

# **Kentucky Cabinet for Health and Family Services**

## **Medicaid 1915(c) Home and Community Based Services Waivers**

### **Rate Increase Policies for Participant Directed Services**



**Last Updated: 12/21/2023**

# 1915(c) HCBS Rate Increase Policy for Participant Directed Services

## Contents

<b>Section 1: Document Background</b> .....	2
<b>Section 2: Document Control Information</b> .....	3
Q1: What happens to service limits once Appendix K expires?.....	4
Q2: What justification is needed for going above the established dollar amount rate in MPW?.....	5
Q3: The current MPW regulation has a dollar amount service cap. How will budget revisions be viewed related to existing regulatory guidance? .....	5
Q4: What does monitoring look like for the legislature-directed rate increase? .....	6
Q5: If a participant and/or their PDS representative asks to increase a PDS employee's pay rate, is that reason enough?.....	6
Q6: What steps need to be taken to complete a participant and/or PDS representative's request to increase a PDS employee's pay?.....	6
Q7: Is there a published list of current rates for 1915(c) HCBS waiver services? .....	7
Q8: How should the legislature-directed rate increases be handled for Goods and Services?.....	7
Q9: Can Financial Management Agencies bill first before paying PDS employees? .....	7
Q10: Which PDS employees are eligible for an increase in pay? .....	7

# 1915(c) HCBS Rate Increase Policy for Participant Directed Services

## Section 1: Document Background

In spring 2022, the Kentucky Legislature approved the 2022-2024 state budget (House Bill 1). The budget included the following rate increases for 1915(c) Home and Community Based Services (HCBS) waiver programs:

- The 50% rate increase available under Appendix K for some residential services became permanent in the 2022-2024 biennial budget. This applied to SCL Residential Support Level I and all ABI and ABI LTC residential services.
- All other services in ABI, ABI LTC, HCB, MPW, and SCL received a 10% rate increase in state fiscal year 2022-2023 and an additional 10% rate increase in state fiscal year 2023-2024.

The following document addresses policy questions about the legislature-directed increase related to Participant Directed Services (PDS). All questions were collected from inquiries made to the DMS Division of Long-Term Services and Supports (LTSS). DMS has modified some questions from the originally submitted language to be as clear as possible and not share case-specific details.

### Navigating the Document

Readers have a couple of options for navigating to specific parts of this document.

1. Questions have been grouped and are listed by topic in the “Contents” section above. Clicking on the question will take you to the answer.
2. Readers can search for keywords in the document by hitting CTRL+F on the keyboard. This will pop up a search box where the reader can enter a keyword (such as PDS) to find all questions and responses related to that topic.

# 1915(c) HCBS Rate Increase Policy for Participant Directed Services

## Section 2: Document Control Information

Document Name	1915(c) HCBS Rate Increase Policy for Participant Directed Services
Document Version	1.0
Document Status	Final
Date Released	09/20/2023

### Document Edit History

Version	Date	Additions/Modifications	Prepared, Edited, and Reviewed
1.0	09/20/2023	Initial Release	Department for Medicaid Services Staff Department for Aging and Independent Living Staff
2.0	12/21/2023	The FAQ was edited to clarify the limit for Attendant Care in HCB is now 45-hours per week <b>OR</b> \$200 per day.	Department for Medicaid Services Staff

## 1915(c) HCBS Rate Increase Policy for Participant Directed Services

Q1: What happens to service limits once Appendix K expires?

Revised: 12/21/2023

Most waivers/services will return to the established pre-public health emergency (PHE) limits. This applies to services with:

- A unit limit; and/or
- A weekly limit on hours.

Additionally, overtime will be discontinued. No PDS employees should work more than forty (40) hours per week.

The Home and Community Based (HCB) waiver and the Michelle P. Waiver (MPW) have dollar amount limits, which will be handled as follows:

HCB	MPW
<ul style="list-style-type: none"><li>• Based on participant feedback, DMS is clarifying the limit on Attendant Care in HCB. In the amended waiver application submitted to the Centers for Medicare and Medicaid Services (CMS), the limit now states:  <i>“Forty-five (45) hours per week alone or in combination with ADHC services <b>OR</b> a maximum of \$200 per day alone or in combination with ADHC services”</i></li></ul> <p>DMS opted to allow participants to use either 45 hours per week or \$200 per day to create flexibility based on each individual’s person-centered needs. The person-centered team should work with the participant to determine the best limit to use based on how much Attendant Care they need. In the case of PDS, a participant paying an employee the maximum Attendant Care rate and trying to stay within the \$200 per day limit would receive less than seven hours of Attendant Care per day. In that case, following the 45-hour limit may be more appropriate.</p> <p>Alternatively, if the participant does not pay a PDS employee the maximum rate, they can stretch the number of hours of Attendant Care per week beyond 45 hours while staying within the \$200 per day limit.</p>	<ul style="list-style-type: none"><li>• The \$40,000/\$63,000 service cap (excluding Respite) is no longer in place to avoid an unintentional reduction in needed services for participants.</li><li>• The following services, alone or in combination, shall be limited to forty (40) hours per calendar week: Homemaker, Personal Care, Attendant Care, Supported Employment, Adult Day Health Care, Adult Day Training, Community Living Supports, Physical, Occupational, and Speech Therapy, and Behavior Supports.</li><li>• A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services per calendar week (Sunday to Saturday) regardless of how many children receive waiver services.</li></ul>

## 1915(c) HCBS Rate Increase Policy for Participant Directed Services

Q2: What justification is needed for going above the established dollar amount rate in MPW?

Revised: 12/21/2023

DMS does not issue participant-specific budgets. Participants should not automatically receive the maximum amount of services simply because they are available. The type and amount of services a participant receives should be person-centered, which means they are based on what the person needs to maintain their health, safety, and well-being in the community and reach their goals. This will look different for each participant, therefore, it is not possible to create a blanket outline of exactly what a participant should get. When creating the PCSP, the case manager/support broker/service advisor should use good case management practices, which include reviewing the participant's assessment, discussing their goals and support needs, and getting input from other members of the participant's person-centered team to determine the type and amount of services necessary to support them. The service types and amounts listed on the plan should be supported with detailed notes and additional documentation to demonstrate why the participant needs a specific level of service. Recoupments will not be issued if the PCSP cost exceeds the dollar limit amounts in MPW and the services were delivered as outlined and authorized on the PCSP.

Q3: The current MPW regulation has a dollar amount service cap. How will budget revisions be viewed related to existing regulatory guidance?

Revised: 12/21/2023

DMS does not issue participant-specific budgets. Due to the rate increases, the \$40,000/\$63,000 service cap in MPW is no longer in place to avoid an unintentional reduction in needed services for participants.

Case managers/support brokers/service advisors, in coordination with the person-centered planning team, should consider each participant's assessed needs, goals, and desired outcomes when creating the PCSP and align the type and amount of services accordingly. Case managers/support brokers/service advisors should support service requests with thorough notes in the PCSP and documentation including the functional assessment and other documentation from licensed professionals who have active roles in the participant's life.

Documentation will be reviewed when DMS audits PCSPs. DMS anticipates the limits may be exceeded on some plans to meet the participant's health, safety, and well-being needs and goals. Recoupments will not be issued if the PCSP cost exceeds the \$40,000/\$63,000 cap and the services delivered were authorized on the PCSP.

For MPW, the weekly hour limit and any unit limits on individual services remain in place. This includes:

- The following services, alone or in combination, shall be limited to forty (40) hours per calendar week: Homemaker, Personal Care, Attendant Care, Supported Employment, Adult Day Health Care, Adult Day Training, Community Living Supports, Physical, Occupational, and Speech Therapy, and Behavior Supports.

## 1915(c) HCBS Rate Increase Policy for Participant Directed Services

- A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services per calendar week (Sunday to Saturday) regardless of how many children receive waiver services.

Q4: What does monitoring look like for the legislature-directed rate increase?

Date Added: 09/20/23

Please continue to upload contracts to the Medicaid Waiver Management Application. DMS, the Department for Aging and Independent Living, and the Department for Behavioral Health, Developmental and Intellectual Disabilities are not changing any waiver monitoring practices. Agencies should continue to keep thorough and updated records as outlined in the waiver-related Kentucky Administrative Regulations.

Q5: If a participant and/or their PDS representative asks to increase a PDS employee's pay rate, is that reason enough?

Date Added: 09/20/23

The participant and/or PDS representative can choose to pay between minimum wage and up to the maximum allowable rate. The maximum allowable rates are listed in the "Home and Community Based Services Waiver Rates 2023-2024" document on the DMS Fee and Rate Schedule website at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

Each PDS employee's pay rate is person-centered to the participant in that it is the participant's choice what to pay their PDS employee(s). They do not have to justify the rate increase, however, the case manager/support broker/service advisor should remind them that they do not have to pay each employee the maximum rate nor do they have to pay each PDS employee the same. When deciding on a rate, they may consider:

- What does the employee do for and/or the level of support given to the participant?
- How much training or experience does the employee have?
- How well does the employee do their job?
- How many hours does the employee work?
- Taxes will be taken out of any pay a PDS employee receives.

It is important to remember that **requests for a pay increase should come from the participant and/or the PDS representative. The PDS employee(s) should not be involved in discussions about raising their pay rate.**

Q6: What steps need to be taken to complete a participant and/or PDS representative's request to increase a PDS employee's pay?

Date Added: 09/20/23

This should be treated like any other time the participant and/or PDS representative asks to set or increase an employee's pay rate and follow the same process. Completing these requests does not have to occur face-to-face. The participant and/or PDS representative can request the increase via phone or email. The case manager/support broker/service advisor should document the discussion in

## 1915(c) HCBS Rate Increase Policy for Participant Directed Services

their normal case management notes. Contracts can be sent out via email or whatever method is easiest for both the case manager/support broker/service advisor and the participant and/or PDS representative.

It is important to remember that **requests for a pay increase should come from the participant and/or the PDS representative. The PDS employee(s) should not be involved in discussions about raising their pay rate.**

Q7: Is there a published list of current rates for 1915(c) HCBS waiver services?

Date Added: 09/20/23

**Yes**, a list of rates is on the DMS Fee and Rate Schedule website at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

Q8: How should the legislature-directed rate increases be handled for Goods and Services?

Date Added: 09/20/23

The process for requesting Goods and Services has not changed. While there are more funds available for Goods and Services requests, they should not be made just to reach the maximum allowance or because additional funding is available. Requests for Goods and Services should be based on the participant's assessed needs, goals, and desired outcomes. As a reminder, 1915(c) HCBS waiver programs are the payer of last resort for Goods and Services. These requests should be made through the Medicaid state plan or the Early Periodic Screening, Diagnosis, and Treatment benefit for participants under 21 years of age.

Q9: Can Financial Management Agencies bill first before paying PDS employees?

Date Added: 09/20/23

**Yes**. There is no requirement for Financial Management Agencies to pay PDS employees before billing claims or vice versa.

Q10: Which PDS employees are eligible for an increase in pay?

Date Added: 09/20/23

Participants are only able to pay current or future PDS employees a higher rate.