

5160-44-27

Nursing facility-based level of care home and community-based services programs: home care attendant services.

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

- (1) "Adult" means an individual at least eighteen years of age.
- (2) "Authorizing health care professional" means a health care professional who, pursuant to section 5166.307 of the Revised Code, authorizes a home care attendant to assist an individual enrolled on a nursing facility (NF)-based level of care waiver with self-administration of medication, nursing tasks, or both.
- (3) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.
- (4) "Custodian" has the same meaning as in section 2151.011 of the Revised Code.
- (5) "Gastrostomy tube" means a percutaneously inserted catheter that terminates in the stomach.
- (6) "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 the Ohio department of medicaid (ODM), or certified by the Ohio department of aging (ODA), to two or three individuals who reside at the same address.
- (7) "Guardian" has the same meaning as in section 2111.01 of the Revised Code.
- (8) "Health care professional" means a physician or registered nurse who holds a current, valid unrestricted license.
- (9) "Home care attendant" means a provider, holding a valid medicaid provider agreement in accordance with section 5166.301 of the Revised Code and paragraph (G) of this rule, who is authorized to provide home care attendant services to a specific individual enrolled on a NF-based level of care waiver.
- (10) "Individual enrolled on a NF-based level of care waiver" and "individual" mean the same as "consumer" as defined in section 5166.30 of the Revised Code.
- (11) "Jejunostomy tube" means a percutaneously inserted catheter that terminates in the jejunum.
- (12) "Medication" means a drug as defined in section 4729.01 of the Revised Code.
- (13) "Minor" means an individual under eighteen years of age.

- (14) "Nursing facility (NF) -based level of care waiver" and "waiver" mean the MyCare Ohio and Ohio home care waivers administered by ODM and the PASSPORT waiver administered by ODA.
 - (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, 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 advance practice nurse as defined in section 4723.01 of the Revised Code.
 - (19) "RN home care attendant service visit" means the face-to-face visit every ninety days between the RN and the individual receiving home care attendant services as required by paragraph (G)(10) of this rule.
 - (20) "Schedule II, " "schedule III," "schedule IV" and "schedule V" have the same meaning as in section 3719.01 of the Revised Code.
 - (21) "Topical medication" means any medication 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 an individual enrolled on a waiver by an unlicensed non-agency provider in accordance with this rule. Home care attendant services are 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 (E) of this rule.
 - (2) Assistance with the performance of nursing tasks as set forth in paragraph (F) of this rule.

- (3) Tasks performed as part of personal care aide services as described in rule 5160-46-04 or 173-39-02.11 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) Home care attendant services may be provided:

- (1) In the individual's home or in the community; and
- (2) To assist an individual to function in the workplace without duplicating workplace accommodations.

(D) If the individual has an authorized representative as defined in rule 5160-1-33 of the Administrative Code, the authorized representative shall be present and awake during the delivery of home care attendant services.

(E) Assistance with self-administration of medication.

- (1) A home care attendant shall assist an individual enrolled on a waiver 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 ODM 02389 "Home Care Attendant Medication Authorization" form (11/2015). The label on the container shall display all of the following information for the individual enrolled on a waiver:
 - (a) The individual's full name;
 - (b) A dispensing date within the prior twelve months; and

- (c) The exact dosage and means of administration.
- (3) For schedule II, schedule III, schedule IV and schedule V drugs, all of the following additional requirements shall apply:
- (a) Medication(s) shall have a warning label on the bottle;
 - (b) During the first visit, the home care attendant shall count the medication(s) in the presence of the individual enrolled on a waiver or the authorized representative and shall record the count on a log located in the individual's clinical record.
 - (c) The medication(s) shall be recounted by the home care attendant in the presence of the individual enrolled on a waiver or the authorized representative at least monthly, and the count shall be reconciled on a log located in the individual's clinical record. The home care attendant shall notify the authorizing health care professional, in writing, within twenty-four hours if:
 - (i) Medication is missing; or
 - (ii) The count of medication(s) cannot be reconciled.
 - (d) The medication(s) shall be stored separately from all other medications, and secured and locked at all times when not being administered in order to prevent access by unauthorized persons.
- (F) Assistance with the performance of nursing tasks.
- (1) A home care attendant may provide assistance with the performance of nursing tasks not expressly excluded in accordance with paragraph (F)(2) of this rule.
 - (2) A home care attendant shall not assist an individual who is receiving home care attendant services 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 (E)(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 (E)(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 ODM 02390 "Home Care Attendant Skilled Task Authorization" form (11/2015).
- (G) In order to provide services to an individual enrolled on a waiver and to submit a claim for reimbursement, home care attendants shall meet all of the following requirements:
- (1) As part of the medicaid provider agreement application process, provide ODM, ODA or their designee with evidence to its satisfaction of the following:
 - (a) Submission of the ODM 02389 "Home Care Attendant Medication Authorization" form (11/2015) and/or ODM 02390 "Home Care Attendant Skilled Task Authorization" form (11/2015) as prescribed by paragraph (H) of this rule.
 - (b) Successful completion of at least one of the following:
 - (i) A competency evaluation program or training and competency evaluation program approved or conducted by the director of health under section 3721.31 of the Revised Code, and registration as active or in good standing on the Ohio nurse aide registry maintained by the director of health under section 3721.32 of the Revised Code; or
 - (ii) A training program and competency evaluation program for home health aides as specified in 42 C.F.R. 484.4 and 484.36, if the person met those standards as they existed on or before January 12, 2018, or 42 C.F.R. 484.80 and 484.115, if the person met those standards since they were adopted on January 13, 2018. A person is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the person's most recent completion of this program(s), there has been a continuous period of twenty-four consecutive months during none of which the person furnished services described in 42 C.F.R. 409.40 (as in effect on October 1, 2019); or

- (iii) A certified vocational program in a health care field, and written testing and skills testing by return demonstration; or
- (iv) A written attestation of training, instruction, and as appropriate, skills testing by return demonstration prior to initiation of service provision on:
 - (a) Appropriate and safe techniques in personal hygiene and grooming that include: bed, tub, shower and partial bath techniques, shampoo in sink, tub or bed, nail and skin care, oral hygiene, toileting and elimination, safe transfer and ambulation, normal range of motion and positioning, and adequate nutrition and fluid intake.
 - (b) The maintenance of a clean, safe and healthy environment, including but not limited to, house cleaning and laundry, dusting furniture, sweeping, vacuuming and washing floors, kitchen care (including dishes, appliances and counters), bathroom care, emptying and cleaning bedside commodes and urinary catheter bags, changing bed linens, washing inside windows within reach from the floor, removing trash and folding, ironing and putting away laundry.
 - (c) Meal preparation, including special diet preparation, grocery purchase, planning and shopping, and running errands.
 - (d) The physical, emotional and developmental needs of individuals, including the need for privacy and respect for individuals and their property.
 - (e) 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.
 - (f) Basic elements of body functioning and changes in body function that should be reported to a supervisor.
 - (g) Basic safety requirements and knowledge of emergency procedures.
 - (h) Reading and recording temperature, pulse and respiration.

- (i) Observation, reporting and documentation of individual status and services provided.
 - (j) Communication skills, including the ability to read, write and make brief and accurate oral or written reports.
 - (c) Completion of training and instruction, prior to beginning home care attendant services, about how to deliver the specific home care attendant services authorized by the individual's authorizing health care professional. The training shall be specific to the individual enrolled on a waiver and may be provided by the individual's authorizing health care professional, the individual receiving services or the authorized representative in cooperation with the individual's health care professional as indicated on the ODM 02389 "Home Care Attendant Medication Authorization" form (11/2015) and/or ODM 02390 "Home Care Attendant Skilled Task Authorization" form (11/2015), as appropriate.
 - (d) Performance of a successful return demonstration of the home care attendant service to be provided if requested by the individual enrolled on a waiver or the authorizing health care professional.
 - (e) Completion and maintenance of first aid certification from a class that is not solely internet-based and that includes hands-on training by a certified first aid instructor, a successful return demonstration of what was learned in the course, and certification that education was received from the authorizing health care professional about health and welfare considerations appropriate for an individual or group setting.
 - (f) Completion and maintenance of cardiopulmonary resuscitation (CPR) certification from a class that is not solely internet-based, and that includes hands-on training by a certified CPR instructor and a successful return demonstration of what was learned in the course. Maintenance of CPR certification may be counted toward the in-service continuing education required pursuant to paragraph (G)(11) of this rule. Current providers and those provider-applicants whose applications are pending as of the effective date of this rule shall have one hundred and eighty days from the effective date of this rule to meet this requirement.
- (2) Be a non-agency provider who holds a current, valid medicaid provider agreement as a home care attendant and complies with sections 5166.30 to 5166.3010 of the Revised Code and rules set forth in Chapters 173-39, 5160-44, 5160-45 and 5160-46 of the Administrative Code.

- (3) Request reimbursement for the provision of home care attendant services in accordance with rule 5160-1-06.1 or 5160-46-06.1 of the Administrative Code.
- (4) Not be the authorizing health care professional of the individual receiving services.
- (5) Not be the authorized representative of the individual receiving services.
- (6) Not be the legally responsible family member as that term is defined in rule 5160-45-01 of the Administrative Code of the individual receiving services.
- (7) Not be the legal guardian or foster caregiver of the individual receiving services.
- (8) Provide home care attendant services for only one individual, unless authorized to provide services in a group setting in accordance with paragraph (G)(9) of this rule.
- (9) If authorized, provide services to two or three individuals enrolled on a waiver in a group setting. Authorization on a case-by-case basis is subject to approval based on a clinical review conducted by ODM or ODA in consultation with the individual receiving services, the authorized representative, authorizing health care professional, care manager and the individual's team. The clinical review will address the needs and desires of the individual receiving services, the skill level and training needs of the home care attendant, the ability to ensure the health and welfare of the individuals enrolled on a waiver served by the home care attendant, and the back-up plan.
- (10) Secure the services of an RN, with agreement of the individual receiving services, and participate in a face-to-face visit at least every ninety days with the individual receiving services, the authorized representative, and the RN for the purpose of answering any questions the home care attendant and/or individual receiving services, or authorized representative have about meeting care needs, medications and other issues.
 - (a) The RN performing an RN home care attendant service visit shall:
 - (i) Possess a current, valid and unrestricted license with the Ohio board of nursing;
 - (ii) Possess an active Ohio medicaid provider agreement;
 - (iii) Comply with the conditions of participation as set forth in rule 5160-44-31 of the Administrative Code.

- (b) The RN shall be present at the first visit between the home care attendant and individual upon the initiation of home care attendant services. ODM, ODA, or their designee shall also be present at the first visit.
 - (c) The home care attendant and the RN shall document the activities of each visit in the clinical record of the individual receiving services.
 - (d) The home care attendant shall discuss the results of the RN visit with ODM, ODA or their designee, the individual receiving services and/or the authorized representative.
 - (e) When the RN performs an RN home care attendant service visit, the RN shall bill the state plan nursing assessment code set forth in appendix A to rule 5160-12-08 of the Administrative Code.
- (11) Completion of at least twelve hours of continuing education annually to enhance the skills and competencies of the provider relevant to his or her job responsibilities and support person-centered service delivery.
- (H) The ODM 02389 "Home Care Attendant Medication Authorization" form (11/2015) and/or the ODM 02390 "Home Care Attendant Skilled Task Authorization" form (11/2015), as appropriate, shall contain all of the following:
- (1) Written consent from the individual enrolled on a waiver or the authorized representative, as applicable, allowing the home care attendant to provide home care attendant services, and assuming responsibility for directing the home care attendant.
 - (2) A written statement from the authorizing health care professional attesting that the individual enrolled on a waiver or the authorized representative has demonstrated the ability to direct the home care attendant. The written statement shall also indicate whether the home care attendant has demonstrated the ability to furnish the home care attendant service to the individual enrolled on a waiver. The statement shall include all of the following:
 - (a) The name and address of the individual receiving home care attendant services;
 - (b) A description of the specific nursing task or self-administration of medication that the home care attendant will assist with, including, in the case of assistance with self-administration of medication, the name, dosage, and route of administration of the medication;

- (c) The times or intervals when the home care attendant is to assist the individual receiving services with the self-administration of each dosage of the medication or with the performance of nursing tasks;
 - (d) The dates on which the home care attendant is to begin and cease providing assistance;
 - (e) A list of severe adverse reactions that the home care attendant shall report to the individual's health care professional should the individual experience one or more reactions;
 - (f) At least one telephone number at which the home care attendant can reach the individual's health care professional in an emergency for consultation after contacting emergency personnel;
 - (g) At least one contact number at which the home care attendant can reach the authorizing health care professional when the home care attendant observes that scheduled medication(s) is missing or cannot be reconciled; and
 - (h) Instructions the home care attendant shall follow when assisting the individual receiving services with the performance of a nursing task or the self-administration of medications, including, instructions for maintaining sterile conditions and for the storage of task-related equipment and supplies.
- (I) The individual enrolled on a waiver shall participate with ODM, ODA, or their designee in the development and maintenance of a written back-up plan prior to ~~initiation~~initiation of services. 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 individual enrolled on a waiver in the event:
 - (a) The regularly scheduled home care attendant cannot or does not meet his or her obligation to provide services to the individual receiving services; or
 - (b) The individual receiving services and/or the authorized representative is not able to direct home care attendant services.
 - (2) As authorized by ODM, ODA, or their designee,

- (a) Waiver nursing as set forth in rule 5160-44-22 of the Administrative Code, and/or private duty nursing or home health nursing as set forth in Chapter 5160-12 of the Administrative Code, may be used as back-up to assist with self-administration of medications and the performance of nursing tasks;
 - (b) Personal care aide services as set forth in rule 5160-46-04 of the Administrative Code may be used as back-up for personal care aide tasks in an ODM-administered waiver;
 - (c) Personal care services as set forth in rule 173-39-02.11 of the Administrative Code may be used as back-up for personal care tasks in the PASSPORT waiver; and
 - (d) Back-up may include informal caregivers.
- (J) All home care attendants service providers shall maintain a clinical record 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) Storage shall be at the provider's place of business other than the individual's residence or primary location where the individual receives services.
 - (3) Each clinical record shall include:
 - (a) Identifying information including name, address, date of birth, gender/gender identity, race, significant phone numbers and health identification numbers of the individual.
 - (b) Information regarding the individual's medical diagnoses, treatment and preferences.
 - (c) The individual's medication profile, as applicable.
 - (d) The individual's treatment administration record, as applicable.
 - (e) The name and contact information for all of the licensed health care professionals serving the individual.
 - (f) The name of and current contact information for the individual's parent/guardian/authorized representative and/or emergency contact.

- (g) A copy of the initial and all subsequent person-centered services plans.
 - (h) All known drug and food interactions, allergies and dietary needs, preferences and/or restrictions.
 - (i) 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.
 - (j) The ODM 02389 "Home Care Attendant Medication Authorization" form (11/2015) and/or the ODM 02390 "Home Care Attendant Skilled Task Authorization" form (11/2015), as appropriate.
 - (k) Documentation of home care attendant services performed or not performed, arrival and departure times, and the dated signature of the provider, and individual receiving services or the authorized representative, verifying the service delivery upon its completion and arrival and departure times. The signature method of choice for the individual receiving services or the authorized representative shall be documented on the person-centered 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.
 - (l) 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.
 - (m) Service notes, signed and dated by the home care attendant, documenting all communications with ODM, ODA or their designee, health care professionals including the authorizing health care professional, and other members of the individual's team, and documenting the general condition of the individual, any unusual events occurring during the visit, and the service tasks performed.
 - (n) Documentation of the face-to-face RN home care attendant service visits every ninety days between the home care attendant, individual enrolled on a waiver and RN, and of any resulting activities, in accordance with paragraph (G)(10) of this rule.
- (K) All home care attendant service providers shall also maintain documentation 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 documentation may include, but not be limited to, a communication log, as designated in the individual's person-centered services plan.
 - (3) Documents 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 location where the documentation will be safely maintained.
- (L) If ODM, ODA, or their designee determines that the individual enrolled on a waiver cannot meet the requirements of this rule, or the health and welfare of the individual receiving home care attendant services cannot be ensured, then ODM, ODA, or their designee may prohibit the individual from receiving home care attendant services. The individual shall be afforded notice and hearing rights in accordance with division 5101:6 of the Administrative Code.
- (M) Notwithstanding any provisions to the contrary in this rule, during the COVID-19 state of emergency the following apply:
- (1) The face-to-face, in-person visit required in paragraphs (A)(19) and (G)(10) of this rule may be conducted by telephone or electronically, unless the individual's needs require a face-to-face visit.
 - (2) The first aid and CPR certifications required in paragraphs (G)(1)(e) and (G)(1)(f) of this rule may be from a class that is solely internet-based that does not include hands-on training.
 - (3) If the individual is unable to provide the signature required in paragraphs (H)(1) and (J)(3)(k) of this rule at the time of the service because of COVID-19, the individual shall submit an electronic signature or standard signature via regular mail, or otherwise provide a signature in no instance any later than at the next face-to-face visit with the provider.
 - (4) 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

Certification

06/12/2020

Date

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Rule Amplifies: 5162.03, 5164.02, 5166.30, 5166.301, 5166.302,
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