HEA 91 Frequently Asked Questions

(Family Caregiver Legislations & Waiver Changes)

SUMMARY OF HEA 91 and WAIVER CHANGES

The passage of House Enrolled Act 91 (HEA 91) required the Developmental Disabilities Division (Division) waiver programs to allow family caregivers, including parents and stepparents, of waiver participants with developmental disabilities or acquired brain injuries to form Limited Liability Companies or Corporations and be reimbursed as Certified Waiver Providers, if they provided services to their relation. The Division has always allowed relatives, who are immediate and extended family, to become certified Medicaid Waiver Providers and serve their relatives, with the exception of parents, stepparents, spouses and legal guardians. The Division is also making allowances for a parent/stepparent, in some instances, to provide services to their child as an employee of a traditional certified waiver provider, as an employee of an Agency with Choice, or as an employee hired through self-direction.

Therefore, the waiver amendments in July 2011 now thoroughly define which relatives, including parents/stepparents for select services, may receive waiver reimbursement for providing services to their relative participants on the Adult DD, Child DD, or ABI Waiver, so long as they meet the specifications outlined in Appendix C of the approved waivers and the provider requirements in Wyoming Medicaid Rules Chapter 45. Legal guardians of minor children are allowed to provide some personal care as outlined in the amendments, but no legal guardians may receive reimbursement for their adult waiver participant. Spouses are still excluded from reimbursement. The waiver amendments also include an explanation of which people are considered relatives and the safeguards that the state has in place to ensure and monitor that services are provided based upon individual need and in the best interest of the participant.

For more information on the changes to the waivers regarding HEA 91, please refer to the Division Memorandum dated July 15, 2011. Other information on these changes is included in these frequently asked questions, the Relative Disclosure and Safeguard Acknowledgment Form, FY2012 Service Definitions Summary, and the Relative Provider Conflict of Interest Checklist.

FREQUENTLY ASKED QUESTIONS

- 1. If I am an unpaid case manager or support broker serving my child, do I have to become a corporation?
- No, because you are receiving no money for that service. However, you have to complete the necessary certification to provide that service.
- 2. I am providing waiver services as a certified provider to my sister, who is a waiver participant, what do I have to do to disclose the relationship?

You must fill out the RELATIVE PROVIDER DISCLOSURE AND SAFEGUARD ACKNOWLEDGEMENT FORM in conjunction with the participant's case manager and the participant/guardian. The Case Manager submits the form to the Division, who will keep it on file with your provider organization and/or the participant's file.

- 3. What if the Case Manager is related to the waiver participant and the participant's sister is a respite provider?
- Then a change must occur since the waiver now requires the case manager to not have a conflict in this way. So either the case manager who is related or the provider who is related must transition off of the plan.
- 4. Can the case manager, who is related to the participant, provide other services to the participant on the plan?

If the case manager is related to the participant, then the case manager <u>cannot</u> provide other services to the participant or employ people to provide other services to the participant on the plan of care. The case manager has to abstain from having a conflict of interest. If yes, then the participant must address the conflict of interest by changing providers so both the case manager and another provider on the plan are not the participant's relation.

5. What if my case manager and my respite provider are related to each other, but not to me. Do they have to disclose their relationship and do I have to switch one of those providers?

Nothing needs to change and the Relative disclosure form does not need to be completed. The providers are allowed to stay "as is" at this time and no changes to the plan are required. The providers are not related to the participant, so the new changes regarding relative providers and the safeguards do not apply.

6. If I am a provider and want to start receiving reimbursement for serving my child, how do I get started?

You have to be certified in the services you want to provide, and those services must be appropriate for your child and added to the plan of care with a modification submitted by the child's case manager. Once the modification is approved, you may start providing billable services per the scope, amount, and duration specified on the child's plan. You will have to complete the Relative Disclosure form.

7. What if the participant has multiple relative providers on her plan, through both traditional services and self-directed services, what needs to happen?

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The providers have to complete the Relative Disclosure form and are allowed to stay "as is" at this time and no changes are required on the plan. However, the case manager must not be related to the participant or employed by one of the related providers on the plan.

8. What if a mom, who is self-directing through the Fiscal Employer Agent model - Public Partnerships LLC (PPL) and operating as an Employer of Record (EOR), wants to provide reimbursable services to their child participant who is under age 18?

This is not allowed through the Fiscal Employer Agent model – PPL. For a limited amount of personal care, the mom could do it through an Agency with Choice or by being hired through a traditional provider.

Only participants over age 18 who are self-directing may hire a parent through the Fiscal Employer Agent (PPL) so long as their parent is not his/her Employer of Record (EOR). The EOR must be the adult participant or an unrelated person. The participant also could not opt out of Support Brokerage.

9. Can a parent of a Child DD Waiver participant under age 18, who is self directing through the Agency with Choice model and operating as a managing employer, hire themselves to provide services to their child participant as an employee of the Agency with Choice?

Yes the parent could provide a limited amount of personal care to his/her child by either becoming employed by the Agency with Choice or a traditional provider. The agency would provide supervision to the parent as an "employee" and would have to review documentation before claims are submitted to ensure services are provided and documented according to the plan of care and are not for supports expected of any parent for an average child of a similar age.

10. If I am an unpaid case manager or support broker serving my child, do I complete the Disclosure form?

Yes, it is important that this relationship be disclosed to the team and documented. In addition, you, or any relative of the participant, cannot provide any other services on the plan of care using traditional services or self direction services. Also, parents/stepparents can become a case manager, but cannot receive reimbursement for providing case management.

11. If I (as a parent) work for an organization and occasionally provide services as a staff person to my child on the waiver, do I have to complete the Relative Disclosure form?

Yes, you do. That Relative Disclosure form should be kept in your employee record at the organization. You, as the parent, should keep a copy and as well as the case manager.

12. If I am the owner of a certified provider organization and that organization provides service to my child on the waiver, do I have to complete the Relative Disclosure form, even if I do not provide any direct services to my child?

Yes, you do. You have to ensure you are meeting the definitions of the service(s) provided since they have recently changed. For example, if your organization is providing Residential Habitation, the child cannot live with you. If your organization is providing Specialized Equipment, you can only bill for mark up if your organization is a non-profit corporation and you must get a second bid. If your organization is providing personal care, it can only be for 4 hours a day if the child lives with you. Also, Respite is not a service you can bill for your child, if you are the owner of the organization.

13. When a participant is a minor (under age 18), can their parent/guardian provide services to them?

Yes, the parent/stepparent/guardian must be a certified provider and an LLC or Corporation, or hired by a certified provider or an Agency with Choice, and they can only provide personal care up to 4 hours a day per participant.

14. Why is there a difference between legal guardians and services for minors and adults (ages 18+)?

Legal Guardians and parents/stepparents of minors are "legally responsible individuals" to provide care for their child/ward by law. With the implementation of HEA 91, the Division will allow legally responsible individuals to receive reimbursement under certain conditions for the "extraordinary care needs" of the child. However, legal guardians for adults have not been allowed to receive reimbursement for providing services in the past and are not allowed to at this time. Guardians have a role to make decisions and act as a monitor for the participant's health, medical and safety needs. The guardian cannot monitor the services they provide without a conflict of interest; therefore we are not allowing the guardian to be reimbursed at this time.

If a guardian of a participant age 18+ is providing direct services and the Division is not aware of the situation, we are correcting that issue. If the guardian is an officer or owner of a provider agency serving their ward or an employee of a provider and providing direct services to their ward, then they must disclose the relationship on the RELATIVE DISCLOSURE FORM and can no longer receive reimbursement for serving their ward nor can the agency receive reimbursement. If a parent is the guardian of an adult and wants to provide services, some parents have found another individual to be appointed the guardian of the participant.

15. Where would I find more information about becoming a limited liability corporation (LLC)?

Information on becoming an LLC or a Limited Liability Partnership (LLP) is on the Wyoming Secretary of State's website. Here is a link: http://soswy.state.wy.us/forms/business/llc/llc-articlesorganization.pdf. The cost to file is \$100.