

5101:3-45-10 **Conditions of participation for Ohio department of job and family services (ODJFS) administered waiver service providers.**

(A) ODJFS-administered waiver service providers shall:

- (1) Maintain an active, valid medicaid agreement as set forth in rule 5101:3-1-17.3 of the Administrative Code.
- (2) Meet all requirements in the applicable provider service specifications set forth in rules 5101:3-12-06 and 5101:3-12-07 of the Administrative Code.
- (3) Comply with, and maintain documentation of compliance with, the patient rights standards set forth in the home health agency medicare conditions of participation in 42 CFR 484.
- (4) Comply with the consumer incident reporting requirements set forth in rule 5101:3-12-29 of the Administrative Code.
- (5) Comply with the criminal records check requirements set forth in rules 5101:3-12-25 and 5101:3-12-26 of the Administrative Code.
- (6) Attend ODJFS and case management agency (CMA) sponsored provider training sessions.
- (7) Assure consumers receive ODJFS-administered waiver services in accordance with the all services plan.
 - (a) Medicare-certified home health agencies and other accredited home health agencies shall assure that back-up staff will be available to provide services when the provider's regularly scheduled staff cannot or do not meet their obligation to provide services to the consumer.
 - (b) Independent nurses, independent daily living aides and independent daily living non-aides shall assist the consumer, upon initiation of services, in developing a back-up plan in the event the regularly scheduled independent provider cannot or does not meet their obligation to provide services to the consumer.
- (8) Immediately provide all requested information to ODJFS, the centers for medicare and medicaid services (CMS) and the CMA.
- (9) Not use or disclose any information concerning a consumer for any purpose without the documented consent of the consumer. Even with the consumer's consent, the information may not be used or disclosed for any purpose not directly associated with the provision of services.
- (10) Comply with all federal and state privacy laws, including the Health Insurance

Portability and Accountability Act (HIPAA) regulations as set forth in 45 CFR parts 160, 162 and 164, and the medicaid confidentiality regulations as set forth in 42 CFR 421.300 through 306.

- (11) Maintain and retain all required documentation. For each unit of service provided, the provider shall clearly document what service was provided and obtain the signature of the consumer on the dated document.
- (12) Retain all records of service delivery and billing for a period of six years after the date of receipt of the payment based upon those records or until any initiated audit is completed, whichever is longer.
- (13) Cooperate with ODJFS and the CMA during any quality assurance activities to monitor the provider's performance, including providing space for and being available to answer questions for onsite reviews and making all requested information available promptly.
- (14) Notify the CMA within twenty-four hours and provide written documentation within five calendar days when the provider is aware of significant changes that may affect the service needs of the consumer. Significant changes that may affect service needs of the consumer include, but are not limited to:

 - (a) The consumer refuses services.
 - (b) The consumer moves to another residential address.
 - (c) There are documented changes in the physical, mental, and/or emotional status of the consumer, documented changes in environmental conditions, and/or other health and safety issues.
 - (d) The consumer no longer needs medically necessary services as defined in rule 5101:3-1-01 of the Administrative Code.
 - (e) Abuse or neglect of the consumer is suspected.
- (15) Submit written notification to the consumer and the CMA at least thirty calendar days prior to the anticipated last date of service if the provider is terminating the provision of ODJFS-administered waiver services to the consumer. Exceptions to this requirement include:

 - (a) Thirty-day advanced notification is not required when the consumer has been hospitalized, placed in a long term care facility, or has expired.
 - (b) The thirty-day advanced notification may be waived for the provider by the CMA on a case-by-case basis.
 - (c) The thirty-day advanced notification of service termination is not required

if the consumer is terminating the services of the provider.

(B) Independent providers are independent contractors and must pay applicable federal, state and local income and employment taxes in compliance with federal, state and local requirements. Federal employment taxes include medicare and social security. On an annual basis, independent providers must submit the ODJFS-approved affidavit stating they paid the applicable federal, state and local income and employment taxes.

(C) ODJFS-administered waiver service providers shall deliver services professionally, respectfully, and legally, and during the provision of authorized services, shall not engage in unprofessional, disrespectful or illegal behavior that includes, but is not limited to the following:

(1) Consuming the consumer's food and/or drink, or using the consumer's personal property without the consumer's offer and consent.

(2) Bringing children, pets, friends, relatives, or anyone else to the consumer's place of residence.

(3) Taking the consumer to the provider's place of residence.

(4) Consuming alcohol, medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use and/or in any way that impairs the provider in the delivery of services to the consumer.

(5) Discussing religion or politics with the consumer and others present in the care setting.

(6) Discussing providers' personal issues with the consumer and others in the care setting.

(7) Accepting, obtaining or attempting to obtain money or anything of value, including gifts or tips from the consumer, household members and family members of the consumer.

(8) Engaging with the consumer in sexual conduct, or in conduct that may reasonably be interpreted as sexual in nature, regardless of whether or not the contact is consensual.

(9) Leaving the home for a purpose not related to the provision of services without notifying the agency supervisor, the consumer's emergency contact person, identified caregiver and/or case manager (CM).

(10) Using the consumer's motor vehicle, unless used solely for the benefit of the consumer.

(11) Engaging in activities that may distract from service delivery including, but not limited to:

(a) Watching television or playing computer or video games.

(b) Making or receiving personal calls.

(c) Engaging in non-care-related socialization with individuals other than the consumer.

(d) Providing care to individuals other than the consumer.

(e) Smoking without the consent of the consumer.

(f) Sleeping.

(D) ODJFS-administered waiver service providers shall not:

(1) Engage in behavior that causes or may cause physical, verbal, mental or emotional distress or abuse to the consumer.

(2) Engage in behavior that may reasonably be interpreted as inappropriate involvement in the consumer's personal relationships.

(3) Be designated to serve or make decisions for the consumer in any capacity involving a declaration for mental health treatment, durable power of attorney, financial power of attorney, or guardianship pursuant to court order unless one or more of the following exceptions applies:

(a) The consumer and the provider relationship existed and the provider had been appointed and was already serving as the consumer's designee pursuant to a declaration for mental health treatment, durable power of attorney, financial power of attorney, or guardianship pursuant to court order prior to September 1, 2005.

(b) The consumer and the provider relationship existed and the provider was subsequently, but prior to September 1, 2005, appointed the consumer's designee pursuant to a declaration for mental health treatment, durable power of attorney, financial power of attorney, or guardianship pursuant to court order.

(c) The consumer's designee pursuant to a declaration for mental health treatment, durable power of attorney, or financial power of attorney is the consumer's parent or spouse.

(d) A family member is appointed by the court as a legal guardian for the

consumer.

(4) Sell to or purchase from the consumer products or personal items. The only exception to this would be family members when not delivering services.

(5) Engage in behavior that constitutes a conflict of interest or takes advantage of or manipulates ODJFS-administered waiver program rules resulting in an unintended advantage for personal gain; or that has detrimental results for the consumer, their family, caregiver and/or another provider.

(E) Failure to meet the required conditions of participation as set forth in this rule may result in sanctions in accordance with rule 5101:3-12-08 of the Administrative Code and/or termination of the medicaid provider agreement in accordance with rule 5101:3-1-17.6 of the Administrative Code.

Effective: 08/01/2005

R.C. 119.032 review dates: 08/01/2010

CERTIFIED ELECTRONICALLY

Certification

07/15/2005

Date

Promulgated Under: 119.03
Statutory Authority: 5111.85
Rule Amplifies: 5111.01, 5111.02