

To: FMS Providers for H CBS Programs, Sunflower, Amerigroup, and United Health Care
From: Aquila Jordan, Director for HCBS Programs,
CC: Kari Bruffett, Secretary, KDADS; Joe Ewert, Interim Commissioner, KDADS
Date: June 30, 2015
Re: Effective Dates of Proposed Changes related to HCBS Programs

The following Policy Informational Memorandum for HCBS Programs is related to the effective date for implementation of proposed changes to the Home and Community Based Services (HCBS) Programs, including the Frail Elderly (FE) Program, Intellectual/Developmental Disabilities (IDD) Program, Physical Disability (PD) Program, and Traumatic Brain Injury (TBI) Program.

FMS Manual Compliance

The changes to Financial Management Services (FMS) are not dependent on approval from CMS of the HCBS Program waiver renewals. Therefore, FMS Providers must update their Policy and Procedure Manuals and have available for review and verification by KDADS within six months of the effective date of the FMS Manual, dated April 10, 2015. The FMS Manual and attachments are available on the KDADS website.

Background Checks for HCBS Programs

FMS providers will need to be compliant with the new background requirements for all new direct support workers effective August 1, 2015. All existing DSWs must have a complete and updated background check by September 30, 2015, if there is not a current background check that meets the requirements in the FMS Manual on file with the FMS provider. KDADS is currently working on a process with the Survey, Certification and Credentialing Commission to allow HCBS providers access to the criminal record check system used by adult care homes that will reduce costs for conducting the KBI criminal record checks. Training and information about using the KDADS process for record checks will be provided by the end of July to all FMS providers.

Unpaid Client Obligation

Consistent with the FMS Manual 6.5.D.8.d, if a participant does not pay client obligation, the MCO should be notified, and the FMS provider should maintain a policy related to notification for non-payment of client obligation to the participant and to the MCO, which includes language explaining to the participant that failure to pay client obligation timely each month could impact continued eligibility for HCBs. The MCOs will manage participants who move from one FMS provider to another to try an avoid paying client obligation and will be responsible for reviewing the participant's ability to self-direct his/her own care safely in the community.

Federal and State Withholding Criteria

Under the Affordable Care Act, some provisions became effective on January 1, 2015, that impact pay to DSW related to the participant-employer. Please review the Kansas DOL and IRS updates related to changes to FICA requirements. For example, parents employed by their adult disabled child are exempt from FICA and FUTA. Kansas has a similar requirement in place for Kansas State Unemployment Insurance Tax (see p. 5 of <http://www.dol.ks.gov/files/pdf/kcns430.pdf>). The IRS has stated that this exemptions is mandatory, and the parent is not permitted to pay FICA tax, even if he/she wants to do so. For more information about exclusions, see <http://www.irs.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income>.

Workers Compensation

FMS providers should ensure business practices related to worker's compensation comply with the KS DOL rules related to Worker's Compensation. Consumers who are not required to have Worker's Comp may elect worker's compensation coverage.

Minimum Age for Direct Support Workers

Effective July 1, 2015, new direct support workers must be at least 18 years old to be qualified providers. Existing DSWs over the age of 16, but under the age of 18, must be 18 years old by December 31, 2015 to continue to be a qualified provider.

Designated Representative Forms

MCOs will be collecting and maintaining documentation of the completed Designated Representative Form and ensuring the FMS provider receives a copy. This document should be completed annually and at the time the Integrated Service Plan is developed. However, there are times when a guardian or activated Durable Power of Attorney's situation may change throughout the year and may require the guardian or activated durable power of attorney to need to be paid as a caregiver for the individual receiving services. The FMS provider should direct the consumer and/or guardian or activated durable power of attorney to the MCO Care Coordinator to assist them with completing this form and submitting it to both entities. However, an FMS provider may accept a copy of the Designated Representative Form from the guardian or activated durable power of attorney or assist them in completing the form to facilitate compliance with the Conflict of Interest policy.

FMS providers should have a policy around educating providers about the use of this form. The Designated Representative Form suffices in lieu of a court determination. Therefore, a guardian does not need to go to court or have a court determination on the potential conflict of interest if he or she chooses to use the Designated Representative Form to mitigate the potential conflict of interest. Additionally, if there is a co-guardianship, one guardian can direct the care and the can be paid to provide the supports, without a court determination, by completing the Designated Representative Form. Please review the policy regarding paid guardians and conflict of interest for effective dates.

Changes to Integrated Service Plans and Authorizations

MCOs may be updating the Integrated Services Plans for individuals over the next several months to come into compliance with the proposed changes to the waivers including working with the foster care system to move individuals who are currently self-directed to agency directed supports and individuals with IDD to limit personal care services to 12 hours per day. At this time, individuals should follow their existing Integrated Service Plans and work with their care coordinator to understand any changes being made.

Department of Labor Rule

The Department of Labor Rule is currently being considered by the appellate court. A decision from the court is expected in the summer of 2015, which may require the state to revisit self-directed services that may be impacted by this rule. At this time, direct support workers can work the hours identified on the plan of care in excess of 40 hours without being paid overtime under the Fair Labor Standards Act.

Self-Direction for Children in State Custody

Children in the custody of the Secretary of the Kansas Department for Children and Families may receive HCBS services. The State has decided that it will not hold an employer identification number for self-direction under the HCBS Programs consistent with the vendor/fiscal agent model for FMS. Children currently receiving self-directed services will be transitioned to agency-directed services over the next six months to allow for capacity building of agency-directed personal care services to meet the needs of these children. The MCOs have begun activities to transition children at the time of their annual assessment to available agency-directed providers. Effective July 1, 2015, new authorizations for children in foster care will be for agency-directed services identified as an assessed need for the child.