

Appendix K Stakeholder Update:

Rule 5160-44-32 Home and Community Based Medicaid Waiver Program Provider and Direct Care Worker Relationships

September 21, 2023

Ohio Department of Medicaid

Ohio Department of Aging

Ohio Department of Developmental Disabilities

Agenda

- 1 | Introduction & Background
- 2 | Stakeholder Engagement
- 3 | Rule 5160-44-32: Home and Community Based Waiver Program
Provider and Direct Care Worker Relationships
 - a) Status
 - b) Summary of Feedback Received & State Response



Introduction & Background

Our goal:

To strengthen & preserve Ohioans' access to home and community-based services.

How we do that:

Focus on those who provide direct care and services to individuals, while working to address workforce shortages.

State of Ohio Initiatives to Address Appendix K Unwinding

ODM has completed or is in the process of completing multiple initiatives to accomplish this goal, including:

Stakeholder Engagement

- Webinars to share updates on the State of Ohio's Appendix K work and solicit feedback from the public on potential changes.
- Ohio Department of Medicaid (ODM) Appendix K email inbox and subscriber list.
- Communications materials (e.g., Status Summary, public notices, etc.).

Parents as Paid Caregivers Rule

- Developed and drafted new rule to address direct care worker needs and workforce shortages.
- Hosted webinar to share draft of rule with key stakeholders.
- Solicited feedback from public and took feedback into consideration as updates were made.

Stakeholder Engagement

Stakeholder Engagement: Our Strategy

- Throughout the development of Appendix K Unwinding policies, the State:
 - » Engaged partner agencies for their continuous review and feedback on draft rules and other updates.
 - » Met bi-weekly with partners at Ohio Department of Developmental Disabilities (DODD) and Ohio Department of Aging (ODA) to discuss drafted regulations.
 - » Hosted webinars and issued public communications.
- ODM utilized this strategy to ensure the maximum stakeholder participation.
- As a result, the State received and considered feedback from organizations and stakeholders who likely would not otherwise become actively involved in this public feedback process.

Stakeholder Webinars

- To engage a wider population of providers and participants, ODM held 9 stakeholder webinars attended by over 1,000 participants targeting:
 - » Nursing Facility (NF)-based waiver participants and stakeholders and case management entities
 - » Developmental Disability (DD)-based waiver participants and stakeholders
 - » MyCare plans
- The webinars addressed anticipated changes as a result of the expiration of Appendix K flexibilities and solicited feedback from the public.
- Additional webinars were held to provide further information on the proposed draft rule and extraordinary care assessment tool for legally responsible family members and relatives to serve as direct care workers in Medicaid state plan and waiver programs.

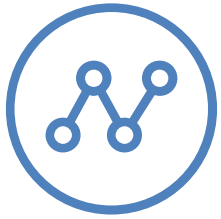
Public Communications

- ODM continues to maintain active communication with stakeholders through:
 - » Additional engagement webinars (e.g., attending meetings with advocacy groups such as Breaking Silences).
 - » Receiving informal and formal public feedback and comments to proposed rules and waiver amendments.
 - ODM established an email address for the sole purpose of receiving feedback from stakeholders and waiver participants.
 - Developed Home and Community-Based Program listserv where individuals can opt in to receive communications regarding activities related to Appendix K and ODM's resumption of routine Medicaid eligibility operations.

Rule

5160-44-32 Home and Community Based Waiver Program Provider and Direct Care Worker Relationships

Background



The drafting and development of OAC Rule 5160-44-32 (Home and community-based waiver program provider and direct care worker relationships) has evolved significantly since active stakeholder activities began in May of 2023.



ODM, ODA, and DODD began by creating an initial rough draft of the rule to allow continuation of the flexibility afforded through the Appendix K authority, based on informal communications received from stakeholders throughout the public health emergency (PHE) period.

Summary of Feedback

- The following summary provides an overview of broad categories of feedback received since early June through August 2023. It encompasses emails and responses received from the ODM clearance posting of the proposed rule.
- Significant feedback was obtained and modifications were made as a result of live webinar and other discussions with various stakeholders throughout development of the rule.
- Please note, this summary is not all-inclusive of every comment received.

Feedback

FEEDBACK TOPIC: GENERAL

STATE REVIEW OF FEEDBACK



- Opposition to the state setting any limitation on parents of minor children, spouses, and other relatives with legal decision-making authority.

- ✓ The rule draft and language was restructured and refined throughout the public engagement period to clarify, eliminate, and enhance language to better reflect stakeholder preferences.
- ✓ CMS requires the state to develop and oversee certain assurances and oversight strategies for allowing parents of minor children, spouses, and other relatives with legal decision-making authorities to receive Medicaid payment for waiver service provision.

Feedback

FEEDBACK TOPIC: EXTRAORDINARY CARE

STATE REVIEW OF FEEDBACK



- Add and refine definition.
- Recommendation to not require extraordinary care requirement for parents of minor children and spouses.
- Recommendation not to require extraordinary care requirement for other relatives with legal decision-making authority.

- ✓ Added and refined based on federal CMS definition.
- ✓ CMS requires personal care-type services to meet extraordinary definition for parents of minor children and spouses.
- ✓ Removed the extraordinary care requirement for other relatives with legal decision-making authority.

Feedback

FEEDBACK TOPIC: EXTRAORDINARY CARE TOOL

STATE REVIEW OF FEEDBACK



- Opposition to requiring use of an ODM approved extraordinary care tool.
- Request to align extraordinary care tool developmental stages with other developmental stages contained in other tools already available.

- ✓ A standardized assessment tool allows the state to train on and assure the same standard across all waiver programs.
- ✓ Many tools are publicly available, all with similar but different standards. Assuring standardized assessment criteria is implemented across the waiver delivery system is the responsibility of the state and is being implemented through the developed state-specific assessment tool.
- ✓ CMS does require the state only reimburse for extraordinary care for parents of minor children and spouses.

Feedback

FEEDBACK TOPIC: APPEAL RIGHTS

STATE REVIEW OF FEEDBACK



- Opposition to 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.

- ✓ Federal requirements for issuance of individual appeals do not apply to provider limitations of certification requirements. However, ODA, ODM, and DODD will enhance current grievance and oversight processes to ensure constituent concerns regarding CMA/SSA application of the rule allowances are monitored and addressed.
- ✓ For DODD operated waivers, Persons served, families, or guardians can request that DODD's Medicaid Technical Assistance Team review any HCBS service issue.

Feedback

FEEDBACK TOPIC: MAXIMUM 40 HOURS

STATE REVIEW OF FEEDBACK



- Opposition to maximum hours per week limitations:
 - » Parents of minor children and spouse.
 - » Other relatives with legal decision-making authority.

- ✓ Effective January 1, 2024, there will be a maximum 40 hour limitation. However, there will also be an exception process through DODD and ODM.
- ✓ The 40 hour per week limitation may be further limited if the total number of hours on the person-center service plan does not equal 40 hours a week.
- ✓ Depending on the specific program rule, there may have been authorities prior to the pandemic. Those authorities will move forward.

Feedback

FEEDBACK TOPIC: FOSTER PARENT PROHIBITION

STATE REVIEW OF FEEDBACK



- Foster parent prohibition of payment for waiver service provision.

- ✓ Per federal guidelines, foster parents are prohibited from receiving payment for waiver services.

Feedback

FEEDBACK TOPIC: MEDICAID BILLING STANDARDS

STATE REVIEW OF FEEDBACK



- General Medicaid billing standards:
 - » Prohibition of direct service worker providing care to non-Medicaid authorized individuals while billing for waiver services.
 - » Prohibition of a direct service worker receiving payment or compensation for non-Medicaid service provision while billing for waiver authorized services.

- ✓ Limitations are general Medicaid requirements. Language has been modified throughout the public input process to better reflect the limitation, in a broad sense.

Feedback

FEEDBACK TOPIC: CONTACT & VISIT REQUIREMENTS

STATE REVIEW OF FEEDBACK



- Care Management/Services and Supports Administrator contact and visit requirements:
 - » Parents of minor children and spouse.
 - » Other relatives with legal decision-making authority.

- ✓ Language refined for parents of minor children and spouse to clarify intent.
- ✓ Requirement made broader, allowing contact and visit schedule to be set by PCSP for other relatives with legal decision-making authority.

Feedback

FEEDBACK TOPIC:
EMPLOYMENT STATUS

STATE REVIEW OF FEEDBACK



- Requirements for parents of minor children to actively seek and/or have a significant change in employment status.

✓ Removed.

Feedback

FEEDBACK TOPIC: BEST INTEREST

STATE REVIEW OF FEEDBACK

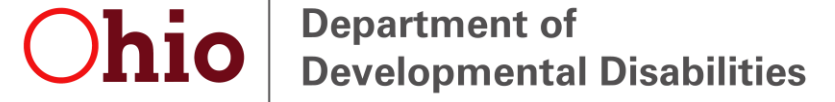


- Requirement that the individual serving as a direct service worker is in the best interest of the enrolled person.

- ✓ Modified the best interest language to reflect health and safety assurance, required by CMS.

Questions?

Comments and questions may also be sent via email to AppendixKQuestions@medicaid.ohio.gov



**Thank you for your
participation in this process!**