	<p>Freedom of Choice A commenter shared some considerations for DMS in regards to expanding freedom of choice.</p> <p>"It is imperative that... Kentucky recognizes that creating additional choice is not only achieved by adding more providers and it takes time to implement successfully. Adding providers to a network that will mean providing intensive guidance and training, creating a sustainable reimbursement rate, and collaboration between community providers and state agencies amongst other things."</p>	<p>DMS thanks you for your feedback and recognizes adding provider types is one of many ways to expand freedom of choice for waiver participants. DMS is continuously evaluating the quality of the 1915(c) HCBS waiver programs for both participants and providers.</p>	
PA14	Providers	<p>Personal Service Agencies Provider Type Commenters expressed concern over the addition of personal service agencies as a provider type for several services saying it will "not increase the number of providers in sparsely populated areas and will weaken the current system by flooding urban areas with unqualified and unlicensed providers"</p>	<p>DMS is requiring personal service agencies to undergo the same licensure, certification, and training requirements as any waiver provider before delivering services to HCB waiver participants, as outlined in the waiver application. The HCB regulation will be updated to include these requirements as well.</p>	

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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
PA15	Provider	<p>Personal Service Agency Licensure One commenter requested clarification on licensure requirements for personal service agencies providing Attendant Care.</p> <p>"Under this regulation (907 KAR 1:180), there is no requirement noted regarding a licensure requirement. We strongly advocate that all providers in HCB be required to be held to the same level of credentialing, staff hiring and education requirements and state license requirements and surveys to ensure the health, safety, and welfare of the extremely vulnerable population served."</p>	<p>The regulation cited in the comment is related to freestanding birth centers and does not pertain to the HCB waiver. The regulation referenced in the HCB waiver for the personal service agency provider type is 906 KAR 1:180, which outlines the licensure requirements for personal services by the Office of the Inspector General.</p> <p>DMS will require personal service agencies to undergo the same licensure, certification, and training requirements as any waiver provider before delivering services to HCB waiver participants, as outlined in the waiver application. The HCB regulation will be updated to include these requirements as well.</p>	
PA16	Provider	<p>Personal Service Agency Provider Type for Attendant Care and Personal Care Commenter supported the DMS proposal to add personal service agencies as a provider type for Attendant Care and Personal Care.</p> <p>"...adding PSA will relieve an unnecessary burden on case managers and financial management since participants will no longer be forced to utilize PSA's as a participant directed service. This should be an</p>	DMS thanks you for your feedback.	

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		administrative cost savings as well as giving participants greater freedom of choice."		
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Eligibility and Enrollment				
EE1	Provider Caregiver	<p>Appendix B-1: Specification of the Waiver Target Group(s) Commenters sought clarification over the HCB waiver target groups listed in Appendix B-1: Specification of the Waiver Target Group(s).</p> <p>One was concerned individuals with autism would be excluded. Another expressed concern the waiver limits services to individuals age 65 or older and would eliminate the ability of younger waiver participants to receive ADHC services.</p> <p>A commenter also asked for clarification that there is no age limit for individuals with a physical disability.</p>	<p>The amended HCB waiver released in October 2020 does not propose any change to the current target populations as defined in Appendix B-1-a: Target Group(s). The 65 or older limitation only applies to individuals who do not have a physical disability but need nursing facility level of care due to their age. The waiver is also open to individuals of all ages when they have a physical disability and need nursing facility level of care</p> <p>The Aged and Disabled Group selected in Appendix B-1-a: Target Group(s) is a preset option in the 1915(c) waiver application developed by CMS. The Aged and Disabled Group is the most inclusive of the options provided by CMS and is composed of individuals who otherwise would require the level of care furnished in a hospital and/or nursing facility. Within this group, CMS provides states the option to further narrow the target group by dividing the group into three major subgroups: aged, physically disabled</p>	

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			and other disabilities, including individuals with intellectual disabilities, developmental disabilities, and autism. For the HCB waiver to be inclusive, DMS has selected all three groups, thereby including individuals with intellectual disabilities, developmental disabilities, and autism.	
EE2	Caregiver	<p>Medicaid Eligibility Commenter expressed concern about the requirement for a yearly disability recertification in instances where a participant is born with a condition that will not improve or resolve saying, "it seems to me, it would be more effective for participants, if their conditions were evaluated on an interim basis."</p>	<p>DMS believes this comment is related to the process of renewing financial eligibility. The Department for Community Based Services (DCBS) determines whether an applicant is financially eligible for Medicaid.</p> <p>If you have questions or concerns about financial eligibility for Medicaid, you can contact DCBS at (855) 306-8959.</p>	
EE3	Advocates Provider	<p>Patient Liability Several commenters appreciated the increase in financial eligibility from 100% of the Federal Poverty Level (FPL) to 300% of the FPL, which reduces or eliminates patient liability payments for most waiver participants.</p>	DMS thanks you for your feedback.	

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EE4	Caregiver	<p>Effective Date of Updates Commenter asked for clarification on when any updates in the amended waiver applications would take effect. "How do the waiver renewal dates correlate to annual recertification dates, i.e. when would individual's annual budgets be affected by proposed changes?"</p>	<p>Waiver updates will not take effect until approved by CMS. No major changes have been proposed that would affect the amount of services a participant receives. Services are based on a participant's assessed needs, input from the person-centered planning team, and their goals and objectives. If a participant's service needs change before their annual recertification, the person-centered plan of care can be modified.</p>	
EE5	Advocate	<p>Level of Care Commenter requested clarification on the level of care required to qualify for HCB waiver services.</p> <p>"We are reading the level of care criteria to require applicants show that they could be admitted to a nursing facility, not that they actually have to be admitted... "</p>	<p>This commenter is correct. Individuals applying for 1915(c) HCBS waiver services must require the level of care provided in a nursing facility or intermediate care facility, however, they do not have to be admitted to one.</p>	

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EE6	Advocate	<p>In-Home Assessment Commenter requested DMS consider updating the requirement for an in-home assessment.</p> <p>"...An applicant in a nursing home or other institutional setting in need of HCBS services could move back to the community and then ultimately be denied HCBS services. This would give an applicant pause when contemplating community placement... We cannot locate in CMS's 1915(c) Technical Guide the requirement that the applicant physically move to the community prior to approval."</p>	<p>A participant's functional assessment may be conducted prior to the participant moving into a community-based setting if doing so is required to support a transition back to the community setting. DMS will continue to require in-home assessments to evaluate the participant's health, safety, and welfare in their home or living environment, however, this can be conducted without the participant present. The in-home assessment is important to evaluate what risks the participant may face in their residence and whether those risks can be mitigated through waiver services, Kentucky's state Medicaid program, or other community resources.</p>	
EE7	Advocate	<p>Waiver Participants Receiving Institutional Services Commenter expressed concern about waiver participants receiving temporary institutional services when their waiver services come up for recertification.</p> <p>"We became aware of this concern when a parent chose not to admit their child to receive medically necessary PRTF services because the parent was told that the child would lose their... waiver services if their child was admitted to the PRTF... we would ask if Kentucky can add provisions to their waiver</p>	<p>DMS is unable to change this process due to CMS requirements. Per CMS, the number of waiver participants served during each waiver year must be unduplicated. When a participant goes sixty (60) days without services, they must be disenrolled from the waiver based on the last date of service. If they are disenrolled when the waiver year ends, they will lose the slot. The waiver year begins based on the</p>	

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		renewal plans so that individuals would not lose their waiver services when they are hospitalized or in a residential facility during the waiver's re-enrollment period."	date CMS approved the waiver application.	
EE8	Advocate	<p>Waiver Enrollment Numbers Commenter requested clarification on projected enrollment numbers.</p> <p>"The projected enrollment is 17,0505 for each year of the waiver and PDS enrollment is projected at 2,600 year one (1) increasing to 2,800 in year five (5). Does this mean the projected PDS participants included in the amended waiver application is the upper limit or is it a projected number that could be exceeded?"</p>	The number is a projection and therefore could be more or less than the number outlined in the HCB waiver application.	
Case Management				
CM1	Caregiver	<p>Case Manager and Level of Care Assessor Qualifications Commenter requested that DMS require level of care assessors and case managers to be medical professionals.</p>	Limiting the qualifications of case managers to medical personnel only severely limits the provider base and leaves participants with fewer choices in case management providers. Currently, level of care assessors in HCB are required to be either registered nurses or to have a master's degree in a health and human services field. DMS did not propose changing this in the	

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			<p>amended HCB waiver released in October 2020.</p> <p>The case manager is part of the waiver participant's person-centered team, which should be led by the participant and/or their guardian or legal representative (if applicable). This team should include service providers and any other individuals of the participant's choosing. This team is responsible to work together to determine the participant's needs based on the level of a care assessment results, which identifies both social and medical needs, the participant's needs as observed by members of the person-centered planning team, and the participant's goals and objectives. DMS supports this process by educating case managers on available resources and encouraging them to assist participants in using 1915(c) HCBS waiver programs, Kentucky's State Medicaid Program services, and community resources to meet any support needs.</p>	
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CM3	Provider	<p>ADHC and PDS Care Coordinator Commenter requested adult day health cares be permitted to provide PDS Care Coordinator services.</p> <p>"Adult Day Health Care has been providing Case Management Services for years and are fully capable of both Case Management and Financial Management for Waiver Recipients that choose Participant-Directed Services"</p>	<p>DMS appreciates adult day health care providers' interest in offering PDS Care Coordinator services however, DMS is unable to unbundle these services and add additional provider types without a sound rate methodology.</p> <p>DMS conducted a comprehensive study of 1915(c) HCBS waiver reimbursement rates between November 2018 and September 2019 as part of 1915(c) HCBS waiver redesign, which identified an updated rate methodology for these services. DMS will re-examine the rate study findings when waiver redesign resumes. No date for resuming waiver redesign has been determined.</p>	
CM5	Provider	<p>Case Management Provider Types Commenter agrees with the proposal to allow approved waiver providers to provide case management services instead of limiting to home health and adult day health care providers.</p> <p>"Despite having a robust provider community in other waivers, Jefferson County continues to have an extreme shortage of HCB case management providers. This is not acceptable."</p>	<p>DMS thanks you for your feedback.</p>	

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CM6	Provider	<p>SMART Goals Commenter expressed concern SMART goals defined in Appendix D-1-d. Service Plan Development Process are not a good fit for all waiver services.</p> <p>"For example, an elderly person with a progressive diagnosis, such as Alzheimer's Disease or Parkinson's, may reach a stage in the disease progression where they need extensive daily personal care. Due to the nature of these diagnoses, there is not a skill that they can build that is "Attainable" or "Time-bound" related to their personal care needs. Forcing providers to invent "SMART" goals for non-clinical services is not smart at all – it encourages a sort of word game to justify services that are clearly needed based on assessment."</p>	<p>DMS agrees with the commenter and amended language related to SMART goals in the HCB waiver application to better reflect the most appropriate services for these types of goals.</p>	<p>DMS amended the language in Appendix D-1-d. to read "Goals and objectives for all services on the PCSP must be:</p> <ul style="list-style-type: none"> • Stated Clearly: The goal or objective should be understandable to the participant and in his/her own words. <p>Additionally, if a participant is receiving a service in order to improve upon current skills or acquire new skills, the goal and objectives must also be:</p> <ul style="list-style-type: none"> • Measurable: There should be markers of progress toward achieving a goal or objective that can be identified and quantified. • Attainable: The goal or objective

				<p>should be broken into small and actionable steps. Barriers to achieving the goal or objective should be identified and a plan put in place to help mitigate those barriers.</p> <ul style="list-style-type: none"> • Relevant: The goal or objective should be important to the participant. Steps toward the goal or objective should help the participant develop and use available resources to achieve it. • Time-Bound: There should be a defined period for when the participant is expected to achieve the goal or objective, keeping in mind that reaching the goal or objective can take time and several steps. There should also be an agreed upon schedule in place for checking progress.
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Participant Directed Services				
PDS1	Provider	<p>PDS Employee Background Screenings Commenter had a question about updates to background check requirements for PDS employees in the HCB waiver.</p> <p>"... Can the employer use the current background checks to waive the drug charges and/or some of the other charges? Or will new background checks need to be completed before being waived?"</p>	DMS will allow PDS employers to use the potential PDS employee's current background screening if it has been completed in the past twelve (12) months. If the potential PDS employee's most recent background screening is more than twelve (12) months old, a new background screening is required.	
PDS2	Providers	<p>PDS Employee Background Screenings Commenters expressed concern about allowing the six-panel drug screening for PDS employees to be optional at the discretion of the participant, legal guardian, or authorized representative.</p>	In the past few years, DMS has received feedback from participants/PDS employers who have indicated the drug screening requirement is a barrier to hiring PDS employees. Participants/PDS employers should be informed of the risk of waiving drug screening while being allowed the freedom to choose whether they want to require it.	

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PDS3	Caregiver	<p>Extraordinary Care Commenter asked for a definition of extraordinary care. A minor child enrolled in the HCB waiver must meet one of two extraordinary care criteria for an individual who is legally responsible for the child to be their PDS employee.</p>	<p>The CMS definition for extraordinary care is: “care exceeding the range of activities that a legally responsible individual would ordinarily perform in the household on behalf of a person without a disability or chronic illness of the same age, and which are necessary to assure the health and welfare of the participant and avoid institutionalization.”</p> <p>This means a legally responsible individual must provide additional care for their loved one, based solely on their disability. In this case, “extraordinary care” is not related to the quality of care delivered but the tasks not ordinarily performed to care for an individual.</p> <p>Example: The father of a 16-year-old daughter living with a disability assists her with feeding herself, bathing, and toileting. The father is providing extraordinary care to his daughter typically not needed for other young women his daughter’s age.</p>	

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PDS4	Advocate	<p>Legally Responsible Individuals as PDS Employees Commenter supported the updated criteria for hiring legally responsible individuals as PDS employees in the HCB waiver. "We also are very encouraged to see the revised legally responsible individual criteria for Participant Directed Services (PDS), as we believe the current natural support criteria is unworkable."</p>	DMS thanks you for your feedback.	
PDS5	Advocate	<p>Cost of PDS Employee Background Screenings Commenter suggested the costs associated with hiring PDS employees in the HCB waiver be part of the payment to a financial management services entity or added to the PDS budget and suggests CMS allows either approach as described on page 225 of CMS's 1915(c) Technical Guide. "Many wavier recipients have limited income and cannot afford to pay for these costs out of pocket. In addition, the recipients' health, safety, and welfare could be jeopardized if they cannot afford to replace a suspect PDS employee because of these costs."</p>	<p>DMS is aware of the challenges related to the cost of background screenings for PDS employees and is evaluating methods for alleviating this cost for participants. Part of this process involves adjustments to reimbursement rates for 1915(c) HCBS waiver services.</p> <p>DMS conducted a comprehensive study of 1915(c) HCBS waiver reimbursement rates between November 2018 and September 2019 as part of 1915(c) HCBS waiver redesign. Waiver redesign is currently paused and, therefore, adjustments to rates have not been made to HCB services at this time. DMS will re-examine the rate study findings and determine if adjustments to rates should be made when waiver redesign resumes. No date for</p>	

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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
			resuming waiver redesign has been determined.	
PDS6	Advocate	<p>Legally Responsible Individual Definition Commenter requests DMS remove "legal guardians" and "individuals with legal authority" from the list of legally responsible individuals who must be approved to provide PDS services to adult (age 18 and older) HCB waiver participants.</p> <p>"CMS's 1915(c) Technical Guide expressly states that "legally responsible individuals" do not include the parents of an adult recipient, including parents who are legal guardians. (p. 120). DMS should remove legal guardians and individuals with legal authority from this category, and limit the proposed review process and additional criteria to parents of minor children and spouses, as required by federal law."</p>	<p>Upon reviewing the CMS 1915(c) Technical Guide and the Kentucky Revised Statutes, DMS agrees that for waiver participants age 18 and older legally responsible individuals do not include those who are also the participant's legal guardian or individuals with legal authority.</p> <p>Parents of a waiver participant age 18 or older who do not have guardianship are not considered legally responsible either.</p>	<p>DMS amended language in C-2-d. Provision of Personal Care or Similar Services by Legally Responsible Individuals to define legally responsible individuals for participants age 18 or older as a spouse only.</p>
PDS7	Advocate	<p>Legally Responsible Individual Criteria Commenter suggested updating criteria in the list of circumstances where a legally responsible individual can be approved to provide PDS services in the HCB waiver from "maintain paid employment within the previous twelve (12) months" to "maintain or obtain employment."</p> <p>"Many caregivers have had to forego employment for much longer than a year. By adding the inability to obtain employment</p>	<p>DMS does not intend to exclude legally responsible individuals who had to give up employment more than twelve (12) months ago from being PDS employees and will amend the waiver language accordingly.</p> <p>While DMS will update this requirement, it will ask legally responsible individuals who submit a request for approval based on this</p>	<p>DMS amended language in C-2-d. Provision of Personal Care or Similar Services by Legally Responsible Individuals from "maintain paid employment within the previous twelve (12) months" to "The legally responsible</p>

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		<p>under their present circumstances to the criteria, these individuals will not be unfairly excluded as potential providers if they otherwise meet all other applicable PDS criteria."</p>	<p>condition to provide information on how caregiving requirements have affected their ability to maintain or obtain employment.</p>	<p>individual can attest that caregiving requirements to maintain the health and safety of the minor child in the community have reduced or eliminated the ability of the legally responsible individual to maintain or obtain paid employment and there is not an alternate caregiver in the home who is functionally able to provide care."</p>
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Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
PDS8	Provider	<p>Employee Responsibilities Review Tool Commenter noted the Employee Responsibilities Review Tool was part of waiver redesign, however, this waiver update is for a renewal only.</p>	<p>Some of the updated processes in HCB, including the Employee Responsibilities Review Tool, were developed using feedback from waiver redesign. The Participant Directed Services (PDS) Advisory Subpanel, convened by DMS in December 2018 as part of waiver redesign, spent a significant amount of time developing and reviewing this tool. At this time, DMS is adding this to the HCB waiver as an optional tool to assist participants and their person-centered team in determining what supports the participant will need to be a PDS employer. DMS looks forward to hearing from person-centered teams who choose to use the tool and will use their feedback to evaluate expanding the tool to other waivers in the future.</p>	
PDS9	Provider	<p>Service Improvement Plan Commenter had a question about the service improvement plans. "Is this a replacement of the CAP system currently in place?"</p>	<p>No. Corrective action plans (CAP) will continue to be used for agencies. Agencies can use service improvement plans to address problems with waiver participants and/or their legal guardians as a way to avoid termination of waiver services.</p>	

Reference #	Commenter Type	Comment	DMS Response	Change to the Waiver
Payment and Rate Setting				
PRS1	Caregiver	<p>Overall Rate Increase Commenter requested a rate increase for providers of all services and suggested a tiered system of rates based on a participant's level of care.</p> <p>"Rates should be categorized and adjusted for increased compensation by levels to further compensate the providers who serve those identified as "hard to serve". In my opinion, 3 Levels should be sufficient. This may assist and improve services and opportunities for individuals who may require substantial more assistance with physical care and/or behavioral care."</p>	<p>DMS conducted a comprehensive study of 1915(c) HCBS waiver reimbursement rates between November 2018 and September 2019 as part of 1915(c) HCBS waiver redesign. Waiver redesign is currently paused and, therefore, adjustments to rates have not been made to HCB waiver services at this time. DMS will re-examine the rate study findings and determine if adjustments to rates should be made when waiver redesign resumes. No date for resuming waiver redesign has been determined.</p>	
PRS3	Provider	<p>Case Management and PDS Care Coordinator Rates Several commenters noted the reimbursement rate for HCB Traditional and PDS case management is lower than reimbursement rates for the same service in other 1915(c) HCBS waivers. The commenters noted the strain this puts on agencies and how a rate increase could benefit participants.</p> <p>"It would reduce large caseloads and allow the hire of additional staff which would provide case managers more time to work individually with all clients to ensure all the client's needs</p>	<p>DMS acknowledges reimbursement rates for case management and PDS Care Coordinator services in HCB are below those of other 1915(c) HCBS waivers. DMS conducted a comprehensive study of 1915(c) HCBS waiver reimbursement rates between November 2018 and September 2019 as part of 1915(c) HCBS waiver redesign, which identified a rate reimbursement increase for HCB case management. Waiver redesign is currently paused and, therefore, adjustments to rates have not been made to HCB waiver</p>	

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		<p>are being met, both inside and outside the program, and work with clients more directly on connecting with community resources."</p> <p>"We're at a position that the reimbursement rates are so low that its now a quantity game... (we want) to emphasize the importance of the increased rates for HCB Waivers to not only make them equal across all waiver programs, but to also help reduce the caseloads by having the ability to hire new staff which will be possible by higher reimbursement rates."</p>	<p>services at this time. DMS will re-examine the rate study findings when waiver redesign resumes. No date for resuming waiver redesign has been determined.</p>	
PRS4	Provider	<p>Home and Community Supports Rate Commenter requested the rate for Home and Community Supports (a PDS service) in HCB be increased to equal the rate for Attendant Care (a traditional service) as suggested in the 1915(c) HCBS rate study.</p> <p>"...Many recipients have told us they cannot recruit or retain PDS employees at \$11.52 per hour."</p>	<p>DMS acknowledges reimbursement rates for Home and Community Supports are lower than the rate for Attendant Care, which are equivalent services. As the commenter noted, DMS conducted a comprehensive rate study of 1915(c) HCBS waiver reimbursement rates between November 2018 and September 2019 as part of 1915(c) HCBS waiver redesign, which identified a rate reimbursement increase for Home and Community Supports. Waiver redesign is currently paused and, therefore, adjustments to rates have not been made to HCB waiver services at this time. DMS will re-examine the rate study findings when waiver redesign resumes. No date for resuming waiver redesign has been determined.</p>	

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PRS5	Provider	<p>Appendix I-3: Payments One commenter asked for clarification of Appendix I-3-e. Amount of Payment to State or Local Government Providers.</p>	<p>In the proposed HCB waiver, DMS had the incorrect option selected in Appendix I-3-e. DMS does not intend to change the current policy related to payment to state or local government HCB providers.</p>	<p>In Appendix I-3-e, DMS will change the selection from “<i>The amount paid to State or local government providers is the same as the amount paid to private providers of the same service</i>” to “<i>The amount paid to State or local government providers differs from the amount paid to private providers of the same service. When a State or local government provider receives payments (including regular and any supplemental payments) that in the aggregate exceed the cost of waiver services, the State recoups the excess and returns the federal share of the excess to CMS on the quarterly expenditure report.</i>”</p>

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PRS6	Provider	<p>HCBS Rate Increase One commenter approved of DMS' proposal to add personal service agencies PSAs as a provider type for Attendant Care and Personal Care but said, "...I caution that billing rates must also be increased if there is going to be an adequate provider network to meet the needs of our aging population."</p>	<p>DMS thanks you for your feedback. DMS conducted a comprehensive study of 1915(c) HCBS waiver reimbursement rates between November 2018 and September 2019 as part of 1915(c) HCBS waiver redesign. Waiver redesign is currently paused and, therefore, adjustments to rates have not been made to HCB waiver services at this time. DMS will re-examine the rate study findings and determine if adjustments to rates should be made when waiver redesign resumes. No date for resuming waiver redesign has been determined.</p>	
Quality Improvement				
QI1	Caregiver	<p>Freedom of Choice Commenter encouraged DMS to increase freedom of choice for participants, including their options for financial management of PDS services.</p>	<p>DMS agrees with the commenter. In HCB, Attendant Care was expanded to allow personal service agencies and centers for independent living as provider types. PDS Care Coordinator was expanded to allow community mental health centers as provider types, and Respite was expanded to allow personal service agencies as a provider type and to allow adult day health cares to provide the service in-home, as well as at the adult day health care center. The goal of these updates is</p>	

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			to attract new 1915(c) HCBS providers and give waiver participants more choices when selecting a provider.	
PS1	Provider	<p>Grievances and Complaints Commenter expressed appreciation for the development of a waiver grievance and complaint system via the 1915(c) Waiver Help Desk. "This change helps to create an opportunity for all parties to resolve issues together as a team."</p>	DMS thanks you for your feedback.	
Other				
O1	Provider	<p>Therapy Prior Authorizations Commenter requested changing the length of prior authorizations for therapies in MPW and SCL from six months to one year. "Expectations that therapies will fade out are in most cases unrealistic. Therapies for this population will almost always be needed without end to ensure maintenance of newly attained skills. Adding additional team meetings to extend therapies each 6 months is completely redundant and feels like red tape... This would allow case managers and all other waiver providers more time for providing quality services."</p>	DMS thanks you for your feedback. The MPW and SCL waivers were not part of this public comment period. DMS has saved these comments and will revisit these suggested updates when 1915(c) HCBS waiver redesign resumes.	

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O2	Caregiver	<p>Appendix K Updates Commenter expressed appreciation for waiver updates made to Appendix K of the 1915(c) HCBS waiver application to provide extra support to participants and providers during the COVID-19 pandemic.</p> <p>"In our case, it has allowed us to make sure that our participant can be taken care of... that we will be able to do whatever we need to keep him safe."</p>	DMS thanks you for your feedback.	
O3	Caregiver	<p>Michelle P. Waiver Services Commenter said having MPW waiver services has improved the live of her son and their family.</p> <p>"Without the Michelle P Waiver, it would be very difficult to maintain the services that he receives!"</p>	DMS thanks you for your feedback.	
O4	Provider	<p>Public Input Commenters noted the "Additional Requirements I. Public Input" said revisions to the HCB waiver were the products of the waiver review process that began in 2017 and that focus groups, stakeholder meetings, and town hall meetings were not held prior to the release of the proposed to the amendments to the HCB waiver in October 2020.</p>	Some of the updated processes in the HCB were developed using feedback from waiver redesign, which DMS collected through focus groups, stakeholders meetings, and town hall meetings. DMS is dedicated to continuously recognizing and considering stakeholder input. Comments can be submitted in several ways:	

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			<p>By emailing MedicaidPublicComment@ky.gov or 1915cWaiverHelpDesk@ky.gov</p> <p>By calling (844) 784-5614</p> <p>By sending a letter to Department for Medicaid Services Division of Community Alternatives 275 E. Main St., 6W-B Frankfort, Kentucky 40621</p>	
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