

# Frequently Asked Questions: Ohio Administrative Code 5160-44-32

"Home and community-based Medicaid waiver program provider and direct care worker relationships."



Department of  
Developmental  
Disabilities

This rule, effective January 1, 2024, applies to individuals enrolled on any of the three DODD administered waivers: Individual Options (IO), Level One, or Self-Empowered Life Funding (SELF) waiver. The rule allows parents of minors to be paid to provide services to their children under certain circumstances, as outlined in the Rule. The following is a list of frequently asked questions and answers intended to help the field implement this [Rule](#).

## **PROVIDER REQUIREMENTS:**

### **Who verifies the shift when I am providing services to my minor child or spouse if there is no one other than my minor child/spouse living in the home?**

For self-direction: Someone other than the parent being paid will need to assist the minor child with self-direction, and this person will need to be identified with the Financial Management Service (FMS) or, for individuals enrolled on the SELF waiver, an Agency with Choice as an approved signer.

Electronic Visit Verification (EVV) is required for both Participant Directed Homemaker Personal Care (PD-HPC) and Homemaker Personal Care (HPC). In both cases, the paid provider is required to log the visit as per the requirements. EVV does not replace the Medicaid documentation requirements for the service being delivered.

Effective July 1, 2024, live-in caregivers may be exempted from EVV requirements pursuant to the process set forth in Ohio Admin. Code 5160-32-01, with the completion of ODM Form 10374. Providers seeking this exemption should follow that process and work with the Ohio Department of Medicaid (ODM) to obtain that exemption. The exemption form can be found here: <https://medicaid.ohio.gov/home/evv-exemption-request>.

### **Will parents of minors/spouses be able to be independent providers under this rule?**

No, if the parent or spouse is authorized for traditional HPC. The Centers for Medicare and Medicaid Services (CMS) requires that the state provide additional oversight over extraordinary care. In Ohio, one way that the state is meeting this requirement is by requiring that parents of minors and spouses work for agencies.

If the minor child/spouse receives PD- HPC, on the Level One or IO waiver, the parent/spouse will need to become a DODD certified Independent Provider and will need to be enrolled with the Financial Management Service (FMS), which will provide the required oversight. For individuals enrolled on the SELF waiver, the parent will either need to become a DODD certified Independent Provider and be enrolled with the FMS or work for an Agency with Choice, as the FMS or Agency with Choice will provide the required oversight.

### **It's my child/spouse; why do I have to document?**

All Medicaid providers must document the service that is being provided. These documentation requirements are found in the service-specific rules.

For HPC: Documentation requirements are contained in Ohio Admin. Code 5123-9-30, "Home and community-based services waivers – homemaker/personal care under the individual options and level one waivers."

For Participant-Directed HPC: Documentation requirements are contained in Ohio Admin. Code 5123-9-32 "Home and community-based services waivers – participant-directed homemaker/personal care under the individual options, level one and self-empowered life funding waivers."

Training on required Medicaid service documentation will be provided to you by your agency employer. If you are an independent provider, that training will be provided to you by the Department through its web-based training modules.

### **What if I don't want to choose the available provider? What about Free Choice of Provider?**

The rule specifies that a parent of a minor child/spouse can only be paid when there is no other willing and able provider or direct care worker. If a parent/spouse chooses not to use those willing and able providers, for whatever reason(s), the parent/spouse does not, therefore, become the paid provider for their minor child/spouse under this rule.

Efforts to identify a "willing and able" and appropriate provider(s) will be well-documented and DODD will expect to see this information if there is a dispute. A provider is only "willing and able" if that provider can perform the duties as outlined in the person-specific Ohio Individual Service Plan (OhioISP). This would include holding all necessary certifications necessary to perform the care needed. The team should work together to determine which providers are appropriate, based on objective analysis, and should work through any disagreements about what requirements are necessary for a provider to implement the OhioISP

### **AUTHORIZED HOURS:**

#### **To whom does the 40-hour limitation apply?**

The 40-hour limitation applies to parents (adoptive, biological, or step) of minors and spouses. Other "relatives", as that term is defined in the rule, and those with legal custody would not be subject to the 40-hour limitation in this rule.

#### **Why am I only permitted to provide 40 hours/week to my minor child?**

ODM and DODD determined that up to 40 hours/week was an appropriate level of support for a parent to provide a minor child. We considered the typical schedule for a school-age child and have determined that 40 hours was sufficient to cover times when the child is not at school or involved in other activities outside of the home. Generally, we believe that before and after school care and weekend care will be the hours when parents will need support and may seek to become paid providers to cover these times.

If circumstances warrant additional care from a parent beyond 40 hours, and there is no other willing and able provider, the county board can submit a request to DODD to review an authorization over 40 hours. DODD will review the request, consult with the county board on the request, ask for additional information (if needed), and decide.

#### **Is the 40-hour limitation for the participant (minor child) or per parent?**

The 40-hour limitation is per program participant (minor child), NOT per parent.

**What if I have more than one child who meets the definition of extraordinary care? How many hours am I able to provide?**

The county board should assess each child and search for providers to meet the assessed hours. If the county board cannot find a willing and able provider to meet the assessed hours, it should complete the Extraordinary Care Instrument (ECI) for each child still in need of care. If multiple children need extraordinary care, the county board may authorize up to 40 hours for each child, keeping in mind that billing ratios and overtime rules need to be considered when authorizing these services. Services provided to multiple children at the same time count toward the 40-hour limit for each child receiving services.

**Am I guaranteed to be able to provide 40 hours/week to my minor child/spouse?**

No. The 40 hours per week is the maximum threshold an enrolled person may be eligible to receive from a parent of a minor or spouse. For all waiver service authorizations, the county board will assess how much service an individual needs. As an example, if the minor child/spouse is assessed to need 30 hours/week of paid support, then only 30 hours/week may be provided by the parent of the minor/spouse, assuming that no other provider can be found.

**What if the provider can only do some of the hours needed?**

If a minor child/spouse requires 40 hours/week of paid support and after a provider search occurs, that provider can only complete 30 hours/week. The parent of the minor/spouse could provide the remaining 10 hours/week.

A parent may also be authorized as a paid back up provider in the event the primary paid provider is unable to provide services if the parent meets all other conditions as outlined in Ohio Administrative Code 5160-44-32.

**MEDICATION ADMINISTRATION:**

**Do I need to have a Medication Administration certification to give my minor child medications while I am their paid provider?**

No. For DODD administered waivers, a Medication Administration Certification is not required for parents of minor children to administer medications to their child if they are residing in the same residence. This includes medications administered through a G or J-tube and insulin or other injections to treat metabolic glycemc disorders.

**As a paid caregiver, am I able to perform more complex nursing tasks?**

No. When complex nursing tasks are performed while the parent caregiver is acting as a paid provider, nursing delegation is required by Ohio Administrative Code [4723-13-05](#).

**Will I need to document when I administer medications or perform health care tasks to my minor child?**

Yes. You must document the tasks you are completing, and therefore, if medications are administered while you are providing paid care, you will be required to document the administration of medication. This can be done on a Medication Administration Record (MAR), print out from the pharmacy, or by any suitable method, such as on a service delivery documentation sheet. You will need to follow your agency's process for that documentation.

## **RESTRICTIONS/LIMITATIONS:**

### **Can I take care of my other children while getting paid to care for my minor child?**

A direct care worker may not provide care to a person other than the authorized individual during Medicaid billed hours. However, if there are other children in the house, their age and level of needed support would be taken into consideration. Ex. 1- making dinner/lunch and other children can eat/feed themselves it is permissible to then also be paid for care for the child who meets extraordinary care. Ex. 2—if additional children in the home require regular care, like diaper changes, and there is no other caregiver available to provide that care to the additional children in the home, the parent is not permitted to be paid to care for their child who requires extraordinary care.

## **DUE PROCESS APPEALS/INFORMAL COMPLAINTS:**

### **How does this rule comply with the Medicaid requirement for Free Choice of Provider?:**

This rule sets requirements for who an agency can hire to perform care for Medicaid members. It is not limiting which agency can be chosen. The parent/guardian has the right to choose from all “willing and able” providers, which includes the right to reject all “willing and able” providers. Rejection of all willing and able providers does not make the parent eligible to be a paid provider.

### **What if I disagree with the county board’s decision about how many hours my minor child needs?**

When the county board takes an action to approve, deny, reduce, suspend, or terminate a service, the county board must issue due process pursuant to Ohio Admin. Code 5101:6. There is no appeal process through the Bureau of State Hearings for the outcome of the ECI or the eligibility for a parent/spouse to be the paid provider. Those determinations can be reviewed by DODD, as explained below.

### **What if I disagree with the county board’s determination of the Extraordinary Care Instrument?**

Persons served, families, or guardians can request that the Technical Assistance (TA) Team review any HCBS service issues. This request can be made via email ([waiverpolicyta@dodd.ohio.gov](mailto:waiverpolicyta@dodd.ohio.gov)). In response to this request for review, the TA team will do the following:

- Seek additional information from the person served, family, or guardian regarding the matter that is the subject of the request.
- Request that the Board provide files relevant to the request (assessments, plans, case notes, etc.)
- Once the information has been reviewed, hold phone or video conferences with the requestor(s) and/or the Board

The TA team is empowered to:

- Request that the Board reconsider the matter by reconvening a team meeting or conducting further review and assessments.
- Refer the matter for legal review or for a compliance action.

## **EXTRAORDINARY CARE INSTRUMENT:**

### **Does the Extraordinary Care Instrument need to be completed for every minor child/participant, or only if the parent/spouse is going to be the paid provider?**

The ECI is completed when the family/participant cannot find a willing and able provider for all assessed hours, and a parent is interested in serving as a caregiver for a minor child or if a spouse is interested in serving as a caregiver for their spouse.

### **How often does the Extraordinary Care Instrument need to be completed?**

The ECI should be completed any time there is a significant change or at least annually for the minor child/spouse, as required by 42. C.F.R. 441.301

### **PROVIDER SEARCH/PROVIDER TRANSITION:**

#### **How often does the Board need to re-engage in the provider search process?**

DODD expects that each Board would re-engage the provider search process annually, to align with the annual planning requirements, as set forth 42 C.F.R. 441.301. During the provider search process, the Board would continue to authorize services to the parent through the completion of the process and would only begin to transition services if a willing and able provider is identified and would transition as described below.

#### **After the provider search is completed, if a provider is identified, how long should the Board take to transition from the parent to the new provider?**

After a willing and able provider is identified, there are several steps that the Boards and families will need to take to make this change. Once the provider's start date has been identified, generally, Boards would transition those services within 30 days.

#### **How long does the parent have to wait to be authorized if no provider is found?**

While the process will vary slightly with each county board, it is reasonable that an electronically posted referral or request for provider email process would be up for ten to fifteen business days before it could be determined that there were no willing or able providers.

Once the provider search is completed, County Boards should work with the parent/family to review the list of providers and make selections about which providers to interview. If no providers respond to the provider search after the initial posting, County boards should complete the initial two-week provider search, and if no willing and able provider has responded to the request, they should complete the ECI.

### **NATURAL SUPPORTS:**

Counties should assess what services a family needs an outside provider to be paid to provide. Services that a family does not want an outside provider to provide and would rather provide itself, without pay, are natural supports and should not be assessed as hours needed. This conversation should happen during the assessment process before the administration of the EC I.

Additionally, care provided by family members to a minor who does not meet the definition of extraordinary care as determined by the ECI will be considered natural supports.

### **HOMESCHOOLING:**

If a child is homeschooled and the parent is the paid provider, the parent cannot be authorized to provide waiver services during the homeschool period. Once the homeschool period is identified, those hours would not be compensable under this Rule.

## **AUTHORIZATION/BILLING:**

### **How are Services Authorized if there are Multiple Children in the Home Requiring Extraordinary Care?**

If multiple children have been assessed to need extraordinary care, services will be authorized according to [Ohio Administrative Code 5123-9-31](#).

### **Does a Parent Need to Obtain Permission from the Probate Court to Become the Paid Provider?**

No, the parent of a minor child is the "natural guardian" under Ohio law and does not need to seek probate court approval to be the paid provider.

### **Can a parent request/be authorized "on behalf" of HPC for their minor children?**

No, through the ECI, the Board will assess needs for direct care services and will authorize the parent to provide those direct care services.

### **Can a parent provide Homemaker Personal Care Transportation?**

Yes. This would generally not include transportation to or from school, which the school district is legally responsible for providing.

### **How frequently will Service and Support Administrators (SSA) contact the parent provider?**

At a minimum, the SSA will call the family monthly and make an in-person visit every 60 days. The purpose of these visits is for the SSA to talk to the parent/provider to determine if the child's needs are continuing to be met and whether the parent/provider needs any additional support from the SSA or County Board. If possible, the child will participate in the calls/visits by the SSA.

## **Reports and Investigations of Major Unusual Incidents/Unusual Incidents:**

The Major Unusual Incidents (MUI) Rule (Ohio Admin. Code 5123-17-02) requires removal of an employee for Physical and Sexual Abuse allegations. Specifically, the rule requires removal of an employee from direct contact with any individual when the employee is alleged to have been involved in Physical or Sexual Abuse until the provider has reasonably determined such removal is no longer necessary. As applied to this rule, a parent/spouse would not be eligible to serve as a paid provider until the provider agency has made that determination. While the parent may not be required to leave the home, the service plan should detail the back-up plan/supports that may be necessary.

DODD's MUI unit is also available to provide technical assistance on these issues.