

# Frequently Asked Questions

## Appendix K Flexibilities Ending June 30, 2024 (Revised: 5/30/24)

This document specifically addresses flexibilities that will end after June 30, 2024, and the flexibilities that have been made permanent effective July 1, 2024.

A Public Health Emergency (PHE) was declared by the federal government in March 2020 in response to COVID. Subsequent federal approvals gave Alaska the flexibility to respond to the emergency by allowing specific actions that were not previously allowed. The PHE ended on May 11, 2023, and Alaska received federal approval to continue these flexibilities until June 30, 2024. Alaska took additional steps during the PHE to make some flexibilities permanent, effective July 1, 2024.

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**Flexibilities Ending June 30, 2024**

The following flexibilities end June 30, 2024:

Legally Responsible Individuals (LRIs) as Paid Providers

The ability for legally responsible individuals (LRIs) to be paid providers depends on the service being delivered. SDS is in the process of reviewing and changing how LRIs can serve recipients as paid providers. The following information is specific to the flexibilities ending on June 30, 2024. Changes may be made to the following information in the future.

*Who is considered a legally responsible individual?*

Legally responsible individuals (LRIs) are parents of minor children, spouses, or a legal guardian (appointed by the court).

LRIs are not:

- Individuals holding Power of Attorney (POA)
- Stepparents (Unless a guardian)
- Foster parents
- Family or relatives (Unless parents of a minor child, spouse of recipient, or legal guardian)

*A Recipient’s LRI cannot be a paid provider of most Waiver services after June 30, 2024:*

A LRI cannot be a paid provider of most waiver services (including, but not limited to Respite and Day Habilitation), unless permission to provide waiver services is included in the court appointed legal guardian decree. Please see Flexibilities Made Permanent on the following page, for additional information.

*Who should be contacted about guardianship questions?*

Please contact the Alaska State Association of Guardianship and Advocacy: <https://asaga.info/>.

*CFC PCS: Can legally responsible individuals (LRIs) provide Community First Choice (CFC) Personal Care Services after June 30, 2024?*

Background: Personal Care Services (PCS) are offered through two different programs: State Plan or Community First Choice (CFC). The programs have different requirements that impact if LRIs can provide the service.

**Yes. LRIs can provide Community First Choice-Personal Care Services (CFC-PCS).**

*State Plan PCS: Can legally responsible individuals (LRIs) provide State Plan Personal Care Services after June 30, 2024?*

**No. LRIs cannot provide State Plan-Personal Care Services (PCS) after June 30, 2024.**

*Is an amendment needed if an LRI is listed as providing waiver services on a previously approved support plan?*

No. The LRI must stop providing services after June 30, 2024, but the support plan can be updated upon renewal as appropriate. LRIs can continue to provide Supported Living and In-Home Supports and no amendment is needed to indicate that.

### Additional Respite, Day Habilitation, or Chore

*Is additional Respite, Day Habilitation, or Chore available after June 30, 2024?*

SDS received federal approval to allow additional amounts of respite, day habilitation and chore under specific conditions during the PHE. This flexibility will end June 30, 2024. An amended support plan and communication with the provider is required if the support plan year goes beyond June 30, 2024.

*What if situations occur that require additional Respite, Day Habilitation, or Chore?*

The Care Coordinator may file an amended or renewal Support Plan requesting the increase for a specific timeframe and must provide specific justification showing the need for service hours beyond those allowed by regulation. Initial or renewal requests for Day Habilitation, Respite or Chore that are over the regulatory limit cannot be made using the Short Support Plan form.

### In-Person Assessments

*When will SDS resume in-person assessments?*

SDS will resume in-person assessments after June 30, 2024.

*Will all assessments be in-person? Do I have to have an in-person assessment?*

Generally, all initial assessments will be conducted in-person after June 30, 2024. Some assessments may need to be conducted via teleassessment at the discretion of SDS. The applicant will be notified whether the assessment will be in-person or by teleassessment at the time their assessment is scheduled. Applicants who are renewing their level of care may be eligible for a comprehensive file review in lieu of an assessment, although they can request an in-person assessment if they would prefer.

### **Flexibilities Made Permanent after June 30, 2024**

Alaska took additional steps during the public health emergency to amend certain regulations so that some flexibilities would be permanent when the public health emergency was over. The amended regulations, making some flexibilities permanent, will go into effect on July 1, 2024. The flexibilities include the option to receive some services via distance delivery.

### Legally Responsible Individuals (LRIs) as Paid Providers

*A recipient's LRI may be a paid provider for following Waiver services:*

- In-Home Supports
- Supported Living

LRIs must meet all agency hiring requirements including background check, training requirements, and all other conditions of employment set by the agency.

### Distance Delivery of Specified Waiver Services

*What waiver services will be eligible to be provided via distance delivery after June 30, 2024?*

SDS implemented regulations to make some flexibilities permanent, including the option to use distance delivery for specified waiver services, if approved in a support plan.

Care Coordination, Day Habilitation, Employment Services, and Intensive Active Treatment Services will continue to be eligible to be provided via distance delivery after June 30, 2024. Each service has limitations on the amount of units that can be provided via distance delivery.

*What waiver services are not eligible to be provided via distance delivery after June 30, 2024?*

The ability to use distance delivery to provide Adult Day, In-Home Supports, and Supported Living services will end on June 30, 2024.

*What is distance delivery?*

Regulation: [7 AAC 130.319\(22\)](#)

Distance delivery means a face-to-face interaction between a recipient and a provider, using a secure web-based platform that is compliant with P.L. 104-191 (Health Insurance Portability and

Accountability Act of 1996 (HIPAA)). Distance delivery does not include the use of a telephone without a video component. Care coordination has different requirements for monthly contacts and of the use of telephone or distance delivery. Please see the section on Care Coordination for more information.

*How does a person request Day Habilitation, Employment Services, or Intensive Active Treatment Services be provided via distance delivery?*

Using the Planned Services tab in Harmony, the Care Coordinator will indicate if 10% of the service is being requested to be provided via distance delivery. The Care Coordinator will then provide information regarding the request in the “Describe Weekly Frequency and Duration” section of the support plan, under the specified service.

*Is an amendment needed for approved plans that would like to use up to 10% distance delivery?*

No, update the support plan upon renewal as appropriate. Providers who are providing services in approved support plans should document the amount of services being provided via distance delivery. Providers are responsible for ensuring that the amount of units delivered via distance delivery does not exceed 10% of the total approved units. Care coordinators renewing support plans with start dates after June 30, 2024, should document the amount of units being requested via distance delivery in Harmony while adding Planned Services. Harmony has been updated for planning teams to document distance delivery and it is available for use.

*Who should providers get the informed consent from, to provide services via distance delivery?*

Waiver recipients and/or their legal representatives must be informed about the type of connection being used during the distance delivery visit, including whether the connection is secure or unsecured. Informed consent does not need to be obtained at every visit if the waiver recipient has previously consented to using that specific type of distance delivery. A waiver recipient and/or their guardian must be given the option to revoke that consent at any time if they choose. If the waiver recipient cannot communicate over the phone, a phone contact is not considered a visit with the person.

*What platforms are considered HIPAA compliant for distance delivery?*

It’s up to the provider to ensure HIPAA compliance for all communication when the person is sharing PHI. It is up to the provider to get written consent from the recipient to use distance delivery and it must state whether the method used is encrypted or not. Platforms change over time, and it is the responsibility of the provider to ensure the platform meets HIPAA compliance. Prohibited platforms include those that make PHI open to individuals who are not specifically invited, such as livestreaming on YouTube, Facebook live, TikTok, and similar applications.

## Care Coordination

*Care Coordination: Monthly Contacts*

Regulation: [7 AAC 130.240](#)

Care coordination may be provided via distance delivery or by telephone with the following

limitations:

For ISW recipients:

- Every six months: [7 AAC 130.240\(b\)\(1\) & 7 AAC 130.240\(b\)\(3\)\(B\)](#)
  - At minimum, **one in-person contact** with the recipient or the recipient's representative at least once every six months, and **one telephone contact or distance delivery contact in each of the subsequent five months**. The in-person contacts must occur in one of the settings where home and community-based waiver services are provided. Care Coordinators will have six months from July 1, 2024, to complete the required in-person contact with the recipient.
- During the plan year: [7 AAC 130.240\(b\)\(3\)](#)
  - Additional contacts to monitor service delivery include meeting in-person with the recipient in **at least two service environments during the plan year**, one of which must include meeting with the recipient in the recipient's home.
- For recipients of the IDD, ALI, APDD, and CCMC waivers:
  - Every six months: [7 AAC 130.240\(b\)\(2\) & 7 AAC 130.240\(b\)\(3\)\(B\)](#)
    - At a minimum, **two contacts each month** with the recipient or the recipient's representative; **every six months one of the monthly contacts must be in-person** and the remainder may be done by telephone or distance delivery. The in-person contacts must occur in one of the settings where home and community-based waiver services are provided. Care Coordinators will have six months from July 1, 2024, to complete the required in-person contact with the recipient.
  - During the plan year: [7 AAC 130.240\(b\)\(3\)](#)
    - Additional contacts to monitor service delivery include meeting in-person with the recipient in **at least two service environments during the plan year**, one of which must include meeting with the recipient in the recipient's home.

### Day Habilitation

*When will the amendments to the Day Habilitation regulations be implemented?*

Regulation: [7 AAC 130.260](#)

Amendments to Alaska's Day Habilitation regulations became effective 10/1/2020. Due to the COVID-19 emergency declaration, SDS chose to delay implementation of the amended regulations. These regulations will no longer be on hold and will go into effect after June 30, 2024. The regulations clarify how Day Habilitation services can be included in a Person-Centered Support Plan and explain what should be contained in support plans and amended support plans that request additional Day Habilitation beyond 624 hours per year. SDS will start using the new regulatory language when reviewing requests for Day Habilitation on support plans with a start date after June 30, 2024.

*What flexibilities have been made permanent for Day Habilitation?*

Regulation: [7 AAC 130.260](#)

Effective July 1, 2024, up to 10% of the total Day Habilitation units approved can be provided via

distance delivery. Additionally, 10% of the total Day Habilitation units approved can be provided in a residential setting. Care coordinators renewing support plans with start dates after June 30, 2024, should document the amount of units being requested via distance delivery and/or requested to be provided in a residential setting in Harmony while adding Planned Services. Additional information regarding how to request distance delivery of services for service dates after June 30, 2024, can be found under “*How does a person request Day Habilitation, Employment Services, or Intensive Active Treatment Services be provided via distance delivery?*”

### Employment Services

*When will SDS require that program administrators and employment service specialists have National Certification in Employment Services or an equivalent certification?*

Employment Services program administrators must receive National Certification in Employment Services (NCES) or an equivalent certificate in Employment Services prior to July 1, 2024. The flexibility that suspended this requirement expires on June 30, 2024. Program administrators with questions about meeting this requirement by July 1, 2024, should contact the Provider Certification and Compliance Unit at: [hss.dsds.certification@alaska.gov](mailto:hss.dsds.certification@alaska.gov).

At this time, job coaches and employment services specialists will have until July 1, 2025, or one year from their date of hire if later, to obtain the NCES training certificate or an equivalent certificate in Employment Services. The training certificate for job coaches and employment services specialists should be maintained in their employee record.

SDS is currently revising the Employment Services Regulations and Conditions of Participation. Public comment opportunities will be available for the revised Employment Services Regulations and Conditions of Participation. Until then, please refer to the effective Employment Services Regulations and Conditions of Participation.

*What flexibilities have been made permanent for Employment Services?*

Regulation: [7 AAC 130.270](#)

Conditions of Participation: [Employment Services Conditions of Participation](#)

Employment Services may be provided in-person or using distance delivery that is justified and approved in a support plan to a recipient individually or as a member of a group of two to five recipients. The units of distance delivery may not be more than 10% of the total units of Employment Services approved for a plan year and must be justified and approved in the recipient’s support plan.

### Intensive Active Treatment

*What flexibilities have been made permanent for Intensive Active Treatment?*

Regulation: [7 AAC 130.275](#)

Intensive Active Treatment may be provided in-person or using distance delivery that is justified and approved in a support plan. Distance delivery may not be more than 10% of the total authorized units of service. The number of estimated units reserved for distance delivery must be included in the written plan for time-limited treatment or therapy.

### Changes to Acuity Add-On

Changes to acuity add-on were added to the most recent Appendix K, in the fall of 2023. The changes to acuity add-on allow for recipients to receive:

- Acuity add-on in an 8-hour unit of time instead of a 24-hour unit
- 2:1 acuity add-on

These flexibilities are currently approved under Appendix K, with the intention of being made permanent. The criteria for requesting acuity add-on remains the same and is listed in the acuity add-on regulations [7 AAC 130.267](#). The service documentation requirements have not changed. All interventions and supports delivered for an acuity add-on must be documented in service notes by the staff rendering the service. This does not change if a billable unit is broken into 8-hour vs 24-hour units. Amendments are not needed for recipients who already have 24-hour acuity add-on in their approved support plan. The billable unit will change to 8-hour units, but the amount of acuity add-on approved will still be for 24-hours, made up of three 8-hour units.