

5160-44-22

**Nursing facility-based level of care home and community-based services programs: waiver nursing services.**

(A) "Waiver nursing services" are defined as nursing tasks and activities provided to individuals who require the skills of a registered nurse (RN) or licensed practical nurse (LPN) at the direction of an RN.

(1) All nurses providing waiver nursing services to individuals shall:

- (a) Possess a current, valid and unrestricted license with the Ohio board of nursing;
- (b) Possess an active medicaid provider agreement or be employed by an entity that has an active medicaid provider agreement; and
- (c) Provide services within the nurse's scope of practice as set forth in Chapter 4723. of the Revised Code and agency 4723 of the Administrative Code rules adopted thereunder.

(2) Nursing tasks and activities that shall only be performed by an RN include, but are not limited to, the following:

- (a) Intravenous (IV) insertion, removal or discontinuation;
- (b) IV medication administration;
- (c) Programming of a pump to deliver medications including, but not limited to, epidural, subcutaneous and IV (except routine doses of insulin through a programmed pump);
- (d) Insertion or initiation of infusion therapies;
- (e) Central line dressing changes; and
- (f) Blood product administration.

(B) Limitations.

- (1) Waiver nursing shall not be used in lieu of similar services available through third-party insurers, community supports, resources or other Ohio medicaid state plan services when it has been determined an individual's needs can be met by those services.
- (2) If the provider cannot assist an individual with an assessed need, the provider shall notify ODM, the Ohio department of aging (ODA) or their designee, in writing,

of the service limitation(s) before the provider is included on the individual's person-centered services plan.

(3) Waiver nursing services do not include:

- (a) Services delegated in accordance with Chapter 4723. of the Revised Code and rules adopted thereunder and to be performed by providers who are not licensed nurses in accordance with Chapter 4723. of the Revised Code;
- (b) Services that require the skills of a nurse with a psychiatric mental health nursing specialty as set forth in rule 4723-8-04 of the Administrative Code;
- (c) Visits performed for the sole purpose of meeting the supervisory requirements (including any visit) set forth in 42 CFR 484 (as in effect on October 1, 2018);
- (d) Visits performed for the sole purpose of directing LPNs pursuant to section 4723.01 of the Revised Code; or
- (e) Visits performed for the sole purpose of meeting the home care attendant service RN visit requirements set forth in rule 5160-44-27 of the Administrative Code.

(4) Waiver nursing services are reimbursable when sequentially, but not concurrently, performed with any other service during a visit in which the RN is furnishing billable home health, private duty nursing, RN assessment, RN consultation, and/or any other similar service that is reimbursable through the Ohio medicaid program.

(C) Waiver nursing shall be delivered by one of the following:

- (1) An employee or contractor of a medicare-certified or otherwise-accredited home health agency approved by ODM or certified by ODA who meets the provider requirements set forth in paragraph (D) of this rule. For the purposes of this rule, medicare-certified home health agencies and otherwise-accredited agencies shall ensure they and the nurses they employ or contract with, are in compliance with 42 CFR 484. (as in effect on October 1, 2018).
- (2) A non-agency RN waiver nursing provider approved by ODM who meets the provider requirements set forth in paragraph (D) of this rule.

- (3) A non-agency LPN waiver nursing provider approved by ODM who meets the provider requirements set forth in paragraphs (D) and (E) of this rule.

(D) All waiver nursing providers shall:

- (1) Understand and comply with all applicable rules governing the home and community-based services waiver(s) for which they are providing services including, but not limited to those rules set forth in Chapters 5160-44, 5160-45, 5160-46, and/or 5160-58, of the Administrative Code, as applicable, for ODM-administered HCBS waiver programs, and Chapters 173-39, 5160-31, 5160-33, and/or 5160-58 of the Administrative Code, as applicable, for ODA-administered HCBS waiver programs.
- (2) Be providing the service to one individual, in a group setting as defined in rule 5160-46-06 of the Administrative Code during a face-to-face nursing visit in an ODM-administered HCBS waiver program, or in a group setting as defined in rule 5160-31-07 of the Administrative Code during a face-to-face nursing visit in an ODA-administered HCBS waiver program.
- (3) Complete training about individual rights and responsibilities as set forth in rule 5160-45-03 of the Administrative Code for ODM-administered HCBS waiver programs.
- (4) Not be the individual's legally responsible family member, as that term is defined in rule 5160-45-01 of the Administrative Code, unless the legally responsible family member is employed by a medicare-certified or otherwise-accredited home health agency and the individual is enrolled on an ODM-administered waiver.
- (5) Not be the individual's legally responsible family member, as that term is defined in rule 173-39-02 of the Administrative Code, when the individual is enrolled on the ODA-administered waiver.
- (6) Not be the foster caregiver of the individual.

(E) Non-agency LPNs, at the direction of an RN, shall:

- (1) Conduct a face-to-face visit with the directing RN at least every sixty days after the initial visit to evaluate the provision of waiver nursing services and LPN performance, and to ensure that waiver nursing services are being provided in accordance with the approved plan of care and within the LPN's scope of practice; and

- (2) Conduct a face-to-face visit with the individual and the directing RN before initiating services and at least every one hundred and twenty days for the purpose of evaluating the provision of waiver nursing services, the individual's satisfaction with care delivery and LPN performance, and to ensure that waiver nursing services are being provided in accordance with the approved plan of care and within the LPN's scope of practice.
- (F) All waiver nursing service providers shall maintain a clinical record at their place of business for each individual served in accordance with the requirements set forth in rule 5160-44-31 of the Administrative Code.
- (1) Storage shall be in a manner that protects the confidentiality of these records.
  - (2) For the purposes of this rule, the place of business shall be a location other than the individual's residence or primary location where the individual receives services.
  - (3) Each clinical record shall include the following:
    - (a) Identifying information, including but not limited to, name, address, date of birth, gender, gender identity, race, significant phone numbers and health insurance identification numbers of the individual.
    - (b) Information regarding medical diagnoses, treatment and preferences.
    - (c) The individual's medication profile and medication administration record, as applicable.
    - (d) The individual's treatment administration record, as applicable.
    - (e) The name of and contact information for the individual's primary care physician(s).
    - (f) The name of and current contact information for the individual's parent/guardian/authorized representative and/or emergency contact.
    - (g) All known drug and food interactions, allergies and dietary needs, preferences and/or restrictions.
    - (h) A copy of the initial and all subsequent person-centered services plans.
    - (i) Nurse assignments.

- (j) A copy of any advance directives including, but not limited to, a do-not-resuscitate (DNR) order and/or medical power of attorney, if they are provided.
  - (k) A copy of the initial and all subsequent plans of care, specifying the type, frequency, scope and duration of the nursing services being performed. When services are performed by an LPN at the direction of an RN, the clinical record shall include documentation that the RN has reviewed the plans of care with the LPN. The plan of care shall be recertified by the primary care physician at least every sixty days, or more frequently if there is a significant change in the individual's condition.
  - (l) Documentation of any verbal orders given by the primary care physician to the nurse. The nurse shall document, in writing, the physician's orders, the date and time the orders were given, and sign the entry in the clinical record. The nurse shall subsequently secure documentation of the verbal orders, signed and dated by the primary care physician.
  - (m) In all instances when a non-agency LPN is providing waiver nursing services, clinical notes, signed and dated by the LPN, documenting all consultations between the LPN and the directing RN, the face-to-face visits between the LPN and the directing RN, and the face-to-face visits between the LPN, the individual, and the directing RN.
  - (n) Clinical notes, signed and dated by the nurse, documenting the general condition of the individual, any unusual events occurring during the visit and the service tasks performed or not performed.
  - (o) All communications with the individual, case manager, RN supervisor if one exists, primary care physician and other members of the individual's team.
- (G) All waiver nursing providers shall also maintain a record at the individual's residence or primary service location in order to encourage sharing of information between caregivers and enhance person-centered care.
- (1) Storage shall be in a manner that protects the confidentiality of these records.
  - (2) The record may include a communication log, treatment record and/or medication administration record, if they exist.
  - (3) Documents in the record shall reflect a minimum of at least the past sixty calendar days, with the individual's right to maintain more if he or she so chooses.

- (4) The individual shall identify the location in his or her residence or the primary service location where the record will be safely maintained.

(H) Notwithstanding any provisions to the contrary in this rule, during the COVID-19 state of emergency the following apply:

(1) The prohibition in paragraph (B)(1) of this rule against using waiver nursing in lieu of similar services when they are available is suspended.

(2) Submission of evidence of recertification or reaccreditation to ODM or ODA by medicare-certified or otherwise-accredited home health agency providers is suspended.

(3) Face-to-face visits required in paragraphs (D) and (E) of this rule may be conducted by telephone or electronically, unless the individual's needs require a face-to-face visit.

(4) The provider prohibitions in paragraphs (D)(4), (D)(5), and (D)(6) of this rule are suspended. The following legally responsible persons may be eligible to provide waiver nursing services:

(a) The individual's legally responsible family member, as that term is defined in rule 5160-45-01 of the Administrative Code, if the individual is enrolled on an ODM-administered waiver and the legally responsible family member is employed by a medicare-certified or otherwise-accredited home health agency, or another ODM-approved agency.

(b) The individual's foster caregiver, if the individual is enrolled on an ODM-administered waiver and is employed by a medicare-certified or otherwise-accredited home health agency, or another ODM-approved agency.

(c) The individual's legally responsible caregiver, if the individual is enrolled on an ODA-administered waiver and the legally responsible caregiver is employed by an ODA-certified agency. For the purposes of this rule, legally responsible caregiver is the individual's spouse, parent, step-parent, or legal guardian who is not an attorney, except as applied to legal guardians who are attorneys or agencies.

(5) ODM and ODA are authorized to deem any provider approved by ODM or certified by ODA or the Ohio department of developmental disabilities (DODD) to provide waiver services as having satisfied the requirements for approval by ODM or certification by ODA for the same or similar services.

Effective: 6/12/2020

CERTIFIED ELECTRONICALLY

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Certification

06/12/2020

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Date

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