



Ohio Administrative Code

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

Effective: January 1, 2024

(A) This rule is applicable to the following waiver programs and services:

(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 homemaker/personal care services, participant-directed and provided through an agency, as described in Chapter 5123-9 of the Administrative Code.

(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 participant-directed homemaker/personal care services, as described in Chapter 5123-9 of the Administrative Code.

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

(1) "Agency" refers to the following:

- (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) "Appendix K" refers to a standalone appendix that may be utilized by states during emergency situations to request amendment to approved 1915(c) waivers. It includes actions that states can take under the existing section 1915(c) home and community-based waiver authority in order to respond to an emergency.

(3) "Care management agency" and "service and support administration entity" refers to an agency or entity delegated or contracted by ODA, ODM, or DODD to perform care coordination activities and



related functions for individuals enrolled on a fee for service or managed care waiver program.

(4) "Direct care worker" refers to the person providing hands on care to an individual receiving a medicaid 1915(c) waiver program service.

(5) "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.

(6) "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.

(7) "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.

(8) "Individual" refers to a medicaid recipient receiving services through an HCBS waiver program authorized under 1915(c) of the Social Security Act.

(9) "Legal representative" refers to a person or entity who has a legal standing to make decisions on behalf of another person (e.g., a guardian who has been appointed by the court or an individual who has power of attorney granted by the individual).

(10) "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.

(11) "Parent" refers to an adoptive, biological, or step-parent of an individual.

(12) "Relative" refers to children, grandparents, grandchildren, great-grandparents, great grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations and parents of an individual above the age of seventeen.

(C) Unless otherwise permitted in this rule or other home and community based services (HCBS) waiver program rules or other ODM rules, a parent of a minor child, a spouse, and other legal representatives are not eligible to bill for medicaid reimbursable waiver services to an individual for whom they serve as legal representative.

(D) Unless otherwise permitted in other HCBS waiver program rules, an agency fully or partially owned by an individual's legal representative is not eligible to bill for medicaid reimbursable waiver services to an individual for whom they serve as legal representative.

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

(1) A parent of a minor child, or the spouse of an individual may only provide HCBS waiver services to an individual if both 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 paragraph (E)(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:



- (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, or determined by ODM, DODD or their designee, as necessary to ensure the health and safety of the individual and authorized on the PCSP, an individual who is a minor child may receive a maximum of forty hours per week of paid care from a parent or combination of parents and may not exceed the amount of service the individual is assessed to need. ODM, ODA, DODD or their designee may grant an exception to this limitation, in accordance with departmental program operational processes.
- (d) Unless otherwise permitted in HCBS waiver program rules, or determined by ODM, ODA, DODD or their designee, as necessary to ensure the health and safety of the individual and authorized on the PCSP, an individual may receive a maximum of forty hours per week of paid care from their spouse and may not exceed the amount of service the individual is assessed to need. ODM, ODA, DODD or their designee may grant an exception to this limitation, in accordance with departmental program operational processes.
- (e) HCBS waiver services provided by a parent of a minor child or by a spouse must meet extraordinary care requirements, as determined through prescribed form, ODM 10372 "Ohio Extraordinary Care Instrument";
- (f) Services provided by a parent of a minor child or by a spouse may not be provided for respite purposes;
- (g) Individuals agree to and cooperate with monthly care management agency or services and supports administrator contacts. Contacts may be a combination of telephonic and in-person visits, with no more than sixty calendar days between in-person visits.
- (h) The parent of a minor child or spouse participates in contact and visit requirements described in



the individual's person-centered services plan (PCSP).

(3) HCBS waiver services may not be provided to an individual by the foster parent of the individual or by an agency in which the foster parent of the individual has an ownership interest.

(4) 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.

(F) Relatives of an individual above the age of seventeen years with a legal representative designation:

(1) A parent of an individual above the age of seventeen years may provide the services described in paragraph (A) 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, 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.

(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 (A) 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, or
 - (e) 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 HCBS waiver program rules or determined by ODM, ODA, DODD or their designee, as necessary to ensure the health and safety of the individual and authorized on the PCSP, 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.
- (G) Limitations
- (1) A direct care worker providing services described in paragraph (A) of this rule may not verify service provision on behalf of the individual.
 - (2) 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.
 - (3) A direct care worker may not provide care to a person other than the authorized individual(s) during medicaid billed hours.
 - (4) Participant directed services: if an individual chooses to designate a representative through the FMS, the FMS designated representative(s) may not serve as a direct care worker.
- (H) The PCSP will document that the conditions set forth in paragraphs (E) and (F) of this rule are



met.

(I) Within ninety days of the effective date of this rule, parents of minor children and spouses of individuals who were authorized to provide paid services under the Appendix K authority will be assessed by care management agencies or service and support administration entities, as appropriate, to determine whether they meet the requirements outlined in this rule in order to continue to provide services. The authorized parents of minor children and spouses of individuals may continue to provide paid services until the assessment has been completed or the ninety-day period has expired, whichever comes first.

(J) 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.