









CABINET FOR HEALTH  
AND FAMILY SERVICES

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

**Informational Meeting for 1915(c) Home and Community Based Services  
(HCBS) Waiver Participants**

**June 10, 2024**

# Agenda

-  What is Participant Directed Services (PDS)?
-  Who is a Legally Responsible Individual (LRI)?
-  LRI Review Criteria
-  LRI Review Outcomes & Participant Rights
-  Why Implement a Review Process?
-  Next Steps and Resources

# What is PDS?

- PDS is a service-delivery model **included** in five of Kentucky's six Home and Community Based Services (HCBS) waivers.
  - Acquired Brain Injury Acute & Long-Term Care, Home and Community Based, Michelle P. Waiver, and Supports for Community Living.
- PDS increases participant choice and control by allowing them to find and hire individual employees to provide non-medical, non-residential waiver services.
  - The participant takes on the role of employer – like a traditional agency employs direct service workers.
- PDS is delivered by following a written person-centered service plan that details the services provided.
  - The types of services, amount, frequency, and duration are based on the participant's assessed needs and abilities, preferences and choices, and access to community and natural supports.

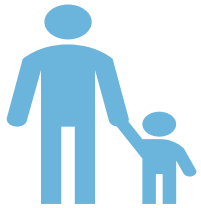
# Implementing an Updated LRI Review Process



- Updated process begins July 1, 2024
- 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...”

# Allowing LRIs as PDS Employees

An adult PDS employee is **hiring a parent**. The **parent is not the participant's court-appointed guardian**.



**Review NOT  
Required**

A minor PDS employee is **hiring a grandparent**. The **grandparent is not the participant's court-appointed guardian**.



**Review NOT  
Required**

A minor PDS employee is **hiring a sibling**. The **sibling is the participant's court-appointed guardian**.



**Review Required**

# LRI Review Criteria

Application for a §1915(c) Home and  
Community-Based Waiver [Version 3.6, January 2019]

## Instructions, Technical Guide and Review Criteria

Release Date:  
January 2019



Disabled and Elderly Health Programs Group  
Center for Medicaid and State Operations  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services

“Through an HCBS waiver, a state may elect to make payment for personal care or similar services that are rendered by legally responsible individuals when such services are deemed extraordinary care so long as the state specifies satisfactory criteria for authorizing such payments.”

“By extraordinary, CMS means 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.”

[\*Application for a §1915\(c\) Home and Community-Based Waiver Instructions, Technical Guide and Review Criteria – page 120\*](#)

# 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 be directly related to his or her disability and 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

The review request will be submitted using MWMA.

- PDS Case Managers will enter the information in MWMA on behalf of the participant or PDS representative.
- The participant and/or PDS representative must sign an attestation that the answers are correct.

Additional documentation or information can be submitted.

- If you have documents or more information supporting the need to hire an LRI, the case manager can include that in the request.

The potential LRI PDS employee must NOT be involved in the request process.

- The participant and/or the PDS representative is responsible for requesting the review.

# 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 who went through an approval process before March 2020
- Non-LRI PDS employees

# LRI Review Request Outcomes

## Approval

- You and your case manager will receive a letter. The hiring process can continue.

## Lack of Information (LOI)

- A reviewer can request more information before deciding. If this happens, the case manager will receive a notification. They will work with you to obtain and submit the requested information.

## Denial

- The request is denied. You will receive a certified letter notifying you of the decision.

# LRI Review Request – Participant Rights


## Participant Rights for LRI Employee Request Denials

Participant can request a reconsideration.

- DMS will review reconsideration requests.
- CM submits reconsideration request.

Participants can request an appeal.

- Letter includes directions.
- Appeal request must be sent within 30 days of date on letter.
- Appeals made to the Office of the Ombudsman.

  
Commonwealth of Kentucky  
Department for Medicaid Services  
Division of Community Alternatives  
275 E Main St 6th Fl Frankfort, KY 40621  
P: 502-564-7540 F: 502-564-0249 www.chfs.ky.gov

Andy Beshear, Governor  
Eric C. Friedlander, Secretary  
Lisa D. Lee, Commissioner  
Pam Smith, Division Director

Member Name  
MAIN ST  
LEXINGTON, KY 45646

Dear Member,

A request for a legally responsible individual (LRI) to provide your PDS services was received for the following individual:

Employee Name	SAMPLE DENIAL
Date of Birth	1/1/1990
Relationship to the Individual	Spouse

This letter is to inform you that the request been denied, and the individual is not eligible to be a paid PDS employee for the following reason:

-[reviewer comments]

You have right to appeal as it says in 907 KAR 1:583. Only you, your guardian or your PDS representative may request an appeal. Send the request within thirty (30) calendar days of the date of this letter to:

Office of the Ombudsman and Administrative Review  
Attn: Medicaid Appeals and Reconsiderations  
275 East Main Street, 2E-O  
Frankfort, KY, 40621

At the hearing, you can have someone else speak for you, such as your guardian, authorized representative, legal counsel, a relative, a friend, or other spokesperson or you may represent yourself. If you want legal help, you may be able to get it free from your local legal aid office at 1-800-277-5733.

If you have any questions about the review, please contact the Ombudsman's office at 502-564-5497.

# Why Implement an Updated LRI Review Process?

1

To comply with Centers for Medicare and Medicaid Services (CMS) requirements

2

To have a consistent process across all 1915(c) Home and Community Based Services (HCBS) waivers

3

To screen LRI PDS employees who were hired without undergoing a review process

# Next Steps

LRI PDS Employee Review Process Question and Answer Session

**June 20, 2024**

**6:30 – 7:30 p.m. Eastern / 5:30 – 6:30 p.m. Central**

Zoom

<https://bit.ly/PDSLRIQAParticipants>

Send Questions to [MedicaidPublicComment@ky.gov](mailto:MedicaidPublicComment@ky.gov)

# 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>