

KDADS STANDARD POLICY

Policy Name:	Personal Care Services and Limitations	Policy Number:	E2021-115
Commission:	Aging & Disability and Community Services and Programs Commission	Date Established:	8/1/2015
Applicability:	All HCBS Programs (Excluding SED)	Date Last Revised:	10/6/2021
Contact:	KDADS HCBS Program Manager	Date Effective:	10/6/2021
Policy Location:	https://kdads.ks.gov/commissions/home-community-based-services-(hcbs)/hcbs-policies	Date Posted:	10/6/2021
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Purpose

This policy defines Personal Care Services (PCS) and specific limitations to PCS related to conflict of interest, legally responsible persons. The policy rescinds all applications, practice or utilization of “capable person procedures” in the administration and or the delivery of PCS.

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 personal care services (PCS) for all HCBS waiver populations. The term PCS has been standardized across the HCBS waiver populations and shall replace all previous terms for this service and/or worker. Previous terms being replaced include Personal Services, Personal Care Attendant, Personal Assistant Services, Attendant Worker, Direct Services Worker, and Attendant Care Services. For a complete description of personal care services, please visit the appropriate program waiver application available at [https://www.kdads.ks.gov/commissions/csp/home-community-based-services-\(hcbs\)/hcbs-program-renewal-information](https://www.kdads.ks.gov/commissions/csp/home-community-based-services-(hcbs)/hcbs-program-renewal-information).

ENTITIES AFFECTED BY THIS POLICY

- Participants self-directing PCS
- HCBS Providers providing agency-directed PCS
- Managed Care Organizations (MCOs)

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I. Policy

- A.** In the event that a language in this policy runs contrary to personal care services (PCS) provisions or definitions or qualifications in any of the currently approved HCBS waivers that offer PCS, the waiver shall supersede this policy until the policy is amended to align with the waiver.
- B. General**
1. PCS is designed to assist elderly and disabled participants in their home and community settings that comply with the HCBS Settings Final Rule. PCS focuses on assistance with Activities of Daily Living (ADLs) such as bathing, grooming, toileting, transferring, and eating and Instrumental Activities of Daily Living (IADL) such as shopping, laundry, housekeeping, and meal preparation.
 - (a) PCS services are authorized, provided and reimbursed 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 Person-Centered Service Plan (or called the service plan). The service plan must document the participant's authorized service in hours/units and the participant's selected provider.
 - (b) A participant may receive PCS services in the participant's place of employment if the participant requires a need for assistance in the work environment. The participant's need for assistance in a work environment must be noted in the Person Centered Service Plan. PCS services provided in a work environment cannot be duplicative of other waiver services such as supported employment or day supports.
 2. Participants authorized for PCS services have the option to agency-direct or self-direct their authorized services as provided for in each waiver.
 3. Agency-directed and self-directing participants employing PCS workers shall comply with all applicable state and federal employment laws;
 4. If available, a participant, a parent, or legal guardian may elect to self-direct PCS.
 - (a) Self-directing participants employing PCS workers are subject to the same quality assurance standards as other PCS providers including, but not limited to, completion of the tasks identified on the person centered service plan; and
 - (b) For self-direct PCS for the TA Program, the HCBS TA Waiver PCS Training Checklist must be completed prior to providing PCS.
 5. If a participant or legal guardian no longer wants to self-direct his or her PCS, the participant or legal guardian shall have the option to transition to agency-directed PCS without penalty. Conversely, if a participant or legal guardian no longer wants agency-directed PCS and has

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not been determined unable to self-direct his or her services, the participant or legal guardian shall have the option to transition to self-directed PCS, authorized in accordance with this policy.

6. For minor participants under the age of 18, it is the parents' responsibility to complete the required parent fee documentation and, if a parent fee is determined to be required by the state, the parent(s) shall share the cost of services for the minor participant.
7. The names of the following services are now referred to as personal care services, but they maintain the same billing code and rate identified for each HCBS Program. Supportive Home Care is a valid I/DD waiver service and will indicate the agency-directed option for PCS.

HCBS PROGRAM

SERVICE NAME

Frail Elderly	Attendant Care Level I Attendant Care Level II Attendant Care Level III Attendant Care (Self-Direct)
Intellectual/Developmental Disabilities	Personal Assistant Services (PAS)
Physical Disability	Personal Services/Agency-Directed Personal Services/Self-Directed
Technology Assisted	Long Term Community Care Assistant (LCCA) Personal Service Attendant (PSA) Medical Service Attendant (MSA)
Traumatic Brain Injury	Personal Services/Agency-Directed Personal Services/Self-Directed

C. General Limitations to PCS

1. Up to twelve (12) hours of PCS can be provided for every twenty-four (24) hour day and reimbursed based on the assessed needs of the participant.
 - (a) Agency-directed and self-directed PCS may be combined to meet the participant's needs, but the total combination of PCS hours shall not exceed 12 hours per 24-hour period.
 - i. Requests for accommodation to exceed the service limit are subject to MCO authorization and shall not exceed an additional 6 hours of PCS. Any exception to the PCS service limit must be identified by the MCO

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and is subject to MCO authorization.

(b) Any accommodation requests must meet one or more of the following criteria:

- i. The additional request for PCS is critical to the remediation of the participant's law enforcement or DCF confirmed abuse, neglect, exploitation, or domestic violence issue.
- ii. The additional request for PCS is critical to address a health, behavioral health or safety need that poses an imminent risk, which if not addressed would cause the participant to be in crisis or to be admitted to an institutional setting. The participant must not have other natural or paid supports available to address the identified need that presents the imminent risk.
- iii. The request for additional time for PCS is a necessary support in order for the participant to remain in the community within the first three months of his/her return to the community from a stay in excess of 90 days in an institution.

(c) Participants who have an assessed need for more than six hours in addition to the 12 hours of PCS, and the needs cannot be met by another other HCBS service such as personal emergency response services, may have Enhanced Care Services (ECS) authorized in conjunction with PCS. Refer to the Enhanced Care Services policy for more information.

2. The combination of PCS, ECS and other HCBS Program services shall not exceed a total of 24 hours of service within a 24-hour period. PCS paid for by the HCBS Program is limited to the number of hours/units authorized on the person centered service plan.
3. The cost of transportation is included in PCS. Non-emergency medical transportation is not covered as part of PCS, but if medically necessary, it may be covered through regular Medicaid and authorized by the KanCare MCO.

D. Limitations on Reimbursement for PCS

1. PCS shall not be reimbursed for any period of time that a participant is admitted to an inpatient or residential hospital, nursing facility, intermediate care facility for participants with intellectual disabilities or institution for mental disease.
2. PCS shall not be reimbursed while a participant is in an institution for a temporary stay.
3. PCS can be authorized while a participant lives in an assisted living facility (ALF) but the participant cannot self-direct PCS in an ALF.

E. Non-duplication of PCS with other HCBS services

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1. PCS shall not be authorized for times when a participant is in residential or day supports as authorized on the person centered service plan.
2. PCS shall not be authorized if a person has authorization for both residential and day supports on the person centered service plan.
3. PCS services may be authorized for the purpose of meal preparation by the MCO based on assessed needs.
 - (a) Authorization for meal preparation cannot duplicate similar services authorized through HCBS (such as home-delivered meals) or any other funding source (such as Older Americans Act), if available.
 - (b) If PCS is authorized for meal preparation, the participant may not also have home meal delivery authorized for the same timeframe. If a participant is authorized for other services for meals, then meal preparation will not be authorized for the same timeframe.
4. If the participant is accessing medication reminder services, PCS shall not be authorized for medication management.
5. When a participant elects hospice care, PCS services shall not duplicate services provided under hospice. Concurrent care is subject to approval and review by the MCO and must not be duplicative.

F. Kansas Electronic Visit Verification (EVV)

1. In compliance with federal requirements to ensure health, safety and welfare and prevent fraud, waste and abuse, PCS workers for both agency-directed and self-directed employers shall use the system designated by KDADS for electronic visit verification.

G. The PCS worker is responsible for supporting the participant in accessing medical services and completing normal daily ADL and IADL activities.

1. No more than one HCBS provider shall be paid for providing services at any given time of the day.
 - (a) A PCS worker shall not be paid for services when another HCBS Program service is being provided at the same time.
 - (b) The only exception is when justification for a two-person lift or transfer is documented on the person centered service plan or as necessary to meet health and welfare needs of the participant.
2. A PCS worker shall not work or be paid for working for more than one HCBS participant at the same time on the same day.

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3. PCS workers shall not provide and be paid for providing more than one HCBS service at the same time on the same day.

H. Limitation on Family Caregiving

1. A participant's spouse, parent of a minor child, guardian, conservator, person authorized as an activated Durable Power of Attorney (A-DPOA) for health care decisions, or an individual acting on behalf of a participant shall not be paid to provide PCS for the participant except as authorized according to this policy.
 - (a) A guardian, conservator or A-DPOA is not permitted to provide PCS unless conflict of interest has been mitigated in accordance with this policy and the Conflict of Interest policy.
 - (b) For the frail elderly program, a participant's relative who is an employee of an assisted living facility, residential health care facility, or home plus in which the participant resides and the relative's relationship is within the second degree of the participant may be paid to provide supports through their employer.
 - (c) If the designation of the appointed representative (guardian, conservator, A-DPOA for health care or an individual acting on behalf of the participant) is withdrawn, the individual may become the participant's paid PCS worker after the next annual review or a significant change in the participant's needs occurs prompting a reassessment.

I. Family reimbursement restrictions shall be applied in accordance with KAR 30-5-307.

1. All previous limitation based upon a previous capable-person policy requirement is rescinded.
2. All other limitation regarding service provision shall be applied in accordance with the respective HCBS waiver.
3. PCS is not a default level of care for technology dependent and medically fragile children served on this program. This service should only be accessed when the participant is medically stable and the level of care needs can be fully met by the PCS.
 - (a) PCS needs shall be determined using the MATLOC instrument and risk assessment, with limits to this service established by KDADS.
 - (b) The care coordinator is responsible for assessing the level of need to determine if the participant's medical needs can be fully met under PCS services. The care coordinator shall take into consideration the assurance of the participant's health and welfare needs prior to authorizing PCS service.
 - (c) Exceptions to exceed the service limits as determined by the MATLOC and risk assessment instrument are subject to the approval of KanCare MCOs.

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J. Based on the participant’s HCBS Program, respite care services are available to Medicaid participants who have a family member who serves as the primary caregiver who is not paid to provide any HCBS program service for the participant. Medical respite care services cannot be provided by PCS based on provider qualification requirements.

K. PCS shall not be provided in a school setting and shall not be used for education, as a substitute for educationally related services, or for transition services as outlined in the participant’s Individualized Education Plan (IEP).

L. Provider Requirements

1. PCS Workers

- (a) With the exception of the IDD waiver, PCS workers shall be 18 years of age or older, or have a high school diploma or equivalent, and meet the provider qualifications for providing PCS as defined in the HCBS Program waiver.
- (b) For the IDD waiver, PCS workers shall be 16 years of age or older and meet the provider qualifications for providing PCS as defined in the HCBS IDD Program waiver.
- (c) All PCS 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 PCS 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.

3. If a language in this policy runs contrary to PCS provisions or definitions or qualifications in any of the currently approved HCBS waivers that offer PCS, the waiver shall supersede this policy until the policy is amended to align with the waiver.

M. Exception to Limitations

1. Conflict of Interest Policy

- (a) A conflict of interest exists when the person responsible for developing the person

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centered service plan 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).

- (b) A guardian or individual authorized as an A-DPOA may be paid to provide supports if the potential conflict of interest is mitigated.
- (c) 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.

N. 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 to know is competent to perform those activities.
 - (c) If authorized on the participant's person centered service plan, a licensed physician or nurse shall provide a written delegation for the following health maintenance activities:
 - i. Monitoring vital signs
 - ii. Supervision and/or training of nursing procedures
 - iii. Ostomy care
 - iv. Catheter care
 - v. Enteral nutrition
 - vi. Wound care
 - vii. Range of motion

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viii. Reporting changes in functions or condition

ix. 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 KSA 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:
 - i. 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.” KSA 65- 6201(d); and
 - ii. 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.

O. Medication Administration and Assistance

1. Provided in a Licensed Facilities

- (a) Any resident may self-administer and manage medications independently or by using

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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.

- (b) 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.
- (c) 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.

2. Provided in a Private Residence

- (a) 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.
- (b) Medicare Certified Home Health Agencies and state Licensed Home Health Agencies may perform medication administration and assistance in accordance with their license.
- (c) Self-directing participants employing PCS workers who have a written physician’s or registered nurse’s statement to delegate health maintenance activities, including medication administration and assistance, is responsible to supervise PCS workers and train them to administrate medication according to the physician’s orders.

P. Termination/Closure

1. Consistent with the HCBS Criterion for Notification of Service Status and other applicable KDADS’s policies, the MCO shall provide appropriate notice to the participant regarding the status of services, including whether notification to the State could result in termination of services or HCBS Program eligibility.
2. A participant’s option to self-direct his/her services may be terminated to protect the participant from abuse, neglect or exploitation or to mitigate the impact of potential Medicaid fraud, waste and abuse.
3. To allow sufficient time for the KanCare MCO to assess the participant’s needs and update the person centered service plan, any time the participant chooses to discontinue the self-

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direction option, the participant shall provide at least ten (10) days' notice to the KanCare MCO chosen by the participant, and to the FMS provider.

4. 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 participant's assessed health and safety needs.
5. 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 person centered service plan 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.
6. 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 person centered service plan. 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 person centered service plan of any changes or terminations, including the effective date of the termination.

Q. Documentation and Quality Assurance

1. Authorization for exceptions to limitations identified in this policy shall be documented on the person centered service plan and documentation of the applicability of an exception shall be maintained in the participant's MCO file.
2. To ensure appropriate payment for services a copy of the person centered service plan or other documentation indicating that an exception is authorized shall be provided to the FMS provider or added to Electronic Visit Verification

II. Definitions

A. Activities of Daily Living (ADL) –

1. Basic functional activities necessary on a daily basis to allow an participant 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

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bed to wheelchair).

B. Extraordinary Care –

1. Exceeds the ordinary care that would be provided to a person without a disability of the same age as determined by the State within reasonable limits that preserve participant choice and control and takes into consideration supports that would be provided informally or by a third party.

C. Health Maintenance Activities –

1. 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 a participant who is competent and capable of performing the activities.

D. Home –

1. 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 must comply with the HCBS Setting Final Rule. See HCBS Setting Final Rule Transition Plan for more information.

E. Immediate Family Members –

1. As defined by IRS, a spouse, child, parent, grandparent, brother, sister, grandchild, stepparent, stepchild, stepbrother or stepsister of the participant.

F. Instrumental Activities of Daily Living (IADL) –

1. Activities necessary on an indirect basis, not directly related to functional skills, to ensure that the participant can continue to live in a safe and healthy environment. Examples of these activities include but are not limited to meal preparation, shopping, laundry, housekeeping, money management, and medication management.

G. Person-Centered Service Plan –

1. This term replaces the term “plan of care or the integrated service plan” that details the services a participant needs and wants and the provision of these services. This plan is developed in accordance with KDADS Person Centered Service Plan Policy.

H. Parent Fee –

1. A fee assessed to the family is based on the parents’ income according to a sliding scale for a

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child on an HCBS Program. Established through a legislative proviso, the Parent Fee Program was created for all HCBS waiver programs to increase shared responsibility for the payment of waiver services. Families who are determined to have the financial means to pay a portion of the cost of services provided to their minor children are assigned a parent fee.

I. Participant –

1. Person determined to be eligible for Medicaid-funded home and community-based waiver services.

J. Self-direction –

1. Participants exercise employer authority over some or all of the home and community-based services they need to live in their community and accept the responsibility for taking a direct role in managing these services. Within the participant-directed model and Kansas state law, participants employ direct workers and “make decisions about and direct the provisions of services which include, but not limited to selecting, training, managing, paying and dismissing of a direct service worker.” (KSA 39- 7,100)

III. Authority

A. Application for 1915(c) HCBS Waiver – Appendix C: Personal Care

1. BI KS.4164.R06.02
2. FE KS.0303.90.R1
3. I/DD KS.0224.R06.00
4. PD KS.0304.R04.01
5. SED KS.0320.R04.01
6. TA KS.4165.R06.00

B. Federal Authority

1. 42 CFR §441.301(c) (4) (5): HCBS Setting Final Rule 42 CFR §441.12, §440.167 – Personal Care Services
2. 42 CFR §435.602 – Legally Responsible Individuals for determining Medicaid eligibility State Medicaid Manual §4442.3B.1 – Legally Responsible Relatives
3. IRM 1.25.1.2.2 – Limited Practice Based on Relationship to the Taxpayer: Family Member 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

C. State Authority

Policy Name:	Personal Care Services and Limitations	Policy Number:	E2021-115
Commission:	Aging & Disability and Community Services and Programs Commission	Date Established:	8/1/2015
Applicability:	All HCBS Programs (Excluding SED)	Date Last Revised:	10/6/2021
Contact:	KDADS HCBS Program Manager	Date Effective:	10/6/2021
Policy Location:	https://kdads.ks.gov/commissions/home-community-based-services-(hcbs)/hcbs-policies	Date Posted:	10/6/2021
Status/Date:	Final	Page Number:	14 of 14

1. KSA 39-7,100 – Home and Community Based Services Program
2. KSA 65-5115 – Home Health Aide Requirements
3. 2015 Senate bill No. 112 at Sec. 108 (n) — Parent Fee Program
4. KSA 65-1124(I) – Self-Direction and Physician’s/RN Delegation
5. KSA 65-2837(b)(14), (26), (30) – Supervision of Delegated Activities
6. KSA 65-6201 – Individuals in Need of In-Home Care
7. KSA 65-28,127 Physician’s Delegation
8. KAR 28-51-113 – Home Health Aide Training
9. KAR 26-41-101 – Assisted Living/Residential Health Care (ALF/RHC) Facilities
10. KAR 26-42-101 – Homes Plus
11. KAR 30-5-300 – Definitions
12. KAR 30-5-307 – Family Reimbursement
13. KAR 30-5-308 – Non-Supplementation of HCBS
14. KAR 26-41-101(h) – Spousal Exception

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D. Related Information

Conflict of Interest Policy –

<https://www.kdads.ks.gov/docs/default-source/CSP/HCBS/HCBS-Policies/kansas-hcbs-conflict-of-interest-policy---6-15-15.pdf?sfvrsn=2>

KDADS website –

HCBS Programs - <https://www.kdads.ks.gov/commissions/csp>