

# Kentucky Department for Medicaid Services

## 1915(c) Home and Community Based Services Waiver Programs

### Official Response to Formal Public Comment from June 2, 2025 – July 1, 2025



1915(c) Home and Community Based Services (HCBS) waivers expire every five years. The current versions of Home and Community Based (HCB) and Model II (MIIW) waivers approved by the Centers for Medicare and Medicaid Services (CMS) expire this year. To continue providing HCB and MIIW services, DMS must renew these waivers with CMS. The Cabinet held two formal public comment periods to allow waiver community members to provide feedback on updates proposed in the amended HCB and MIIW waiver applications.

The first public comment period took place between March 13, 2025, and April 13, 2025. A summary of the comments received and DMS' response is available at <https://www.chfs.ky.gov/agencies/dms/dca/waivers/DMSPubliCommentResponseHCBMIIW.pdf>.

Between June 2, 2025, and July 1, 2025, DMS held a second public comment period during which the waiver applications were posted in a non-electronic format, allowing individuals without access to technology to review and submit comments. This document provides the Cabinet's response to the second public comment period submissions.

Below you will find a few definitions to help you understand the Cabinet Response. If you have questions about this response, please email [MedicaidPublicComment@ky.gov](mailto:MedicaidPublicComment@ky.gov).

Reference #	Waiver	Commenter Type	Comment	Cabinet Response	Change to the Waiver
The Cabinet assigned a number to each set of comments to help us track them. Please note the reference # sometimes goes out of numerical order to allow for grouping of similar comments.	This section identifies the waiver to which the comment is referring.	This section identifies the type of stakeholder(s) who made the comments (providers, caregivers, etc.)	This is where you will find the public comments. The Cabinet grouped and summarized comments.	This is where you will find the Cabinet response to each set of comments.	This section lists any changes the Cabinet made to the amended waiver application based on the comments received.

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**June 2 – July 1, 2025**

Covered Services					
Reference #	Waiver	Commenter Type	Comment	Cabinet Response	Change to the Waiver
CS1	HCBS	Provider	Commenter requested that case managers be able to provide case management without having to contract with an Adult Day Health Care (ADHC). Commenter says this allowance would potentially increase the case management pool for the HCBS waiver.	To increase the freedom of choice for HCBS waiver participants, the Cabinet is creating a new provider type that will allow case managers to serve HCBS participants without requiring a contract with an ADHC. The Cabinet expects to begin enrolling providers in the new provider type by the end of the summer. For additional questions, contact the Department for Aging and Independent Living at <a href="mailto:HCBSinquiries@ky.gov">HCBSinquiries@ky.gov</a> or (877) 315-0589.	
CS2	HCBS	Provider	Commenter requested clarification on whether parents or legal guardians can provide Non-Specialized Respite for one another.	No, parents and legal guardians cannot provide Non-Specialized Respite for one another.	

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PDS					
Reference #	Waiver	Commenter Type	Comment	Cabinet Response	Change to the Waiver
PDS1	HCB	Provider	Commenter noted DMS and DAIL recently issued guidance requiring Financial Management Agencies (FMA) to cover the cost of up to four PDS employee background checks per participant, per level of care year. Commenter asked where this is indicated in the waiver application.	The “Participant/Common Law Employer” option is selected in E-2-a.i. Per the Application for a §1915(c) Home and Community-Based Waiver Instructions, Technical Guide, and Review Criteria, this selection indicates the participant is the legally responsible employer of PDS employees while the FMA is responsible to perform “necessary payroll and other employment related functions.” Obtaining and paying for background checks falls under “other employment related functions.” The guide specifically states Financial Management Services (FMS) entities can arrange for the background check on behalf of the participant and the cost can be included as part of payment to the FMS entity.	

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PDS2	HCB	Provider	<p>Commenter states that requiring FMAs to cover the background checks is unhelpful for the PDS model and is unsustainable for the FMAs.</p>	<p>The goal of this shift is to remove cost as a barrier to individuals who want to use PDS and to ensure compliance with CMS guidance and regulations.</p> <p>Per CMS' Application for a §1915(c) Home and Community-Based Waiver Instructions, Technical Guide, and Review Criteria, the cost of background checks cannot be charged to the participant and may be compensated as part of the payment to the FMS entity.</p> <p>FMAs received rate increases in 2022 and 2023 as part of the 2022-2024 state budget. Those rate increases were made permanent in 2025. As stated in public comment responses issued in 2023 and 2024, the higher rates were intended to include the cost of background checks for PDS employees.</p>	
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PDS3	HCBS	Provider	Commenter applauds the Cabinet's decision to limit PDS employees working 40 hours per week. Commenter asked how the employee's number of working hours will be tracked, as some employees work for multiple participants.	Thank you for your comment. This policy is already in place in Michelle P. Waiver and will be expanded to all waivers that allow PDS. The Cabinet continues to evaluate the best way to operationalize this policy, including the method for tracking hours worked for employees across waivers. FMAs are encouraged to take the lead and work with PDS employees to help them understand the requirement and to ensure they do not exceed 40 hours per week.	
PDS4	HCBS	Provider	Commenter suggested the Cabinet develop an online registry of approved PDS employees to assist participants with recruitment and training.	Thank you for this suggestion. The Cabinet will consider this as we work toward future improvements of the PDS delivery model.	
PDS5	HCBS	Provider	Commenter asks whether PDS representatives in HCBS must undergo a background check and if it counts toward the four per participant, per plan of care year.	Background check policy for PDS representatives is outlined in each approved waiver application. The Supports for Community Living waiver is the only waiver that requires background checks for PDS representatives within the approved waiver application. The Cabinet for Health and Family Services has identified this as an item to adjust the next time the waiver is amended. The background check for the PDS representative is not included in the four paid for by the FMA.	

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Other					
Reference #	Waiver	Commenter Type	Comment	Response	Change to Waiver
O1	HCB	Provider	Commenter requested that the Attendant Care training materials be easier to locate on the CHFS website.	Thank you for the suggestion.	
O2	HCB	Provider	Commenter suggested mandatory online or in-person waiver training for PDS participants, employees, and representatives.	Thank you for the suggestion. The Cabinet will consider this as we work toward future improvements of the PDS delivery model.	