

Kentucky Cabinet for Health and Family Services
Participant Directed Services Frequently Asked Questions
Updated: May 13, 2024

Overview: Participant Directed Services is a service delivery model that allows 1915(c) Home and Community Based Services (HCBS) waiver participants to directly hire providers for their non-medical, non-residential waiver services rather than use a traditional agency. Participants in the following waivers can use the PDS service delivery model:

- Acquired Brain Injury (ABI)
- Acquired Brain Injury Long-Term Care (ABI LTC)
- Home and Community Based (HCB)
- Michelle P. Waiver (MPW)
- Supports for Community Living (SCL)

The following frequently asked questions (FAQ) document addresses questions the Department for Medicaid Services (DMS) and the Department for Aging and Independent Living (DAIL) have received about PDS.

If you have questions about this document, please contact MedicaidPublicComment@ky.gov.

If you have questions about PDS policy, please contact DAIL at (877) 315-0589, option 3, or HCBIquiries@ky.gov.

Glossary of Acronyms	Acronym
Acute Brain Injury Waiver	ABI
Acute Brain Injury Long-Term Care Waiver	ABI LTC
Area Development District	ADD
Centers for Medicare and Medicaid Services	CMS
Community Mental Health Center	CMHC
Department for Aging and Independent Living	DAIL
Department for Behavioral Health, Developmental and Intellectual Disabilities	DBHDID
Direct Support Professionals	DSP
Financial Management Services	FMS
Home and Community Based Waiver	HCB
Home and Community Based Services	HCBS
Kentucky Administrative Regulation	KAR
Kentucky Department for Medicaid Services	DMS
Kentucky State Police	KSP
Legally Responsible Individual	LRI
Level of Care	LOC
National Sex Offender Public Website	NSOPW
Medicaid Waiver Management Application	MWMA
Michelle P. Waiver	MPW
Person Centered Service Plan	PCSP
Power Of Attorney	POA
Supports for Community Living Waiver	SCL

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1.0	May 10, 2024	Initial Document	DMS Division of Long-Term Services and Supports Staff DAIL Division of Quality Living Staff
2.0	May 13, 2024	Added question about POAs, clarified question about CPR, clarified provision of case management and financial management for ADDs and CMHCs.	DMS Division of Long-Term Services and Supports

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Section 1: Legally Responsible Individuals

1. Who is a Legally Responsible Individual (LRI)?

A legally responsible individual is defined as any person who has a duty under State law to care for another person. In the 1915(c) Home and Community Based Services (HCBS) waiver applications, the following individuals are considered LRIs:

(a) the parent, stepparent, adoptive parent, or a court-appointed legal guardian of a minor child (younger than 18); or

(b) the spouse or court-appointed legal guardian of an adult (age 18 and older).

If an individual being hired as a PDS employee does not meet the criteria above, they are not considered an LRI and **do not need to be reviewed**.

2. What criteria must an LRI meet to provide services to a waiver participant?

Per the Centers for Medicare and Medicaid Services (CMS), LRIs can only be paid for services deemed “**extraordinary care**” and cannot be paid for supports they are ordinarily obligated to provide. 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.”

Per CMS, the state must define the circumstances where an LRI can be paid for providing waiver services. The state’s definition of “extraordinary care” is below. The review process will confirm the participant’s circumstances fall within this criteria.

Extraordinary Care Criteria for Minors (Younger than 18)

Payment for the provision of PDS shall be available to an individual who is legally responsible for a minor child when the minor child meets one of the criteria in Category A and one of the criteria in Category B.

Category A

1. Caregiving requirements to maintain the health and safety of the minor child in the community have reduced or eliminated the ability of the legally responsible individual to maintain paid employment within the previous twelve (12) months and there is not an alternate caregiver in the home who is functionally able to provide care; **or**

2. The legally responsible individual can demonstrate attempts within the first thirty (30) days to recruit a qualified provider, both traditional or PDS, but is unable to secure

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another provider or secure sufficient provider coverage for needed services; **or**

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 to a care provider.

Category B

1. The minor child's level of dependency in performing activities of daily living, including the need for assistance with toileting, eating, or mobility, is directly related to his or her disability and exceeds that of his or her age-matched peers; **or**

2. The minor 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.

Extraordinary Care Criteria for Adults (18 and older)

Payment for the provision of PDS for adults shall be made available to any qualified person, regardless of legal responsibility or familial relationship to the participant, including a spouse, if at least one of the following circumstances has been identified and verified to necessitate the use of the LRI as a PDS employee:

1. Caregiving requirements to maintain the health and safety of the participant in the community have reduced or eliminated the ability of the legally responsible individual to maintain paid employment within the previous twelve (12) months and there is not an alternate caregiver in the home who is functionally able to provide care; **or**

2. The legally responsible individual can demonstrate attempts within the first thirty (30) days to recruit a qualified provider, both traditional and PDS, but is unable to secure another provider or secure sufficient provider coverage for all care; **or**

3. The participant has a communication barrier that impacts his or her ability to effectively communicate needs and wishes to a care provider.

3. If an individual has a power of attorney (POA) for a waiver participant, are they considered an LRI?

A POA is not considered a legally responsible individual unless they meet the LRI definition (parent, stepparent, adoptive parent, or court-appointed guardian for participants under age 18 and spouse or court-appointed guardian for participants age 18 and older). It is important to note a power of attorney does not have the same legal meaning as a legal guardian. A legal guardian is appointed by a Kentucky District Court.

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4. Why does an LRI need to be approved?

CMS requires states to establish safeguards when a PDS employee is an LRI with decision-making authority over the PDS participant.

5. What needs to be completed for a new LRI hired between May 1, 2024, and July 1, 2024?

The agency should upload the LRI Conditional Employment Letter to MWMA, which will be released as soon as possible. The PDS LRI employee(s) will undergo the review process at the time of the participant's next level of care reassessment/recertification.

6. Will PDS employees approved through the past LRI review process have to go through the new approval process, or will they be grandfathered in?

No. If an immediate family member or LRI hired to work for an HCB or SCL participant received approval before March 2020 for either HCB or SCL they will not have to undergo the new review process.

Section 2: PDS Employee Background Checks and Pre-Employment Screenings

7. Do all PDS employees have to undergo a background screening before starting work?

Yes. All PDS employees are required to undergo a background check as described in C-2-a. of the applicable waiver application.

8. If KARES background screening is completed on a PDS employee, does a separate Kentucky State Police (KSP) Sex Offender Registry check need to be completed?

If a Financial Management Agency utilizes KARES to complete PDS employee background screenings, no additional registries are needed.

9. Will the Kentucky Sex Offender Registry only be required for new hires or do current PDS employees need to be checked as well?

The Administrative Office of the Courts (AOC) background screening should include any convictions in-state. If the individual has lived or worked out of state, please complete background screenings in any states in which they have worked or lived. Please review the KSP Sex Offender Registry for new employees for possible convictions or moves from out of state.

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10. If the Nationwide Sex Offender Public Website (NSOPW) is used to search an individual, does the KSP Sex Offender Registry need to be checked as well?

The NSOPW search is available at <https://www.nsopw.gov/>. If the NSOPW search is used, you do not have to complete a KSP Sex Offender Registry search. NSOPW checks all state sex offender registries.

11. What proof is required for the KSP Sex Offender Registry check?

The NSOPW has a print function for search results. The agency is only responsible for documenting the date of the search completed if no results are found.

12. Will the drug screening only apply to PDS employees?

No. drug screenings are only required for traditional agency staff.

13. Do all PDS employees need to complete a Tuberculosis (TB) risk assessment? Does this apply to existing PDS employees or only new PDS employees? When must PDS employees be compliant with this requirement?

Per Kentucky Department for Public Health regulation 902 KAR 20:205, all individuals working directly with waiver participants must undergo a TB risk assessment. A TB risk assessment varies from a TB test in that it only requires the individual to answer a series of questions. The answers will help determine if the individual has a risk of TB and should receive a TB test.

PDS employees should comply with this requirement as soon as possible. Providers can give individuals a 60-day timeframe to come into compliance and should follow up at the next monthly case management visit.

Section 3: PDS Employee Contract

14. Should the PDS employee contract align with the participant's person-centered service plan documented in MWMA?

The employee contract should include the maximum number of hours agreed upon by the participant and the PDS employee. In the case of respite services, the service can be listed as "per required need" as respite is not always used on a set schedule.

15. When does the PDS case management agency need to get a new PDS employee contract signed?

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A new PDS employee contract is required if:

1. The PDS participant or designated PDS representative adds a new PDS employee;
2. There is a modification to the number of hours the PDS employee works; and/or
3. There is a modification to the PDS employee's pay rate.

16. What paperwork needs to be completed when a PDS employee stops working?

If the PDS employee is no longer working, the employee contract should be end-dated and uploaded to MWMA.

17. Can PDS employee contracts be assigned electronically?

Yes.

18. Does an employee need to complete a new contract if signed before May 6, 2024?

No.

19. Who should sign the PDS employee contract?

The PDS employee and the PDS participant or the PDS Representative.

Section 4: PDS Employee Training

20. What are the training requirements for PDS representatives?

PDS representatives are required to complete Rights and Responsibilities training and Fraud, Waste, and Abuse training.

21. Who is required to track CPR/First Aid for participants who require it?

Participants in the ABI, ABI LTC, HCB, MPW, and SCL waivers can choose whether or not to require their employees to have CPR/First Aid certification.

As the employer of record, the participant and/or the participant's PDS representative should request proof of CPR and/or First Aid certification from the PDS employee. A copy should be provided to the Case Manager and placed in the PDS employee's personnel file.

If the PDS participant chooses not to require the PDS employee to be trained in CPR

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and/or First Aid, they must sign an attestation that is kept in the PDS employee's personnel file.

Section 5: Case Management

- 22. How frequently must PDS case managers meet with a participant face-to-face at the participant's residence? Do face-to-face monthly meetings at program sites, such as ADT or work, count?**

A face-to-face visit shall be completed quarterly in the participant's residence to assess the home environment.

Section 6: Financial Management Services (FMS)

- 23. With PDS Case Management and Financial Management being separated into two distinct services, should FMS agencies request two separate lines for each in MWMA, or use one service detail line for both and bill them separately? Can you confirm the reimbursement rate for each service now that it is separate?**

Per the waiver application effective May 1, 2024, this service can no longer be bundled. DMS is currently working with our systems teams to find a solution that reduces the administrative burden for area development districts (ADD) and community mental health centers (CMHC) that serve HCB participants and are billing the bundled service. These providers should continue to bill the bundled service until further guidance is issued.

For reimbursement rates for the bundled and unbundled services, please see the "Home and Community Based Services Waiver Rates 2023-2024" link at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

- 24. Can a participant receive case management and financial management services from the same agency?**

Providers who have historically been delivering both Support Broker/Case Management services and Financial Management (ADDs and CMHCs) are allowed to continue providing both to the same participant.

New providers that enroll and become certified to provide PDS case management or financial management are not allowed to provide both services to the same individual.

Participants must have freedom of choice when selecting a PDS case management agency and a financial management agency. These services must remain conflict-free and exemptions will not be granted.

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25. Are PDS participants eligible for rate increases? How should they go about raising rates for their employees?

Yes, services delivered PDS are included in the 21% legislature-directed rate increase. Participants and/or PDS representatives can request pay increases for their employees, as long as pay does not exceed the maximum allowable rates 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>.

If the participant and/or PDS representative is interested in increasing a PDS employee’s pay, they should contact the participant’s case manager to begin the process. Guidance regarding PDS and rate increases is available using the links below.

PDS and Rate Increase Frequently Asked Questions:
<https://www.chfs.ky.gov/agencies/dms/dca/waivers/PDSRateIncreaseFAQ.pdf>

Section 7: Respite

26. As of May 1, 2024, will Non-Specialized Respite in HCB be tracked by level of care (LOC) year only?

Yes. All waiver applications have been updated to reflect respite is tracked by LOC year.

27. Can Non-Specialized Respite take place in the community?

Per the HCB waiver application, non-specialized respite may be provided in the participant’s residence, in the community or at an Adult Day Health Care center if the participant has a prior authorization on their person-centered service plan.