

5101:3-46-04.1 **Ohio home care waiver program: home care attendant services.**

The requirements set forth in this rule begin when the Ohio department of job and family services (ODJFS) receives approval from the centers of medicare and medicaid services (CMS) of an amendment adding home care attendant services to the Ohio home care waiver, or on the effective date of this rule, whichever is later.

(A) The following definitions are applicable to this rule:

- (1) "Adult" means an individual at least eighteen years of age.
- (2) "Authorized representative" means the following:
 - (a) In the case of a consumer who is a minor, the consumer's parent, custodian, or guardian. The authorized representative shall be present and awake during the delivery of home care attendant services.
 - (b) In the case of a consumer who is an adult, an individual selected by the consumer to act on the consumer's behalf for the purposes regarding home care attendant services. The authorized representative shall be present and awake during the delivery of home care attendant services.
- (3) "Authorizing health care professional" means a health care professional who, pursuant to section 5111.887 of the Revised Code, authorizes a home care attendant to assist a consumer with self-administration of medication, nursing tasks, or both. The consumer, authorized representative, legally responsible family member, legal guardian, and foster caregiver are prohibited from being the authorizing health care professional.
- (4) "Consumer" means an individual to whom all of the following apply:
 - (a) The individual is enrolled in the Ohio home care waiver.
 - (b) The individual has a medically determinable physical impairment to which both of the following apply:
 - (i) It is expected to last for a continuous period of not less than twelve months.
 - (ii) It causes the individual to require assistance with activities of daily living, self-care, and mobility, including either assistance with self-administration of medication or the performance of nursing tasks, or both.
 - (c) In the case of an individual who is an adult, the individual is mentally alert and is, or has an authorized representative who is, capable of freely choosing home care attendant service providers in accordance with rule

5101:3-45-03 of the Administrative Code, and selecting, directing the actions of, and dismissing a home care attendant.

(i) In accordance with section 5111.8810 of the Revised Code, a consumer who is an adult may select an authorized representative by submitting a written notice of the consumer's selection to the director of ODJFS. The notice shall specifically identify the individual the consumer selects as authorized representative and may limit what the authorized representative may do on the consumer's behalf regarding home care attendant services.

(ii) A consumer may not select the consumer's home care attendant to be the consumer's authorized representative.

(d) In the case of an individual who is a minor, the individual has an authorized representative who is capable of freely choosing home care attendant service provides in accordance with rule 5101:3-45-03 of the Administrative Code, and selecting, directing the actions of, and dismissing a home care attendant.

(5) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(6) "Custodian" has the same meaning as in section 2151.011 of the Revised Code.

(7) "Gastrostomy tube" means a percutaneously inserted catheter that terminates in the stomach.

(8) "Group setting" means a situation in which a home care attendant service provider furnishes home care attendant services in accordance with this rule, and as authorized by ODJFS, to two or three individuals who reside at the same address.

(9) "Guardian" has the same meaning as in section 2111.01 of the Revised Code.

(10) "Health care professional" means a physician or registered nurse who holds a current, valid, unrestricted license.

(11) "Home care attendant" means an individual holding a valid medicaid provider agreement in accordance with section 5111.881 of the Revised Code and paragraph (E)(2) of this rule that authorizes the individual to provide home care attendant services to a consumer.

(12) "Jejunostomy tube" means a percutaneously inserted catheter that terminates in the jejunum.

(13) "Medication" means a drug as defined in section 4729.01 of the Revised Code.

- (14) "Minor" means an individual under eighteen years of age.
- (15) "Nursing tasks" means skilled tasks that would otherwise be performed by a registered nurse (RN), or a licensed practical nurse (LPN) at the direction of an RN.
- (16) "Oral medication" means any medication that can be administered through the mouth, or through a gastrostomy tube or jejunostomy tube if through a pre-programmed pump or through a syringe. Oral medication may include medication administered through a metered dose inhaler.
- (17) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.
- (18) "Practice of nursing as a registered nurse," "practice of nursing as a licensed practical nurse (LPN)," and "registered nurse (RN)" have the same meanings as in section 4723.01 of the Revised Code. "Registered nurse" includes an advanced practice nurse as defined in section 4723.01 of the Revised Code.
- (19) "Schedule II," "schedule III," "schedule IV," and "schedule V" have the same meaning as in section 3719.01 of the Revised Code.
- (20) "Topical medication" means any medication that is applied to the outer skin, including transdermal medications and eye, ear, and nose drops. Topical medication may also include vaginal or rectal suppositories.
- (B) Home care attendant services are services provided to a consumer enrolled on the Ohio home care waiver by an unlicensed non-agency provider in accordance with this rule. Home care attendant services include, but are not limited to, tasks that would otherwise be performed by an RN or an LPN at the direction of an RN. Home care attendant services include:
- (1) Assistance with self-administration of medications as set forth in paragraph (C) of this rule.
 - (2) Assistance with the performance of nursing tasks as set forth in paragraph (D) of this rule.
 - (3) Personal care aide tasks as described in paragraph (B)(1) of rule 5101:3-46-04 of the Administrative Code when performed during a home care attendant service visit. Personal care aide tasks are not reimbursable separately as personal care aide services when they are performed during a home care attendant service visit.
- (C) Assistance with self-administration of medication.

- (1) A home care attendant shall assist a consumer with the self-administration of only the following medication:

 - (a) Oral medications;
 - (b) Topical medications;
 - (c) Subcutaneous injections only for routine doses of insulin;
 - (d) Programming of a pump only used to deliver a routine dose of insulin;
 - (e) Medication administered via stable, labeled gastrostomy or jejunostomy tubes using pre-programmed pumps; and
 - (f) Doses of schedule II, schedule III, schedule IV, and schedule V drugs only when administered orally or topically.
- (2) Medication shall be maintained in its original container and the attached label shall match the dosage and means of administration set forth on the JFS 2389 "Home Care Attendant Medication Authorization Form" (7/10). The label on the container shall display all of the following:

 - (a) The consumer's full name in print;
 - (b) A dispensing date within the prior twelve months; and
 - (c) The exact dosage and means of administration.
- (3) Schedule II, schedule III, schedule IV, and schedule V drugs shall meet all of the following additional requirements:

 - (a) The medication(s) has a warning label on the bottle.
 - (b) The home care attendant shall count the medication(s) in the consumer's or authorized representative's presence and record the count on a log located in the consumer's clinical record.
 - (c) The medication(s) is recounted by the home care attendant in the consumer's or authorized representative's presence at least monthly, and the count is reconciled on a log located in the consumer's clinical record. The home care attendant shall notify the authorizing health care professional, in writing, within twenty-four hours if:

 - (i) The medication(s) is missing; and
 - (ii) The count of medication(s) cannot be reconciled.

(d) The medication(s) is stored separately from all other medications, and is secured and locked at all times when not being administered to the consumer in order to prevent access by unauthorized individuals.

(D) Assistance with the performance of nursing tasks.

(1) A home care attendant may provide assistance with the performance of nursing tasks that are not expressly excluded in accordance with paragraph (D)(2) of this rule.

(2) A home care attendant shall not assist a consumer with the performance of any of the following nursing tasks:

(a) Intravenous (IV) insertion, removal, or discontinuation;

(b) Intramuscular injections;

(c) IV medication administration;

(d) Subcutaneous injections, except for routine doses of insulin pursuant to paragraph (C)(1)(c) of this rule;

(e) Programming of a pump used to deliver medications (including but not limited to epidural, subcutaneous, and IV), except for routine doses of insulin pursuant to paragraph (C)(1)(d) of this rule;

(f) Insertion or initiation of infusion therapies; and

(g) Central line dressing changes.

(3) Performance of nursing tasks shall be summarized and submitted on the JFS 02390 "Home Care Attendant Skilled Task Authorization Form" (7/10).

(E) In order to provide services and to submit a claim for reimbursement, home care attendant service providers must meet all of the following requirements:

(1) Be at least eighteen years of age.

(2) Be a non-agency provider who holds a current, valid agreement as a home care attendant service provider in accordance with sections 5111.01, 5111.02, and 5111.8810 of the Revised Code and this rule, and complies with all rules set forth in Chapters 5101:3-45 and 5101:3-46 of the Administrative Code.

(3) Request reimbursement for the provision of home care attendant services in accordance with rule 5101:3-46-06.1 of the Administrative Code.

- (4) Not be the consumer's authorized representative.
- (5) Not be the consumer's legally responsible family member as that term is defined in rule 5101:3-45-01 of the Administrative Code.
- (6) Not be the consumer's legal guardian or foster caregiver.
- (7) Not be the consumer's authorizing health care professional.
- (8) Be identified as the provider, and have specified on the consumer's all services plan that is prior-approved by ODJFS or its designee, the number of hours for which the provider is authorized to furnish home care attendant services to the consumer.
- (9) Have a valid social security number, and one of the following forms of identification:
 - (a) Alien identification;
 - (b) State of Ohio identification;
 - (c) A valid driver's license; or
 - (d) Other government-issued photo identification.
- (10) Be able to read, write, and understand English at a level that enables the provider to comply with all requirements set forth in the administrative rules governing the Ohio home care waiver.
- (11) Be able to effectively communicate with the consumer.
- (12) Enter into a medicaid provider agreement with ODJFS to provide home care attendant services to consumers enrolled on the Ohio home care waiver. In order for ODJFS to approve an individual's application to become a home care attendant, the individual shall do all of the following:
 - (a) Comply with the medicaid provider requirements set forth in division 5101:3 of the Administrative Code.
 - (b) Comply with the ODJFS-administered waiver service provider requirements set forth in Chapters 5101:3-45 and 5101:3-46 of the Administrative Code.
 - (c) Agree to comply with the requirements set forth in sections 5111.88 to 5111.8810 of the Revised Code and all requirements set forth in this rule.

(d) Provide ODJFS with evidence to its satisfaction of all of the following:

(i) The home care attendant submits the JFS 02389 "Home Care Attendant Medication Authorization Form" (7/10) and/or JFS 02390 "Home Care Attendant Skilled Task Authorization Form" (7/10) as prescribed by paragraph (F)(2) of this rule.

(ii) The home care attendant either meets the personnel qualifications specified in 42 C.F.R. 484.4 (as in effect on the effective date of this rule) for home health aides, or has successfully completed at least one of the following:

(a) A competency evaluation program, or training and competency evaluation program approved or conducted by the Ohio department of health under section 3721.31 of the Revised Code; or

(b) A training program approved by ODJFS that includes training in at least all of the following and provides training equivalent to a training and competency evaluation program specified in paragraph (E)(12)(d)(ii)(a) of this rule, or meets the requirements of 42 C.F.R. 484.36(a) (as in effect on the effective date of this rule):

(i) Basic home safety;

(ii) Universal precautions for the prevention of disease transmission, including hand-washing, and proper disposal of bodily waste and medical instruments that are sharp or may produce sharp pieces if broken;

(iii) Consumer-specific personal care aide services; and

(iv) The labeling, counting and storage requirements for schedule II, schedule III, schedule IV, and schedule V medications.

(iii) Prior to beginning home care attendant services, the home care attendant received training and instruction about how to deliver the specific home care attendant services authorized by the consumer's authorizing health care professional. The training shall be consumer-specific and may be provided by the consumer's authorizing health care professional, and/or the consumer or the authorized representative in cooperation with the consumer's licensed health care professional as indicated on the JFS 02389 "Home Care Attendant Medication Authorization

Form" (7/10) and/or JFS 02390 "Home Care Attendant Skilled Task Authorization Form" (7/10), as appropriate.

- (iv) Upon request of the consumer or the consumer's authorizing health care professional, the home care attendant has performed a successful return demonstration of the home care attendant service to be provided.
- (v) The home care attendant has obtained a certificate of completion of a course in first aid that:

 - (a) Is not provided solely through the internet;
 - (b) Includes hands-on training provided by a certified first aid instructor; and
 - (c) Requires the individual to perform a successful return demonstration of what was learned in the course.
- (vi) The home care attendant has received education from the authorizing health care professional about health and welfare considerations appropriate for an individual or group setting.
- (13) Provide home care attendant services for one individual, unless authorized to provide services in a group setting in accordance with paragraph (E)(14) of this rule.
- (14) The home care attendant may provide services to two or three consumers in a group setting on a case-by-case basis. Authorization is subject to approval based on a clinical review conducted by ODJFS in consultation with the consumer, authorized representative, authorizing health care professional, case manager, and multidisciplinary team. The clinical review will address the consumers' needs and desires, the skill level and training needs of the home care attendant, and the ability to assure the consumers' health and welfare.
- (15) The home care attendant shall secure the services of an RN, in agreement with the consumer or authorized representative, and participate in a face-to-face visit every ninety days with the consumer, authorized representative, and the RN for the purpose of monitoring the consumer's health and welfare. During the face-to-face visit, the RN shall serve as a resource for the purpose of answering any questions the home care attendant, consumer, and/or authorized representative have about consumer care needs, medications, and other issues.

 - (a) The first visit between the home care attendant and the RN shall occur upon the initiation of home care attendant services. The case manager

shall also be present at the first visit.

(b) The home care attendant and the RN shall document the activities of the visit in the consumer's clinical record.

(c) The home care attendant shall discuss the results of the face-to-face visit with the case manager and the consumer and/or authorized representative.

(16) Completes at least twelve hours of in-service continuing education regarding home care attendant services annually. Evidence of completion must be submitted to ODJFS no later than the annual anniversary of the issuance of the home care attendant's initial medicaid provider agreement. Continuing education topics include, but are not limited to, consumer health and welfare, cardiopulmonary resuscitation (CPR), patient rights, emergency preparedness, communication skills, aging sensitivity, developmental stages, nutrition, transfer techniques, disease-specific trainings, and mental health issues.

(F) A home care attendant shall not provide home care attendant services until:

(1) The consumer and/or authorized representative chooses to receive home care attendant services from a non-agency provider and complies with the requirements set forth in rule 5101:3-45-03 of the Administrative Code.

(2) ODJFS receives a JFS 2389 "Home Care Attendant Medication Authorization Form" (7/10) and/or a JFS 02390 "Home Care Attendant Skilled Task Authorization Form" (7/10), as appropriate, that contains all of the following:

(a) Written consent from the consumer or the authorized representative allowing the home care attendant to provide home care attendant services, and assuming responsibility for directing the home care attendant. When an authorized representative is directing the home care attendant, the authorized representative shall be present and awake during the delivery of home care attendant services.

(b) Written consent from the consumer's authorizing health care professional attesting that the consumer or the authorized representative has demonstrated the ability to direct the home care attendant. The written consent shall also indicate that the home care attendant has demonstrated the ability to furnish the consumer-specific home care attendant service to the consumer. The consent shall include all of the following:

(i) The consumer's name and address;

(ii) A description of the specific nursing task or self-administration of

medication that the home care attendant will assist the consumer with, including, in the case of assistance with self-administration of medication, the name, dosage, and route of administration of the medication;

(iii) The times or intervals when the home care attendant is to assist the consumer with the self-administration of each dosage of the medication or with the performance of nursing tasks;

(iv) The dates on which the home care attendant is to begin and cease providing assistance;

(v) A list of severe adverse reactions that the home care attendant must report to the consumer's health care professional should the consumer experience one or more reactions;

(vi) At least one telephone number at which the home care attendant can reach the consumer's health care professional in an emergency for consultation after contacting emergency personnel;

(vii) At least one fax number at which the home care attendant can reach the consumer's authorizing health care professional when the home care attendant observes that scheduled medication(s) is missing or cannot be reconciled; and

(viii) Instructions the home care attendant must follow when assisting the consumer with the performance of a nursing task or the self-administration of medications, including, but not limited to, instructions for maintaining sterile conditions and for the storage of task-related equipment and supplies.

(G) Upon initiation of services, the consumer and/or authorized representative and case manager shall participate in the development and maintenance of a written back-up plan. The authorizing health care professional and/or the home care attendant may also participate in the development and maintenance of the back-up plan.

(1) The back-up plan shall meet the needs of the consumer in the event:

(a) The regularly scheduled home care attendant cannot or does not meet his or her obligation to provide services to the consumer; or

(b) The consumer and/or authorized representative is not able to direct home care attendant services.

(2) As authorized by the case manager,

(a) Waiver nursing as set forth in rule 5101:3-46-04 of the Administrative

Code, and/or private duty nursing or home health nursing as set forth in Chapter 5101:3-12 of the Administrative Code, may be used as back-up to provide assistance with self-administration of medications and the performance of nursing tasks;

(b) Personal care aide services as set forth in rule 5101:3-46-04 of the Administrative Code may be used as back-up for personal care aide tasks; and

(c) Back-up may include informal caregivers.

(H) All home care attendants must maintain a clinical record for each consumer served in a manner that protects the consumer's privacy and the confidentiality of these records. Home care attendants must maintain the clinical records at their place of business, and maintain a copy in the consumer's residence. For the purposes of this rule, the place of business must be a location other than the consumer's residence. The clinical record must contain the information listed in paragraphs (H)(1) to (H)(12) of this rule.

(1) Consumer identifying information including, but not limited to, name, address, age, date of birth, sex, race, marital status, significant phone numbers, and health identification numbers.

(2) Consumer medical history.

(3) Name of, and contact information for all of the consumer's licensed health care professionals.

(4) A copy of the initial and all subsequent all services plans.

(5) Documentation of all drug and food interactions, allergies, and dietary restrictions.

(6) A copy of any advance directives including, but not limited to, a "do not resuscitate order" ("DNR") or a "medical power of attorney" if they exist.

(7) The JFS 2389 "Home Care Attendant Medication Authorization Form" (7/10) and/or a JFS 02390 "Home Care Attendant Skilled Task Authorization Form" (7/10), as appropriate.

(8) Documentation of home care attendant services performed or not performed, arrival and departure times, and the dated signature of the provider, and consumer or authorized representative, verifying the service delivery upon its completion. Nothing shall prohibit the collection and maintenance of documentation through technology-based systems. The consumer's or authorized representative's signature of choice shall be documented on the all services plan, and shall include, but not be limited to, any of the following: a

handwritten signature, initials, a stamp or mark, or an electronic signature.

- (9) A copy of the log detailing the count and reconciliation of schedule II, schedule III, schedule IV, and schedule V drugs for which assistance with self-administration is provided.
- (10) Progress notes signed and dated by the home care attendant, documenting all communications with the case manager, licensed health care professionals including the authorizing health care professional, and other members of the multidisciplinary team, and documenting any unusual events occurring during the visit, and the general condition of the consumer.
- (11) Documentation of the face-to-face visits occurring every ninety days between the home care attendant, consumer, authorized representative, and RN, and any resulting activities, in accordance with paragraph (E)(15) of this rule.
- (12) A discharge summary, signed and dated by the departing home care attendant at the point the home care attendant is no longer going to provide services to the consumer, or when the consumer no longer wants or needs home care attendant services. The summary should include documentation regarding progress made toward achievement of goals as specified on the all services plan.
- (I) If ODJFS or its designee determines that the consumer and/or authorized representative cannot meet the requirements of this rule, or the health and welfare of the consumer receiving home care attendant services cannot be assured, then ODJFS or its designee may prohibit the consumer from receiving home care attendant services. The consumer shall be afforded notice and hearing rights in accordance with division 5101:6 of the Administrative Code.
- (J) A home care attendant who provides home care attendant services to a consumer in accordance with the limitations set forth in this rule, including activities in accordance with the authorizing health care professional's authorization, shall not be considered to be engaging in the practice of nursing as an RN or an LPN in violation of section 4723.03 of the Revised Code.
- (1) The consumer who is receiving home care attendant services, the authorized representative, or a provider shall report to ODJFS all instances in which a home care attendant appears to have:
- (a) Provided nursing services, other than assistance with self-administration of medication or the performance of nursing tasks as authorized in this rule; or
- (b) Provided services not in accordance with the authorizing health care professional's authorization.

(2) ODJFS may initiate an investigation based on the report, and shall report its findings to the Ohio board of nursing.

Effective: 07/01/2010

R.C. 119.032 review dates: 07/01/2015

CERTIFIED ELECTRONICALLY

Certification

06/21/2010

Date

Promulgated Under: 119.03
Statutory Authority: 5111.85, 5111.881
Rule Amplifies: 5111.01, 5111.02, 5111.88, 5111.881, 5111.882,
5111.883, 5111.884, 5111.885, 5111.886, 5111.887,
5111.888, 5111.889, 5111.8810