

Final Proposed Changes Following Public Comment Period to HCBS (Autism, TA & SED) Programs

Public Comment Period: **Posted:** January 26, 2015 **Ended:** February 25, 2015
KDADS 503 S. Kansas Ave, Topeka, KS 66603 * www.kdads.ks.gov * 785-296-4986 * HCBS-KS@kdads.ks.gov

The proposed changes were open to public comment and feedback from 01/26/15 through 02/25/15. Public comments/ inputs regarding the proposed changes were reviewed by KDADS leadership. The final proposal is summarized in this document and will be posted to the KDADS website at www.kdads.ks.gov.

The final summary of the proposed changes in the HCBS Amendment affects the following programs:

- Autism
- Technology Assisted (TA)
- Severe Emotional Disturbance (SED)

Specific to the HCBS Transition Plan: The **draft** amendments, which include the Transition Plan for Home and Community-Based Services (HCBS) Settings and proposed changes for each HCBS Program's amendment were available online at www.KDADS.ks.gov for public comment until February 25, 2015. Only the areas of proposed changes identified in the summary document were available for public comment.

Access to these documents was provided in three ways:

- **Online:** www.KDADS.ks.gov – on the home page
- **In Person:** At your local Community Developmental Disability Organization (CDDO), Aging and Disability Resource Center (ADRC) or Center for Independent Living (CIL).
- **By Email:** HCBS-KS@kdads.ks.gov, *Subject Line:* HCBS Amendment Information Request

The following opportunities were provided for submission of comments and feedbacks:

- **In Person:** February 4th and 5th, 2015, from 10-12 and 2-4 in Wichita and Topeka
- **Conferencing option:** *On the following dates call:* 1-866-620-7326, code 4283583031
February 10, 2015, Dial: 1-866-620-7326, Enter: PIN 5826736791#
11:00-12:00 noon and (repeat session) 5:30-6:30pm
- **By Email:** HCBS-KS@kdads.ks.gov – **Subject:** HCBS Amendment Public Comments
- **By Mail:** KDADS, Attn: HCBS Programs, 503 S. Kansas Ave, Topeka, KS 66603.
- **By Fax:** 785-296-0256, Attn: HCBS Programs

After the public information sessions, an online survey was made available for individuals, providers, and stakeholders to submit comments and questions to KDADS. A summary of KDADS responses will be posted on the KDADS website. The summary of responses and any changes to the proposals will be submitted to CMS as part of the amendment submission.

Summary of Proposed Changes to HCBS Programs and Transition Planning

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The following proposed changes were open for public comment. Language specific to these proposed changes were presented in person, via conference call and posted on the KDADS website at www.kdads.ks.gov. The public was provided various opportunities to submit suggestions for changes, questions, comments and concerns at public events, online, in-person or email to the HCBS-KS@kdads.ks.gov email box. The summary of public comments and questions relating to proposed changes are addressed within this document. Any comments unrelated to the proposed changes were addressed individually.

A. General Proposed Changes to the HCBS Autism and TA Programs

1. Proposed Requirement of Background Checks for All Services and Assessors
2. Proposed Addition of Prohibited Offenses Language to All Services
3. Updated language from consumer/individual/person/beneficiary to participant
4. Proposed language applicable to All HCBS services for the purpose of mitigating conflict of between guardian and consumer
5. Proposed language for the purpose of mitigating other conflicts of interests
6. Proposed language allowing military individuals and immediate family to bypass waitlist upon KDADS approval in the event there is a waiting list.
7. Clarified roles and responsibilities of MCO (made the roles and responsibilities more clearly defined)
8. Proposed reserve capacity to serve waiver eligible participants admitted to an institution for a temporary stay
9. Proposed change to HCBS program specific transition plan

B. Program Specific Proposed Changes

1. Autism Program
2. TA Program
3. SED Program

Following completion of public comment sessions and KDADS review of the comments/ inputs gathered by Wichita State University as submitted in person and through online survey, the following final proposed changes; including summary of public comments will be submitted to CMS for review and approval on March 17, 2015:

A. General Proposed Changes to the HCBS Autism and TA Programs

1. The state is proposing adding a list of Kansas Prohibited Offenses language to provider qualifications for all HCBS programs.

KDADS Response: Public comments were minimal regarding this proposal. The majority of the responses were positive and related to a need for greater oversight in this area. The second most common comments were related to what happens if a consumer refuses to comply with the background requirements or chooses to hire someone with a prohibited offense anyway.

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Based on the comments received, the comments were in favor of identifying prohibited offenses, therefore, the State will move forward with requesting approval from CMS of this requirement. Additional information and clarification on the changes will be shared in HCBS Policy and FAQs.

2. To comply with CMS requirement for mitigating conflict, KDADS is proposing to add language consistent with all HCBS programs operated in Kansas for the purpose of mitigating conflict of interest. In response to public comments, the State is proposing the following language for review and approval.

KDADS Response: Consistent with 42 CFR 442.301, the State will ensure policies; processes and protocols are in place to support the person-centered planning process and to mitigate potential conflicts of interest. CMS reviewed and approved the KanCare service planning process during the transition to managed long-term services and supports, so KDADS understands that process to be compliant with the regulations on person-centered planning and potential conflicts. KDADS has requested technical assistance from CMS to ensure that all other elements of the HCBS programs are compliant with CMS conflict of interest regulations.

3. Proposed Updated Language from Consumer/Individual/Person/Beneficiary to Participant.

KDADS Response: The State received no comments regarding this proposed update, the State will move forward with the updated language.

4. The State proposed language applicable to all HCBS providers related to guardianship. The Autism and TA programs received few comments from providers, consumers and stakeholders. As a result of public comments, the State has proposed the following language to be adopted by the Autism and TA program when applicable:

KDADS Response: A court appointed legal guardian is not permitted to be a paid provider for the participant unless a court determines that all potential conflict of interest concerns have been mitigated in accordance with KSA 59-3068. It is the responsibility of the appointed or proposed guardian to report any potential conflicts to the court and to maintain documentation regarding the determination of the court.

- i. A copy of the special or annual report in which the conflict of interest is disclosed will be provided to the State or designee.
- ii. If the court determines that all potential conflict of interest concerns have not been mitigated, the legal guardian can:
 - a. Select another family member or friend to provide the HCBS services to the participant. If a family member or friend is not available, the participant's selected MCO or FMS provider can assist the legal guardian in seeking alternative HCBS service providers in the community; OR
 - b. Select another family member or friend (who is not a legal guardian or DPOA) as a representative to develop or direct the plans of care. In that case, the MCO will obtain the participant's written consent of delegated representative to act on behalf of participant, initially and annually thereafter; OR
 - c. Select other legal guardian or activated DPOA to serve as the appointed representative to act on behalf of the participant.

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d. An exception to the criteria may be granted by the State when a participant/guardian lives in a rural setting and the nearest agency-directed service provider available to provide services is in excess of 50 miles from the participant residence.

5. The State proposed language allowing military individuals and immediate family to bypass waitlist upon KDADS approval, and the response was overwhelmingly positive and favorable.

KDADS Response: The State will proceed with the requested change as originally proposed for public comments to CMS for approval.

6. The State proposed language related to clarifying the roles and responsibilities of MCOs and received favorable responses related to holding the MCOs accountable, improving transparency on roles and responsibilities, and giving more guidance to the MCOs.

KDADS Response: The State will proceed with the requested change as originally proposed for public comments to CMS for approval.

7. The State proposed reserve capacity to serve waiver eligible participants admitted to an institution for a temporary stay and received favorable public comments in support of this change. This will allow consumers to remain program eligible up to 90 days from date of admission without having to reapply for services.

KDADS Response: The State will proceed with the requested change as originally proposed for public comments to CMS for approval.

8. Proposed HCBS Setting TA Transition Plan that will assess and ensure Kansas provider settings meet the requirements of the HCBS Final Setting Rule within 5 years.

KDADS Response: The State is proposing changes to the HCBS Setting Transition timeline for Autism, TA and SED program, the new time line will be written as follows:

By July 1, 2014, KDADS will produce an overall summary of:

- Public comments received
- Inventory and description of all HCBS settings
- How setting types meet or does not meet the federal HCBS settings requirements

By April 1, 2015, KDADS will provide a detailed assessment plan

- To complete assessments for HCBS Settings
- To identify areas of non-compliance that needs to be addressed
- To identify the number of individuals affected by the HCBS Settings Rule

By January 1, 2016, KDADS will publish a compliance plan

- To ensure the health and safety of participants who reside in locations that need to meet corrective action requirements for setting to come into compliance during the State's specified transition timeline
- To move individuals to compliant settings, if necessary

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From January 2015 through August 2015, KDADS will begin conducting HCBS provider assessments for all residential and non-residential settings and develop a compliance summary from each provider type and identify areas of non-compliance for further review. This assessment will provide the basis for identifying, settings in compliance with the rule, settings requiring heightened scrutiny, and settings no longer qualifying for HCBS.

KDADS will assess all provider setting types to identify the scope of compliance and measure the impact on individual HCBS participants within 180 days of approval of the Transition Plan, but no later than August 30, 2015. The assessment will identify non-compliant settings and barriers to achieving compliance that require additional time to address. The assessment will also identify settings which are deemed ineligible by the new rule for which relocation of HCBS participants will be required. Kansas will use self-assessments, attestations, policy and record review, participant and provider interviews, observations, and other tools to determine compliance with respect to the new rule.

In calendar year 2015, the State will review existing policies, regulations and statutes to identify barriers to compliance or conflicting information that hinders compliance. State law changes will be initiated to ensure compliance with HCBS Settings Rule and other elements of the CMS Final Rule, if appropriate.

By January 2016, KDADS will notify all HCBS settings and providers of their compliance with the new Final Rule. All settings that are currently in compliance will be identified and shared publically with MCOs, stakeholders and consumers. HCBS settings that need additional time to come into compliance will be notified of non-compliance areas, timelines for compliance, and benchmarks to achieving compliance within the shortest timeframe possible.

By January of 2016, for settings that are not compliant with the new Final Rule, the State will ensure appropriate transitions by working with stakeholders and community partners. Between July 2015 and December 2015, additional stakeholder input will be required to develop a comprehensive plan for transition. However, all HCBS participants will be afforded education and information about their rights and responsibilities prior to a transition from a non-compliant setting to a compliant setting. By July 1, 2016, the State will establish a transition policy for relocation or transition to compliant settings after public input and comment that will address the process for transition, ensure choice is provided, and identify timeframes for appropriate transition.

By March 17, 2019, the Kansas Department for Aging and Disability Services (KDADS) will ensure that all residential and non-residential locations where a person receives home and Community-based services (HCBS) through Medicaid allows individuals to be integrated in and have support for full access to services in the greater community, including opportunities to seek employment and work in competitive integrated settings, to control personal resources, and to engage in community life in the same way as individuals not receiving Medicaid HCBS.

During 2015, KDADS will assess all HCBS Settings by August 30, 2015 to identify settings that comply with the HCBS Setting Rule and review state law and program policies that may need to be changed. KDADS will make changes to the Transition Plan in 2015 to set more specific timelines and benchmarks for compliance. By December 31, 2015, KDADS will identify all providers and

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individuals who may be affected by the changing rules and seek public input on timeframes and benchmarks. During 2016, KDADS will notify all HCBS providers of non-compliance areas, timelines for compliance and benchmarks for achieving compliance in the shortest period possible. KDADS may change the Transition Plan to ensure compliance with the HCBS Setting Rules based on the State's Transition Plan for Access, Compliance and Public Engagement.

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B. Summary of Final Proposed Changes to Specific HCBS programs

1. HCBS Autism Program

- A. Proposed Change: KDADS has developed a transition plan for the HCBS/Autism settings that will assess and ensure Kansas provider owned/controlled settings meet the requirements of the HCBS Final Settings Rule within 5 years.
- B. Proposed Change: KDADS had updated the language in the waiver to be consistent with current state agency names and responsibilities, as well as streamlining the language for program members.
 - a. References to SRS have been changed to DCF
 - b. References to “individuals,” “beneficiaries or “children” have been changed to “participants.”
- C. Proposed Change: KDADS will ensure that firewalls to mitigate conflict of interest regarding service plan development and service delivery will be put in place to be consistent with the current CMS requirement regarding Conflict Free Case Management.
- D. Proposed Change: KDADS is proposing a reserve capacity for Military Families and children who enter into facilities for temporary stays.
 - a. Military families entering into the waiver
 - b. This will allow military families who were receiving services through a Tricare or like program, in the event the program develops a waitlist, may bypass the waitlist.
- E. Participants who enter into temporary stays in a facility or hospital for 90 days or less.
 - a. This will ensure that the child who enters into a temporary stay due to an emergency or an unforeseen situation will not lose their place on the waiver during their stay.
- F. Proposed Change: KDADS has made general grammatical changes or corrections throughout the waiver from Appendix A to Appendix J, as needed.
- G. Proposed Change: KDADS has proposed the requirement of a family to utilize Family Adjustment Counseling, Parent Support and Training (Peer to Peer), or both as a requirement for a one-time, one-year extension request on the Autism Waiver.
 - a. Currently the Autism Waiver is a three (3) year early intensive therapy program. The program allows families to request a one-time extension for a fourth (4th) year on the Waiver as long as the Autism Specialist and MCO demonstrate that an additional year on the program would be beneficial for the child. KDADS has recognized that a large part of the therapy component for the child is preparation of the family for life outside of waiver services.
 - b. Since the waiver is a short-term program, part of the success within and outside of the waiver for continuing therapy is ensuring that the family has the tools needed to continue to work with the child once the program is complete or the child no longer meets functional eligibility. The success of the child lies not only in their individual success with their progress, but also with the family’s progress in coping and preparation to work with the child in the future.
 - c. To address this KDADS proposes a family must utilize one or both of the aforementioned services based on the assessed need of the MCO. KDADS recommends

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that these services are utilized prior to an extension request to prepare the child and family for life outside of the waiver in hopes that the child will make strides that will not require a transition to the I/DD program. Thus, the family will have the tools necessary to transition back and take control without therapy services.

- H. Proposed Change: KDADS is clarifying the review team for 4th year extensions on the Autism Waiver. Currently the waiver references the “review team” but it does not detail who those individuals are. The proposed change for the review team and their requirements will be:
- a. Autism Specialist identifies the need for a 4th year and submits all required documents with a written recommendation to the participant’s MCO.
 - b. The MCO will review the required documents that have been sent from the Autism Specialist and then forward all materials on the waiver program manager with the MCO written recommendation.
 - c. When all required documentation (including a 1 written recommendation from the Autism Specialist and 1 written recommendation from the MCO) reaches the Autism Program Manager, the packet will be reviewed and the program manager will notify the family via an NOA of the decision for the extension.

Request for Public Feedback: (Proposed Changes for Future Renewal in 2016)

Proposed Change: KDADS is proposing adding a component of program oversight will allow the following: Autism Specialist monitoring of IIS service delivery; delivery of Family Adjustment Counseling and Parent Support and Training as identified in the IBP/POC via distance technology. The HCBS/Autism program currently has a provider capacity issue. This will allow an exception for participants who live in areas that the MCO can demonstrate a need for services, but cannot identify a face to face provider base for an Autism Specialist.

- a. This is STRICTLY an exception to the face-to-face delivery model subject Autism Program Manager’s approval for those individuals in extreme rural areas or areas that have no providers.
- b. This will not replace face-to-face service delivery.

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2. Final Proposed Changes Specific to HCBS-TA Program

A. Clarified Service Definition/ Limitations for Personal Care Services (PCS):

- a. PSA will be changed to the standardized definition of personal care service (PCS). Kansas will continue to offer both agency and consumer directed option.
- b. Clarified PCS is not a default level of care for technology dependent and medically fragile children served on this program.

KDADS Response: KDADS received a few comments regarding the proposed standardized definition of Personal Care Services and PCS not to be utilized as a default level of care. In general, the feedback was positive, therefore the State will move forward with the proposed language. The provider qualification for the TA program will remain unchanged.

B. Clarified Service Definition/ Limitations for Specialized Medical Care Service (SMC): The language proposed 1) the participant's service needs will be determined using the MATLOC acuity/risk assessment tool 2) services cannot be provided to more than two TA children in the same home 3) If more than one TA child resides in the same home and the level of care needs cannot be met by an attendant level, the MCO must meet the level of need with appropriate staffing.

KDADS Response: The State received general comments and clarification regarding this proposal, including comments from an attendee who is not aware of a home with more than 2 TA children in the same home. Based on the lack of concerns directed to this proposal, the State will move forward with the submission to CMS for approval.

C. Proposed Modification of FMS Service Definition to Reflect the Hybrid Model: Kansas is promoting true choice by making options available to the participant or responsible party by entering into an employment support with the Financial Management Services (FMS) provider and to work collaboratively with the FMS to ensure the receipt of quality needed support services from direct support workers. The participant retains the sole responsibility as the common law employer. FMS service will be provided through a third party entity. For detailed information about the language related to FMS model, please review the FMS Proposed Changes document on the KDADS website.

KDADS Response: The State received comments and input relating to unemployment and worker's compensation. The State is working with Federal/State agencies to gain better understanding of these concerns and will provide additional guidance to FMS providers through state policy.

D. Proposed Clarification to Participant-Direction Opportunities for Personal Care Service.

KDADS Response: Consistent with previous public sessions, the State received a few of comments with concerns relating participant-direction and labor laws and requirement for consumers/guardians to obtain a federal employer identification number. The proposal and decisions relating to participant-direction were made in preparation for compliance with the new Federal Law issued by DOL.

E. Proposed Updated Language from Consumer/Individual/Person/Beneficiary to Participant.

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KDADS Response: The State received no comments regarding this proposed update, the State will move forward with the updated language.

- F. Modified plan of care development process, including utilization of the MATLOC assessment instrument for evaluating the participant's level of nursing acuity needs.

KDADS Response: The State received a few comments regarding the use of the MATLOC tool for the purpose of service plan development. Overall, the comments and feedbacks were favorable from participants, care coordinators and stakeholders. The State will modify the language for plan of care development process to include the MCO care coordinator's responsibility to refer to the MATLOC instrument when evaluating a consumer's service needs.

- G. Adding the list of prohibited offenses for the purpose of direct service worker background check clearance, which states "Any provider or provider assistant found identified to have been substantiated for prohibited offenses as listed in KSA 39-970 & 65-5117 is not eligible for reimbursement of services under Medicaid funding."

KDADS Response: The State received favorable comments regarding this proposal, the proposed language will be submitted to CMS for review and approval.

- H. Proposed amended language for children in state custody served on the TA program for (PCS) service and is subject to CMS approval: 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.

KDADS Response: The State received comments and feedback with concerns on this proposal, following thoughtful consideration, the State will move forward with the submission of proposed language for CMS review and approval.

- I. Modified language regarding voluntary termination and language relating to incidences leading to involuntary termination of an individual's choice to participant direct. "Participants" refers to the participant or representative directing the care on behalf of the participant.

KDADS Response: The State received few comments relating to this topic and will move forward with the modified language.

- J. Kansas is requesting to reserve capacity to maintain waiver eligibility for individuals admitted into an institution on a temporary basis up to 90 days. For the purpose of this program, participants who are hospitalized will continue to maintain TA program eligibility up to 90 days, at the end of this 10 period, the participant's eligibility will end. The participant will need to reapply for HCBS services when a pending discharge date has been determined.

KDADS Response: The State received favorable responses to this proposal in support of the reserve capacity. The State will request approval from CMS to reserve capacity for participants who may require short-term re-hospitalization and maintain program eligibility.

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K. Proposed elimination of Health Maintenance Monitoring

KDADS Response: The State received no comments regarding this proposal; as a result the State will propose an elimination of this service at the renewal.

Request for Information: (Proposed Changes for Future Amendments or Renewals):

KDADS is proposing addition of Specialized Day Service for TA waiver eligible children under the age of 5, whose parents is seeking employment outside the home. The purpose of this proposal is to support an individual's integration into the community, increase socialization and promote deinstitutionalization of an individual's quality of life.

KDADS Response: The State received positive feedback on this proposal as a future service option for families. The State will consider the addition of this service in future as part of a program renewal.

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3. Final Proposed Changes Specific to HCBS-SED Program

- A. KDADS is proposing adding language to the Plan of Care signature page that states that when a consumer and their parents or guardians signs the Plan of Care they acknowledge that their preferences were reflected in the Plan of Care.

KDADS Response: The State received favorable comments regarding this proposal; the proposed language will be submitted to CMS for review and approval.

- B. KDADS is proposing adding language to the Plan of Care to identify the consumer's desired outcomes.

KDADS Response: The State received favorable comments regarding this proposal; the proposed language will be submitted to CMS for review and approval.

- C. KDADS is proposing adding language to the Plan of Care to identify less intrusive methods of meeting the consumer's need that have been tried, but did not work.

KDADS Response: The State received one comment regarding this proposal that asked for clarification about the process. The proposed language will be submitted to CMS for review and approval.

- D. KDADS is proposing adding a requirement that KDADS will determine if a consumer is clinically eligible for the SED waiver. The current process is that the Community Mental Health Center (CMHC) completes the functional assessment and determines if a consumer is clinically eligible for the SED waiver. In the proposed process the CMHC will complete the functional assessment and send the information to KDADS for the clinical determination. Once a consumer is found to be clinically eligible for the waiver the Department of Children and Family will assess if that consumer is financially eligible to be on the waiver. Once a consumer is found to be both clinically and financially eligible for the waiver the CMHC will develop the Plan of Care and submit it to the Managed Care Organization (MCO) for review and approval. After the Plan of Care is approved by the MCO the CMHC will provide the waiver services to the consumer.

KDADS Response: The State received comments and feedback with concerns on this proposal, following thoughtful consideration, the State will move forward with the submission of proposed language for CMS review and approval.

- E. KDADS is proposing adding language that if there is a waiting list, military individuals and their immediate dependent family members who have been determined program eligible may bypass waitlist upon approval by KDADS.

KDADS Response: The State received one comment regarding this proposal that asked for clarification about the process. The proposed language will be submitted to CMS for review and approval.