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CABINET FOR HEALTH  
AND FAMILY SERVICES

# **Implementing Long-Term Appendix K Flexibilities for 1915(c) HCBS Waivers for Providers**

April 2024

# Webinar Agenda



CABINET FOR HEALTH  
AND FAMILY SERVICES

01

Appendix K and Wavier Update Timeline

02

1915(c) Waiver Policy Changes

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Next Steps

# Appendix K and Waiver Update Timeline

# Appendix K Policies Impact All Six 1915(c) Home and Community Based Services (HCBS) Waivers

Kentucky's 1915(c) Home and Community Based Waivers
Acute Brain Injury (ABI) Waiver
Acute Brain Injury Long-Term Care (ABI LTC) Waiver
Home and Community Based (HCB) Waiver
Michelle P. Waiver (MPW)
Model II Waiver (MIIW)
Supports for Community Living (SCL) Waiver

# Making Appendix K Changes Permanent

The Department for Medicaid Services (DMS) made temporary updates to waivers during the COVID-19 Public Health Emergency (PHE) using Appendix K. Now that the COVID-19 PHE is over, Appendix K expires on May 1, 2024.

DMS understands the benefits that some of these changes have had on participant outcomes and provider operations and sought to make some of them permanent.

DMS has received Centers for Medicare and Medicaid (CMS) approval for all six of the updated waiver applications, which include making several components of Appendix K permanent.

# Appendix K Timeline To Date



1. The effective date for MIIW changes is February 1, 2024.

# 1915(c) Waiver Policy Changes

# What Guided Proposed Policy Decisions?

- ▶ The Cabinet carefully considered the Appendix K policy changes to keep vs. sunset.
- ▶ Some of the factors that guided proposed policy decisions include:
  - Health, safety, and well-being of program participants
  - Where it was best to return to in-person service delivery
  - When it was necessary to sunset a policy to revert to standing federal requirements
  - Where emergency-based allowances are no longer needed
  - Continued efforts to sustain and maintain the existing HCBS provider network



# 1915(c) Waiver Policy Changes

Appendix K  
policies  
**becoming  
permanent in  
all waivers**

- 1 **Telehealth** for Case Management and Therapeutic Services
- 2 **Allowing limited nonmedical waiver services** to be provided to participants **in acute hospital settings** when the hospital cannot meet the participant's immediate need (These do not replace HCBS)
- 3 **Expanded PDS case management and financial** management to any willing and qualified provider and expanded case management provider qualifications
- 4 **Reducing age requirement** from 21 to 18 to provide some services
- 5 **Retaining the temporary rate increases** implemented through Appendix K for all services

Appendix K  
policies  
**becoming  
permanent in  
specific  
waivers**

ABI and ABI LTC

- **Expanding residential services** to allow up to five (5) participants per house

SCL

- Allowing participants in **Residential Support Level II** to receive **respite services**

HCB

- PDS Case Management and Financial Management **separated into two distinct services**
- **Allowing frozen meals** as part of the Home Delivered Meal service
- **Expanded Attendant Care** provider types

# The following policies will no longer be active as of May 1, 2024:

## Appendix K policies being removed from all waivers

1 **Increased service limits and extra units** for Case Management

2 **Overtime** for PDS

3 **Telehealth** for non-therapies including ADHC, ADT, Community Access, Community Living Supports, and Personal Care/Assistance

4 **Level of care assessments/reassessments** via telephone or video conference

5 **Expanded provider settings** for Residential and Respite

6 **Expanded provider settings** for ADT and ADHC to be provided in-home

7 **Allowing ADHC to provide** in-home Respite and nursing services

8 **Delayed First Aid, CPR and training requirements** for DSPs\*

9 **Allowing DSPs and PDS employees to begin work** while awaiting results of pre-employment background screening

10 **Suspended approval process** for hiring immediate family members as PDS employees

11 **Waived requirements for out of state providers** to be licensed & located in Kentucky if licensed by other states

12 **Expansion of Home Delivered Meals** to all waivers and any enrolled waiver

13 **Incident reports** for disruption of waiver-funded services due to COVID and positive COVID-19 tests

\*Effective May 1, 2024, participants can choose whether to require First Aid/CPR for PDS employees

Appendix K  
policies **being  
removed** in  
**specific  
waivers**

SCL

- Allowing participants in **Residential Support Level II** to receive **Personal Assistance**

# Maintaining Appendix K Rates

- ▶ During the COVID-19 PHE, certain services received a temporary rate increase under Appendix K based on requirements from the legislatively approved 2022-2024 state budget.
- ▶ DMS included these increased rates as part of the waiver updates to make them permanent.
- ▶ DMS has assessed current rates and will retain the Appendix K increases until the Legislature and CMS approve a new rate methodology based upon the completed rate study (anticipated summer 2024).

## Recap of Rate Increases Implemented Using Appendix K

50% rate increase for residential services

50% rate increase for certain traditional, non-residential services where providers attest to pass through 85% of the rate to direct care workers

10% rate increase for all other services in state fiscal year 2023 and an additional 10% state fiscal year 2024 (excluding Model II Waiver)

# Resuming the Legally Responsible Individual (LRI) Approval Process

Who is considered an LRI?

- An LRI refers to the **parent or guardian** of a minor child, a **spouse**, or **any individual as defined in state law**.
- In the waiver applications submitted to CMS in November 2023, DMS clarified the definition to include:
  1. **Parents, stepparents, adoptive parents, or court-appointed legal guardians** of **minor** children (under 18).
  2. **Spouses** of waiver participants or **court-appointed legal guardians of an adult**

How is “extraordinary care” relevant to LRIs?

- Per Federal rules, LRIs **can only be paid** for services deemed “**extraordinary care**” that is **above age-appropriate** care natural supports **normally** provide.
- An LRI must provide **additional care** for their loved one **based solely on their disability**.
- “Extraordinary care” is **not** related to the **quality of care** delivered, but instead the **tasks not usually performed** to care for participants.
- Because of this, **LRIs must be approved** to provide HCBS to participants.

# Resuming the LRI Approval Process (Continued)

DMS understands how valuable it is to allow LRIs to be hired as PDS employees and will continue to allow this practice. Federal guidelines require certain safeguards when allowing LRIs to be hired as PDS employees.

- ▶ LRIs are allowed to be hired as paid caregivers for PDS. Going forward, there will be an approval process for all waivers to determine whether the LRI meets extraordinary care requirements.
- ▶ If an LRI was hired as a PDS employee under Appendix K, the review process will take place at the participant's annual re-certification after the updated waivers have taken effect on May 1, 2024. Hired LRIs do not need to stop work on May 1, 2024.
- ▶ LRIs will be allowed to keep working while undergoing the review process. Any individual hired as a PDS employee who is not also an LRI will not require review.



# Expectations for Telehealth

DMS recognizes the value of telehealth for participants. Providers may deliver telehealth under specific circumstances. Participation in services via telehealth should be wanted by the participant, person-centered, meaningful, and advance established goals.

After May 1, 2024, providers can deliver the following services in-person or via telehealth:

- Behavioral Services, Case Management, Consultative Clinical and Therapeutic Services, Individual and Group Counseling, Occupational Therapy, Physical Therapy, and Speech therapy

Telehealth services must meet the following requirements:

- In-person services must be provided whenever possible and at a minimum, every other month
- Case management visits must occur at the participant's residence at least quarterly
- Telehealth visits may be provided every other month
- Participants have the right to request in-person services instead of telehealth
- Telehealth services must be provided using a HIPAA-compliant platform

# Next Steps

# Ending Flexibilities: Next Steps

The Cabinet knows that some policy changes will require actions from providers, including employees of participants who self-direct. Please **plan to take the following actions** to align with anticipated policy changes and **communicate these changes appropriately** to participants, natural supports, and/or other stakeholders.



## Increased Limits or Expanded Services

Person-centered service plans (PCSPs) need to be adjusted before May 1, 2024 for any participant receiving more services than allowed under normal waiver operations or receiving services not typically offered through the waiver in which they are enrolled. Retainer payments and overtime payments that have expired must also end.



## Provider Certification

Providers who want to continue offering certain services that they are not authorized to provide under normal waiver operations should begin Medicaid certification processes for those services. DSPs and PDS employees must finish all pre-employment background screenings and out-of-state providers who are not licensed in KY must get their KY license.



## Telehealth Capabilities

Providers should ensure they have sufficient and HIPAA-compliant IT in place to provide telehealth services on a continuing basis.



## CPR and Training Requirements

DSPs may be required to fulfill all CPR and training requirements that were delayed as a result of Appendix K flexibilities. (Agency employed DSPs must complete training and PDS employers can elect to require training.)

# Continuing Flexibilities: Next Steps

The Cabinet knows that some policy changes will require actions from providers, including employees of participants who self-direct. Please **plan to take the following actions** to align with anticipated policy changes and **communicate these changes appropriately** to participants, natural supports, and/or other stakeholders.



## Sharing the Waivers

DMS has posted the approved waiver applications at the following link: [Kentucky Home- and Community-Based Services](#)



## Provider Training

DMS will offer additional opportunities for provider training/questions. DMS has posted current FAQs at the following link: [COVID-19 and Appendix K FAQs Document](#)



## Regulatory Updates

DMS is actively working to incorporate these changes into the Kentucky Administrative Regulations (KAR).

# Questions?

Please send questions to [MedicaidPublicComment@ky.gov](mailto:MedicaidPublicComment@ky.gov)

# Contact Info

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**General Waiver Information**

<https://bit.ly/KYMedicaidLTSSInfo>

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**Appendix K and COVID-19 Information**

<https://bit.ly/KYDMSInfoCOVID19>

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**Waiver-Related KARs**

Legislature.ky.gov or find links the waiver-specific pages listed on <https://bit.ly/KYMedicaidLTSSInfo>

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**Waiver Policy and Case-Specific Questions**

[1915cWaiverHelpDesk@ky.gov](mailto:1915cWaiverHelpDesk@ky.gov) or (844) 784-5614

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**Medicaid Financial Eligibility**

Contact the Department for Community Based Services at (855) 306-8959 or [DFS.Medicaid@ky.gov](mailto:DFS.Medicaid@ky.gov)

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**MWMA User Info**

View reference guides on TRIS ([tris.eku.edu/MWMA](http://tris.eku.edu/MWMA)) or call

For MWMA technical issues, call (844) 784-5614, option 1.

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**MMIS Billing Inquiries**

(800) 807-1232

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**To get email updates or submit a comment**

[MedicaidPublicComment@ky.gov](mailto:MedicaidPublicComment@ky.gov)

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