
State of Vermont

Agency of Human Services

Attachment P Caregiver Reimbursement Protocol

Health Care Administrative Rules 7.200

Developmental Disability Services—Payment for Services Provided by Legally Responsible Individuals

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7.200 Developmental Disability Services—Payment for Services Provided by Legally Responsible Individuals

7.200.1 Introduction

- (a) The intent of this policy is to operationalize how to pay Legally Responsible Individuals to provide extraordinary care to their adult children with developmental disabilities. The use of this policy, to pay an individual's Legally Responsible Individual to provide personal care and similar services, is not intended to replace other paid direct support professionals or natural supports.
- (b) This policy is intended to be used when direct support professionals and/or independent direct support workers are not available to provide the services an individual has been approved for to ensure a person's health and safety.
- (c) It is expected that the use of the policy will be reviewed periodically during its use for the appropriateness of continued application.

7.200.2 Definitions

For the purposes of this rule, the term:

- (a) **“Activities of Daily Living”** is defined as the actions of dressing, bathing, grooming, eating, toileting, mobility and physical transfers.
- (b) **“Adult Child”** means an individual enrolled in Developmental Disabilities Home- and Community-Based Services age 21 and older.
- (c) **Community Support** as defined in the Disability Services –Developmental Disabilities Rule §7.100.2(j). Through this rule, only individual community support is applicable.
- (d) **“Extraordinary Care”** means care provided to an adult child that exceeds the range of activities that a Legally Responsible Individual would ordinarily perform in the household on behalf of an individual without a disability or chronic illness of the same age, and which are necessary to assure the health and welfare of the individual and avoid institutionalization.
- (e) **In-Home Family Support** is defined as Home Support in the Disability Services –Developmental Disabilities Rule §7.100.2 (v) with the additional distinction that In-home Family Support are regularly scheduled, or intermittent hourly supports provided to an individual who lives in the home of unpaid family caregivers. Supports are provided on a less than full time (not 24/7) schedule.
- (f) **“Instrumental Activities of Daily Living”** means light housework, laundry, meal preparation, transportation, shopping, communication, medication management, and money management.
- (g) **“Legally Responsible Individual”** means an individual's spouse, or legal guardian, or the biological parent, adoptive parent, or stepparent of a minor child.

Legally Responsible Individual does not include an Adult Child's Power of Attorney.

- (h) **“Personal Care or Similar Services”** means hourly services performed in the home or community provided to acquire, maintain and promote skills related to independent living, including activities of daily, instrumental activities of daily living, navigation and engagement of community, and coordination of and participation in personal appointments. For Vermont Developmental Disabilities Home and Community Based Services, these services are provided within the services “Community Supports” and “Home Supports”.

7.200.3 Conditions for Payment

- (a) Payments can be made to Legally Responsible Individuals for extraordinary care provided to their adult child according to the conditions of this policy.
- (b) Legally Responsible Individuals **can** be paid to provide¹:
- (1) Community Supports as defined in the Disability Services –Developmental Disabilities Rule §7.100.2 (j)
 - (2) In-home Family Supports as defined in the Disability Services –Developmental Disabilities Rule §7.100.2 (v)
 - Services, support and services provided for individuals in and around their residences up to 24 hours a day, seven days a week (24/7). Services include support for individuals to acquire and retain life skills to improve and maintain opportunities and experiences for individuals to be as independent as possible in their homes and community in accordance with [Medicaid Manual for Developmental Disabilities Services Division, Effective 11/1/2017](#).
- (c) Legally Responsible Individuals can be paid to provide care to their adult child due to the complexity of support needs including:
- (1) A lack of qualified direct support professionals or independent direct support workers, resulting in lack of other providers who are available to serve the adult child during periods when the Legally Responsible Individual would otherwise be absent from the home for 45 consecutive calendar days or more.
 - This is defined as the individual receiving 0% of the services any of the services authorized to the individual, except for case management/service coordination within a 45-consecutive calendar day period.
 - The Legally Responsible Individual must remain in the home to care for the adult child, or
 - (2) Complex medical support needs, as defined by the need for:
 - 2:1 staffing,
 - Support provided by clinically trained/credentialed staff (i.e., Licensed Nursing Assistant, Licensed Practical Nurse, etc.)
 - Nursing oversight,
 - Assessed to fall within the Supports Intensity Scale-Adult “Extraordinary medical support need” level of support. or
 - (3) Complex behavioral support needs, as defined by the need for:
 - 2:1 staffing,
 - Support provided by clinically trained/credentialed staff,
 - Clinical/psychiatric oversight,
 - Assessed to fall within the Supports Intensity Scale-Adult “Extraordinary behavior support need” level of support.
 - (4) Communication support needs, as defined by the need for:
 - Access to community aids, devices, programs, or other assistive technology,
 - Communication plan,
 - Consistent access to interpreters, facilitators, etc.

¹ Refer to payment details in §7.200.5

- (d) The individual's team, consisting of case manager, direct service provider agency staff, individual, guardian (when there is one) and other people invited by the individual, will review the arrangement relating to paying the individual's Legally Responsible Individuals based on the criteria included in this policy.
- (e) Prior to making the determination that the Legally Responsible Individuals will be paid, the team will decide on the schedule for regular review of the arrangement. Once the plan is developed, the direct service provider agency will notify the Fiscal Employer/Agency (FE/A).
- (f) Monthly, the Adult Child's Case Manager will audit the Legally Responsible Individual's notes, which should include date and times of services provided, and progress toward Individual Service Agreement (ISA) goals made in the previous 30 days. Services must be accounted for and provided in accordance with the ISA in order for payment authorization to be rendered to the Fiscal Employer/Agent (FE/A).
- a. Whenever possible, the Case Manager will confirm the dates, times, amount and nature of services provided with the Adult Child.
- (g) Payment will be calculated based on the current Collective Bargaining Agreement (CBA) minimum rate (inclusive of employer tax rate) and the amount of services provided by the Legally Responsible Individual, with a maximum of level of number of hours to be submitted for payment equal to the individual's authorized level of support or 40 hours per week, whichever is less.
- (h) Key components in making the determination to approve the arrangement must include:
- Honoring the individual's choice,
 - Providing a confidential outlet for the individual to voice preference,
 - Ensuring the individual's health and safety is being appropriately met,
 - Lack of or limited availability of qualified staff,
 - Culturally and linguistically appropriate care,
 - Maintenance of unpaid family time,
 - Involvement of the person's circle of support, and
 - Process to review the efficacy of the arrangement and ongoing need to continue to have legally responsible Individuals as paid caregiver.

7.200.4 Non-Covered Services

- (a) Legally Responsible Individuals cannot be paid to provide:
- Service Coordination/Case Management
 - Clinical Services
 - Crisis Services
 - Employment Supports
 - Respite
 - Supportive Services
- (b) Legally Responsible Individuals will not be paid to replace Shared Living Provider, Shared Living Hourly, Supervised Living, or Staffed Living supports.
- (c) Only one Legally Responsible Individual per Adult Child can be designated for the paid arrangement at a time.

7.200. Oversight and Review

- (a) The arrangement will be reviewed periodically to ensure that it continues to meet the desires and best interests of the individual. The frequency of reviews will depend on individual circumstances and may be as frequent as monthly (30-days) but no less frequent than bi-annually (6-months).
- (b) Reviews will be completed by members of the individual’s support team, including:
 - (1) Case Manager Entity—through monthly in-home/in-person visits, including unannounced home visits. More frequent visits may be provided when needed.
 - (2) DDS Quality Management Team—through an in-person/in-home visit as part of the agency’s annual onsite quality services review process., if the arrangement is in place during the Agency’s scheduled annual onsite quality review.
 - (3) Direct Service Provider Agency—through monthly in-home/in-person visits, including unannounced home visits and the agency’s internal quality services review process.
 - (4) Provide the Adult Child opportunities to speak privately with the Case Manager, representative of the Direct Service Provider Agency and DDS Quality Management Team (as applicable).
- (c) Monthly in-home/in-person visits by team members should occur *independently* to allow maximum opportunity to assess the arrangement.
- (d) Legally Responsible Individuals must comply with all state and federal rules and regulations² to receive payment for care provided. Failure to meet these requirements will result in discontinuation of payment of Medicaid dollars to the Legally Responsible Individual.
- (e) Legally Responsible Individuals must meet the “Worker Qualifications” as described in Medicaid Manual for Developmental Disabilities Services (§1.8).³
- (f) During the periodic review of the arrangement, the team should document efforts made to move away from reliance on Legally Responsible Individuals(s) as paid support. These efforts should include recruitment of direct support workers, community integration activities, expansion of the individual’s circle of support, discussions with the individual about the decision, and desire to have it continue, and alternative options.
 - (1) Periodic review will consist of the Adult Child, the Legally Responsible Individual, the Adult Child’s Case Manager, a representative of the Direct Service Agency and any person of the Adult Child’s choosing to support them.
 - (2) The Adult Child, with the support of their Case Manager, and any person of their choosing, will direct the periodic review of the arrangement and be afforded the opportunity to speak privately about their preferences.
- (g) Documentation of the periodic review must include how the family maintains unpaid family time, how the team supports the individual and how the individual’s voice is heard and respected, how the Legally Responsible Adult(s) is supported, and the next steps for the team for the next review period.
- (h) Refusal to accept available staff does not support continued payment of a Legally Responsible Individual.

7.200.5 Payments

- (a) The Case Manager would determine if a Legally Responsible Individuals is to be paid based on a review of the previous 45 consecutive calendar days of an individual’s support needs and level of service provided, as well as other qualifying factors.
 - (1) The amount would be **up to** 40 hours per week, based on the level of support provided during the month based on the process detailed in 7.200.5(b).

² Behavior Support Guidelines for Support Workers Paid with Developmental Services Funds
 Critical Incident Reporting Guidelines
 DAIL Background Check Policy
 Health and Wellness Guidelines
 Individual Support Agreement Guidelines
 Vermont State System of Care Plan for Developmental Disabilities Services
 42 CFR Parts 430, 431, 435, 436, 440, 441 and 447

³ [Medicaid Manual for Developmental Disabilities Services](#) (*this will need to be updated if/once this Rule is approved*).

- i. Level of support for an Adult Child is determined based on the Adult Child’s needs, ISA and ISA goals and the specific services provided in a given month.
 - ii. Payment authorizations cannot exceed 40 hours per week.
- (2) Payments will not exceed authorized service levels.
- (3) The Legally Responsible Individual must perform the work that any other direct support staff would be required to do, based on job duties and Individual Support Agreement goals.
- (4) If a significant staffing change occurs mid-month, a Legally Responsible Adult could be provided with a payment for the number of affected weeks, (i.e., partial payment).
- (b) Authorization Form submitted by the Case Manager to Fiscal Employer/Agency (FE/A) for payment. The authorization form must include, at a minimum:
 - Legally Responsible Individual’s (payee’s) demographic information required to process payment,
 - Demographic information of individual receiving services required to process payment,
 - Service category,
 - Dates of service covered,
 - Total number of hours per week and weeks per month approved,
 - Approved rate (i.e., minimum for the state fiscal year),
 - Total amount authorized for payment, by service category and total, for the month,
 - Signature of authorized Case Manager.
- (c) Prior to initial payment, any time payments are restarted, or at the start of each state fiscal year, the FE/A will ensure that any payee is not contained on the Office of Inspector General (OIG) Exclusion List prior to making a payment.⁴
- (d) These payments **will not** be considered “tax-exempt Difficulty of Care Payments” as the individuals receiving the services will not have been placed in the Legally Responsible Individual’s home by a placement agency, as required by the Internal Revenue Service ([IRS Bulletin 2014-7](#)). At the end of the tax year, the FE/A will supply a Form 1099 for any payee (Legally Responsible Individual) for whom payments processed exceed \$600 in the calendar year.
- (e) Case Managers are responsible to submit payment authorizations for services provided by Legally Responsible Individuals individual’s authorized service plan. If the number of hours submitted exceeds the total authorized services for individual Community Supports or In-Home Family support, the Legally Responsible Individual may receive partial or no payment.
- (f) Payments will not exceed authorized service levels. Case Managers must ensure payment authorizations are within the scope of the approved service plan for the adult child.

⁴ This means that if a Legally Responsible Individual receives an initial or restarted payment for the month of June that an OIG Exclusion List check will be made for the initial/restarted payment in June and then again in July, at the beginning of the new state fiscal year.