Frequently Asked Questions (FAQs)

HCBS Program Renewals Submitted 12/31/14

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Summary of HCBS Setting Transition Plan Questions and Comments

1. *How do the Final Rules, the KDADS Transition Plan, CDDO impact and CSP compliance all fit together? If we were to draw a flow chart or relationship diagram of all of these parts and pieces, what would it look like, including who is responsible for doing what, by when?*

   There are three federal rules impacting the HCBS Programs in Kansas:
   - Department of Labor Final Rule – www.dol.gov/whd/homecare/
   - CMS Final Rule on HCBS (has three main parts)
     - HCBS Transition Plan for residential and nonresidential settings
     - Conflict Free requirements – TCMs, assessments, PCSP
     - Person-Centered Planning Process
   - Affordable Care Act – Health Care Mandates to Internal Revenue Service (IRS)
     - IRS issued a Revenue Procedure (Rev Proc 2013-39) for administrative purposes that requires a federal employer identification number for individual consumers who have taxes paid for their worker's on their behalf by a payroll agent to track large employer status and tax payments

2. *Is there a finalized assessment tool that CSP's can use to determine the extent to which they are currently in compliance? Has any assessment already been done and if so, where is the data that reflects compliance status?*

   KDADS is developing an assessment tool for HCBS Transition Planning, Person-Centered Planning and Conflict Free. KDADS continues to meet with the Department of Labor for Technical Assistance regarding the DOL Final Rule and its potential impact on self-directed services under the HCBS Programs. KDADS strongly encourages providers to complete a self-evaluation of their settings/facilities for preliminary compliance review of HCBS Setting Final Rule.

3. *How much actual time does each CSP have to come into compliance? Is that time different for residential, day services and case management? What is the true meaning of the 5 year window for compliance?*

   There are a number of deadlines that KDADS has to come into compliance for the different federal rules.

   - DOL Final Rule – six-month non-enforcement delay until July 1, 2015
   - CMS Final Rule
     - HCBS Transition Plan – March 17, 2019
     - Person-Centered Planning & Conflict Free – At approval of Waiver Renewal, which is approximately 90 days after submission to CMS, unless CMS gives us a different timeframe

4. *What are CSP's doing now to come under compliance? Is there any standard source of guidance they are receiving or is each provider acting separately?*

   KDADS is actively working with local, state, and federal partners to ensure compliance with the federal rules. KDADS will continue to host Provider and Consumer Lunch and Learn calls to provide guidance about the upcoming changes, answer questions, and provide updates. KDADS also hosts training and education opportunities as requested.

   - For the DOL Final Rule, KDADS will be releasing guidance on the DOL Final Rule and the steps it will take during the non-enforcement period, including proposed changes to KS AuthentiCare® and obtaining a FEIN.
     - Service providers should not make changes other than those approved in the waiver until they receive further guidance from KDADS
   - For the CMS Final Rule, KDADS has posted the Transition Plan and will be hosting Focus Groups and other opportunities for learning more about the assessment of compliance over the next 6 months
     - Proposed Workflows, Policies, Procedures, and Forms will be presented in public information sessions and Lunch and Learn calls in early 2015.
     - KDADS will continue to seek feedback on those tools at that time
   - KDADS strongly encourages providers to complete a self-evaluation of their setting/facilities for preliminary compliance review of HCBS Setting Final Rule.

5. *Do the Final Rules essentially or literally mandate that CSP's divest themselves of workshops, in their present form, or rather, require them to re-constitute the work place into some kind of integrated setting for disabled and non-disabled workers?*

   The HCBS Final Rule requires that individuals receiving home and community based services live and work in environments that are integrated in the greater community in order to received HCBS funding for services provided in those environments. This rule applies to any and all locations where HCBS services are provided, residential and non-residential.
   - CDDOs and Community Service Providers are reviewing their current services and supports and determining if those locations meet the requirements of the CMS Final Rule
   - Sheltered Workshops and other employment opportunities that have not traditionally identified as integrated employment may need to review their current design to ensure they comply with Department of Labor rules under the Fair Labor Standard Act or applicable subminimum wage rules

   CMS has not provided additional guidance on non-residential settings, so States will continue to work together to identify assessment tools and guidelines for HCBS settings that may be appropriate based on the current guidance for residential settings.

6. *If a CDDO is located on the same campus as a CSP and its administrative offices, do the Final Rules mandate a physical separation of the two?*

   Conflict of interest requirements in the CMS Final Rule are designed to ensure that the same entity responsible for monitoring service delivery is separate from the entity providing services or assessing the need for those services.
   - Allowance for administrative firewalls is limited in the regulation to geographic areas in which the provider is the only willing and able provider to perform assessments, case management and/or services. This exception is generally reserved for rural areas where provider capacity is scarce based on population size.

7. *Will there be a common source of guidance, consultation and assistance available to CDDO's and CSP's to help them understand the Final Rules compliance obligations? If so, what is that source, where is it located and how do CSP's access the available help?*

   KDADS will continue to provider guidance, consultation and assistance to CDDOs and service providers through bulletins, business meetings, conference calls, public sessions, education, presentations and training. CDDOs and CSPs can access information about HCBS programs, changes and the federal rules on the Provider Information pages of the KDADS website. KDADS strongly encourages providers to complete a self-evaluation of their setting/facilities for preliminary compliance review of HCBS Setting Final Rule.

8. *With all of the changes likely to be required for compliance with the Final Rules, what special steps are being planned and/or taken to assist our consumers in understanding and adjusting to the changes?*

   KDADS will continue the Consumer Lunch and Learn calls on a bi-weekly basis during the first 6 months of 2015. Over 150 individuals have participated in the topic-focused calls at one time. We expect to continue to have consistent involvement in those calls as a source of information and an opportunity to ask questions.

   Additionally, focus groups and roundtable opportunities will occur as well. KDADS is planning additional consumer education opportunities to address individual concerns.

9. *As parents and/or guardians, what are some of the most critical things we need to understand and be ready to respond to regarding the new requirements?*

   Parent and/or guardians should understand that the new requirements of the HCBS Setting Final Rule were developed to improve the quality of life for individuals receiving HCBS services. The impact of HCBS Final Rule will be determined based on the current residential setting of the consumer. Therefore, a consumer living in a private home with a parent/guardian/family member may not be impacted at the same level as a consumer in a provider setting. All HCBS settings will be evaluated to ensure that consumers on HCBS services are not living in settings enforcing institutional-like restrictions.

   Parent and/or Guardians should pay attention to the HCBS Final Rule and continue to provide feedback to the State on the following key areas:

   - HCBS Transition Plan
     - This is will be a long-term discussion about the future of HCBS services and how Kansas can continue to trailblaze a path to decreasing the need for institutional settings and settings that isolate an individual from the greater community
     - This Transition Planning process has the ability to help all disability groups work collaboratively to take the best of the philosophies of person-centered planning, independently living, and "no wrong door" from all areas of the disability communities to develop a Kansas system that meets the needs of aging and disabled individuals regardless of the type of disability.

   - Quality residential and non-residential services
     - What type of oversight will help improve the quality of life for individuals in those settings and ensure their rights are protected based on their needs and abilities?

    - What information would you want to know about a service or service provider to help you feel more comfortable about the provider's ability to provide supports and services to your child or family member with disabilities

- Conflict of Interest
    - How can the State meet the requirements of the Final Rule and still support creative living and working opportunities for individuals with disabilities
    - What creative options have other states used that meet the overall needs of the person that the State can present to CMS to comply with the rule
    - If you are the parent/guardian for a person 18 years of age or older on the I/DD waiver and you intend to be a paid caregiver through HCBS funding you should be aware of State regulations that require you to disclose that information to the court responsible for the guardianship. Also, you should obtain documentation from the court that it has determined it would not be a conflict for you to be a paid caregiver. Finally, you should contact the court office for the jurisdiction of the guardianship and request what specific information they want you to provide to assist the court in making its determination.

10. *In terms of some of the "settings" requirements that relate to residential situations, how do parents/guardians respond to some of the rules that are not in the best interests of our children/wards? Specifically, the requirement that consumers have access to food any time they want it is not a good idea in my son's case. He doesn't always exercise good judgment in deciding what to eat. As his guardian, I want to have a say in how that's managed. Likewise, the freedom to have visitors any time he wants is troublesome to me. My son is vulnerable enough that he could be talked into having an inappropriate visitor. I want to have a say in determining this aspect of his social interaction. My understanding from reading the CMS responses to comments is that parents/guardians can use the PCSP to spell out how they want things such as I've mentioned here to be handled. I'd like to have confirmation of my understanding.*

    An individual's rights can be limited if:

    1. There is an **assessed** need for the limitation (CMS requires this portion)
    2. The limitation is documented and included in the person-centered support plan
    3. The limitation is reviewed regularly and that review period is consistent and documented

    Any limitation to an individual's rights and choices should only be limited if that person would be a danger to themselves or others if they did not have those limitations in place. Providers have to ensure that the limitation of one individual does not become a universal limitation for all individuals in the residential or non-residential setting. Guardians are appointed by the court and given specific authority because the court has removed the individual's rights and autonomy and given them to the guardian because the person is incapable of making those types of decisions or caring for themselves. Parents who are not guardians of the individual with disabilities do not have this authority. Guardians will continue to have that authority. The proposed limitations speak to circumstances in which the guardian serves in dual roles: self-directed the care for the incapacitated person and selecting and paying themselves to provide that care. In those circumstances there is an inherent conflict of interest because the guardian sets the pay, sets the hours, signs the timesheets to verify they provided services, signs off the integrated service plan.

Summary of General HCBS Renewal Questions and Comments

1. *Can a legal guardian be a paid provider for a consumer on HCBS programs?*

   A legal guardian can be a paid provider if the court has determined that all potential conflict of interest concerns have been mitigated in accordance with KSA 59-3068.

2. *How is it determined that there is no "conflict of interest" for a guardian that is requesting to be a paid provider?*

   Conflict of interest determinations are made by the court that established the guardianship. The guardian must submit an annual report and special report a potential conflict of interest, such as being paid to provide supports for their ward.

   For additional information, please contact your local district court for more information on the process for submitting annual or special report to report potential conflicts of interest.

3. *What happens if the guardian has a "conflict of interest?*

   - The guardian can designate an appointed representative to direct the care for the individual and continue to serve as the paid care giver. This appointed representative can be a co-guardian, activated Durable Power of Attorney, or other individual who is not prohibited from serving as an appointed representative. A targeted case manager, HCBS provider, or assessor, for example, cannot be an appointed representative.

   - The guardian can continue to direct the care and hire a personal care worker to serve as the paid caregiver.

4. *What does "capable person" mean? What types of tasks are exempt in the capable person policy?*

   The capable person policy is an existing policy for the HCBS Programs. Most plans of care already apply the capable person policy.

   CMS prohibits payment to a legally responsible person who has a duty under State law to care for another person including:
   (a) the parent (biological or adoptive) of a *minor* child; or the guardian of a *minor* child who must provide care to the child; or
   (b) a spouse of a consumer

   A **capable person** is any individual who lives with a person receiving HCBS Program services, which may include guardians, relatives or friends, who is capable of completing household-related tasks regardless of whether an individual who is aging or disabled also lived in the home. The capable person cannot be paid for completing Instrumental Activities of Daily Living (IADL) tasks that the capable person would normally complete for himself or herself.

   The tasks may include, but are not limited to, the following:
   - Lawn care
   - Snow Removal
   - Shopping

- Ordinary housekeeping/laundry
- Meal preparation

The capable person policy does NOT apply to individuals who do not live in the home. It also does NOT apply to activities for daily living such as dressing, bathing, toileting, and mobility or extraordinary circumstances related to the individual's assessed needs. Each case should be reviewed during the person-centered planning process to make sure services and supports are available to meet the needs of the person receiving HCBS Program services.

5. *Does the consumer have to get an Employer Identification Number (EIN) if he/she/guardian self-directs program services?*

   The Internal Revenue Service (IRS) requires that all consumers or legal guardians who self-direct obtain an EIN. This is required for individuals who are self-directing their care and use a financial management services (FMS) provider.

6. *Can my service provider work more than 40 hours per week? Can I still receive sleep cycle support?*

   The State of Kansas is waiting for guidance on the implementation of the Department of Labor (DOL) Rule. As of December 31, 2014, the new rule was delayed until January 15, 2015, and there is an ongoing court case that may result in further delays. Therefore, no changes regarding the DOL rule, such as 40 hour worker limits or sleep cycle restrictions, have been approved by the State or CMS in a waiver at this time.

   If a consumer has been notified by their FMS provider that the provider will no longer pay for sleep cycle support, please notify your Managed Care Organization so your care coordinator can assist you in identifying a new FMS provider who will continue to pay for this service.

7. *Who determines the wage rate for the service provider?*

   Any consumers that select to self-direct services are responsible for determining the pay rate they chose for the worker. The FMS provider can provide you with information about the reimbursement rate for the services you receive, so you are aware of the rate limitation and the current minimum wage rate.

8. *Under the new changes, is self-direction available for consumers that are in the State foster care system?*

   No. Children in foster care will only receive agency-directed care while in custody of the State. Foster parents and agencies of children (with disabilities not just IDD) in the state's custody will continue to have the opportunity to choose the providers of services for agency-directed services. The transition plan and timeframe will coincide with the transition plan for the federal EIN. All services must be provided through the agency-directed service model.

9. *Does the Personal Care Service (PCS) worker have to be at least 18 years old? Is the PCS worker required to have a high school diploma?*

   KDADS has modified the proposal regarding age and education requirements for PCS following public comments. The new proposal will allow PCS workers to provide services if the worker is at least 18 years of age OR has a high school diploma/GED.

10. *Is a consumer required to transition from the Physical Disability (PD) program to the Frail Elderly (FE) once he or she turns 65?*

    No. KDADS has removed this proposal following public comments. Therefore, the consumer has the choice to remain on the PD program or transition to FE after the age of 65. However, if a person chooses to move to FE after the age of 65, the individual cannot choose to return to the PD Program at a later date.

11. *Will the State continue with the proposal for Alternative Meal Option on the Frail Elderly (FE) program?*

    No. KDADS has removed this proposal; however, consumer can continue to receive meal options through the Older American's Act (OAA).

12. *Who is responsible for providing and submitting the documentation for the Traumatic Brain Injury (TBI) and Physical Disability (PD) programs?*

    The consumer requesting TBI or PD services is responsible for providing the TBI or PD documentation to the Aging and Disability Resource Center (ADRC) at the initial assessment. The ADRC will submit the TBI or PD documentation to KDADS for review by the TBI or PD Program Manager.

13. *Background checks are the responsibility and choice of an employer. A consumer as the employer who hiring a relative or friend is not going to run a background check. In addition, they will hire their relative or friend even if they fail to meet the requirements.*

    A consumer may choose to hire a worker who does not clear the list of prohibited offenses. However, the direct service worker will not be deemed a qualified HCBS service provider. The unqualified worker cannot be reimbursed by HCBS funds.

14. *What happens if a Consumer refuses to run the check?*

    A consumer must follow with all State and Federal requirements for HCBS services.

15. *What happens when the Consumer hires the individual anyway?*

    A consumer must follow with all State and Federal requirements in order to continue receiving HCBS services.

Summary of Frail Elderly Specific Questions and Comments

1. *If an individual is required to transition from PD to FE at age 65, what will happen if the same services are not available?*

   KDADS has removed the proposal to transition participants of the PD program to FE who turn age 65 or older on or after January 1, 2015. Consumers who are currently participating in the PD program may still choose to transition to FE once they turn age 65. However, they will not be required to.

2. *If participants of the PD program are required to transition to FE at age 65, what will the state do about the Medicaid reimbursement rate for PCS under the FE program since it is lower than the PD program?*

   KDADS has removed the proposal to transition PD participants to FE at age 65. PD participants will continue to have a choice to transition if they choose, but will not be required. The current reimbursement rates for PCS under the PD and FE programs will remain the same.

3. *If an individual on the FE program chooses the alternative meal option, what will be the start date?*

   KDADS has removed the proposal for the addition of an alternative meal option on the FE program. Current FE participants may still access meals through the Older Americans Act (OAA) and may still utilize the Meal Preparation option under PCS that is currently in place on the program. KDADS has chosen to make no changes regarding meal options for the FE program.

Summary of IDD Program Specific Questions and Comments

1. *I am an IDD consumer; will I lose my targeted case manager under the conflict-free rule?*

No, the State must assure CMS that the targeted case manager must not be in conflict with the agency that performs eligibility assessment for the program and those proving services to the consumer.

2. *Has the current assessment tool used for the I/DD community been scientifically shown to be inaccurate? Where has it been shown that people are receiving unneeded or inappropriate services?*

Over time the assessment has been shown more effective at measuring some things and less effective at measuring others.

3. *MCO providing service information on I/DD. Is this not a statutory function of CDDO?*

CDDOs do have statutory functions to collect and provide certain information. It is also an expected function of the MCOs under KanCare.

4. *Will someone successfully employed and closed through DCF Voc. Rehab programs still be able to access IDD HCBS Supported Employment funding by passing the waiting list?*

Yes, they will be able to access IDD HCBS Supported Employment funding.

5. *Need more quality oversight on I/DD TCM/CDDO. Who covers insurance for workers?*

FMS providers are responsible for deducting Workers Compensation along with State and Federal Unemployment Insurance costs.

6. *The copy of the IDD plan online @ one time showed a) a reduction in slots and b) no increase in slots over a five year period. What is the state's plan to address the waiting list?*

The State will continue to bring persons off of the waiting list at times when new funding are available for the IDD program or when a person leaves the program.

7. *According to the discussion it sounds like IDD consumers will be forced to live at home with their parents until their parents are too old to take care of them. Is there not an expectation any longer that these consumers be able to live more independently, for example in a group home or in an apartment with assistance?*

Thank you for the comment. It is the States intent and the purpose of the IDD program to provide needed supports to persons who chose to live independently in the community.

8. *Would the state rather pay 800/month for residential care for a Tier 1 on the IDD waiver in lieu of fewer dollars for the person to live at home with people who care about them? Know them? When will all of these changes take effect?*

Thank you for the comment. It is the States intent and the purpose of the IDD program to provide needed supports to persons who chose to live independently in the community.

9. *What role will the CDDO play? Aren't care coordinators and case managers redundant?*

CDDOs will continue to perform functions designated by the Developmental Disabilities Reform Act and corresponding regulations. Care coordinators and Target Case Managers have specifically defined roles and responsibilities under KanCare.

10. *Removing Monthly Averages from IDD in-home supports: What will the daily limit be as proposed by the state? Eight (8) hours per day or 12 hours per day?*

As stated in the program limits in the waiver proposal, eight hours per day maximum unless there is demonstrated need for more but no more than 12 hours in any given day.

11. Considering the number of aging/fragile IDD individuals served, and the number of challenging behavior individuals served, most of whom have in-home services provided by parents/guardians (many of whom are aging themselves and/or overwhelmed and exhausted by the care needs) - is the state prepared to meet the federal requirement of institutional care as required by CMS in lieu of HCBS services? And not by only offering HCBS residential group home options - but by offering full state institutional care to ensure the health and safety needs of the aging/fragile and high needs population that is now being provided at a fraction of the state institution costs by parents, guardians and family members? Is there a plan in the proposed changes that addresses situations where mitigation of the guardian conflict can't be resolved and the state must decide to approve current placement when state institution may be the only alternative?

The State requesting the commenter to contact the program manager directly to ensure the State clearly interprets this inquiry in order to provide needed response to the inquiry.

12. The Summary of Proposed Changes specific to the IDD Program, 2. Says "Kansas has standardized the definition of Personal Care and removed the Alternative Service Title of 'Personal Assistant Services' ". Please clarify what this means. The current Personal Assistant Services (PAS) is specific to self/participant -directed services. Does this mean that the current PAS services available for self-directed services will be called something else? If so, what?

The different waiver programs have had different names for attendant care. As part of the renewal, the waiver names for the different attendant care services will be the same.

13. *Respite Care ID/DD Please confirm if the benefit becomes only an overnight benefit or a respite service that can be used anytime, the number of hours that per night that may be used and if the benefit will be modified to reflect an hourly rate. If the benefit is going to be modified from a per diem to an hourly rate, please confirm what the monthly and annual limits will be.*

Currently, respite care is only an overnight benefit. Modification to future overnight respite benefits are not being discussed and KDADS is <u>not</u> proposing changes to the service at this time.

Summary of PD Program Specific Questions and Comments

1. *PD waiver: the reimbursement rate is different between PD and FE waiver. By requiring PD individuals to move to FE @ age 65, their direct service workers will take about a 40 cent an hour pay cut and potentially be providing a higher level of care as the individual has aged. This may cause direct service workers to leave and leave individuals without workers. Is the state concerned about potential lawsuits that could come from this disparity from those not grandfathered in?*

   KDADS leadership has made a decision to not submit this proposal to CMS for approval following public feedback.

2. *Who will be responsible (what entity) for obtaining the "relevant documentation" for PD waiver?*

   If proposal is approved by CMS, the consumer or legal guardian applying for service is responsible for obtaining the required documentation for KDADS review. The consumer requesting TBI or PD services is responsible for providing the TBI or PD documentation to the Aging and Disability Resource Center (ADRC) at the initial assessment. The ADRC will submit the TBI or PD documentation to KDADS for review by the PD Program Manager.

3. *PD Please confirm that PD participants over the age of 65 and previously approved by KDADS to remain on the PD waiver will be allowed to continue receiving services through the PD waiver/grandfathered or whether the expectation is that these participants transition to the FE waiver.*

   KDADS Secretary has made a decision to allow PD participants the option to remain on the program when participants reach age 65.

4. *PD Please confirm if KDADS intends to put into place an exception process for individuals wishing to remain on the PD wavier after turning 65, and if so, what criteria KDADS will apply in making that decision*

   Please see response to # 3.

5. *If we had physical disability (PD) waiver people moving to the frail elder (FE) waiver, they would lose some services. If the state comes up with expedited service delivery if we could see a person qualifies functionally and financially we could put them on services. We have concern for people who need services but have to go through the 45-day period.*

   Please see response to # 3.

Summary of TBI Program Specific Questions and Comments

1. *Who is responsible for determining if a consumer is making progress?*

   A consumer's progress will be gathered and reported by the services worker/therapy provider and submitted to the consumer's selected Managed Care Organization (MCO). The consumer's MCO will review the provider data, track and trend rehabilitative progress and make recommendation to KDADS on consumer's continued eligibility for the TBI program. The MCO will submit the data and supporting documentation to KDADS for final review and determination of the consumer's continued program eligibility.

2. *Who was involved in the development of the progress reporting assessment tool?*

   The State has developed a draft of the standardized instrument in partnership with MCO representatives. The final draft of the proposed progress report will beposted for public comment prior to implementation. The instrument was developed based on Kansas' study of the Mayo-Portland and IRF PAI (CMS In-Patient Rehab Assessment Instrument) in addition to the current Independent Living Plan and Transitional Living Skills Assessment utilized by the Kansas TBI program in the past. The purpose of the progress reporting tool is not to capture every personal goal a consumer sets for his/herself. It is intended to measure progress on goals that will assist the consumer towards independence with the necessary tasks of daily living at home and community.

3. *What does it mean that a consumer cannot have "a primary diagnosis of SPMI or IDD?"*

   - If the consumer experiences the Traumatic Brain Injury (TBI) prior to the age of 22, the consumer must first be assessed for an Intellectual or Developmental Disability (IDD) by the Community Developmental Disability Organization (CDDO). Services may be available on the HCBS-IDD program depending on the results of the IDD assessment. The consumer must be denied program eligibility for IDD prior to TBI eligibility consideration.

   - If the consumer has a primary diagnosis of SPMI, the consumer must provide required TBI supporting documentation for review and determination of meeting program eligibility requirements. If the documentation does not support a TBI, the consumer will not be approved for HCBS-TBI services.

4. *What is the State definition of a "professional assessment" for documentation that is unclear?*
   The State will require a licensed professional (for example a licensed clinician, physician or neuropsychologist) assessment for documentation that does not clearly support a traumatically-acquired brain injury.

5. *Can cognitive therapy services be provided by licensed speech therapists?*

   Yes, a licensed speech therapist can provide cognitive therapy for the purpose of assisting and individual to regain impaired or loss of speech as a result of the TBI. The therapist must work within the scope of practice as defined by state law and regulation.

6. *Does a consumer receiving services through the HCBS-TBI program have to transfer to the PD program when the consumer turns age 65?*

The consumer may remain on the chose to remain on the HCBS-TBI program providing the consumer continues to meet program eligibility criteria.