

Kansas and Colorado Comparison of Parents as Caregiver and Capable Persons

Parents as Paid Caregivers:

This is a comparison of similar HCBS waivers in Kansas and Colorado and whether they allow for legally responsible parents as paid caregivers. Federal rules only allow a parent to be a paid caregiver in extenuating circumstances defined by individual state programs. This chart illustrates the circumstances in which Kansas and Colorado have allowed parents to be paid caregivers for their children.

In both Kansas and Colorado, parents are natural guardians. Legal guardians are people appointed to be guardians. An *authorized representative* is defined as an individual designated by the client, parent or legal guardian of a minor, if appropriate, who has the judgment and ability to direct self-directed services on the client's behalf, specific to waivers that allow self-direction.

Target Population	Kansas Waiver Name (Ages Served)	Can a legally responsible parent be paid caregiver? Yes/No		Colorado Waiver Name (Ages Served)
People with Intellectual or Developmental Disabilities	Intellectual/Developmental Disability (Ages 5+) <ul style="list-style-type: none"> Recipient must be over 18 If parent is legally responsible, they must either select an authorized representative or obtain court approval. For specific services only 	Y	Y	Persons With Developmental Disabilities (Ages 18+) If parent is not authorized representative
			Y	Supported Living Services (Ages 18+) If parent is not authorized representative
			N	Children's Extensive Support (Ages 0-17)
			N	HCBS - Children's Habilitation Residential Program (Ages 0-20)
Children with Autism	Autism (Ages 0-5)	N	N	Children with Autism (Ages 0-5)
Children who are medically-fragile	Technology Assisted (Ages 0-21) <ul style="list-style-type: none"> If parent lives with recipient and has been determined to be a person essential to the participant's well-being in accordance with K.A.R. 30-5-307. If parent is currently licensed as an RN or LPN in Kansas, which meets the waiver eligibility criteria of requiring a nursing level of care If parent is employed by a Home Health Agency and will adhere to the policies and procedures of that agency. 	Y	Y	Children with Life Limiting Illness* (Ages 0-18) <ul style="list-style-type: none"> Only under respite service Only for extraordinary care that is beyond that which would ordinarily be provided to a child of the same age and development stage. If parent is employed by Home Health agency or Personal Care Provider as a certified nurse's aide after meeting all the requirements to be hired as a caregiver through the agency.
			Y	Children's HCBS (Ages 0-17) <ul style="list-style-type: none"> Only health maintenance activities through In-Home Support Services so long as the care is determined to be extraordinary. No more than 40 hours/week If parent is not authorized representative
People with mental health diagnosis	Serious Emotionally Disturbed (Ages 4-18)	N	Not specified	Community Mental Health Supports (Ages 18+) Parents aren't specifically permitted or prohibited.

*This is likely the Colorado program referred to at the December 29, 2015, meeting of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight.

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Target Population	Kansas Waiver Name (Ages Served)	Can a legally responsible parent be paid caregiver? Yes/No		Colorado Waiver Name (Ages Served)
People who have had a brain injury	Traumatic Brain Injury (Ages 16-65) <ul style="list-style-type: none"> Recipient must be over 18 or unless all other options are exhausted and extraordinary criteria are met For specific services only 	Y	N	Persons with Brain Injury (Ages 16+)
People with AIDS diagnosis	(Not applicable)		Not specified	Persons Living with AIDS (Ages 18+) Parents aren't specifically permitted or prohibited.
People with physical disabilities, elderly, other disabilities	Frail Elderly (Ages 65+)	N	Y	Elderly, Blind and Disabled (Ages 18+) If parent is not authorized representative
	Physical Disability (Ages 16-65)	N	Not specified	Persons with Spinal Cord Injury (Ages 18+) Parents aren't specifically permitted or prohibited.

Note: These guidelines apply to a parent who is also legally responsible for the recipient of services. In some cases parent may be able to be a paid caregiver if/when they are no longer legally responsible for the person receiving services.

DEFINITIONS:

LEGALLY RESPONSIBLE PERSON means the parent of a minor child, or the client.

GUARDIAN means an individual at least twenty-one years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a court. Guardianship may include a limited, emergency, and temporary substitute court appointed guardian but not a guardian ad litem.

AUTHORIZED REPRESENTATIVE means an individual designated by the client, parent or legal guardian of a minor, if appropriate, who has the judgment and ability to direct Consumer-Directed Attendant Support Services (CDASS) on the client's behalf, specific to waivers that allow CDASS in Colorado.

FAMILY means a relationship as it pertains to the client and is defined as:

- Extended blood relatives such as grandparent, aunt, uncle, cousin,
- An adoptive parent,
- One or more individuals to whom legal custody of a person with a developmental disability has been given by a court,
- A spouse or,
- The client's child.

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Capable Person Summary:		
<p>A <i>capable person</i> is someone who lives with a person who receives services through a Medicaid waiver and who typically would be expected to meet the general maintenance or care needs of the household. This chart outlines Kansas and Colorado's service limits applicable when there is a capable person living in the same household as the recipient.</p>		
	Kansas	Colorado
Summary	<p>"A capable person living in the home of the participant with whom he or she has a significant relationship shall not be paid to provide Personal Care Services or similar services for Independent Activities of Daily Living (IADLs) that the person would ordinarily perform or be responsible to perform."</p>	<p>"A member of the client's household may only be paid to furnish extraordinary care as determined by the Case Manager. Extraordinary care is determined by assessing whether the care to be provided exceeds the range of care that a family member would ordinarily perform in the household on behalf of a person without a disability or chronic illness of the same age, and which are necessary to assure the health and welfare of the client and avoid institutionalization."</p>
Activities limited:	<ul style="list-style-type: none"> • Shopping • Housekeeping • Laundry • Meal Preparation • Medication Setup, Cuing & Reminding 	<ul style="list-style-type: none"> • Shopping for necessary items to meet basic household needs • Routine light housekeeping such as: dusting, vacuuming, mopping, and cleaning bathroom and kitchen areas • Laundry • Meal preparation • Dishwashing • Bed making
Exceptions:	<p>Inability or Refusal:</p> <ul style="list-style-type: none"> • The capable person either cannot or refuses to provide the support for the task(s). Refusal must be documented and signed by the capable person • Paid support may be authorized to be provided by someone other than the capable person. <p>Housekeeping and Laundry:</p> <ul style="list-style-type: none"> • Paid support may be authorized if the recipient has documented incontinence issues creating excessive laundry and requiring excessive housekeeping. • Only applies to recipient's areas and laundry. <p>Meal Preparation:</p> <ul style="list-style-type: none"> • Paid support may be authorized if <ul style="list-style-type: none"> ○ Capable person is not in the home at meal time ○ Recipient's meals require separate preparation due to dietary or medical needs documented by physician. 	<p>(None)</p>