



KDADS LTSS PUBLIC COMMENT MATRIX

Comment Period: 1/25/2024 - 2/23/2024

Program:

BRIEF DESCRIPTION OF DOCUMENT SUBMITTED FOR PUBLIC COMMENT AND COMMENT SUMMARY



KDADS LTSS PUBLIC COMMENT MATRIX

#	SENDER	PUBLIC COMMENT	KDADS RESPONSE
1.	Jeannette Livingston Sedgwick County Developmental Disability Organization	Section D. 7 - confused by the use of the word "or." Is the expectation for privacy not for both the sleeping and living unit? Then in D.7 b) the word "unit" is ambiguous - is the choice of roommates referring only to sleeping units or living unit?	<p>Thank you for your comment. This language comes from the regulation. The state standard defines to "sleeping unit" as a bedroom and the "living unit" refers to shared common areas of the home shared by housemates.</p> <p>Per the regulation, each individual shall have privacy in their sleeping or living unit:</p> <ol style="list-style-type: none"> 1. Units shall have entrance doors lockable by the individual, with only appropriate staff having keys to doors. 2. Individuals sharing units shall have a choice of roommates in that setting. 3. Individuals shall have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. 4. Individuals shall have the freedom and support to control their own schedules and activities and have access to food at any time
2.	Michelle Aiken AbilityPoint	1. HCBS monitoring and the final rule. I understand the final rule and luckily attending the seminars this summer. I would like feedback or information how best to support individuals and how to work with the providers to ensure that all persons are residing in their preferred location (per support need) and how the providers can change/rearrange households to meet those needs for specific roommates?	<p>1. Thank you for your comment. Please refer to Kansas Statutes 59-3075. Guardian's duties, responsibilities, powers and authorities. (2), in addition to Federal Regulation 42 CFR 441.301. All services and decisions should be made in consideration of the best interest of the waiver participant and their choice. It is the duty of all to advocate for and educate other parties on the rights and choices of the waiver participant and remind guardians of their role to support and not control decisions of the individual. When concerns are noted, they should be escalated up to the proper authorities including those responsible for oversight of the guardian be it the Kansas Guardianship Program or appropriate court. The HCBS Compliance Unit at KDADS is responsible for Final Rule oversight. They can be reached at -</p> <p>Final Rule Compliance Team: Phone: 1-800-432-3535 or 1-785-296-4983 (TTY: 1-711) Email: kdads.finalrule@ks.gov Mail: Kansas Department for Aging and Disability Services Attn: HCBS Programs – HCBS Compliance Team 503 S. Kansas Avenue</p>



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		<p>2. My other question is, the final rule has emphasized that whether or not a person with IDD had a guardian, they still have choices and can make those decisions, unless outlined in a risk assessment or BSP due to safety or behaviors.</p> <p>3. How can a guardian pull a person from their preferred setting where they are thriving, and close out all the services they have had for years? This did go to court and the court favored with the guardians. Where is the support in these cases? Who can help us as case managers enforce the final rule?</p>	<p>Topeka, Kansas 66603</p> <p>2 and 3. Choice in roommates is specific to the sleeping unit and does not include housemates. The emphasis on identifying and notifying the guardian if one has been appointed is to ensure that the individual served as well as the guardian are educated on the requirements in order for the individual to be able to make an informed decision regarding their services.</p>
3.	Deone Wilson, RCIL	<p>Page 2 B.1. – Note – the codes in this section do not match those I listed in Sections IIA or IIC.</p> <p>Page 5 IIA. 2. Why are codes T2025 and S5130 included when these are services delivered in individuals homes?</p> <p>Page 6 C. 1. a)-e) – Clarification is needed to understand why the services listed require Presumed Compliance. Question - Will there be an exceptions for homeless shelters that allow attendant care? Some may not comply with the Final Rule requirements.</p> <p>Page 13 H 1. -3. – Who are “staff”? The employees of the agency providing the services? The Direct Support Workers employed by a self-directed consumer? Regarding item 3. Who are “persons-served”? Does a self-directing consumer have to be trained?</p> <p>Question – Please clarify, do only newly enrolled providers have to meet the requirements? Existing providers do not other than completing the “presumed compliance”?</p>	<p>Page 2., B.1. and Page 5, IIA. 2. Thank you for your comment. The codes in section B.1 and C.1 have different workflows in the HCBS Compliance Portal depending on how the provider responds to assessment questions to determine compliance, non-compliance or presumed compliance.</p> <p>Thank you for your comment. We are taking this under further review.</p> <p>Page 13, H.1.-3. Staff is anyone paid to complete agency direct or self-direct home and community-based services. A person-served is anyone receiving HCBS waiver services. Persons served who self-direct must be provided training.</p> <p>All providers that bill identified service codes in the HCBS Settings Ongoing Monitoring Compliance Policy must be initially assessed and also complete a recertification assessment annually as part of ongoing</p>

Commented [TS[1]]: Kaitlyn, did you add this item by mistake?



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			monitoring. Providers that do not complete required assessments, risk the recoupment and suspension of HCBS funding.
4.	Nichole Hall, CDDO of Butler County	<p>Policy: C – inclusion of options counseling – what exactly is that? The options counseling “form” done by the CDDO, something done by the MCO, etc. a reference in one of the other documents regarding how a choice was made, etc.? D. 2.b – this likely goes along with the above question about options counseling – what is the expectation for the PCSP?</p> <p>Procedure: F.1.b.ii – notify the CDDO of noncompliance also.</p> <p>Documentation/Quality Assurance: F. – is this one survey or a survey for participants and another survey for guardians? What is being done with this information? G.2 – onsite monitoring – who will be doing these and how often? H.1 – HCBS Settings 5 Essential Characteristics 101 Course – training also needed for persons served, targeted case managers, CDDO staff and parents/families/guardians. When will this begin?</p>	<p>C. Evidence of notification of all available community supports available to them and supporting evidence included in the documents to support how the choice was made. The PCSP should include supporting documentation that includes the decision process and how the decision was made by the individual served.</p> <p>D.2.b. The Options Counseling form and the person-centered support plan depending on the service, shall be provided by the responsible entity and follow requirements according to the waiver type, state policy and entity contract.</p> <p>F.1.b.ii Language has been updated to state - If an HCBS participant is active and receiving services with such provider, then KDADS shall issue a written notice of noncompliance to the provider indicating the provider’s noncompliant components with the rule which shall include a deadline by which the provider shall respond with a remediation plan. The CDDO shall be notified also when noncompliance involves the I/DD waiver.</p> <p>F. It is one survey that is to be completed annually during the face-to-face visit by the MCO with the participant. The guardian’s feedback is only taken when an individual is unable to respond to the survey for themselves. The information will be submitted to the HCBS Compliance Unit monthly by the MCO for review and follow-up where needed regarding service concerns.</p> <p>G.2. Onsite monitoring will be completed by the HCBS Compliance Unit at KDADS with each provider and a sample of their settings every two years or as needed upon service complaints/concerns.</p> <p>H.1-3. We will review the suggestion of training requirements for persons-served, targeted case managers, CDDOs, and parents/families/ guardians and staff. A competency test will be required of all mandated to take HCBS Settings Final Rule Training. Some providers currently offer training</p>



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		<p>H.2 – if training is required for targeted case managers and CDDO staff they should have to take the competency test as well.</p> <p>H.3. – notes training records for persons-served but they were not noted above as needing to be trained.</p>	<p>for persons-served and can provide evidence of such during the onsite monitoring visit or upon request. This policy will be reviewed to assure consistency of required training for identified groups, including self-directed service delivery settings.</p> <p>Timelines will be determined as more information becomes available.</p>
5.	Kylee Childs, LeadingAge Kansas	<p>LeadingAge Kansas is the state association for not-for-profit and other mission-focused aging services. We have 150 member organizations across Kansas, which include over 50 not-for-profit assisted living providers. Our full membership serves more than 25,000 older Kansans each day and employs more than 20,000 people across the state. We have great concerns with the landlord-tenant protections and appeal processes granted in the HCBS Final Settings Rule and outlined in the Ongoing Monitoring policy the Kansas Department for Aging and Disability Services has released.</p> <p>1. Assisted living and other residential care settings are not at all equivalent to landlords.</p> <p>Landlords: The difference between an assisted living and a landlord are obvious – landlords are not legally responsible for the daily health and welfare of their tenants. Delaying an eviction while legal issues are worked out in court does not endanger anyone’s life and does not force the landlord into violating laws and regulations central to their existence.</p> <p>Assisted Living: Under Kansas regulation, the care, and services to be provided by an assisted living is set out in a document called the negotiated services agreement (NSA). The NSA provides a detailed description of the services to be provided to the resident, their frequency, and the cost of each service. If a resident’s care needs change or intensify the provider is not required to meet those needs if they fall outside of the NSA. An assisted living may choose to establish a new NSA with the resident if the provider determines that their needs can still be met. If the provider cannot meet the resident’s needs the resident must be discharged to another setting. The rule and</p>	<p>1 and 2. Thank you for your comments. Federal HCBS Final Rule Regulations supersede any state policy or regulations.</p>

Commented [L2]: Again, KDADS Leadership - what are we going to do with these PD and FE settings that do not fit within us attempting to enforce FR regulations? They have always brought up LOC changes and not being forced to no longer provide care beyond their capacity - which I agree. Do we write in a caveat for ALFs and others? How does licensing enforce the LOC transition and should we mirror it in the transition and ongoing monitoring policy?

Commented [TS3R2]: Megan will review this further with leadership. HCBS in PD and FE is being operated like an institution.



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		<p>Ongoing Monitoring policy sets providers up for failure with no liability protections for residents whose needs may exceed what the provider can support or a resident whose declining health may result in behaviors of physical harm to residents and staff.</p> <p>2. Section I of the policy, page 5, item H, states whenever there is a conflict between current regulations administered by KDADS or CMS, the Ongoing Monitoring Policy will supersede existing state regulations. The concern then becomes will emergency discharges no longer be allowed for HCBS participants since they are granted landlord-tenant and appeal protections? How long will a resident be allowed to stay despite their declining health or harmful behaviors towards others? Will the provider be held liable for any negative or poor outcomes that come out of a situation such as this? We urge the Kansas Department for Aging and Disability Services to identify ways to include liability protections for providers or alternative means to remain compliant with the HCBS Final Settings Rule. Our providers wish to serve the most vulnerable populations; however, they hold an obligation to protect others they care for and employ. We fear this policy as it currently stands will decrease the number of HCBS/FE providers and result in premature nursing home placements in Kansas.</p>	
6.	Travis Chapman, Lakemary Center	Page 10 and 11 refer to section II.E.2.c and we are unable to locate it. Should it be II.F.2.c instead.	Thank you for your comment. Correction of numbering sequence have been corrected.
7.	Nick Wood, InterHAB	Several of the criteria for the HCBS settings rule are qualitative in nature and it is unclear from the policy how KDADS will determine if some of these criteria are met. Many of the activities articulated in the policy require staff to review and evaluate individual person-centered support plans. Implementation of this policy should be based on widely available state training and standards that are as clear as possible to avoid arbitrary variation in the types of decisions that are issued. A statewide group of reviewers is necessary but does not exist. KDADS should not rely on MCO staff to review person centered support plans for these criteria because their evaluations could conflict with their responsibilities for prior authorization and utilization review and lead to inappropriate denials of services.	Thank you for your comment. The HCBS Compliance Unit, a division of KDADS will review and compare person-centered service plans against service delivery during onsite visits and response to complaints/concerns. Providers and a sample of their settings will be visited at least every two years for ongoing monitoring purposes.



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