



# KDADS STANDARD POLICY

<b>Policy Name:</b> HCBS Access for Individuals in the Custody of DCF	<b>Policy Number:</b> E2017-100
<b>Commission:</b> Community Services and Programs	<b>Date Established:</b> 01/23/2017
<b>Applicability:</b> HCBS-I/DD, PD, TA, TBI Programs	<b>Date Last Revised:</b> N/A
<b>Contact:</b> HCBS- Waiver Program Manager	<b>Date Effective:</b> 08/01/2017
<b>Policy Location:</b> <a href="https://www.kdads.ks.gov/commissions/home-community-based-services-(hcbs)/hcbs-policies">https://www.kdads.ks.gov/commissions/home-community-based-services-(hcbs)/hcbs-policies</a>	<b>Date Posted:</b> 07/19/2017
<b>Status/Date:</b> FINAL 07/18/2017	<b>Number of Pages:</b> 6
<b>Revision History</b>	

## **Purpose**

This policy is established for the purpose of compliance with the currently approved Home and Community Based Services (HCBS)-Intellectual/Developmental Disability (I/DD), Physical Disability (PD), Technology Assisted (TA), and Traumatic Brain Injury (TBI) Waivers regarding: (1) Exceptions for the provision of participant-directed services for individuals in the custody of the Secretary of the Department for Children and Families; and, (2) Exceptions for the provision of in-home services when there are more than two (2) individuals unrelated to the foster family living in the home.

## **Summary**

This policy provides clarification on the criteria for the participant-directed services and provision of in-home services when there are two or more individuals living in a foster home exception processes for individuals in DCF custody eligible for HCBS waiver services. The policy establishes processes and procedures for submitting, managing and determining these exception requests to ensure access to the waiver program services that best meet the assessed needs of the individual.

## **ENTITIES AFFECTED BY THIS POLICY**

- Aging and Disability Resource Centers (ADRCs)
- Kansas Department for Aging and Disability Services (KDADS)
- Kansas Department for Children and Families (DCF)
- Kansas Department of Health and Environment (KDHE)
- Managed Care Organizations (MCOs)
- Child Welfare Contractors
- Child Placing Agencies
- Community Developmental Disability Organizations (CDDOs)

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## Policy

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### I. General

- A. Any child determined eligible for HCBS I/DD waiver services who the court has found to be a child in need of care (CINC), has come into custody of the Secretary of DCF and placed in a foster care living arrangement will not be placed on a waiting list and shall have access to the services required to meet their assessed needs. The approved HCBS I/DD services will not duplicate services available through other resources.
- B. Access to services will not be available for the purpose of maintenance (including room and board) or supervision required to be provided in a family foster home for individuals who are in DCF's custody.
- C. Agency-directed supportive home care is considered the preferred in-home service delivery model for individuals in DCF custody;
- D. Participant direction may be a necessary option for foster children receiving HCBS waiver services who have an identified need yet reside in a geographic area where there is little to no access to agency-directed supportive home care.

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## Procedures

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### I. Participant direction for individuals in DCF custody

- A. Participant direction of HCBS waiver services for individuals in DCF custody requires approval of an exception by the Program Manager of the applicable HCBS Waiver. An exception may be granted by KDADS upon consultation with DCF and other applicable authorities. Therefore, the HCBS Program Manager will consult with the DCF Permanency Program Administrator and the MCO prior to approving an exception for participant directed services.
  - i. For individuals receiving HCBS IDD waiver services, the CDDO servicing the child's current county of residence notifies KDADS if, upon investigation, it is determined no agency directed services are available in the geographic area where the child is currently placed. The CDDO also notifies the home county CDDO (i.e. county where the CINC case originated and is assigned as the primary organization in KAMIS). The CDDO servicing the child currently shall notify KDADS and the home county CDDO the same day the determination is made that no agency directed services are available;
  - ii. Within one (1) business day of receipt of notification, KDADS verifies agency-directed services are not available;
  - iii. Within two (2) business days of receipt of notification, KDADS provides a written exception allowing participant-direction pursuant to section D. of this policy to both the

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residence and home county CDDOs, including established timelines for review and renewal of the exception;

- iv. The Targeted Case Manager works with the child’s MCO in coordination with DCF and the child placing agency to develop a plan of care that includes participant-direction;
  - v. The residence county CDDO works with child’s MCO to develop agency-directed capacity; and,
  - vi. The residence county CDDO arranges for transfer to an agency-directed provider as soon as capacity is created and, in turn, notifies the home county CDDO, KDADS, the Permanency Program Administrator at DCF, and the child’s MCO.
- B. Approved exceptions for participant directed services may continue as long as there is a documented, identified need. Upon approval of an exception, KDADS will arrange with DCF mutually agreed upon timelines for regularly scheduled review to determine if continuation of an approved exception is warranted.
- C. Participants or other responsible individuals are informed by the participant’s MCO that, when choosing participant direction (self-direction) of services, they must exercise responsibility for making choices about personal care services, understand the impact of the choices made, and assume responsibility for the results of any decisions and choices they make. Participants are provided with, at a minimum, the following information about the option to self-direct services:
- i. The limitation to Personal Care Services;
  - ii. The need to select and enter into an agreement with an enrolled Financial Management Services (FMS) provider;
    - 1. Minor children receiving the exception for participant directed services will not be the employer of record and therefore will not be issued a Federal Employer Identification Number (FEIN). In these cases, the foster care provider contracted by agreement with DCF shall assume all employer related functions and be considered the employer of record for any workers hired to provide HCBS waiver services for the minor child.
  - iii. Related responsibilities (outlined in I - D);
  - iv. Potential liabilities related to the non-fulfillment of responsibilities in participant-direction;
  - v. Supports provided by the MCO they have selected;
  - vi. The requirements of personal care service providers;
  - vii. The ability of the participant to choose not to participant-direct services at any time; and

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viii. Other situations when the MCO may discontinue the participant's participant-direct option and recommend agency-directed services.

D. The MCO is responsible for sharing information with the participant about participant-direction of services by the participant. For IDD waiver recipients, service providers are required to be affiliated with the CDDO providing services to the participant. The CDDO providing services to the participant is also responsible for completion of the Service Provider Choice Form and providing a completed copy of the form to the home county CDDO and the assigned MCO. The FMS provider is responsible for sharing more detailed information with the participant about participant-direction of services once the participant has chosen this option and identified an enrolled provider. This information is also available from the HCBS Program Manager and KDADS Regional Field Staff.

Information regarding participant-directed services is initially provided by the MCO during the plan of care/service plan process. During this process, the Participant Choice form is completed indicating that the participant has chosen HCBS services. The form is signed by the participant and included in the Plan of Care. This information is reviewed at least annually with the participant. The option to end participant-direction can be discussed, and the decision to change to agency-directed services once an agency-directed provider is located.

**II. Exceptions concerning number of non-related individuals in DCF custody placed in the same licensed foster home (*the statutes and regulations as quoted still reference KDHE as the licensing entity, however DCF is in practice are currently responsible for licensing functions*).**

- A. The KDADS HCBS Program Manager shall review documentation including, but not limited to, the participant's plan of care to determine if placement of the HCBS waiver participant in the setting with more than two unrelated children is suitable in meeting the needs of all participants. The KDADS HCBS Program Manager shall follow through with providing DCF a documented approval or denial of the exception request.
- B. Exceptions to the number of individuals that may be placed in the same licensed family foster home is governed by K.A.R. 28-4-804 as administered by the Kansas Department of Health and Environment with the cooperation of the Department for Children and Families. (Authorized by K.S.A. 65-508 (c) (1); implementing K.S.A. 65-504 and 65-508; effective March 28, 2008).
- C. Each licensee who intends to change the terms of the license, including the maximum number or the age of individuals served, shall submit a request for an amendment on a form supplied by KDHE.
- D. Any applicant or licensee may request an exception from the Secretary of KDHE. Any request for an exception may be granted if the Secretary determines the exception is in the best interest of a child in foster care and the exception does not violate statutory requirements.
- E. Written notice from the Secretary stating the nature of the exception and its duration shall be kept on file in the family foster home and shall be readily accessible to KDHE, the child-placing

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agent, the sponsoring child-placing agency, the Kansas Department for Children and Families, the MCO and the Kansas Juvenile Services Division of the Kansas Department of Corrections.

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## Documentation

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Written notification from KDADS to the MCO indicating approved exception to allow participant directed services for child in foster care.

Written notification from KDADS to DCF indicating approval or denial of the exception allowing placement of a waiver participant in a foster care setting with two or more unrelated individuals.

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## Definitions

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1. Applicant: an individual who has applied for a license but who has not yet been granted a license to operate a family foster home. This term shall include an applicant who has been granted a temporary permit to operate a family foster home.
2. Child in foster care :
  - a. Any individual under 16 years of age who is placed for care in a family foster home; or
  - b. Any individual who is at least 16 years of age but not yet 23 years of age and who is in the custody of the state of Kansas and is placed in a family foster home.
3. Child-placing agent: a person that possesses the legal right to place a child into a family foster home. This term shall include the child's parent, legal guardian, a public or private child-placing agency, and the court.
4. Family foster home: a child care facility that is a private residence as defined in K.A.R 28-4-311, including any adjacent grounds, in which a licensee provides care 24 hours a day for one or more individuals in foster care and for which a license is required by K.A.R. 28-4-801.
5. Foster family: all individuals living in a family foster home other than the child in foster care.
6. Licensee: an individual who has been granted a license to operate a family foster home.
7. Other responsible individual: legal guardian, or the designated representative, or an individual authorized as a durable power of attorney for a participant receiving HCBS waiver services.
8. Participant: child in foster care receiving services through either the HCBS I/DD, PD, TA, or TBI waiver program.
9. Sponsoring child-placing agency: the public or private child-placing agency responsible for sponsoring the family foster home, including providing assessment, training, support, inspection, and monitoring for the licensee's compliance with the regulations governing family foster homes.

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10. State custody: any child who the court has found to be a child in need of care (CINC) and placed in the custody of the Secretary of the Department for Children and Families.

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### **Authority**

1915(c) HCBS Waiver: [KS.0224.R05.01](#) (as of Mar 01, 2016)

#### **State Authority:**

- K.S.A. 65-508 (c) (1) Equipment, supplies, accommodations; competent supervision and care of children
- K.A.R. 28-4-311 Definition – Family foster home
- K.A.R. 28-4-801 License Required
- K.A.R. 28-4-804 Terms of license; validity of temporary permit or license; renewal of license; amendments; exceptions; withdrawal of application or request to close.

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### **Related Information**