



# KDADS STANDARD POLICY

<b>Policy Name:</b>	Enhanced Care Services (ECS)	<b>Policy Number:</b>	E2016-007
<b>Commission:</b>	Community Services and Programs	<b>Date Established:</b>	01/01/2016
<b>Applicability:</b>	HCBS Programs for FE, IDD, PD and TBI	<b>Date Last Revised:</b>	08/21/2017
<b>Contact:</b>	<a href="mailto:HCBS-KS@kdads.ks.gov">HCBS-KS@kdads.ks.gov</a>	<b>Date Effective:</b>	01/01/2016
<b>Policy Location:</b>	<a href="https://www.kdads.ks.gov/commissions/csp/home-community-based-services-(hcbs)/hcbs-policies">https://www.kdads.ks.gov/commissions/csp/home-community-based-services-(hcbs)/hcbs-policies</a>	<b>Date Posted:</b>	11/30/2016
<b>Status/Date:</b>	Revised 08/21/2017	<b>Number of Pages:</b>	10
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## Purpose

This policy is a modification to sleep cycle support services as proposed in the HCBS program amendments for Frail Elderly (FE), Intellectual and Developmental Disability (IDD), Physical Disability (PD), and Traumatic Brain Injury (TBI). The current definition of sleep cycle support is replaced with Enhanced Care Service (ECS), the rate will change to reflect the new service; however, the billing code (T2025) and unit limitations (1 unit is a minimum of 6 hours) will not change.

## Summary

This policy is designed to provide clarification of the regulations and limitations in accordance with requirements documented in the approved Home and Community Based Services (HCBS) waiver programs for reimbursement of enhanced care services (ECS) for all HCBS waiver populations. ECS provides supervision and/or non-nursing physical assistance during a participant’s normal sleeping hours in his/her place of residence. ECS are available to a participant who demonstrates an assessed need for a minimum of 6 hours of sleep support within a 24-hour period and the assessed need cannot be met by the use of personal emergency response services (PERS), informal support or other services. The ECS worker shall be available to provide immediate supervision or physical assistance with tasks such as, but not limited to, toileting, transferring, mobility, and medication reminders as needed. The ECS provider shall be prepared and capable of contacting a doctor, hospital, or medical professional in the event of an emergency.

## Entities/Individuals Impacted

### Managed Care Organizations:

- Amerigroup Kansas
- Sunflower Health Plan
- United HealthCare

### HCBS Program Participants and Agency-Directed providers for the following waivers:

- Frail Elderly (FE)
- Intellectual/Developmental Disability (IDD)
- Physical Disability (PD)
- Traumatic Brain Injury (TBI)

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## I. Policy

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- A. Enhanced Care Services (ECS) are available to a participant who demonstrates an assessed need for a minimum of 6 hours of sleep support within a 24-hour period and the assessed need cannot be met by the use of personal emergency response services (PERS), and informal support or other service such as Personal Care Services (PCS). Specific to IDD, ECS service may only be authorized when there is a physician's documented assessed need for overnight support to ensure the health, safety and welfare of the participant.
1. ECS can be provided as a self-directed or agency-directed service.
    - a. Self-directing participants or designated representatives are responsible for hiring, supervising, and terminating the employment of PCS worker; understanding the impact of those decisions; and assuming responsibility for the results of those decisions.
    - b. Self-directing participants and agencies employing ECS workers shall comply with applicable state and federal employment laws.
    - c. Self-directing participants employing ECS workers are subject to the same quality assurance standards as other ECS providers including, but not limited to, completion of the tasks identified on the Integrated Service Plan (ISP).
  2. ECS is designed to provide supervision and/or non-nursing physical assistance during a participant's normal sleeping hours in his/her place of residence.
    - a. ECS must be provided in the participant's home or HCBS setting as approved by the MCO and authorized on the ISP. Service providers must remain in the participant's home for the duration of this service provision based on the participant's normal sleep cycle as documented in the participant's ISP.
    - b. The ECS worker shall be able to be awakened and available to provide immediate supervision or physical assistance with tasks such as toileting, transferring, mobility, and medication reminders as needed.
    - c. The ECS provider shall be able to be awakened and capable of contacting a doctor, hospital, or medical professional in the event of an emergency.
    - d. ECS is intended to provide support during a participant's normal sleep cycle and may include non-nursing help with toileting, mobility, etc.
  3. Participants in State custody cannot receive ECS.
  4. Sleep Cycle Support services are now referred to as ECS but the same billing code identified in each HCBS program is maintained (T2025). Providers shall bill ECS as one unit; however, ECS workers shall be paid in accordance with participant or agency-direction and state and federal requirements.

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## B. Limitations

1. Only one unit (a minimum of 6 hours) is allowed within a 24-hour period.
  - a. ECS, in combination with other HCBS services, cannot exceed 24 hours within a 24-hour period.
  - b. ECS shall not be authorized when a participant resides in an assisted living facility (ALF) residential health care facility (RHCF), residential care facility (RCF), home plus, boarding care home, or residential supports for individuals with intellectual and development disabilities that the participant has selected as a provider.
  - c. Reimbursement of this service is provided as a flat rate. It is the responsibility of the employer to ensure adherence to all applicable labor regulations.
  - d. Only one ECS worker shall be paid for services at any given time of the day. In order to prevent payment for overlapping of services, ECS workers shall not be paid for services when another HCBS Program service is being provided on the same time on the same day (*i.e.* ECS workers cannot provide services while a participant is receiving PCS or is in therapy). The only exception is when justification for a two-person lift or transfer is documented on the ISP as necessary to meet the health and welfare needs of the participant.
  - e. ECS workers shall neither work nor be paid for providing ECS, PCS or other HCBS Program services for multiple HCBS Program participants at the same time.
2. ECS shall not duplicate any attendant care services provided through the HCBS program, Medicaid State Plan, a third party, through informal supports, or by any other method.
3. For the HCBS-FE Program, ECS are provided as a crisis exception service if the participant meets 5 of the 6 criteria listed below:
  - a. Lacks family or friends within close proximity to provide daily informal supports.
  - b. Has Adult Protective Service confirmation of self-neglect or abuse.
  - c. Lives in a rural or frontier area that is either more than 50 miles from any provider or the participant lives alone.
  - d. Has a severe cognitive impairment.
  - e. Is in the end stages of an illness and receiving hospice care.
  - f. Scores a “4” in toileting, transferring, medication management/treatment, and walking/mobility.
4. ECS cannot be provided by a participant’s legally responsible person (spouse or parent of a minor child) or any individual residing in the home with the participant however, exceptions may be authorized under one or more of the following conditions in accordance with the approved HCBS waiver

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- a. The participant lives in a rural area, in which access to a provider is beyond a 50 mile radius from the participant’s residence, and the relative or family member is the only provider available to meet the needs of the participant.
  - b. The participant lives alone and has a severe cognitive impairment, physical disability, or intellectual disability.
  - c. The individual has exhausted other support options by the MCO, and absent ECS would be at significant risk of institutionalization.
5. All limitations regarding capable person or informal support shall be applied in accordance with the respective HCBS waiver.
  6. The Exceptions to Limitations present in Section II of the Personal Care Services (PCS) policy shall apply to ECS. Please see verbiage below:

#### Exception to Limitations

##### A. Conflict of Interest Policy

1. A conflict of interest exists when the person responsible for developing the ISP to address functional needs is also a legal guardian, durable power of attorney (DPOA) or Designated Representative and that person is also a paid caregiver for the participant. Federal regulations prohibit the individual who directs services from also being a paid caregiver or financially benefitting from the services provided to an individual (42 CFR 441.505, as amended).
2. A guardian or individual authorized as an A-DPOA may be paid to provide supports if the potential conflict of interest is mitigated.
3. Refer to the KDADS Conflict of Interest Policy for additional information regarding appointing a designated representative. The MCO is responsible for collecting required documentation that the conflict of interest has been mitigated, and FMS providers are required to maintain a copy of the documentation in the participant’s file.

##### B. Health Maintenance Activities

1. In accordance with the Healing Arts Act and the Nurse Practice Act, Health Maintenance Activities can only be performed by a licensed physician or nurse.
  - a. Nursing assistance can be provided without delegation or supervision if provided for free by friends or members of the participant’s family (informal supports), as incidental care of the ill participant by a domestic servant, or in the case of an emergency.
  - b. Nursing assistance can be provided as part of PCS directed by a participant, or on behalf of a participant in need of in home care, when the nursing procedure has been delegated via a written physician/RN statement to a participant who the physician or nurse knows or has reason

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to know is competent to perform those activities.

- c. If authorized on the participant’s ISP, a licensed physician or nurse shall provide a written delegation for the following health maintenance activities:

- (1) Monitoring vital signs
- (2) Supervision and/or training of nursing procedures
- (3) Ostomy care
- (4) Catheter care
- (5) Enteral nutrition
- (6) Wound care
- (7) Range of motion
- (8) Reporting changes in functions or condition
- (9) Medication administration and assistance

2. For agency-directed PCS workers:

- a. An attendant who is a certified home health aide or a certified nurse aide shall not perform any health maintenance activities without delegation and supervision by a licensed nurse or physician pursuant to K.S.A. 65-1165.
- b. A certified home health aide or certified nurse aide shall not perform acts beyond the scope of their curriculum without delegation by a licensed nurse.
- c. An agency shall maintain documentation of delegation by a licensed physician or nurse not employed by the agency. Agencies are responsible for ensuring appropriate supervision of delegated health maintenance activities.
- d. Failing to properly supervise, direct or delegate acts that constitute the healing arts to persons who perform professional services pursuant to such licensee’s direction, supervision, order, referral, delegation or practice protocols could result in discipline by the Board of Healing Arts.

3. For self-directing participants:

- a. A participant who chooses to self-direct care is not required to have the PCS supervised by a nurse or physician to perform health maintenance activities if:
  - (1) Health maintenance activities can be provided without direct supervision “. . . if such activities in the opinion of the attending physician or licensed professional nurse may be performed by the participant if the participant were physically capable, and the procedure may be safely performed in the home.” K.S.A. 65-6201(d); and

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(2) Health maintenance activities and medication administration and assistance are authorized, in writing, by a physician or licensed professional nurse.

b. The participant’s failure to properly supervise or direct health maintenance activities delegated to the participant by a physician or licensed professional nurse could result in the termination of self-direction for those activities.

#### 4. Medication Administration and Assistance

##### a. Provided in a Licensed Facilities

(1) Any resident may self-administer and manage medications independently or by using a medication container or syringe prefilled by a licensed nurse or pharmacist or by a family member or friend providing this service gratuitously, if a licensed nurse has performed an assessment and determined that the resident can perform this function safely and accurately without staff assistance.

(2) Any resident who self-administers medication may select some medications to be administered by a licensed nurse or medication aide. The negotiated service agreement shall reflect this service and identify who is responsible for the administration and management of selected medications.

(3) If a facility is responsible for the administration of a resident’s medications, the administrator or operator shall ensure that all medications and biologicals are administered to that resident in accordance with a medical care provider’s written order, professional standards of practice, and each manufacturer’s recommendations.

##### b. Provided in a Private Residence

(1) A KDHE Licensed or Medicare Certified Home Health Agency can provide nursing delegation to aides with sufficient training. The nurse delegation and training shall be specific to the particular participant and their health needs. The qualified nurse retains overall responsibility.

(2) Medicare Certified Home Health Agencies and state Licensed Home Health Agencies may perform medication administration and assistance in accordance with their license.

(3) Self-directing participants employing PCS workers who have a written physician’s or registered nurse’s statement to delegate

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health maintenance activities, including medication administration and assistance, is responsible to supervise PCS workers and train them to administer medication according to the physician's orders.

## C. Provider Requirements

### 1. ECS Workers

- a. With the exception of the IDD waiver, ECS workers shall be 18 years of age or older, or have a high school diploma or equivalent, and meet the provider qualifications for providing ECS as defined in the HCBS Program waiver.
- b. For the IDD waiver, ECS workers shall be 16 years of age or older and meet the provider qualifications for providing ECS as defined in the HCBS IDD Program waiver.
- c. All ECS workers shall have all background checks with no prohibited offenses prior to providing support services in accordance with the respective HCBS waiver requirements.

### 2. Financial Management Services (FMS)

- a. Participants who are self-directing ECS must also receive Financial Management Services (FMS) to provide the participant information, assistance and support with ministerial employer-related functions such as payroll and tax withholding.
- b. FMS providers provide information related to state and federal rules, employer duties, and HCBS program requirements and responsibilities. FMS providers provide assistance with employer-related functions, referral to community options, and understanding the options available related to participant-direction.
- c. Refer to the FMS Manual for policies related to FMS.

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## II. Procedures

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### A. Assessment and ISP

1. ECS is provided based on the assessed needs of the participant. The participant's needs are assessed by the selected Managed Care Organization (MCO) and identified on the ISP
2. The MCO shall assess individuals currently receiving sleep cycle support and receiving PCS to identify need for ECS.
3. The participant's ISP shall document the assessed need of the participant for this service, beyond what can be provided through Personal Emergency Response System (PERS) services, other HCBS services, as well as informal and community supports.

### B. Termination/Closure

1. Consistent with the HCBS Criterion for Notification of Service Status, the MCO shall provide appropriate notice to the participant regarding the status of services, including whether notification

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to the State could result in termination of services or HCBS Program eligibility.

2. When an involuntary termination occurs, the MCO shall apply safeguards to assure the participant’s health and welfare remains intact and shall ensure continuity of care by offering the participant or family a choice of alternative services, if applicable. If the participant chooses the alternative services, the MCO shall coordinate services according to the individual's assessed health and safety needs.
3. At any time the participant’s services are changed or terminated, the KanCare MCO shall assess the participant’s need and determine if other service options are needed or available, provide the participant with a choice of services and providers, if applicable, and ensure the participant receives appropriate services for assessed needs. The ISP shall include person-centered planning and documentation or information related to the transition from self-directed services to agency-directed services to ensure the participant’s health and welfare needs are met during the transition.
4. The MCO shall issue a written Notice of Action with appeal rights to the participant for any decrease in or termination of services identified on the ISP. Any action or adverse determination resulting in the termination, suspension, or reduction of Medicaid eligibility or covered services shall require that Notices of Action be provided in accordance with 42 CFR Part 431, Subpart E. The MCO shall also notify any providers identified in the ISP of any changes or terminations, including the effective date of the termination.

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### III. Documentation

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#### A. Documentation

1. ECS paid for by the HCBS Program are limited to the number of hours/units authorized on the ISP and in the AuthentiCare® Kansas system. ECS workers for both agency-directed and self-directed employers are required to use AuthentiCare® Kansas. This is necessary to comply with federal requirements to ensure the health safety of participants, and to prevent fraud, waste, and abuse.
  - a. Documentation must be generated at the time of the visit. Generating documentation after this the time of the visit is not acceptable.
  - b. Documentation must be clear and self-explanatory, or reimbursement may be subject to recoupment.
  - c. Documentation must be uploaded to AuthentiCare Kansas ® by the Financial Management Services (FMS) provider and in the participant’s file with the MCO, as applicable.
2. MCOs shall maintain applicable documentation in the participant’s file and document in the participant’s ISP, as appropriate.

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### IV. Definitions

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- A. Activities of Daily Living (ADL) – basic functional activities necessary on a daily basis to allow an individual to live in a safe and healthy environment. Examples of these activities include bathing, dressing, grooming, toileting, maintaining continence, eating, mobility, and transferring (such as moving from a bed to wheelchair).



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- B. Health Maintenance Activities – nursing assistance or performing of a nursing procedure defined as the practice of healing arts, including monitoring vital signs, supervision and/or training of nursing procedures, ostomy care, catheter care, enteral nutrition, wound care, range of motion, reporting changes in functions or condition, and medication administration and assistance. Health Maintenance Activities shall be performed by a licensed physician or nurse or shall be delegated and supervised by a licensed physician or nurse to an individual who is competent and capable of performing the activities.
- C. Home – a location in which a participant makes his or her residence that cannot be defined as institutional in nature. For HCBS, the home and community settings of the participant shall comply with the HCBS Setting Final Rule. See HCBS Setting Final Rule Transition Plan for more information.
- D. Instrumental Activities of Daily Living (IADL) - Activities necessary on an indirect basis, not directly related to functional skills, to ensure that the individual can continue to live in a safe and healthy environment. Examples of these activities include but not limited to meal preparation, shopping, laundry, housekeeping, money management, and medication management.
- E. Integrated Service Plan of Care (ISP) - This term replaces the term plan of care that details the services a participant needs and wants and the provision of these services. The managed care organization’s care coordinator develops the ISP with the, participant and the participant’s support team.
- F. Participant- person determined to be eligible for Medicaid-funded home and community-based waiver services.
- G. Self-direction- participants who exercise employer authority over some or all of the home and community-based services the participant needs to live in their community and accept the responsibility for taking a direct role in managing these services. Within the self-directed model and Kansas state law, participants employ director workers and “make decisions about and direct the provisions of services, which include, but are not limited to, selecting, training, managing, paying and dismissing of a direct service worker.” (K.S.A. 39-7,100).

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## **Authority**

### **Application for 1915(c) HCBS Waiver – Appendix C: Personal Care**

- KS.0224.R05.00 (IDD) – effective July 1, 2014, proposed amendment effective January 1, 2016
- KS.0304.R04.00 (PD) – effective January 1, 2015, proposed amendment effective January 1, 2016
- KS.4164.R05.00 (TBI) – effective July 1, 2014, proposed amendment effective January 1, 2016
- KS.0303.R04.00 (FE) – effective January 1, 2015, proposed amendment effective January 1, 2016

### **Federal Authority**

- 42 CFR §441.301(c)(4)(5): HCBS Setting Final Rule
- 42 CFR §441.12, §440.167 – Personal Care Services
- 42 CFR §431.200 *et seq* – Fair Hearings for Applicants and Beneficiaries
- Instructions, Technical Guide and Review Criteria for version 3.5 of the Application for a 1915(c) Home and Community-Based Waiver, released January 2015

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### State Authority

- K.S.A. 39-7,100 – Home and Community Based Services Program
- K.A.R. 30-5-300 – Definitions
- K.A.R. 30-5-307 – Family Reimbursement
- K.A.R. R. 30-5-308 – Non-Supplementation of HCBS

### Related Information

#### PUBLIC COMMENT PERIOD:

**Posted Online: December 18, 2015**

**Comment Period Ends: December 27, 2015**

**Questions & Comments submitted to [HCBS-ks@kdads.ks.gov](mailto:HCBS-ks@kdads.ks.gov)**

#### RELATED CONTENT:

**KDADS website – HCBS Programs - <https://www.kdads.ks.gov/commissions/csp>**

**Policy - [https://www.kdads.ks.gov/commissions/csp/home-community-based-services-\(hcbs\)/hcbs-policies](https://www.kdads.ks.gov/commissions/csp/home-community-based-services-(hcbs)/hcbs-policies):**

- Personal Care Services Policy
- Conflict of Interest Policy
- Background Check Policy
- Criterion for Notification of Service Status Policy

#### Manuals:

- Participant-Direction FMS Provider Manual - <https://www.kdads.ks.gov/docs/default-source/General-Provider-Pages/HCBS/Provider/Provider-FMS/2015-04-10-6-5-fms-manual.pdf?sfvrsn=2>