

**CMS Technical Assistance on Kansas STP as received 5/23/17**  
**KDADS Response to CMS Technical Assistance as prepared 9/29/17**

**CMS follow up responses 12/1/2017**

**KDADS final responses 7/30/2018**

**CMS follow up and new feedback 9/18/18**

**KDADS responses 3/31/19**

**CO response April 2019**

**Systemic Assessment**

1. **CMS Comment:** In the current version of the STP, the systemic assessment only includes assessments of the state's regulations and does not include assessments of any of its statutes, MCO contracts, or policy documents. According to p. 21 of the STP, the state intends to review these additional standards by 10/1/17 and develop proposed remediation by 2/1/18. Please update the crosswalk to assure that the necessary changes the state proposes to make will align with the settings criteria.

**KDADS Response:** The timelines in the STP have been adjusted to allow time for this critical work to occur. Specifically, the newly identified dates account for the extended Final Rule compliance date as well as alignment with the following system-wide activities underway. Kansas is in the process of: (1) extending its current 1115 Demonstration Waiver (i.e. KanCare) to December 31, 2018; (2) submitting a KanCare 2.0 renewal application beginning January 1, 2019 that would run for at least five years; and (3) releasing a Request for Proposal (RFP) to procure the new managed care organizations that will implement KanCare 2.0. Recommended language for the RFP specifically addresses the need for the new contractors to work with KDADS and the provider networks to verify HCBS provider compliance with federal settings requirements at 42 CFR § 441.301(c)(4).

**CMS follow up-** The state indicates on p. 21 that the state will take until 2/1/2021 to review existing policy, regulation, statute, and manuals, identify areas of compliance/noncompliance and identify necessary changes and process required to make needed changes. Although the changes may need time to be completed, the state will need to complete their systemic assessment of the existing policy, regulations, statutes, and manuals and lay out the process required to make these changes, prior to receiving initial approval. While it is reasonable that rule promulgation may take until 2021 to be completed, it is concerning the other portions of the process do not have earlier timelines. CMS urges the state to consider completing their assessment and determining the specific remediation of language prior to the 2021 date. The systemic assessment is complete. The modified systemic assessment addresses this - see the systemic assessment section of the STP for methodology and appendix A of the revised plan.

**CMS follow up-** According to p. 16 of the STP the Gap Analysis the addition of a timeline and remediation strategies will need to be approved by KDADS and added to the systemic assessment to be ready for submission to CMS for approval. Please clarify if the Systemic

Assessment Remediation Strategies and Timelines found in Appendix A are recommendations or if they have been approved by KDADS. If the Systemic Assessment portion of the STP is considered ready for submission to CMS for approval please update the STP on p. 16 accordingly.

**KDADS:** The remediation strategies and timelines have been approved by KDADS and incorporated into the Systemic Assessment.

**CMS Response:** Pg. 16 indicates “KDADS will perform ongoing review the policy language from the work group and make final decisions regarding the changes.” Please verify the proposed remediation in the crosswalk is the final version.

**KDADS Response.** KDADS has made the suggested changes.

- 2. CMS Comment:** The state determined that 30-63-22 is compliant with the requirement that a setting ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint; however, KAR 30- 63-22(b)(8), states that the individual has the right to be free from “inappropriate use of a physical or chemical restraint” under certain circumstances. Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. (42 C.F.R § 441.301(c)(4)(vi)(F)), please ensure the assessment and remediation includes all aspects of the HCBS federal regulation to include, (A) Identify a specific and individualized assessed need, (B) document the positive inventions and supports used prior to any modification to the person-centered service plan, (C) Document less intrusive methods of meeting the need that have been tried but did not work, (D) Include a clear description of the condition that is directly proportionate to the specific assessed need, (E) Include a regular collection and review of data to measure the ongoing effectiveness of the modification, (F) Include established time limits for periodic review to determine if the modification is still necessary or can be terminated, (G) Include informed consent of the individual, (H) Includes an assurance that interventions and support will cause no harm to the individual. Please propose remediation.

**KDADS Response:** The state has developed a Final Rule Requirement Review Questions tool (see attached). This tool will be utilized by a KDADS/Stakeholder Policy Work Group to not only assess the validity of the regulatory crosswalk but also other sources that govern delivery of HCBS in Kansas. It will be a function of this Work Group to identify and recommend regulatory changes or new policy as necessary.

**CMS follow up-** The state did not address this concern in the new crosswalk. Please propose remediation. This is addressed in the modified systemic assessment, KDADS has identified it as a compliance gap in need of remediation. A Person-Centered Service Planning policy has been approved with stakeholder input. Statewide training on the policy was held in June 2018. Ongoing monitoring for compliance is occurring as part of the quarterly HCBS Quality Review process.

**CMS follow up-** The state’s remediation strategy is incomplete. Please remove the statement, “The following requirements must be documented in the person-centered service plan:” complete the statement with “(A) Identify a specific and individualized assessed need, (B) document the positive inventions and supports used prior to any modification to the person-centered service plan, (C) Document less intrusive methods of

meeting the need that have been tried but did not work, (D) Include a clear description of the condition that is directly proportionate to the specific assessed need, (E) Include a regular collection and review of data to measure the ongoing effectiveness of the modification, (F) Include established time limits for periodic review to determine if the modification is still necessary or can be terminated, (G) Include informed consent of the individual, (H) Includes an assurance that interventions and support will cause no harm to the individual.” Or add a clarifier to find the above requirements later in the systemic assessment.

KDADS: Page 69 of the Systemic Assessment has been further updated to address the remaining portion of the citation through the noted remediation.

**CMS Response: The state did not remediate the issue as stated above. Please clarify. Additionally, the state removed the findings that stated, “The provision implies the inclusion of restraint under specific circumstances and is in conflict with the final rule.” This should be re-added as it was an accurate assessment that matched the remediation. Additionally, the link in the new crosswalk does not work, please fix.**

**KDADS Response. KDADS has made the suggested changes.**

3. CMS Comment: In addition, although KAR 30-63-22(b)(5) addresses the right to privacy, and KAR 30-63-22(b) (10) addresses the right to dignity and respect, KAR 30-63-22 does not address the right to freedom from coercion. Please propose remediation.

KDADS Response: The state has developed a Final Rule Requirement Review Questions tool (see attached). This tool will be utilized by a KDADS/Stakeholder Policy Work Group to not only assess the validity of the regulatory crosswalk but also other sources that govern delivery of HCBS in Kansas. It will be a function of this Work Group to identify and recommend regulatory changes or new policy as necessary.

**CMS follow up-** The state did not address this concern in the new crosswalk. Please propose remediation. This is now addressed in the modified systemic assessment, KDADS has identified it as a compliance gap in need of remediation. The modified assessment will guide subsequent remediation activity. See the systemic assessment section of the modified STP for methodology and appendix A of the revised transition plan. A systemic remediation workgroup has been formed. The group is now in the process of reviewing identified systemic gaps and formulating recommendations to be vetted through the legislative process, including stakeholder input.

**CMS follow up-** The proposed remediation does not address freedom from coercion. Please propose remediation in the systemic crosswalk.

KDADS: Page 69 of the Systemic Assessment has been further updated to address freedom from coercion.

**CMS Response: The state added freedom from coercion. CMS does not agree that it is in conflict, rather it is silent. The state continues cut off remediation of the modifications as stated above. Please correct. Additionally, the link in the new crosswalk does not work, please correct.**

**KDADS Response. KDADS has made the suggested changes.**

4. **CMS follow-up-** The systemic assessment crosswalk should include remediation consisting of the specific changes the state will make in order to assure the regulation complies with the settings criteria. This has been addressed in the modified systemic assessment. See the systemic assessment section of the modified STP for methodology and appendix A of the revised transition plan.

**CMS follow up-** The systemic assessment remediation strategy is not specific for the KVS and St. Francis contracts. Please include the systemic assessment for the manuals as requested above or propose specific remediation for the KVS and St. Francis contracts.

**KDADS:** A link to the DCF Prevention and Protection Services Manual was added to page 65 of the Main Body of the STP. After further guidance from CMS the State has included remediation of the DCF Prevention and Protection Services Manual in the Systemic Assessment.

**CMS Response:** Please ensure that for the DCF Manual of the crosswalk, the state lists what setting type applies.

**KDADS Response.** KDADS has made the suggested changes.

### **Systemic Remediation**

5. **CMS Comment:** The state’s description of planned systemic remediation indicates an intention to make important changes to state code and policy documents to comply with the federal criteria. However, the language describing these planned changes lacks specificity. Please provide more detailed language explaining how the state will remediate instances of non-compliance, partial compliance, and silence with regard to the federal criteria in the systemic assessment crosswalk. CMS would like to discuss with the state a variety of strategies to remediate issues of partial compliance or silence, including but not limited to changes in the state’s administrative rule, the issuance of additional policy changes in key policy documents to the field (including but not limited to policy communications, provider manuals, licensing agreements, etc.), and/or the development of sub-regulatory guidance.

**KDADS Response:** The state has developed a Final Rule Requirement Review Questions tool (see attached). This tool will be utilized by a KDADS/Stakeholder Policy Work Group to not only assess the validity of the regulatory crosswalk but also other sources that govern delivery of HCBS in Kansas. It will be a function of this Work Group to identify inconsistencies and recommend regulatory changes or new policy as necessary.

KDADS has extended the timeline for developing specificity around provider compliance. Upon initial approval from CMS, the newly formed KDADS/Stakeholder Policy Work Group would act collaboratively to design and implement compliance documents and remediation policies that are easily understood.

The HCBS Director has also proposed to KDADS leadership the introduction of statutory language that emulates Tennessee, thereby allowing the state licensing authority “to modify its rules to ensure compliance with the HCBS settings rule, even if such rule is in conflict with a previously existing statutory provision.”

(<http://tn.gov/assets/entities/tenncare/attachments/TNProposedAmendedStatewideTransitionPlanCV.pdf>).

Finally, KDADS prepared a brief scan of the Medicaid operating environment in Kansas to

assist with delineating roles and responsibilities as implementation proceeds. See attached. **CMS follow up-** The state's intent on how they will be utilizing this information in the Kanas plan is not clear. It would be helpful to discuss this with the state. A modified systemic assessment was completed and was based on the settings criteria found in the Rule itself. The modified assessment will guide subsequent remediation activity. See the systemic assessment section of the modified STP for methodology and appendix A of the revised transition plan. The Final Rule Requirement Review Questions tool builds upon previous work surrounding the CMS assurances and may be utilized as needed and appropriate for ongoing assessment, training, and remediation. The use of broad statutory language, as previously cited from Tennessee, has been ruled out at this time. A systemic remediation workgroup has been formed. The group is now in the process of reviewing identified systemic gaps and formulating recommendations to be vetted through the legislative process, including stakeholder input.

**CMS follow up-** The recommended remediation strategies for the various Provider Manuals is also not consistent. The Physical Disability Manual and the Severe Emotional Disturbance Manual have been found compliant by the state through the inclusion of a statement. The state must include in the systemic assessment crosswalk the actual remediation consisting of specific changes the state will or intends to make in order to assure the regulation, contract, policy, etc. complies with the settings criteria to obtain Initial Approval of the STP. Please include the systemic assessment of these manuals.

**KDADS:** Review of the Physical Disability and Serious Emotional Disturbance Manuals is addressed on page 27 of the Main Body of the STP as contained within the Systemic Assessment Remediation Timeline. This work is scheduled for completed no later than June 2021. Work on the Physical Disability Waiver Manual will likely occur ahead of schedule as that waiver is up for renewal in 2019. Further, a link to the HCBS Provider Manuals page was added to page 61 in the Main Body of the STP. PD manual completed was changed to partial compliant. A PDF copy of the SED Waiver Manual is on file pending further review. The Gap analysis on the manual is preliminarily complete, however no public facing link can be provided for this copy.

**CMS Response:** In relation to the SED manual the state indicates on pg. 232, "questions to be directed towards..." but does not complete the sentence. Please clarify who questions can be directed towards in order to receive a copy of the manual. Additionally, the state indicates in their response that the analysis is preliminarily complete, please clarify if this assessment is complete and it is only the remediation that still needs to be completed.

**KDADS Response.** KDADS has made the suggested changes. KDADS Confirms that the gap analysis is complete.

## **Settings**

- CMS follow up-** Please clarify if supported employment can be delivered in groups of two or more. Supported Employment per se is only provided under the IDD waiver and is defined as an individualized service. It is technically silent, however, on whether it can be provided in groups of two or more.

**CMS follow up-** Please clarify if supported employment, in the way it is utilized in the

state, is provided to groups of two or more people.

**KDADS:** Supported Employment is an individualized (1-1) service.

**CMS Response:** Please clarify this in the narrative of the STP

**KDADS Response per TA call 5.7.2019** this item is complete and requires no further follow up.

7. **CMS follow up-** Please clarify the settings the IDD facilities crosswalk applies to. (p. 299-310.) This is addressed in the modified systemic assessment. See the systemic assessment section of the modified STP for methodology and appendix A of the revised transition plan.

**CMS follow up-** Please clarify the settings that are included in the systemic assessment portion of the plan for the IDD specific services starting on p. 150 and delineate the specific DD settings on p. 18-19 of the main STP.

**KDADS:** Clarification was added starting on page 143 of the Systemic Assessment. IDD settings clarified on Page 19 of the newly amended STP (Main Body) with links to licensing standards included.

**CMS Response:** Please clarify what the IDD Specific Services Analysis is, and where it can be found.

**KDADS Response per TA call 5.7.2019** this item is complete and requires no further follow up.

8. **CMS follow up** -The state may not presume foster family homes and group supported employment meet the settings criteria. They must be included in the systemic assessment and evaluated as provider owned or controlled settings.

**KDADS** This is addressed in the modified systemic assessment. See the systemic assessment section of the modified STP for methodology and appendix A of the revised transition plan. Also see bullet point above regarding supported employment. Supported employment is defined as an individualized service in the waiver, not a group service.

**CMS follow up-** Please clarify which regulations, manuals and/or contracts apply to foster family home settings and confirm those standards have been addressed in the systemic assessment. Please also include an assessment of the DCF PPS manuals if applicable to this setting. Please also note that Foster Family Homes cannot be presumed compliant with the HCBS settings criteria and must be assessed for compliance.

**KDADS:** A link to the DCF Prevention and Protection Services Manual was added to page 67 of the Main Body of the STP. After further guidance from CMS the State has included remediation of the DCF Prevention and Protection Services Manual in the Systemic Assessment.

**CMS Response:** The state previously stated the DCF manual is what guides the Foster Care setting, but there is no connection in the systemic crosswalk with the contracts and what settings fall under them. Please clarify this in the crosswalk.

**KDADS Response.** KDADS has made the suggested changes.

9. **CMS follow up** - Below, please clarify if all settings are accurate and accounted for and delineate their perspective programs and crosswalks, if not already delineated.

**KDADS** All of the following are addressed in the modified systemic assessment. See the systemic assessment section of the modified STP for methodology and appendix A of the revised transition plan.

**CMS Response-** Please clarify which programs Foster Family Home, and provider-owned and controlled homes and apartments fall under and how they are addressed in the crosswalk. Please also clarify the removal of Pre-foster care placement from the STP.

**KDADS:** Foster Family Homes are subject to the requirements of the DCF Prevention and Protection Services Manual. Provider owned, and controlled apartments are subject to the requirements of the IDD waiver. A link to the DCF Prevention and Protection Services Manual was added to page 67 of the Main Body of the STP. After further guidance from CMS the State has included remediation of the DCF Prevention and Protection Services Manual in the Systemic Assessment. Need additional clarification from CMS in regard to where pre-foster care was previously mentioned then later removed.

**CMS Response: Pre-foster care was previously mentioned in the March 20, 2017 version of the STP on pgs. 13 and 14 and then were not included in the next iteration of the plan. According to the state there were 55 in the inventory of settings and they may be compliant with remediation.**

**KDADS Response the term pre-foster care refers to children's residential for IDD. As such, it is no an HCBS setting and the term was removed from the System Assessment.**

**Spot check of systemic assessment:** CMS began a spot check of the state standards that are included in the state's crosswalk and has concerns with several of the state's determinations regarding compliance with the HCBS settings criteria, as described below. Please note that these examples are not exhaustive, and the spot check was only conducted on one section of the systemic assessment; therefore, in addition to addressing the points below, CMS requests that the state revisit its systemic assessment as a whole and ensure that each determination is accurate with regard to each component of each settings criteria.

**KDADS-** All references specified below have been addressed in the modified systemic assessment. See the systemic assessment section of the modified STP for methodology and appendix A of the revised transition plan.

#### **Assisted Living Facilities and Residential Health Care Facilities Physically Disabled and Frail Elderly:**

10. For the settings criteria, "Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint," CMS does not agree 26-39-103(o) is compliant rather it is silent. Please propose remediation. CMS does not agree 28-39-254 (g)(1)(F) ;(3) (D) is partially compliant or compliant rather is it silent. Please propose remediation. CMS does not agree 26-39-103(i) is compliant rather it is partially compliant. The regulation cited addresses privacy but does not address dignity, respect, freedom from coercion and restraint. Please propose remediation. CMS does not agree 26-39-103(i), 26-41-101(k), 26-

39-102(c), 26-41-202(a), 26-41-204(a) are compliant rather they are silent. Please propose remediation.

**CMS follow up-** The state's remediation strategy is incomplete. Please remove the statement, "The following requirements must be documented in the person-centered service plan:" complete the statement with "(A) Identify a specific and individualized assessed need, (B) document the positive interventions and supports used prior to any modification to the person-centered service plan, (C) Document less intrusive methods of meeting the need that have been tried but did not work, (D) Include a clear description of the condition that is directly proportionate to the specific assessed need, (E) Include a regular collection and review of data to measure the ongoing effectiveness of the modification, (F) Include established time limits for periodic review to determine if the modification is still necessary or can be terminated, (G) Include informed consent of the individual, (H) Includes an assurance that interventions and support will cause no harm to the individual." Or add a clarifier to find the above requirements later in the systemic assessment.

**KDADS:** Page 42-44 of the Systemic Assessment has been further updated to address the remaining portion of the citation. All regulations in the K.A.R. 28-30 section was revoked in 2009 and no longer apply.

**CMS Response: Please clarify where the Residential Health Care Facilities are included in the systemic assessment. The state uses the Frail Elderly waiver to show compliance with the freedom from restraints, however the waiver alone cannot be used to justify a state's compliance and it must be in their regulation, statute, or policy. Please provide remediation for this item which is silent.**

**KDADS response residential health care facilities were removed in error. Assisted Living and Residential health care facilities fall under the same regulations and therefore are addressed under the same guidance. KDADS changed compliant to silent and added remediation addressing freedom from restraint.**

11. For the settings criteria, "Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact," CMS does not agree 26- 39-103 (o) or 26-39-103 (h)(2) are partially compliant rather they are conflicting. The cited regulation indicates a roommate change can be made without the person's consent and is silent on all other aspects of this settings criteria. Please propose additional remediation. CMS does not agree ALF/RHCF: 28-39-254 (h)(k)(l) is compliant rather it is silent. Please propose remediation. Additionally, the Remediation/Comments section suggests access to areas may be restricted without supervision. Please ensure that when addressing this in the PCP the settings criteria for modification of additional conditions is adhered to. Pg. 9 of 61 of the crosswalk #17 of the review- The crosswalk is intended to assess the state's current regulations and policies against the federal settings criteria. This particular item seems to solely address an onsite review question. This should be part of the state's site-specific assessment and should not be addressed in the systemic assessment, rather the specific regulations and policies the state currently has that addresses the federal settings criteria is what should be assessed. CMS does not agree 26-39-103(n) or 26-38-103(i) are compliant rather they are silent. Please propose remediation.

**CMS follow up-** The citation 26-39-103(a)(m) is not a correct citation. Please clarify if the state intended to cite 26-39-103(a) – (m). CMS does not agree that 26-39-103 is silent, rather it is in conflict. The cited regulation indicates a roommate change can be made without the person’s consent, permits visitor restrictions and is silent on other aspects of this settings criteria. Please propose additional remediation to address the conflicts in this regulation.

**KDADS:** All regulations in the K.A.R. 28-30 section was revoked in 2009 and no longer apply.

**CMS Response:** This request was in reference to Chapter 26 and not Chapter 28. K.A.R. 26-39-103 is in conflict by stating “The administrator or operator shall ensure that a designated staff member informs the resident, the resident’s legal representative, or authorized family members whenever the designated staff member learns that the resident will have a change in room or roommate assignment.” Please change to “conflicting” and propose remediation.

**KDADS Response** the original section of the systemic assessment refers to iv of the final rules this CMS response relates to (vi) (B) (2) of the final rule. Citations were corrected in the previous iteration.

12. For the settings criteria, “Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors,” CMS does not agree 28-39-254 (g)(1)(F) ;(3) (D) is partially compliant or complaint (as listed in two separate places) rather it is in conflict. The regulation allows for a master key of the resident doors. Please propose additional remediation.

**CMS follow up-** CMS does not agree that KAR 28-39-254(g) is non-compliant rather it is in conflict. The regulation allows for a master key. Please address in the proposed remediation.

**KDADS:** All regulations in the K.A.R. 28-30 section was revoked in 2009 and no longer apply. Citation of KAR 26-41-101(d)(5) corrected on page 44 of the newly amended STP.

**CMS Response:** Please provide the specific K.A.R. section where the remediation will occur within the remediation section of the systemic assessment.

**KDADS Response** we have identified a regulation and provided remediation as requested.

13. For the settings criteria, “Individuals sharing units have a choice of roommates in that setting,” CMS does not agree 26-39-103(o) or 26-39-103(h)(2) are partially complaint rather they are conflicting. The regulation cited indicates a person will be informed when a room or roommate change is made, indicating a change can be made without the person’s consent. The remediation does not address what will be changed. Please propose additional remediation.

**CMS follow up-** Please address the apparent conflict between Articles 39 and 41 of the Kansas Administrative Regulations that both govern Assisted Living facilities regarding choice of roommates.

Please correct the citation KAR 26-41-101(5) under the Assisted Living, (2) Individuals sharing units have a choice of roommates in that setting criteria. The correct citation appears to be KAR 26-41-101(d)(5).

Note: Please verify all citations are accurate.

**KDADS:** All regulations in the K.A.R. 28-30 section was revoked in 2009 and no longer apply. Citation of KAR 26-41-101(d)(5) corrected on page 44 of the newly amended STP.

**CMS Response:** 26-39-103(h)(2) states, “The administrator or operator shall ensure that a designated staff member informs the resident, the resident’s legal representative, or authorized family members whenever the designated staff member learns that the resident will have a change in room or roommate assignment.” This indicates that a change in roommate can occur without the individual’s consent or knowledge. Please propose remediation.

**KDADS Response** KDADS has made changes are requested.

**New Spot Check of Systemic Assessment Appendix A and STP as Modified August 3, 2018 for Initial Approval**

A new spot check of the state standards that are included in the state’s crosswalk has been conducted, and CMS has concerns with several of the state’s determinations regarding compliance with the settings criteria. Please note that these examples are not exhaustive. CMS requests that the state revisit its systemic assessment to ensure the determinations are accurate.

These are examples to give the state further guidance when completing the crosswalk:

14. Appendix A, pg. 34: Under Attendant Care Youth for the settings criterion, “Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint”, the state cites KAR 28-4-290. Program. (i) Discipline. (3) Prohibited forms of punishment shall include: (C) binding or tying to restrict movement or enclosing in a confined space such as a closet, locked room, box, or similar cubicle; or (D) deprivation of meals. The proposed remediation does not include language that ensures freedom from coercion and restraint. Please propose remediation.

KDADS: This setting was removed. HCBS is not provided.

**CMS Response:** Attendant Care Youth is identified as an applicable setting in the Systemic Assessment under the Autism Manual (p. 214) and the IDD Manual (p. 239). Please clarify. KDADS Response Attendant Care Youth has been removed. It is a service not a setting. Settings where the service can be provided are addressed in other areas of the systemic assessment.

15. Appendix A, pg. 290-299: The Technology Assistance Provider Manual is identified as the Technical Assistance Manual in the Systemic Assessment Crosswalk Appendix A. Please correct.

KDADS: Page 26 of the Main Body of the STP was revised to show that manual updates are not complete but rather ongoing. Newly modified Systemic Assessment also updated starting on page 165.

**CMS Response:** Please clarify if the manual referenced on pg. 238 is the Technology Assistance Provider Manual or the Technical Assistance (TA) Manual.

**KDADS Response** change were made as requested.

## Systemic Assessment Review 4/2019

16. Enhanced Care Services Policy beginning at page 3, is presumed compliant by the state as ECS “is only offered in the participant’s home”. However, A.2.a. of the policy states the service may be provided in the participant’s home *or HCBS setting*. Please clarify if Enhanced Care Services should be included in the Systemic Assessment, as this appears to be a service and not a setting.

**KDADS Response ECS has been removed. It is a service not a setting. Settings where the service can be provided are addressed in other areas of the systemic assessment.**

17. Family Foster Care Home, page 35, regarding (v) Facilitates individual choice regarding services and supports, and who provides them, please ensure remediation addresses not only Medical and Dental as described in K.A.R. 28-4-819 but choice of all HCBS services and who provides them.

**KDADS Response made suggested changes**

18. Family Foster Care Home, page 50, regarding (vi)(D) Individuals are able to have visitors of their choosing at any time, CMS does not agree that this requirement is not applicable. Please provide evidence of compliance or propose a remediation strategy. Individuals should have the same degree of access as individuals not receiving Medicaid HCBS.

**KDADS Response Additional language was added after talking this through with CMS.**

19. Family Foster Care, page 51, regarding accessibility of the setting, please specify where K.A.R. 28-4-821 (b) addresses accessibility of the setting for participants.

**KDADS response requested information has been added.**

20. Adult Day Care, beginning at page 69, the state cites K.A.R. 26-39 regulations as supporting state regulations in the Systemic Assessment. Under the GAP column, K.A.R. 26-30 regulations are cited, and the proposed remediation is to add to the K.A.R. 26-30 regulations. Please clarify which regulations govern Adult Day Care settings and the specific regulations that will be remediated where applicable.

**KDADS Response per TA call 5.7.2019 this item is complete and requires no further follow up.**

21. IDD Specific Services, page 138, (iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact, the state finds this to be in partial compliance [K.A.R. 30-63-22(a)no provision exists ensuring activities are not regimented. K.A.R. 30-63-22(b) (4,6,7) no provision exists ensuring activities are not regimented] but does not propose a remediation. Please propose remediation.

**KDADS Response has added requested remediation.**

22. IDD Specific Services, page 143, CMS disagrees that K.A.R. 30-63-21 is compliant with the requirement that individuals have access to food at any time. Please propose a remediation strategy.

**KDADS Response has added requested remediation.**

23. Sheltered Employment, page 155, (ii) The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. This section is applicable to non-residential settings. Please identify state statute, regulations, policy, etc. that supports compliance or propose a remediation strategy.

**KDADS Response has added requested remediation.**

24. Autism Manual, page 214, indicates it applies to Foster Care Residential Group Home, Attendant Care Youth, Foster Licensed/Managed by DCF, Residential Care. For 42 CFR 301 c (vi), the state indicates there are no provider-owned or controlled settings. Please clarify for the reader. In addition, the state indicated previously that attendant care youth does not fall under HCBS and that Foster Care Residential Center Group Boarding Homes are temporary and do not exceed 30 days. Please clarify if these are these the same as Foster Care Residential Group Homes.

**KDADS Response: KDADS removed language as there are no provider owned or controlled HCBS Autism residential settings. To provide clarification attendant care youth is a service and foster care residential center group homes are a setting. Neither of which apply to the Autism Waiver.**

25. Under Assisted Living, the state indicates for F – modifications, that the KanCare RFP is Silent, but then indicates the PCP policy and KanCare contract are compliant. Please provide the remediation for the silent KanCare RFP.

**KDADS has removed the word silent as requested.**

26. DCF PPS PPM: For criteria iii. Recommendation for the remediation is incomplete. Complete the remediation language with:

- (A) Identify a specific and individualized assessed need.
- (B) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
- (C) Document less intrusive methods of meeting the need that have been tried but did not work.
- (D) Include a clear description of the condition that is directly proportionate to the specific assessed need
- (E) Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- (F) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- (G) Include informed consent of the individual.
- (H) Include an assurance that interventions and supports will not cause harm to the individual.

**KDADS Response has added requested remediation**