

**November 7, 2023**

## **HCBS Appendix K Unwinding Notice- **UPDATED****

The State of Kansas submitted Appendix K provisions to the Centers for Medicare and Medicaid Services (CMS) in response to the COVID-19 pandemic. These provisions allowed the state to request temporary modifications to the state's Home and Community-Based Services (HCBS) programs during the Public Health Emergency (PHE) declaration.

The COVID-19 Public Health Emergency (PHE) ended on May 11, 2023. Unless included and approved by CMS in a formal waiver amendment, **Appendix K provisions will end six months after the end of the federal PHE for COVID-19, which will be November 11, 2023.**

**CMS is in the process of reviewing Appendix K provisions. While KDADS awaits CMS approval of Appendix K, flexibility is being extended to the following:**

- **Paid Family Caregiving**
- **Virtual Delivery of Services**

**KDADS will continue to update stakeholders during the review process with CMS.**

Please note that verbal signatures, which were allowed during the PHE but not as an Appendix K provision, will also be discontinued. Although they are not included in the table below, it's essential to be aware that this practice will not continue **after May 11, 2023**. All other PHE provisions related to HCBS and not otherwise mentioned in this notice have ended as of May 11, 2023.

Below is a summary of the Appendix K provisions and what will be happening for each on November 11, 2023.

<b>Appendix K Provision</b>	<b>Ending on 11/11/23?</b>	<b>Additional Notes</b>
<b>1.</b> Require monthly monitoring for participants who receive services less than monthly, but do not remove them from HCBS.	<b>Yes – ending</b>	• Beginning 11/12/23, HCBS participants must receive at least one service every 30 days to remain eligible for HCBS.
<b>2.</b> Waive the daily limit for Personal Care Services	<b>Yes - ending</b>	• PCS hours will return to the benefit limits and criteria specified within each approved HCBS waiver for exceeding the benefit limit.
<b>3.</b> Personal Care Services (PCS) and Respite may be provided to more than one individual at a time and in a group setting.	<b>Yes – ending</b>	• PCS and Respite must be provided on a 1:1 basis. Any changes to the 1:1 requirement would require either a waiver amendment or be included in a HCBS waiver renewal submitted by KDADS to CMS.

<p>4. Participants may receive certain allowable services while living with a paid caregiver.</p> <p>The state will also allow payment to family caregivers or legally responsible individuals, suspending the conflict-of-interest mitigation for PCS.</p>	<p><b>No – keeping</b></p>	<ul style="list-style-type: none"><li>• For Personal Care Services, the state intends to keep this provision pending Waiver amendment approval from CMS.</li></ul> <p>This means that for adult waiver participants, the assessed need for ADLs and IADLs may be provided by and paid to a family member or other person living in the home unless provided through natural supports. For minor children, the parent or foster parent is responsible for providing typical parental support. The assessed need related to the child’s disability may be provided by and paid to a parent or family member living within the home unless provided through natural supports.</p>
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Appendix K Provision	Ending on 11/11/23?	Additional Notes
		<ul style="list-style-type: none"> <li>Enhanced Care Services will continue to be required to be provided by someone living outside of the home.</li> <li>Waiver requirements for Conflict of Interest will need to be followed. Spouses, parents of minor participants, and other legal representatives can only be paid via the waiver if they meet certain conditions as outlined in the waiver and policy.</li> <li>PCS cannot be authorized as a substitute for Specialized Medical Care when SMC is a need and chosen by the family. When PCS is approved, parents can continue to self-direct it and be paid. Health Maintenance Activities can be completed by a PCS worker when a physician or RN statement is present.</li> </ul>
<p>5. HCBS Services may be provided wherever the participant is located.</p>	<p><b>Yes – ending</b></p>	<ul style="list-style-type: none"> <li>Services must be delivered in the approved setting as identified within each HCBS waiver unless an exception is granted as allowed by the requirements within each waiver.</li> </ul> <p>Examples of what is ending include, but are not limited to, IDD Day Services being provided in a Residential setting or PCS being provided in a temporary emergency place of residence.</p>
<p>6. BI participants may receive services in an assisted living, group home, or home plus setting.</p>	<p><b>Yes – ending</b></p>	<ul style="list-style-type: none"> <li>Previous service requirements and settings will be reinstated.</li> </ul> <p>Brain Injury services may no longer be provided in an Assisted Living, Homes Plus, or Group Home setting.</p>
<p>7. Respite services may include respite provided in a facility-based setting.</p>	<p><b>Yes – ending</b></p>	<ul style="list-style-type: none"> <li>Respite services will return to in-home, 1:1 requirement.</li> </ul>
<p>8. Allow relatives of waiver beneficiaries to provide services prior to background check and training.</p>	<p><b>Yes – ending</b></p>	<ul style="list-style-type: none"> <li>The KDADS background check policy will return to full effect. This means persons providing HCBS services cannot start until the required background checks have been completed.</li> </ul>
<p>9. CPR/First Aid training will be allowed to be completed online rather than in person.</p>	<p><b>Yes – ending</b></p>	<ul style="list-style-type: none"> <li>Training requirements return to their previous requirements.</li> </ul>
<p>10. Personal Care Services may substitute for Specialized Medical Care.</p>	<p><b>Yes – ending</b></p>	<ul style="list-style-type: none"> <li>If SMC is authorized and the member/family chooses it as a service, then it must be provided by a RN or LPN under the supervision of a RN. Parents will not be paid to provide PCS as a substitute for Specialized Medical Care.</li> </ul>
<p>11. The requirement to utilize EVV is not required for temporary staff or for services delivered in temporary settings.</p>	<p><b>Yes – ending</b></p>	<ul style="list-style-type: none"> <li>All staff providing services within current State EVV Policy will be required to use EVV in all allowed settings.</li> </ul>
<p>12. Personal Care Services and/or Enhanced Care Services may be provided in an acute hospital</p>	<p><b>Yes – ending</b></p>	<ul style="list-style-type: none"> <li>PCS and ECS will no longer be able to be paid when provided in acute care hospital or short-term institutional stay setting.</li> </ul>

Appendix K Provision	Ending on 11/11/23?	Additional Notes
setting and paid for no more than 30 consecutive days.		
<b>13.</b> Not comply with the HCBS settings requirement at 42 CFR 441.301(c)(4)(vi)(D) that individuals are able to have visitors of their choosing at any time, for settings added after March 17, 2014, to minimize the spread of infection during the COVID-19 pandemic.	<b>Yes – ending</b>	<ul style="list-style-type: none"> <li>• This component of the final rule will no longer be waived effective 11/11/2023. HCBS participants will be able to have visitors of their choosing at any time.</li> </ul>
<b>14.</b> Add an electronic method of service delivery allowing services to continue to be provided remotely in the home setting.	<b>No – keeping</b>	<ul style="list-style-type: none"> <li>• Certain services shall be allowed to be provided virtually. Requirements are included in the waiver amendments and included in a forthcoming KDADS policy.</li> </ul>
<b>15.</b> Allowing case management entities to provide direct services.	<b>Yes – ending</b>	<ul style="list-style-type: none"> <li>• IDD Targeted case managers will no longer be allowed to provide direct services.</li> </ul>
<b>16.</b> Allow other practitioners in lieu of approved providers within the waiver.	<b>Yes – ending</b>	<ul style="list-style-type: none"> <li>• All providers must be properly enrolled in KMAP and credentialed for each waiver and service they provide.</li> </ul>
<b>17.</b> Modify service providers for home-delivered meals to allow for additional providers, including non-traditional providers.	<b>Yes – ending</b>	<ul style="list-style-type: none"> <li>• See #16 above.</li> </ul>
<b>18.</b> Allow an extension for reassessments and reevaluations for up to one year past the due date.	<b>Yes – ending</b>	<ul style="list-style-type: none"> <li>• All eligibility reassessments and reevaluations must be completed within 365 days.</li> </ul>
<b>19.</b> Allow the option to conduct evaluations, assessments, and person-centered service planning meetings virtually/remotely in lieu of face-to-face meetings.	<b>Yes – ending</b>	<ul style="list-style-type: none"> <li>• All evaluations, assessments, and person-centered service planning meetings which previously required an in-person visit will return to face-to-face. As of Nov. 12, 2023, members must participate in the required face-to-face visits to remain on the HCBS waiver.</li> </ul>
<b>20.</b> Allow an electronic method of signing off on required documents such as the person-centered service plan.	<b>No – keeping</b>	<ul style="list-style-type: none"> <li>• MCOs have demonstrated the necessary requirements for electronic signatures to remain a method of signing.</li> </ul>
<b>21.</b> Allow qualified foster parents to be paid for HCBS services.	<b>Yes-ending</b>	<ul style="list-style-type: none"> <li>• Foster parents may not be paid for HCBS services for individuals placed in their care by Kansas Dept. of Children &amp; Families. An exception may be granted for foster parents who are LPNs or RNs to be paid to provide Specialized Medical Care under the PSUDC criteria, if they agree to not accept a foster care payment for the same timeframe. Each exception will need to be approved by KDADS.</li> </ul>