

Notice Regarding Updated E&D Waiver Policy for Relatives as Direct Care Workers (DCWs)

Updated 6/20/2023

Effective 7/1/2023, all direct care services (personal care and in-home respite) must be provided in compliance with the updated language in Appendix C-2-e "Other Policy" of the Elderly and Disabled Waiver application pending CMS approval. For members receiving services from a qualifying relative, DOM recommends a "Qualifying Relative DCW Questionnaire" form be completed and maintained in the employee file to substantiate compliance with the requirements.

The updated language in Appendix C-2 is the following:

The state does not make payments for furnishing waiver services to 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. The state may allow payments for furnishing waiver services to non-legally responsible relatives only when the following criteria are met:

- The selected relative is qualified to provide services as specified in Appendix C-1/C-3.
- The participant or another designated representative is available to sign verifying that services were rendered by the selected relative.
- The selected relative agrees to render services in accordance with the scope, limitations and professional requirements of the service during their designated hours.

The state reserves the right to remove a selected relative from the provision of services at any time if there is the suspicion, 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 the state removes a selected relative from the provision of services, the participant will be asked to select an alternate qualified provider.

From 7/1/2023 through 11/10/2023, non-qualifying relatives may continue to render direct care services under the COVID Appendix K flexibilities. In instances where a non-qualifying relative continues to provide waiver services under these flexibilities, provider must document the need for flexibility and the plan for full compliance by 11/10/2023 in the member's file. DOM has provided the "Documentation for Appendix K Exception to Relatives as Direct Care Worker (DCW) Requirements" form as a tool to capture the auditable information.

All DCWs must comply with the new waiver requirements after the Appendix K expires on 11/10/2023.

Case Managers are expected to educate the members/legal representatives about the new waiver requirements and offer them Freedom of Choice of qualifying providers. Case Managers are not responsible for ensuring DCWs are compliant with the new regulations. Case Management Supervisors should notify DOM of any suspected non-compliance with these requirements by providers after 11/10/2023.