



KDADS STANDARD POLICY

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| Policy Name: | HCBS Transition Policy | Policy Number: | E2024-066 |
| Commission: | Long Term Services & Supports (LTSS) Frail Elderly (FE), Intellectual and Developmental Disability (I/DD), Physical Disability (PD), and Brain Injury (BI) waiver | Date Established: | 08/01/2024 |
| Applicability: | programs. | Date Last Revised: | 06/23/2024 |
| Contact: | HCBS Transition Specialist | Date Effective: | 08/01/2024 |
| Policy Location: | KDADS Website | Date Posted: | 08/13/2024 |
| Status/Date: | 08/13/2024- Final | Number of Pages: | 1 of 9 |
| Revision History | 9/4/2018;6/23/2024 | | |

Purpose

This policy establishes the processes and procedures for transitioning eligible individuals from institutional care settings onto the Frail and Elderly (FE), Intellectual and Developmental Disability (I/DD), Physical Disability (PD), and Brain Injury (BI) waiver programs, and for transitioning HCBS participants from non-compliant settings to compliant settings.

Summary

This policy establishes the processes and procedures for requesting, managing, and determining eligibility for individuals in an institutional care setting to transition into the community and onto HCBS waiver services. Additionally, this policy establishes the right for individuals to receive advance notification regarding actions that may adversely impact program participation and continued eligibility within home and community-based settings. The State intends to preserve the ability of the individuals to transition into the least restrictive setting in which they choose to reside and/or receive services.

Entities/Individuals Impacted

- FE, PD, BI waivers Functional Eligibility Assessing Entity (Assessing Entity)
- Community Developmental Disability Organizations (CDDOs)
- Home and Community Based Services (HCBS) waiver Participants
- Home and Community Based Services Providers
- Kansas Department of Aging and Disabilities (KDADS)
- Kansas Department of Health and Environment (KDHE)
- Managed Care Organizations (MCOs)
- Centers for Independent Living

I. Policy

- A. The MCO shall coordinate and encourage active participation in pre-transition activities as early as possible with the individual/guardian, the institution or the non-compliant setting provider, and the appropriate support team members.

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B. Transitions from institutions and/or non-compliant settings shall be into community settings as identified in the applicable HCBS waiver and consistent with 42 C.F.R. § 441.301(c)(4) HCBS Settings Final Rule.

C. Institutional Transitions:

1. The following are considered institutional settings:
 - a) Nursing Facility
 - b) Skilled Nursing Facility which provides skilled nursing services or skilled rehabilitative services
 - c) State Hospitals (Kansas Neurological Institute, Larned, Osawatomie, and Parsons)
 - d) Institution for Mental Disease (IMD)
 - e) Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF-IID)
 - f) Psychiatric Residential Treatment Facilities (PRTF)
 - g) Brain Injury Rehabilitation Facilities (BIRF)
 - h) Hospitals
2. Individuals wanting to transition from an institutional setting to a community setting shall be identified via self-report, the Minimum Data Set (MDS), community resource referrals, referrals from other entities such as MCOs, CDDOs, or Assessing Entities, and referrals from other individuals such as caregivers or guardians.
3. Waiver eligibility is based on the criteria in the current Centers for Medicare and Medicaid Services (CMS) approved HCBS waivers.
4. Institutional transition assistance funding related to the direct costs for transitions out of institutional settings may be provided by the MCO as an in lieu of service.
5. Transitions from the PRTF to HCBS programs involving foster children are subject to all waiver requirements for waiver access for foster children.

D. Non-Compliant Setting Transitions:

1. For the purposes of this policy, a non-compliant setting is:
 - a) Any setting determined to be out of compliance with the HCBS Settings Final Rule, commonly referred to as the Final Rule.
 - b) A provider voluntarily electing to no longer provide HCBS waiver services.

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2. Affected HCBS participants shall be entitled to and receive advance notification of findings of non-compliant settings to avoid gaps in service delivery.

II. Procedures

A. To be eligible for an institutional transition an individual shall:

1. Be a current resident of the State of Kansas.
2. Be a current resident in an approved institutional setting.
 - a) For waivers in this policy with waiting lists, the individual needs to be a current resident in an institutional setting for a minimum of sixty (60) consecutive calendar days before being considered eligible for an institutional transition.
 - b) The sixty (60) consecutive calendar days requirement can be met even if the individual transitions between institutional settings so long as the individual did not a return to the community during the sixty (60) consecutive calendar days.
 - c) For individuals choosing to participate in the KanGoHome Money Follows the Person Program, the individual needs to be a current resident in an institutional setting for a minimum of sixty (60) consecutive calendar days before being considered eligible for a Money Follows the Person institutional transition.
3. Meet the HCBS waiver program eligibility criteria for the waiver they are transitioning to.
4. Complete an approved applicable functional eligibility assessment.
5. Meet the Medicaid financial eligibility criteria.

B. The formal institutional transition referral will be submitted to KDADS by the MCO:

1. The MCO shall submit an institutional transition referral to KDADS a minimum of thirty (30) calendar days prior to the anticipated discharge date. Urgent referrals with less than thirty (30) calendar days' notice may be considered on a case-by-case basis. The referral shall include the following:
 - a) A completed Referral and Notification Form with the following information:
 - i. KAMIS number
 - ii. Patient location including type of facility and facility contact information;
 - (a) If a discharge address is pending or the individual wishes to explore a location prior to committing to a lease, then the MCO will note that location is pending and provide an update once established.

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(b) A valid discharge address is required to confirm if the location is allowable per the waiver rules, and to ensure proper coding is completed post discharge.

- iii. Admit date or initial admit date for consecutive hospital/facility stay if the requested waiver has a waitlist for an institutional transition or is a KanGoHome MFP referral.
- iv. The primary ADRC or CDDO pre-discharge and post-discharge.
- v. Reason for referral including member input and statement that the member has been educated on service options for the requested waiver.
- vi. Reason for discharge location (i.e. ALF/Homes Plus vs independent residence);
- vii. For members discharging to ALF/Homes Plus, whether they desire to explore independent residence options in the future.
- viii. Evidence for programmatic eligibility which can include diagnosis(s), medical condition(s), Social Security Administration disability determination and/or age as appropriate per waiver. Evidence as to how the eligibility criteria relates to needed supports in the community via waiver services.

(a) Recent medical records or an attestation form from a treating physician to verify a current need relevant to the requested waiver may be required when applicable.

- ix. Description of identified services and resources (HCBS or community) identified to support the member's success in the community.
- x. Confirmation if the individual has been provided a referral to the Center for Independent Living (current location or discharging location depending on need), or if the offer to refer has been declined by the participant; document reason for refusal.

b) A 3160 Form with section I. Consumer Information completed by the MCO and section II. HCBS Program Eligibility Information completed by the Functional Eligibility Assessor including the Functional Assessment score.

2. For individuals transitioning to the IDD waiver:

- a) Initial eligibility should be determined in accordance with the HCBS Intellectual/Developmental Disability Program Eligibility Determination Policy # M2023-054.
- b) Prior to referral for transition, the MCO shall confirm the program eligibility determination for the individual with the individual's CDDO.

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- c) If program eligibility is confirmed, then the MCO shall request a functional assessment for the individual from the individual's CDDO.
 - d) If functional eligibility is confirmed, then the MCO shall conduct the needs assessments to determine the waiver services and the MCO shall notify the CDDO when the needs assessment is complete and the individual is ready for provider options counseling.
 - e) Once functional eligibility is determined, and once options counseling is complete, the CDDO shall inform the MCO via email evidence of the functional assessment and the options counseling.
3. For individuals transitioning from a State Hospital:
 - a) The State Hospital Discharge Planner shall assist the individual in initiating the Medicaid application process.
 - b) Once Medicaid eligibility is determined, and once the MCO is chosen, the MCO shall begin the process for evaluating and assisting with the transition process.
 4. KDADS shall respond to the MCO within five (5) business days of receiving the institutional transition or KanGoHome MFP referral and shall indicate, on the Referral and Notification Form, either approval, denial, or if additional information is needed. If additional information is requested by KDADS from the MCO, additional time will be required to process the request.
 - a) If an individual is not found eligible for an institutional transition, then KDADS shall send a Notice of Action (NOA) stating the decision to the requesting member and/or legal representative and provide a copy via email to the MCO.
 - b) If an individual is found eligible for an institutional transition, then KDADS shall send the approved Referral and Notification Form to the MCO.
 5. The MCO shall notify KDADS that the individual has discharged to the community within one (1) business day.
 6. KDADS shall send the 3160 Form, noting the date the individual transitioned to the community, to the applicable HCBS Program Manager, MCO, KDHE, and Assessing Entity or CDDO within two (2) business days of notification of discharge.
- C. Providers unable to comply with the Settings Final Rule, or otherwise electing to no longer provide HCBS waiver services, shall be required to participate in the transition process to a compliant home and community-based settings for participants they are currently serving.
1. Providers shall ensure that an individual or guardian receives a minimum of 180 calendar days' notice of its decision to terminate its participation as a waiver provider.
 - a) Providers shall notify the individual or guardian through certified mail.

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- b) Providers shall notify, through mail or email, KDADS, HCBS Compliance Specialists, MCOs they are contracted with, state licensing staff, and any ADRCs, CDDOs, or other entities they are affiliated with.
2. For settings found non-compliant through the KDADS HCBS Compliance Portal and other ongoing monitoring activities, the HCBS Compliance Unit shall notify the provider and MCO to begin transition proceedings.
3. Within ninety (90) calendar days of the provider termination deadline, the MCO shall obtain an executed informed consent documentation from the individual or guardian. The informed consent documentation shall state the following:
 - a) The reason and date services will no longer be authorized;
 - b) Information and referral on how to select a compliant provider; and
 - c) The implication the individual's choice may have on their waiver eligibility and services if the option to remain is a possibility.
 - d) A copy of the executed informed consent documentation shall be sent to the HCBS Transition Specialist.
4. Providers shall work with their MCOs and person-centered planning team members to develop a transition plan for HCBS participants impacted by transition proceedings.
 - a) The transition plan shall provide adequate time for the individual or guardian to convene a service planning team meeting, make an informed choice, and select an alternate compliant provider.
 - b) The transition plan shall be the cumulative effort of the provider, the MCOs, the person-served, the natural and professional supports, and KDADS. This can include feedback from Targeted Case Managers (where applicable), CDDOs, the KanCare Ombudsman, the MCO Care Coordinator, State Licensing, Quality Review staff, family, community members, and all other forms of natural support. Natural supports mean personal associations and relationships typically developed in the community that enhance the quality and security of life for people. They can include family members, neighbors, teachers, church members, co-workers, friends, housemates, classmates, club members, etc.
 - c) The transition plan shall reflect the preferences and needs of each individual affected. Choice of all compliant setting types shall be offered to individuals and as required for the waiver type.
 - i. If the individual or guardian is willing to be relocated, then such choice shall also include compliant setting types in other parts of the state. The choice of

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settings provided to the individual shall be documented and designate the individual's choice of setting in the person-centered service plan.

- d) If the individual or guardian have the option to continue services from the current non-compliant provider, then the transition plan shall inform them of the costs of services for which they will be responsible.
 - i. If the individual chooses to remain in the non-compliant setting as outlined in the transition plan, then the MCO shall notify KDADS via the Referral and Notification Form thirty (30) calendar days prior to the anticipated date of services no longer being authorized for the non-compliant setting.
 - ii. If the decision to remain will result in overall HCBS waiver ineligibility, then KDADS will issue a Notice of Action to the individual and/or guardian upon receipt of the Referral and Notification form.
5. Providers who are determined to be noncompliant by KDADS with the requirements outlined in Section II.C.1-4 of this policy may be at risk to have HCBS payments for participants in that setting paused or recouped back to the date of the transition notification.
6. The MCO shall follow up with all affected HCBS participants within sixty (60) calendar days post-transition to ensure the individual is satisfied and has adjusted to the change in setting.

III. Documentation/Quality Assurance

- A. The Referral and Notification Form shall be completed by the MCO and submitted to KDADS. KDADS shall return it to the MCO upon its determination of approval or denial of the transition request.
- B. The MCO shall request the functional assessment via the 3160 Form from the Assessing Entity or CDDO.
- C. The applicable section of the 3160 (III) shall be filled out by KDADS reflecting approval/denial for the associated HCBS waiver.
- D. The MCO shall notify KDADS, via email, within one (1) business day if the individual transitioned and services were authorized in the compliant home and community-based setting.
- E. The MCO shall notify KDADS, via email, within one (1) business day if an individual did not discharge as planned.
- F. The MCO shall notify KDADS, via email, within five (5) business days if an individual rescinds their choice to transition to the community.
- G. The MCOs will report to KDADS the number of individuals who have completed a successful transition and remained in the community for thirty (30) calendar days, 180 calendar days, and one (1) year.
- H. Assessing Entities, CDDOs, and MCOs shall comply with all KDADS data reporting requests.

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- I. MCOs shall comply with the requirements for Person-Centered Service planning as indicated in the HCBS Person-Centered Service Plan policies on the KDADS website.
- J. KDADS shall notify and work with the MCOs in the event HCBS payments need to be halted or recouped.

IV. Definitions

Assessing Entity – Entity responsible for the FE, PD, and BI functional eligibility assessments.

Business Day – Any day that is not a Saturday, a Sunday, or a legal holiday. A legal holiday includes any day designated as a holiday by any statute or regulation of this state. In computing any period of time in this policy, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

CDDO – Community Developmental Disability Organization. Single point of entry for an individual or family to obtain services through the intellectual/developmental disabilities (IDD) system in the State of Kansas. Entity contractually responsible for the IDD HCBS functional eligibility assessment.

Centers for Independent Living- Centers for Independent Living (CILs) provide independent living services for people with disabilities. These programs provide tools, resources, and supports for integrating people with disabilities fully into their communities to promote equal opportunities, self-determination, and respect.

Compliant Setting – Setting where Medicaid HCBS waiver funds are billed and have been determined fully compliant with 42 C.F.R. § 441.301(c)(4).

Institutional Setting – For the purposes of this policy, institutional settings include Nursing Facilities, State Hospitals (Kansas Neurological Institute, Larned, Osawatomie, and Parsons), Institution for Mental Disease (IMD), Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF-IID), Psychiatric Residential Treatment Facilities (PRTF), Brain Injury Rehabilitation Facilities (BIRF) and Hospitals.

Non-Compliant Setting – Setting that has not met Settings Final Rule requirements or is otherwise electing to no longer provide HCBS waiver services.

Settings Final Rule - Medicaid regulation defined in 42 C.F.R. § 441.301(c) which outlines the qualities of settings that are eligible to receive HCBS funding.

Temporary Stay – Stay in an institution that includes the month of admission and two months following the month of admission.

Authority

Federal Authorities

42 U.S.C. § 1396n

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- 42 C.F.R. § 430 *et al.*
- 42 C.F.R. § 431 *et al.*
- 42 C.F.R. § 435 *et al.*
- 42 C.F.R. § 440 *et al.*
- 42 C.F.R. § § 440.10
- 42 C.F.R. § § 440.150
- 42 C.F.R. § 440.155
- 42 C.F.R. § 440.160
- 42 C.F.R. § 440.40
- 42 C.F.R. § 441 *et al.*
- 42 C.F.R. § 441.301(c)
- 42 C.F.R. § 441.302
- 42 C.F.R. § 441.303
- 42 C.F.R. 447 *et al.*

Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 119 S.Ct. 2176 (1999)

State Authorities

State of Kansas Home & Community-Based Services 1915(c) | Medicaid Waiver Programs

Related Information

PUBLIC COMMENT PERIOD: 01/25/2024- 02/25/2024

RELATED CONTENT:

- Approved Kansas Final Rule Statewide Transition Plan (STP)

Policy:

- FE, IDD, PD, BI Eligibility Policies
- HCBS Person-Centered Service Plan Policies
- HCBS Settings Ongoing Monitoring Compliance Policy