

205.5370 Waiver programs -- Definitions for section -- Application -- Waitlists -- Assessments and reevaluations -- Eligibility -- Report of possible violations -- Quarterly report.

- (1) As used in this section:
 - (a) "Department":
 1. Means the Department for Medicaid Services; and
 2. Includes any other agency of state government or nongovernmental entity contracted by the department to administer any aspect of a waiver program;
 - (b) "Waiver program" means a 1915(c) home and community based waiver program approved by the federal Centers for Medicare and Medicaid Services and administered by the department or any other subdivision of the cabinet; and
 - (c) "Waiver program application" means any waiver program application, including a waiver waitlist application or application to begin receiving waiver program services.
- (2)
 - (a) The department shall require any individual applying for waiver program services, including any individuals applying for or requesting placement on a waiver waitlist, to submit a completed waiver program application that includes a provider's recommendation for waiver program services and provider attestation to the primary diagnosis for which the individual is seeking waiver program services.
 - (b) Except as provided in paragraph (c) of this subsection, the department shall not place any individual on a waiver waitlist or approve any individual to receive waiver program services if the individual has not completed and submitted a waiver program application that includes a provider's recommendation for waiver program services and provider attestation to the primary diagnosis for which the individual is seeking waiver program services.
 - (c) An individual who was placed on a waiver waitlist on or before April 14, 2026, shall be allowed twelve (12) months from April 14, 2026, to submit a waiver program application that includes a provider's recommendation for waiver program services and provider attestation to the primary diagnosis for which the individual is seeking waiver program services. Any individual who was placed on a waiver waitlist on or before April 14, 2026, who fails to comply with the requirements of this paragraph shall be removed from the waiver waitlist.
 - (d) As used in this subsection, "provider" means a physician or physician assistant licensed under KRS Chapter 311, an advanced practice registered nurse licensed under KRS Chapter 314, or a licensed psychologist licensed under KRS Chapter 319.
- (3) By July 1, 2026, the department shall identify, designate, and require the use of a waiver-specific level of care assessment tool for each waiver program operated by the department. The level of care assessment tools designated under this subsection

shall:

- (a) Be nationally recognized;
 - (b) At a minimum, recommend the frequency, duration, and intensity of services needed by the individual; and
 - (c) Be age-appropriate relative to the population served by the waiver program for which it is designated.
- (4) All level of care assessments, including annual level of care reevaluations, shall utilize the waiver-specific level of care assessment tools designated in accordance with subsection (3) of this section.
- (5) Notwithstanding subsections (3) and (4) of this section, an individual who is eighteen (18) years of age or younger and currently receiving waiver services on April 14, 2026, shall not be reassessed using the level of care assessment tools designated under subsection (3) of this section and shall continue to be reassessed as required under state and federal law using the assessment tool in effect on April 14, 2026, until he or she reaches eighteen (18) years of age.
- (6) The department shall undertake efforts to encourage waiver service providers to develop innovative programs that increase the quality and value of care while reducing costs of the waiver programs.
- (7) (a) Except as provided in paragraphs (b) and (c) of this subsection and to the extent permitted under federal law, in order to be eligible for enrollment in a waiver program an individual shall be a citizen of the United States or a qualified alien as defined in 8 U.S.C. sec. 1641 and have been a resident of the Commonwealth for at least one (1) year prior to enrollment.
- (b) Notwithstanding paragraph (a) of this subsection, an individual who has been a resident of the Commonwealth for less than one (1) year may be enrolled in a waiver program for which there is no waitlist.
- (c) This subsection shall not apply to:
- 1. Individuals enrolled in a waiver program prior to April 14, 2026; or
 - 2. Members of the United States Armed Forces, their spouses or dependents, or veterans.
- (8) (a) The cabinet shall reserve capacity in each waiver program to ensure availability of waiver slots for individuals determined to have an emergency need status and shall develop waitlist management policies for individuals seeking emergency placement in a waiver program, including but not limited to, by January 1, 2027, for each waiver program, development of waiver-specific emergency need allocation criteria for any waiver program for which such criteria do not already exist on April 14, 2026.
- (b) Allocation criteria developed pursuant to this subsection for the home and community based waiver, or HCB waiver, shall prioritize the allocation of reserve capacity waiver slots to individuals determined through assessment to be in need of skilled nursing services through a waiver program.
- (9) (a) For the purposes of identifying and eliminating waste, fraud, and abuse in the 1915(c) waiver programs, any person who knows or has reasonable cause to

believe that a violation of waiver program policy or law, including but not limited to this section, this chapter, any administrative regulation promulgated under this chapter, waiver program documents approved by the federal Centers for Medicare and Medicaid Services, federal Medicaid-related statutes or regulations, or contracts entered into by any agency of state government for administration of the waiver programs, has been or is being committed by any person, corporation, or entity, shall report or cause to be reported to the Office of Medicaid Fraud and Abuse Control in the Office of the Attorney General, or the Medicaid Fraud and Abuse hotline as required under KRS 205.8465.

- (b) This subsection and KRS 205.8465 shall apply to area development districts, or any other agency of state government, quasi-governmental agency, or private entity tasked with administering or overseeing a patient directed services program under which waiver participants are permitted to directly employ caregiving staff. Any person who knows or has reasonable cause to believe that any fraudulent activity in the hiring, employment, or compensation of patient directed services staff has occurred or is ongoing shall report or cause to be reported to the Office of Medicaid Fraud and Abuse Control.
- (10) On a quarterly basis beginning July 1, 2026, the cabinet shall prepare and submit a report to the Legislative Research Commission for referral to the Interim Joint Committees on Appropriations and Revenue and Families and Children and the Medicaid Oversight and Advisory Board on waiver program expenditures and waiver service utilization rates for the quarter immediately preceding the most recent quarter.

Effective: April 14, 2026

History: Created 2026 Ky. Acts ch. 179, sec. 15, effective April 14, 2026.