



Mississippi Department of Mental Health
Provider Bulletin
Number PR0141

Subject: Revised Requirements for Family Members providing Home and Community Supports and/or In Home Respite

Issue Date: 6/22/2023

Effective Date: 7/1/2023

Scope

All IDD Certified Providers for Home and Community Supports and/or In Home Respite

Purpose

This Provider Bulletin replaces the requirements outlined in Provider Bulletin PR0137 issued 6/2/2023. The Division of Medicaid issued revised requirements 6/20/2023 for family members providing Home and Community Supports and/or In Home Respite through the ID/DD Waiver effective 7/1/2023. Requirements remain the same from **PR0137** other than criteria outlined for non-legally responsible relatives were reduced from five (5) criteria to three (3) criteria.

Providers with non-qualifying family members hired under the Appendix K must be evaluated (*per Provider Bulletin PR0138*) under the revised criteria outlined in this Provider Bulletin and with use of the updated *Qualifying Relative Questionnaire* and *Documentation for Exception to Relatives as DCWs* forms attached to this bulletin.

Subject

The following Standards are effective July 1, 2023, and replace Rule 45.2 and Rule 47.2. of the 2020 DMH Operational Standards:

Legally responsible relatives are not allowed to provide Home and Community Supports (HCS) or In-Home Respite (IHR). This includes legal guardians or legal representatives, including but not limited to spouses, parents/stepparents of minor children, conservators, guardians, individuals who hold the participant's power of attorney or those designated as the participant's representative payee for Social Security benefits. For the purposes of this requirement, relatives are defined as any individual related by blood or marriage to the participant.

Non-legally responsible relatives may provide Home and Community Supports or In-Home Respite only when the following criteria are met:

1. The selected relative is qualified to provide service(s).
2. The person receiving the service, or another designated representative is available to sign verifying that services were rendered by the selected relative.
3. The selected relative agrees to render services in accordance with the scope, limitations, and professional requirements of the service during their designated hours.

Providers must document each family member's eligibility meets the above requirements in the staff's personnel record. Providers may use the "Qualifying Relative Questionnaire" form.

Providers employing a family member to serve as Home and Community Supports or In-Home Respite personnel, regardless of relationship or qualifications, must also maintain the following documentation in each staff's personnel record:

1. Proof of address for the family member seeking to provide services. Proof of address is a copy of a lease, rental agreement, or utility bill that includes the person's name. A copy of the person's driver's license is not sufficient for proof of address. If required documentation cannot be obtained, the family member seeking to provide services must provide a signed and notarized affidavit that includes his/her current address.
2. Evidence the person's ID/DD Waiver Support Coordinator was notified the agency is seeking approval of a family member to provide Home and Community Supports or In-Home Respite. The person's Plan of Services and Supports (PSS) must document the family member is providing the approved service.
3. Documentation the provider has conducted drop-in, unannounced visits during the time the approved family member is providing services. These visits must occur at least two (2) times per year and must include the following:
 - a. Observation of the family member's interactions with the person receiving services,
 - b. Review of the Plan of Services and Supports and Service Notes to determine if outcomes are being met, and
 - c. Review of utilization to determine if contents of Service Notes support the amount of service provided.

A qualified family member providing Home and Community Supports and/or In-Home Respite cannot be authorized to provide more than one-hundred seventy-two (172) hours per month (or forty [40] hours per week) of one service or combination of the two services.

Support Coordinators are to educate the person/legal representative about the new waiver requirements and offer Freedom of Choice of qualifying providers of services. The person's chosen Home and Community Supports or In Home Respite provider is responsible for ensuring all Direct Care Workers (DCWs) are compliant with the new regulations. The Home and Community Supports or In Home Respite provider selected by the person/legal representative must search for qualified staff to fill the authorized hours. If no other willing and qualified staff are available at the person's recertification and the person/legal representative requests the family member continue to render services, the family member must be evaluated by the chosen provider and determined to continue to meet the qualifications outlined for the service(s).

The Department of Mental Health (DMH) and/or Division of Medicaid (DOM) reserves the right to remove a selected relative from the provision of services at any time if there is a suspicion of, or substantiation, of abuse/neglect/exploitation/fraud or if it is determined that the services are not being professionally rendered in accordance with the approved Plan of Services and Supports. If DMH/DOM removes a selected relative from the provision of services, the person/legal representative will be asked to select an alternate qualified provider.

If you have questions, contact Betty Pinion, Director of ID/DD Waiver at (601)359-5797 or email betty.pinion@dmh.ms.gov.

End of Provider Bulletin

Documentation for Exception to Relatives as Direct Care Worker (DCW) Requirements

COVID Appendix K Flexibility

This section to be completed by Provider Administrator and maintained in Member file.			
Provider Agency Name		Medicaid Provider ID	
Member Name		Member ID	
DCW Name		Relationship to Member	
Which of the criteria (#3-5) on the Qualifying Relative DCW Questionnaire does the current DCW not meet?			
What recruitment efforts have been made to hire a DCW that meets the updated qualifications effective 7/1/2023?			
If the Appendix K flexibility is being exercised, what is your plan and timeline for achieving full compliance and retaining a qualifying DCW for this member by 11/10/2023?			

Reminders:

- In instances where the Appendix K flexibility is exercised by the provider agency, provider supervisors will be required to conduct drop-in, unannounced quality assurance visits at least every three (3) months (more often if needed) with documentation of each visit in the personnel file to meet requirements of DMH Operational Standards.
- Members have freedom of choice of qualifying providers and direct care workers. A member's refusal to receive services from a qualifying DCW is not sufficient justification for an exception.
- **Full compliance without exception must be implemented by 11/10/2023. Any care rendered by non-qualifying DCWs after 11/10/2023 and reimbursed by DOM will be recouped upon audit.**

Qualifying Relative DCW Questionnaire

Member Name		Member ID		
DCW Name		Relationship to Member		
#1 – Is the direct care worker (DCW) the member’s legal guardian? *Legal guardian is defined as spouse, conservator, guardian, parent/stepparent of minor, power of attorney, representative payee for Social Security.			Yes	No
If the answer to question #1 is “yes”, STOP HERE . This individual is <u>not</u> eligible to provide services under the new waiver criteria or the Appendix K flexibilities. If “no”, continue to the below questions.				
#2 - Is the direct care staff <u>not</u> a legal guardian, but still related to the member by blood or marriage?			Yes	No
If the answer to question #2 is “yes”, check the below criteria to determine if the DCW can continue to work under the new waiver criteria effective 7/1/23. If “no”, then normal DCW qualifications/criteria apply and no change is needed.				
#3 - Is the direct care staff qualified to provide service as specified in the CMS approved Waiver, Appendix C-1/C-3?			Yes	No
#4 - Is the participant or another designated representative available to sign verifying that services were rendered by the selected relative?			Yes	No
#5 - Does the selected relative agree to render services in accordance with the scope, limitations, and professional requirements of the service during their designated hours?			Yes	No
If the answer to questions #3-5 are “yes”, STOP HERE . The individual meets the criteria to provide services under the new waiver effective 7/1/23. DOM recommends annual review of these requirements to ensure continued compliance.				
If the answer to any of questions #3-5 are “no”, then follow the below criteria based on the Dates of Service:				
<ul style="list-style-type: none"> For <u>DOS 7/1/2023-11/10/2023</u>, document the need for flexibility and the plan for full compliance by 11/10/2023 in the member’s file. DOM recommends use of the “Documentation for Exception to Relatives as Direct Care Worker (DCW) Requirements” form. This non-qualifying relative is eligible to work under the COVID Appendix K flexibility through its expiration on 11/10/2023. For <u>DOS 11/11/2023 forward</u>, this DCW is ineligible to render waiver services to their relative. Any claims for services submitted to DOM will be denied or recouped upon audit. 				