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### **B-1 Kansas Administrative Regulations (K.A.R.) and Kansas Statutes Annotated (K.S.A.)**

a. The following are references to K.A.R.s that apply to the Traumatic Brain Injury program:  
*(These regulations are available in their entirety online at:*  
<http://www.kslegislature.org/cgi-bin/ksadminregs/index.cgi>)

- 30-5-78**      **Scope of and reimbursement for home-and community-based services for persons with head injury trauma.** The scope of and reimbursement for home-and community-based services for persons with head injury trauma shall consist of those services provided under the authority of the applicable federally approved model waiver to the Kansas Medicaid State Plan. (a) Recipients of services provided pursuant to this waiver shall be capable of benefitting from rehabilitation by demonstrating improvement.(b) home-and community-based services shall be provided in accordance with a plan of care written by a case manager. Before the development of any plan to provide services, the need for services shall be determined by an individualized assessment of the prospective recipient by a provider enrolled in the program.
- 30-5-116**      **Scope of rehabilitation services.** (d) Long-term head injury rehabilitation shall be limited to only those individuals who: (1) have sustained a traumatic head injury; (2) continue to show progress in their recovery; and (3) can benefit from transitional living skills training.
- 30-5-301**      **Provider participation.** (A) Each provider shall meet the provider participation requirement specified in K.A.R. 30-5-59, including record keeping requirements, and the following additional requirements: (1) All assessment records; (2) All plan of care records, and (3) All case file documentation records.
- 30-5-304**      **Cost efficient plans of care.** (a) Each HCBS plan of care shall be cost efficient and shall be provided in accordance with K.A.R. 30-5-70.
- 30-5-305**      **Assessment requirements.** (a) Qualified staff and assessment providers shall conduct an assessment prior to the implementation of any HCBS.

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**30-6-306**      **Effective date for HCBS eligibility.** (a) The effective date of eligibility for HCBS services shall not be before the effective date of Medicaid eligibility.

**30-5-307**      **Family reimbursement restriction.** (a) An adult consumer's spouse cannot be paid to provide HCBS services to that consumer. A minor consumer's parents cannot be paid to provide HCBS services to that consumer (b) Unless one of the four criteria noted below are met.

1. Consumer's residence is documented in writing by three HCBS provider agencies to be so remote or rural that HCBS services would be otherwise completely unavailable.
2. Consumer's health, safety, or social welfare would be jeopardized and is so documented in writing by two health care professionals including the attending physician.
3. Due to advancement of chronic disease, consumer's primary means of communication can only be understood by the spouse or parent of minor child and is so documented in writing by the attending physician.
4. Written documentation from three HCBS providers that delivery of HCBS services to the consumer poses serious health or safety risks for providers thereby rendering HCBS services otherwise unavailable.

**30-5-308**      **Nonsupplementation of HCBS services.** (a) An organization, agency, family, consumer, or other individual shall not be allowed to pay for services that are on the plan of care.

(b) A consumer may accept the following:

(1) Any available service that is provided free and voluntarily by one or more organizations, agencies, families, or other individuals, at no cost to the Medicaid program; and

(2) any available, desired services in addition to those services on the plan of care that are purchased by the consumer or one or more organizations, agencies, families, or other individuals, at no cost to the Medicaid program.

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(c) This regulation shall be effective on and after December 31, 2002. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1997; amended Dec. 31, 2002.)

**30-5-309**     **Scope of and reimbursement for medicaid home- and community-based services (HCBS).** The scope of medicaid home- and community-based services shall consist of those services provided under the authority of the applicable federally approved waiver to the Kansas medicaid state plan. (a) Medicaid home- and community-based services shall be provided to medicaid-eligible consumers who are determined by individualized assessment to be qualified for the appropriate institutional level of care, and who elect to receive the services specified in individualized written plans of care designed to prevent living in an institution.

(b) Medicaid home- and community-based services shall consist of one or more of the services defined and federally approved in the medicaid home- and community-based waiver provided under a written plan of care.

(c) Medicaid home- and community-based services shall be provided in accordance with an individualized written plan of care approved in writing by the Kansas department of social and rehabilitation services for all waiver program services other than the frail elderly waiver program services, which shall be provided in accordance with an individualized written plan of care approved in writing by the Kansas department on aging. Each annual review and amendment of this plan shall be approved in the same fashion. This plan shall meet these requirements:

(1) Be based on needs identified during the screening assessment;

(2) specify each service to be provided and why each service was selected, or how each service will address any specific need identified by the assessment;

(3) specify the frequency and limits of each provided service;

(4) specify any other required support services and the plan for obtaining them;

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(5) be prepared in consultation with the consumer or the consumer's guardian, if one has been appointed;

(6) be approved in writing by the consumer or the consumer's guardian, as appropriate; and

(7) be reviewed at least annually and updated as necessary.

(d) Medicaid home- and community-based services shall be subject to the individual and aggregate expenditure limits applicable under the federally approved waiver.

(e) Medicaid home- and community-based services for a consumer shall be terminated when the Kansas department of social and rehabilitation services or the Kansas department on aging for the frail elderly program determines at least one of the following:

(1) The consumer no longer meets the level of care criteria.

(2) The consumer fails to cooperate with basic program requirements to the degree that the department's ability to deliver services is substantially impeded.

(3) The written plan of care no longer meets the tests of cost-effectiveness, or a cost cap exception is not granted. *(HCBS/TBI waiver plans of care are not subject to cost caps.)*

(4) No provider of essential services is available in the consumer's home location.

(5) The consumer enters a nursing facility for more than a planned brief stay.

(6) The consumer becomes no longer eligible for medicaid.

(7) The consumer requests termination of services.

(8) The consumer dies.

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(f) Reimbursement for medicaid home- and community-based services shall be based upon reasonable fees as related to customary charges, but no fee shall be paid in excess of the range maximum. The range of charges shall provide the basis for computations.

(g) This regulation shall take effect on and after July 1, 2000. (Authorized by and implementing K.S.A. 1999 Supp. 39-708c; effective July 1, 1997; amended July 1, 2000.)

b. Kansas Statutes Annotated (K.S.A.) that effect the HCBS/TBI wavier are listed below:  
(These statues are available in their entirety online at <http://www.kslegislature.org>)

- 39-1430** This section refers to reporting the abuse, neglect, and exploitation of the certain persons which the law defines as “Mentally Ill, Incapacitated and Dependent Persons.”
- 39-1431** This section on the reporting of abuse, neglect or exploitation delineates those individuals who are required to report such incidents and states the penalty for failure to do so. (*Mandated reporters include TCMs.*)
- 65-5101** Defines home health agencies and independent living centers.
- 65-5102** This section indicates that an entity that is a home health agency may not provide services with the exception of non medical attendant services, unless it is licensed.
- 65-1124** This section refers to acts which are *not* prohibited by law under the regulation of nursing. The most important of which is letter ‘m’ which states, “performance of a nursing procedure by a person when that procedure is delegated by a licensed nurse, within the reasonable exercise of independent nursing judgment and is performed with reasonable skill and safety by that person under the supervision of a registered professional nurse or a licensed practical nurse”.
- 65-6201** This section includes the definitions described above and sets the exemption to the nurse practice act by defining health maintenance activities: includes but are not limited to, catheter irrigation, administration of medications, enemas and suppositories; and wound care, if such activities in the opinion

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of the attending physician or licensed professional nurse may be performed by the individual if the individual were physically capable, and the procedure may be safely performed in the home.

**39-7, 100** Defines HCBS services. It further sets the rights of the individual in need of in-home care who are recipients of attendant care services and the parents or guardians of minors who are at least 16 years of age and who are in need of in-home care shall have the right to choose the option to make decisions about, direct the provisions of and control the attendant care services.

### **B-2 Laws and case law**

Listed below are important federal and state laws and case law that have affected people with disabilities.

#### **1953 - Kansas Act Against Discrimination**

This state law addresses the illegal discrimination of people with disabilities and other protected classes in the areas of employment, housing, and public accommodations. Amended several times over the years, it is currently considered to be substantially equivalent to several federal laws including the Fair Housing Act, Title VII of the Civil Rights Act, and the Americans with Disabilities Act.

#### **1964 - Civil Rights Act**

Signed into law by President Lyndon Johnson, the Civil Rights Act (amended 1991) prohibits discrimination in employment and public accommodations on the basis of race, color, national origin, religion, sex, age, disability.

#### **1965 - Medicaid Act**

Medicaid is a medical assistance program jointly financed by state and federal governments for low income individuals and is embodied in 42 U.S.C. 1396 et seq. It was first enacted in 1965 as an amendment to the Social Security Act of 1935.

#### **1968 - Architectural Barriers Act**

This act prohibits architectural barriers in all federally-owned or leased buildings.

#### **1970 - Urban Mass Transit Act**

This act requires that all new mass transit vehicles be equipped with wheelchair lifts.

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### **1973 - Rehabilitation Act**

A landmark law, the Rehabilitation Act bars discrimination against persons with disabilities by programs receiving federal funds— particularly Title V, Sections 501, 503, and 504.

### **1975 - Developmental Disabilities Bill of Rights Act**

This act establishes, among other things, Protection and Advocacy services (P & A).

### **1975 - Education of All Handicapped Children (PL 94-142)**

This law requires free, appropriate public education in the least restrictive environment for children with disabilities. This law was amended in 1997 and is now called the Individuals with Disabilities Education Act (IDEA).

### **1978 - Amendments to the Rehabilitation Act**

These amendments provide for consumer-controlled Centers for Independent Living.

### **1983 - Amendments to the Rehabilitation Act**

Provides for the Client Assistance Program and advocacy programs for consumers of rehabilitation and independent living services.

### **1985 - Mental Illness Bill of Rights Act**

Requires protection and advocacy services (P & A) for people with mental illness.

### **1985 - Alexander v. Choate**

Case law which states the Rehabilitation Act does not encroach upon the state's decisions about the types of disability services they provide under the Medicaid Act.

### **1988 - Civil Rights Restoration Act**

Congress overrode President Reagan's veto and reversed the impact of unfavorable case law (the 1984 United States Supreme Court [USSC] ruling in Grove City College v. Bell) by clarifying Congress' original intention under the Rehabilitation Act. The Act restores the reach of Title IX and other laws that prohibit discrimination by entire programs that receive federal funding (not just the part of the program which directly receives the funding).

### **1988 - Fair Housing Amendments Act**

Originally passed in 1968, this act was amended and now prohibits discrimination in housing and related transactions on the basis of race, color, national origin, sex, religion, disability and familial status. It also provides for architectural accessibility of certain new housing units, renovation of existing units, and accessibility modifications at the renters expense. The

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Act covers all kinds of housing-related transactions, including rentals, home sales, mortgage lending, homeowners' insurance, home improvement and zoning.

### **1990 - Americans with Disabilities Act**

A landmark comprehensive civil rights law, the ADA bans job discrimination on the basis of disability and requires businesses, public transportation, and other public facilities to be made accessible to persons with disabilities.

### **1991 - Civil Rights Act (as amended)**

This act legislatively reversed the USSC's 1989 decision that narrowly interpreted job discrimination laws and provides money damages for victims of intentional job discrimination to compensate them for their injuries and to deter future employer wrongdoing.

### **1995 - Helen L. v. DiDario**

First case to find that the ADA (specifically Title II) requires a public entity to provide programs, services, and activities in the most integrated setting appropriate to the needs of the individual with a disability. This case found it was discriminatory to require an individual to receive services in a nursing home as opposed to a community-based attendant care program.

### **1996 - TBI Act (P.L. 104-166)**

The law was passed to expand studies and establish innovative programs with respect to traumatic brain injury. This was amended and reauthorized as Title XIII of the Children's Health Act of 2000 (P.L. 106-310). Authority for state protection and advocacy services was included in the legislation.

### **1998 - Bragdon v. Abbott**

This was the first ADA case to make its way to the USSC, which holds, among other things, that HIV+ individuals are protected under the ADA.

### **1999 - Olmstead v. L.C.**

This case reaffirmed that Title II of the ADA bars the unnecessary segregation of people with disabilities in state institutions. As the USSC noted, such segregation is often motivated by irrational fears, stereotypes, and patronizing attitudes, and unfairly relegates individuals with disabilities to second-class status.