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5160-xx-xx 1915(c) Medicaid waiver, home health, and private duty nursing program provider and direct service worker relationships.

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

(1) "Agency" refers to the following:

- (a) An agency provider of home health services, as described in rule 5160-12-01 of the Ohio Administrative Code;
- (b) An agency provider of private duty nursing services, as described in rule 5160-12-02 of the Ohio Administrative Code;
- (c) An agency provider of Ohio home care waiver services, as described in chapter 5160-46 of the Administrative Code;
- (d) An Ohio ~~Department of a~~ging (ODA) certified agency provider certified under section 173.391 of the Revised Code;
- (e) A Department of ~~Developmental~~ ~~Disabilities~~ (DODD) certified agency provider certified under section 5123.045 of the Revised Code.

(2) "Direct Care Worker" refers to the individual worker receiving payment to provide a ~~m~~Medicaid state plan or 1915(c) waiver program service.

(3) "Financial Management Service (FMS)" refers to the entity contracted with ODA, Ohio ~~Department of~~ ~~m~~Medicaid (ODM), DODD, or their designee to process payment of participant-directed waiver services.

(4) "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, 2021). Programs include Assisted Living, PASSPORT, Individual Options, Level One, SELF, Ohio HomeCare and MyCare waiver programs.

(54) "Legally responsible family member" refers to the adoptive or biological parent of a minor child and spouse of an individual receiving services through ~~m~~Medicaid state plan home health, private duty nursing and 1915(c) Medicaid waiver services.

(5) "Relative" refers to spouses, parents, children, grandparents, grandchildren, great grandparents, great grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step relations.

(6) "Legal decision-making authority" refers to the authority granted to an individual or entity to act on behalf of an individual through a designation of authorized representative, a declaration for mental health treatment, a general power of attorney, a healthcare power of attorney, an appointment of representative payee, or an appointment of legal guardianship pursuant to a court order.

(7) "Individual" means a ~~m~~Medicaid recipient receiving services through any combination of state plan home health services, private duty nursing services, or services through an HCBS waiver program authorized under 1915(c) of the Social Security Act.

(8) "Non-agency provider" refers to the following:

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- (a) A non-agency provider of private duty nursing services, as described in rule 5160-12-02 of the Ohio Administrative Code;
- (b) A non-agency provider of Ohio home care waiver services, as described in chapter 5160-46 of the Administrative Code;
- (c) An ODA certified non-agency provider, certified under section 173.391 of the Revised Code.
- (d) A DODD certified independent provider, certified under section 5123.045 of the Revised Code.

(9) "Relative" refers to parents of an individual above the age of 18, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.

(9) Participant directed provider refers to a person that an individual (participant) directly employs and supervises to provide a service.

(B) Legally responsible family members and relatives with legal decision-making authority with full or partial ownership of an agency are not eligible for payment of state plan home health services, private duty nursing services, or waiver services to an individual for whom they hold legal decision-making authority.

(C) Unless otherwise permitted in HCBS waiver program rules, Legally responsible family members and relatives with legal decision-making authority serving as a non-agency provider are not eligible medicaid payment of state plan private duty nursing services or waiver services to an individual for whom they hold legal decision-making authority.

(D) A foster parent is prohibited from receiving payment as a direct care worker.

(E) A legally responsible family member may serve as an individual's direct care worker, as an employee of an agency provider only if all of the following conditions are met:

- (1) One or more of the following is the case:
 - (a) Services are needed from the legally responsible family member while a willing and able direct service worker/provider is sought; or
 - (b) The legally responsible family member has had a change in work status due to meeting the care needs of the individual; or
 - (c) The legally responsible family member is unable to obtain or maintain employment due to the care needs of the individual; and
- (2) The individual's case manager/services and supports administrator has determined the following conditions are met:
 - (a) There are no alternatives available to the individual; and
 - (b) The legally responsible family member as a paid direct service worker is in the best interest of the individual as determined by ODM, ODA, DODD or their designee.

(F) When conditions set forth in paragraph (E) of this rule are present, a legally responsible family member may serve as a direct care worker, within the following parameters:

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- (1) The legally responsible family member is employed through an agency provider or provides a service paid through a fiscal management service;
- (2) Unless otherwise permitted in HCBS waiver program rules, pPaid care is limited to forty (40) hours per week per individual and may not exceed the amount of service the individual is authorized to receive;
- (3) Services provided by a legally responsible family member include provision of 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 or spouse would ordinarily perform in the household on behalf of an individual without a disability or chronic illness of the same age, as determined through an ODM approved exceptional care assessment tool;
- (4) Services may not be provided for respite purposes; and
- (5) The legally responsible family member participates in contact and visit requirements described in the person-centered services plan (PCSP), in accordance with paragraph (I) of this rule.

(G) Unless otherwise permitted in HCBS waiver program rules, aA relative with legal decision-making authority may serve as the direct service care worker, within the following parameters:

- (1) A relative appointed as a legal guardian of an individual must provide and maintain evidence of the guardian's ability to be a direct service provider for the individual in accordance with Rule 66.04 of the Rules of Superintendence for the Courts of Ohio;
- (2) A relative who is not the parent of an individual may not be appointed as power of attorney or representative payee unless the individual is eighteen18 years or older;
- (3) The relative is employed through an agency provider or provides a personal care service paid through a financial management serviceFMS or as an non-agency provider of a DODD waiver; and
- (4) The relative participates in contact and visit requirements described in the person-centered services plan (PCSP), in accordance with paragraph (I) of this rule;
- (5) (6) Reimbursement is not allowable if the parent of the minor child is the only caregiver available for children not enrolled on a HCBS waiver.
- (6) Reimbursement is not allowable if the parent of the minor child or the spouse is otherwise receiving remuneration for activity other than the direct care for their minor child or spouse outline herein.
- (7) Unless otherwise permitted in HCBS waiver program rules, pPaid care is limited to forty-(40) hours per week per relative with legal decision-making authority, and may not exceed the amount of service the individual is assessed to need.

(H) A direct service worker providing Medicaid state plan or 1915(c) waiver services may not sign timesheets verifying service provision.

(I) Person-centered services plan (PCSP)

- (1) For individuals enrolled in home and community based services waiver programs, the PCSP will document that the conditions set forth in paragraphs (E) and (F) of this rule are met.
- (2) The care management or services and supports agency completes phone contact with individual enrolled

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on the program at least monthly.

(3) The care management agency or services and support administrator completes in-person visit at least every 60 days.

(J) Agency oversight requirements

(1) The agency completes phone contact with individual enrolled on the program at least monthly.

(2) The authorized home health agency completes an in-person visit at least every 60 days,

(3) The agency record demonstrates requirements contained within this rule are met at the time of service provision.