



Department of Medicaid

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To: ALL CLEARANCE REVIEWERS

From: Jesse Wyatt, Chief, Bureau of Long-Term Services and Supports

Date:

Subject: Direct care worker relationships

Attached for your review and comment is a proposed Ohio Administrative Code (OAC) Home and Community-based (HCBS) rule under the Ohio Department of Medicaid.

Rule 5160-44-32, entitled "Home and community based medicaid waiver program provider and direct care worker relationships," sets forth circumstances in which the parent of minor children, spouse, and relatives appointed legal decision making authority may serve as direct care workers of certain waiver services.

Questions pertaining to this clearance should be sent to Rules@Medicaid.Ohio.gov.

To receive notification when ODM posts draft rules for public comment please register via the Common Sense Initiative eNotifications Sign-up: [eNotifications Sign Up | Governor Mike DeWine \(ohio.gov\)](#). The Ohio Department of Medicaid will use this list to notify subscribers when draft rules are posted for public comment.

To receive notification when ODM original, revise, refile, or final files a rule package please register for Joint Committee on Agency Rules Review's (JCARR) RuleWatch at www.rulewatchohio.gov where an account can be created to be notified of rule actions by the rule number or department.

The main Ohio Department of Medicaid (ODM) web page includes links to valuable information about its services, programs and rules; the address is <http://www.medicaid.ohio.gov>.

Thank you in advance for your review of these rules.

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5160-44-32 Home and community based medicaid waiver program provider and direct care worker relationships.

(A) Unless otherwise permitted in home and community based services (HCBS) waiver program rules, a parent of a minor child, a spouse, or relatives appointed legal decision making authority may serve as a direct care worker only within the parameters described in this rule.

(B) The following waiver programs and services are applicable:

(1) Individual options services, as described in Chapter 5123-9 of the Administrative Code

- (a) Homemaker/personal care, participant-directed and provided through an agency; and
- (b) Waiver nursing, provided through an agency.

(2) Level one services, as described in Chapter 5123-9 of the Administrative Code

- (a) Homemaker/personal care, participant-directed and provided through an agency

(3) MyCare Ohio services, as described in Chapter 5160-58 of the Administrative Code

- (a) Choices Home care attendant, participant-directed;
- (b) Homemaker services provided through an agency;
- (c) Personal care services provided through an agency and participant-directed; and
- (d) Waiver nursing services provided through an agency.

(4) Ohio home care services, as described in Chapter 5160-46 of the Administrative Code

- (a) Personal care aide services provided through an agency; and
- (b) Waiver nursing services provided through an agency.

(5) Pre-admission screening system providing options and resources today (PASSPORT) services, as described in Chapter 173-39 of the Administrative Code

- (a) Choices home care attendant, participant-directed;
- (b) Homemaker services provided through an agency;
- (c) Personal care services provided through an agency and participant-directed; and
- (d) Waiver nursing services provided through an agency.

(6) Self-empowered life funding services, as described in Chapter 5123-9 of the Administrative Code

- (a) Participant-directed homemaker/personal care

(C) For the purpose of this rule, the following definitions apply:

(1) "Agency" refers to the following:

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- (a) A home health agency provider of Ohio home care waiver services, as described in Chapter 5160-46 of the Administrative Code;
- (b) An Ohio department of aging (ODA) agency provider certified under section 173.391 of the Revised Code; and
- (c) A department of developmental disabilities (DODD) agency provider certified under section 5123.045 of the Revised Code.

- (2) "Direct care worker" refers to the person providing hands on care to an individual receiving a medicaid 1915(c) waiver program service.
- (3) "Extraordinary care" refers to hands-on assistance with activities of daily living, incidental activities of daily living, and supervisory monitoring care exceeding the range of activities a parent of a minor child would ordinarily perform in the household on behalf of an individual without a disability or chronic illness of the same age, or on behalf of a spouse without a disability or chronic illness.
- (4) "Financial Management Service (FMS)" refers to the entity contracted with ODA, Ohio department of medicaid (ODM), DODD, or their designee to process payment of participant-directed waiver services.
- (5) "Home and community-based services (HCBS)" refers to services available to individuals to help maintain their health and safety in a community setting in lieu of institutional care as described in 42 C.F.R. 440 subpart A (October 1, 2023). Programs which provide HCBS include the assisted living waiver, the individual options waiver, the level one waiver, the MyCare Ohio waiver, the Ohio home care waiver, pre-admission screening system providing options and resources today (PASSPORT), and the self-empowered life funding waiver.
- (6) "Individual" means a medicaid recipient receiving services through an HCBS waiver program authorized under 1915(c) of the Social Security Act.
- (7) "Non-agency provider" refers to the following:
 - (a) A non-agency provider of Ohio home care waiver services, as described in Chapter 5160-46 of the Administrative Code;
 - (b) An ODA certified non-agency provider, certified under section 173.391 of the Revised Code; and
 - (c) A DODD certified independent provider, certified under section 5123.045 of the Revised Code.

(D) Parents of minor child and spouse of an individual:

- (1) A parent of a minor child, or the spouse may only provide HCBS waiver services to an individual if all of the following conditions are met:
 - (a) There is no other willing and able provider or direct care worker available to provide the HCBS waiver services to the individual.
 - (b) ODM, ODA, DODD, or their designee has determined the health and safety needs of the individual can be ensured.
- (2) When conditions set forth in (D)(1) of this rule are present, a parent of a minor child, or the spouse of an individual may serve as a direct care worker, within the following parameters:

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- (a) The parent of a minor child is employed through an agency provider or provides an eligible participant-directed service through an FMS.
- (b) The spouse is employed through an agency provider or provides an eligible participant-directed service through an FMS.
- (c) Unless otherwise permitted in HCBS waiver program rules, a minor child may receive a maximum of forty hours per week of paid care from a parent or combination of parents;
- (d) Unless otherwise permitted in HCBS waiver program rules, an individual may receive a maximum of forty hours per week of paid care from their spouse;
- (e) Services provided by a parent of a minor child or by a spouse must be determined to meet extraordinary care requirements, as determined through an ODM-approved extraordinary care assessment tool;
- (f) Services may not be provided for respite purposes;
- (g) Individuals agree to and cooperate with the following contact schedule:
 - (i) The care management agency or services and supports agency completes phone contact with the individual enrolled on the program, or their representative, at least monthly, and
 - (ii) The care management agency or services and supports administrator completes in-person visits at least every sixty days.
- (h) The parent of a minor child or spouse participates in contact and visit requirements described in the person-centered services plan (PCSP).
- (3) HCBS waiver services may not be provided to an individual by a foster parent or by an agency in which the foster parent has an ownership interest.
- (4) Guardianship pursuant to a court order. A spouse appointed as a legal guardian of an individual must maintain evidence of the guardian's ability to be a direct care worker for the individual in accordance with Rule 66.04 of the Rules of Superintendence for the Courts of Ohio.
- (E) Relatives with legal decision-making authority: parents of an individual above the age of seventeen, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations:
 - (1) A parent of an individual above the age of seventeen may provide the services described in paragraph (B) of this rule while holding the designation of:
 - (a) Authorized representative,
 - (b) Declaration for mental health treatment,
 - (c) General power of attorney,
 - (d) Healthcare (medical) power of attorney,
 - (e) Representative payee,

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(f) Appointment of legal custody of a minor pursuant to a court order, or

(g) Guardian appointed by the probate court who is authorized by the court to be a direct service provider for the individual under court order as permitted by Rule 66.04 of the Rules of Superintendence for the Courts of Ohio.

(2) Unless otherwise permitted in HCBS waiver program rules, adult children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations may provide the services described in paragraph (B) of this rule while holding the designation of:

(a) Authorized representative,

(b) Declaration for mental health treatment,

(c) General power of attorney,

(d) Healthcare (medical) power of attorney,

(e) Appointment of legal custody of a minor, or

(f) Guardian appointed by the probate court who is authorized by the court to be a direct service provider for the individual under court order as permitted by Rule 66.04 of the Rules of Superintendence for the Courts of Ohio.

(3) Unless otherwise permitted in this rule or other HCBS waiver program rules, a parent of a minor child, spouse or relative with legal decision-making authority may not be designated as the individual's representative payee.

(4) Unless otherwise permitted in HCBS waiver program rules, paid care is limited to forty hours per week per relative with legal decision-making authority, and may not exceed the amount of service the individual is assessed to need.

(F) Limitations

(1) Unless otherwise permitted in HCBS waiver program rules, parents of a minor child, the spouse, or any person or entity with legal decision-making authority are not eligible for payment of Medicaid waiver services to an individual for whom they hold legal decision-making authority. This provision prohibits an ownership interest in an agency serving the individual and serving as a direct care worker for the individual.

(2) A direct care worker providing services described in paragraph (B) of this rule may not verify service provision on behalf of the individual.

(3) A direct care worker may not receive payment from any source for activity other than the direct care for the individual during the time authorized to provide HCBS waiver services.

(4) A direct care worker may not provide care to a person other than the authorized individual(s) during Medicaid billed hours.

(G) The PCSP will document that the conditions set forth in paragraphs (D) and (E) of this rule are met.

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(H) A decision by ODM, ODA, DODD, or their designee related to whether someone qualifies under this rule to serve as a provider or a direct care worker for an individual is not subject to notice and appeal rights under division 5101:6 of the Administrative Code.