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CABINET FOR HEALTH  
AND FAMILY SERVICES

**Legally Responsible Individuals as Participant Directed Services  
Employees**

**Question & Answer Session for 1915(c) Home and Community Based  
Services (HCBS) Waiver Providers**

**June 20, 2024**

# Agenda



Recap of LRI Definition & Hiring Process



Common Questions



Questions and Answers

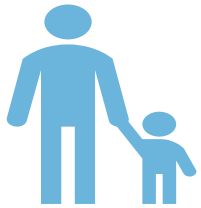
# Implementing an Updated LRI Review Process



- Updated process begins July 1, 2024
- Applies to ABI, ABI LTC, HCB, MPW and SCL
- Review requests submitted using the Medicaid Waiver Management Application with PDS Case Manager assistance
- Requests reviewed by the Department for Aging and Independent Living (DAIL)

# Who is considered an LRI?

## Minor Child (Younger than 18)



- Parent
- Stepparent
- Adoptive Parent
- Guardian as defined by KRS 387.010(3)
  - “...an individual, agency, or corporation appointed by the District Court to have care, custody, and control of a minor and to manage the minor’s financial resources.”

While they are an LRI, foster parents cannot be paid PDS employees due to receiving payment from the state for the provision of foster care.

<https://bit.ly/KYPDSFosterCare>

## Adult (18 and older)



- Spouse
- Guardian as defined by KRS 387.812(3)
  - “...a person appointed by the court to make decisions regarding the person of an adult...”

# LRI Review Criteria - Children

## Minor Participants (younger than 18)

### Category A

1. The child's care needs have reduced or eliminated the legally responsible individual's ability to maintain paid **employment** in the past 12 months or longer and there is not an alternative caregiver who is functionally able to provide care.
2. The legally responsible individual can demonstrate attempts within the first 30 days to **recruit a qualified provider** (traditional or PDS) but cannot secure one.
3. The minor child has a **communication barrier** exceeding that of his or her age matched peers that impacts his or her ability to effectively communicate needs and wishes.



### Category B

1. The child's dependency in performing activities of daily living (ADLs) must:
  - a) be directly related to his or her disability, **and**
  - b) exceeds that of his or her age-matched peers.
2. The child demonstrates destructive or injurious behaviors exceeding that of his or her age-matched peers, and such behaviors represent a risk of serious injury or death to self or others.

The **minor** participant's situation must meet **ONE** of the criteria **IN EACH CATEGORY** for the LRI to be approved.

# LRI Review Criteria - Adults

Participants aged 18 and older

1. The participant's care needs have reduced or eliminated the legally responsible individual's ability to maintain paid **employment** in the past 12 months or longer and there is not an alternative caregiver who is functionally able to provide care.
2. The legally responsible individual can demonstrate attempts within the first 30 days to **recruit a qualified provider** (traditional or PDS) but cannot secure one.
3. The participant has a **communication barrier** exceeding that of his or her age matched peers that impacts his or her ability to effectively communicate needs and wishes.

The **adult** participant's situation must meet **ONE** of the above criteria for the LRI to be approved.

# LRI Review Criteria

## Review Required at the Time of Hire

- PDS LRIs hired on or after July 1, 2024

## Review Required at Participant's LOC Recertification

- PDS LRIs who have **never** been reviewed
- PDS LRIs hired from March 2020 through April 30, 2024
- PDS LRIs hired conditionally between May 1, 2024, and June 30, 2024

## No Review Required

- PDS LRIs hired for **HCB** and **SCL** who went through an **approval process before March 2020**
- Non-LRI PDS employees

# Common Questions

## Hiring and Review Process

Does this process apply to MPW?

- Yes. This process applies to all 1915(c) HCBS waivers that allow PDS: ABI, ABI LTC, HCB, MPW, and SCL

How can the participant hire an LRI if they are unable to manage the hiring process due to their age and/or disability?

- Participants who cannot manage the hiring process on their own should have a PDS representative who is responsible to assist the participant and/or manage the process on their behalf.



# Common Questions

## Hiring and Review Process

Does an LRI hired **before March 2020** require review?

- If the LRI was hired to provide services in the **HCB or SCL** waiver, **they do not require review**. These LRIs were approved using the MAP-532.
- If the LRI was hired to provide services in the **ABI, ABI LTC, or MPW**, **they require review**.

MAP 532  
(12/2013)

PDS Request Form for  
Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider

**Participant Information:**

Name Last:	First:	Mi:	Medicaid ID:
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**Paid Service Provider Information:**

Name Last:	First:	Mi:
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**Current Case Manager:**

Last Name:	First Name:
Email:	
CM Provider Name:	CM Provider #:

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**Relation** *(Please mark appropriate box in table below)* Clear

<b>Legally responsible individual</b> means an individual who has a duty under state law to care for another person and includes: a) A <b>Parent</b> (biological, adoptive, or foster) of a minor child who provides care to the child; b) The <b>guardian of a minor child</b> who provides care to the child; or c) A <b>spouse</b> of a participant.	<input type="checkbox"/>
<b>Guardian</b> is defined by KRS 387.010(3) for a minor (means any person who has not reached the age of eighteen (18)) and in KRS 387.012(3) for an adult (means an individual who has attained eighteen (18) years of age.)	<input type="checkbox"/>
<b>Immediate family member</b> is defined by KRS 205.8451(3). (Means a parent, grandparent, spouse, child, stepchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, sibling, brother-in-law, sister-in-law, or grandchild.)	<input type="checkbox"/>

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What services are you providing?

What duties will you be performing that exceed the range of activities you normally provide as a family member/legally responsible person?

How will these duties be cost-effective?

What unique abilities and qualifications do you possess that may not be found with other potential employees?

Page 1 of 2

# Common Questions

## Hiring and Review Process

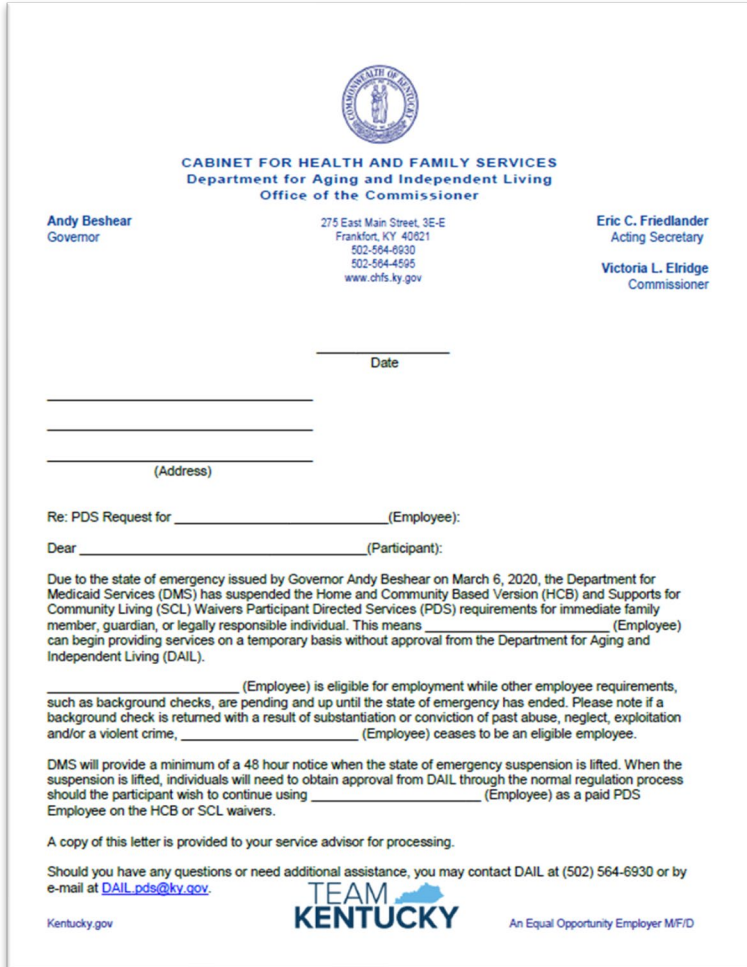
Does an LRI hired after March 2020 require review?


- Yes, LRIs hired from March 2020 to June 30, 2024, must be reviewed. These LRIs were hired using a temporary approval process and must undergo formal review. Reviews for these LRIs will take place at the time of the participant's LOC recertification.
- LRIs hired after July 1 must undergo review at the time of hire.

# Common Questions

## LRI Hiring Process

If you were hired using either the **Appendix K Immediate Family Member Form** or the **LRI Conditional Employment Letter**, you were temporarily approved and must undergo the review process.



  
**CABINET FOR HEALTH AND FAMILY SERVICES**  
Department for Aging and Independent Living  
Office of the Commissioner

Andy Beshear  
Governor

275 East Main Street, 3E-E  
Frankfort, KY 40621  
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502-564-4555  
www.chfs.ky.gov

Eric C. Friedlander  
Acting Secretary

Victoria L. Etridge  
Commissioner

Date \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Address)

Re: PDS Request for \_\_\_\_\_ (Employee):  
Dear \_\_\_\_\_ (Participant):


Due to the state of emergency issued by Governor Andy Beshear on March 6, 2020, the Department for Medicaid Services (DMS) has suspended the Home and Community Based Version (HCB) and Supports for Community Living (SCL) Waivers Participant Directed Services (PDS) requirements for immediate family member, guardian, or legally responsible individual. This means \_\_\_\_\_ (Employee) can begin providing services on a temporary basis without approval from the Department for Aging and Independent Living (DAIL).


\_\_\_\_\_ (Employee) is eligible for employment while other employee requirements, such as background checks, are pending and up until the state of emergency has ended. Please note if a background check is returned with a result of substantiation or conviction of past abuse, neglect, exploitation and/or a violent crime, \_\_\_\_\_ (Employee) ceases to be an eligible employee.


DMS will provide a minimum of a 48 hour notice when the state of emergency suspension is lifted. When the suspension is lifted, individuals will need to obtain approval from DAIL through the normal regulation process should the participant wish to continue using \_\_\_\_\_ (Employee) as a paid PDS Employee on the HCB or SCL waivers.

A copy of this letter is provided to your service advisor for processing.

Should you have any questions or need additional assistance, you may contact DAIL at (502) 564-6930 or by e-mail at [DAIL\\_pds@ky.gov](mailto:DAIL_pds@ky.gov).

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**Legally Responsible Individual (LRI) Conditional Employment Letter**

Date \_\_\_\_\_

Participant Name \_\_\_\_\_

Participant Medicaid ID Number \_\_\_\_\_

Re: LRI Conditional Employment for \_\_\_\_\_ (Employee Name):  
Dear \_\_\_\_\_ (Participant):

Beginning July 1, 2024, the Department for Aging and Independent Living (DAIL) will begin a new process for reviewing Participant Directed Services (PDS) employees who are legally responsible for the participant hiring them. These PDS employees are known as legally responsible individuals (LRI).

The LRI PDS participant specified above is being hired between May 1, 2024, and June 30, 2024. This PDS employee is temporarily approved to provide your services without being reviewed by DAIL. The PDS employee must undergo the review process at the time of your next waiver level of care re certification.

Before delivering your services, \_\_\_\_\_ (Employee Name) must meet all other requirements for being a PDS employee. This includes undergoing a background screening, a Tuberculosis risk assessment, and completing any required training. If your PDS employee does not meet these requirements, they will not be able to provide your services.

A copy of this letter is provided to your PDS case manager for processing.

If you have questions or need additional help, contact DAIL at (877) 315-0589 or by e-mail at [HCBInquiries@ky.gov](mailto:HCBInquiries@ky.gov).

  An Equal Opportunity Employer M/F/D

# Common Questions

## Hiring and Review Process

Can LRI PDS employees continue working while they wait for review?

- Yes. **If an LRI is already working, they may continue to work for the participant** while the LRI review is in progress. If a participant wants to hire a new LRI **after July 1, 2024, the LRI must be reviewed before they begin working.**

How long will the review process take?

- Once all completed information is received, the target for review determination is less than five (5) business days.

Does the review process take place yearly?

- No, this is a one-time process. Once an LRI is approved using the formal review process, they will not require review again.

# Common Questions

## LRI Definition

I am a parent of a waiver participant over age 18 and I am **not** their court-appointed guardian. Do I require review?

- No. Parents of adults (age 18 and older) are not considered legally responsible **unless the parent is the adult child's court-appointed guardian.**

Do other family members require review?

- Other family members (such as siblings or grandparents) do not require review **unless they fall under the LRI definition.** For example, **a grandparent who is also a court-appointed guardian** would require a review. A grandparent who is not a court-appointed guardian would not require review.

Do backup or standby guardians require review?

- No. **If you do meet the definition of LRI** and you are providing paid supports, then **you will have to reviewed.**

# Common Questions

## LRI Definition

If an LRI approved and working for a minor child obtains guardianship when the child is 18, does the LRI have to be reviewed again?

- No.

I have a power of attorney for a waiver participant. Do I require review?

- No. Unless an individual with a power of attorney for a waiver participant is also a legally responsible individual, they do not require review.

What age is considered when hiring an LRI? Is it the age at waiver enrollment or at recertification?

- The LRI definition is based on the participant's age at the time of recertification for current LRI PDS employees and the time of hire for LRI PDS employees hired on or after July 1, 2024.

Why are LRIs subject to a review and other family members are not?

- LRIs must be reviewed because they have decision-making power over the participant. Federal rules and regulations for waiver programs require states to put safeguards in due to the potential conflict of interest these situations can create.

# Common Questions

## Review Criteria

When attempting to hire non-LRI employees, when does the 30-days start?

- The 30-days starts upon the approval for waiver services.

What does a communication barrier mean? Is it only the inability to speak? Or does it include a developmental delay affecting the ability to communicate needs?

- A communication barrier and its associated care needs can vary from participant to participant. Reviewers will evaluate each participant's situation based on the information provided and will follow up with the case managers if additional information is needed to make a determination.

How can the participant/PDS representative show attempts to hire other non-LRI employees?

- The participant or PDS representative can describe, in detail, the steps they have taken to hire other employees. Documentation is not required, however, you could submit emails with other providers, notes, or a log of individuals you tried to hire and why they did not work out.

# Common Questions

## Submission Process

Will the LRI attestation form be provided?

- Yes, an LRI attestation form will be released.

Is there a form we can use to capture the answers? Can the participant/PDS representative complete a form and the case manager upload it to MWMA?

- PDS case managers may develop their own form to capture responses. The responses must be entered directly into MWMA.



# Common Questions

## Documentation

Is documentation required when submitting a review request?

- No. Documentation can be helpful for reviewers, but **it is not required**.

Does the MAP-10 qualify as documentation of extraordinary care?

- No.

# Common Questions

## Other Questions

If denied, can the participant request a reconsideration and an appeal hearing? Which one should be requested first?

- The participant has the option to request either a reconsideration, or an appeal hearing. Reconsiderations take less time versus going straight to the hearing process.

What is the deadline for submitting a formal review request for LRIs hired between May 1, 2024, to June 30, 2024, using the LRI Conditional Employment Form?

- LRIs hired between May 1, 2024, and June 30, 2024, using the LRI Conditional Employment Form must be reviewed at the time of the participant's next LOC recertification.

# Common Questions

## Documentation

What types of documentation can be submitted?

- You can submit any document you feel might be helpful. Below is a list of possible documents. **This is not an exhaustive list.**
  - Child's IEP
  - Results of court-ordered evaluations
  - Behavior Support Plan
  - Psychological Evaluation
  - Physician Note about individual's care needs
  - Employment Records
  - Notes or Emails Demonstrating Attempts to Hire Other Employees

# Resources

<b>PDS Policy Questions</b>	DAIL	(877) 315-0589 <hr/> HCBIquiries@ky.gov
<b>1915(c) Waiver Help Desk</b>	DMS	(844) 784-5614 <hr/> <a href="mailto:1915cWaiverHelpDesk@ky.gov">1915cWaiverHelpDesk@ky.gov</a>
<b>To Receive Email Updates or Submit Q&amp;A questions</b>		MedicaidPublicComment@ky.gov
<b>Links</b>	PDS Frequently Asked Questions	<a href="https://bit.ly/KyPDSFAQ">https://bit.ly/KyPDSFAQ</a>
	DMS PDS Website	<a href="https://bit.ly/DMSWaiverPDS">https://bit.ly/DMSWaiverPDS</a>
	DMS LTSS Website	<a href="https://bit.ly/KYMedicaidLTSSInfo">https://bit.ly/KYMedicaidLTSSInfo</a>

# Question and Answer Time

Please use the Q&A button at the bottom of your Zoom screen to submit questions. Questions will appear as they are answered.

