

TO BE RESCINDED

5160-45-10 **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 provider agreement as set forth in rule 5101:3-1-17.3 of the Administrative Code.
- (2) Comply with all provider requirements as set forth in Chapter 5101:3-45 of the Administrative Code, and Chapter 5101:3-46, 5101:3-47, or 5101:3-50 of the Administrative Code, depending upon the waiver(s) for which the provider is furnishing services. Provider requirements include, but are not limited to:
 - (a) Provider enrollment as set forth in rule 5101:3-45-04 of the Administrative Code;
 - (b) Provider service specifications as set forth in rule 5101:3-46-04, 5101:3-47-04, or 5101:3-50-04 of the Administrative Code, as applicable;
 - (c) Criminal record checks as set forth in rule 5101:3-45-07 or 5101:3-45-08 of the Administrative Code, as applicable;
 - (d) Consumer incident reporting as set forth in rule 5101:3-45-05 of the Administrative Code; and
 - (e) Provider monitoring and reviews as set forth in rule 5101:3-45-06 of the Administrative Code.
- (3) Deliver services professionally, respectfully and legally.
- (4) Comply, and maintain documentation of compliance, with the patient rights standards set forth in the medicare conditions of participation for home health agencies as set forth in 42 C.F.R. 484.10 (June 27, 1995).
- (5) Participate in all mandatory provider training sessions sponsored by ODJFS or its designee.
- (6) Assure consumers receive ODJFS-administered waiver services in accordance

with the consumer's all services plan.

- (a) Medicare-certified home health agencies and otherwise-accredited agencies shall make every reasonable effort to replace staff when the provider's regularly scheduled staff cannot or do not meet their obligation to provide services to the consumer.
 - (b) At the direction of the consumer, non-agency providers shall assist the consumer upon initiation of services, as appropriate, in developing a backup plan in the event the regularly scheduled non-agency provider cannot or does not meet its obligation to provide services to the consumer.
- (7) Upon request and within the timeframe prescribed in the request, provide information to ODJFS, its designee and the centers for medicare and medicaid services (CMS).
- (8) Comply with all federal and state privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA) regulations as set forth in 45 C.F.R. parts 160 and 164, and the medicaid confidentiality regulations as set forth in 42 C.F.R. 421.300 to 421.307; and sections 5101.26 to 5101.28 of the Revised Code.
- (9) Notify ODJFS and its designee, in writing, within thirty calendar days of changes in address, telephone number, email address and other contact information.
- (10) Maintain and retain all required documentation including, but not limited to, documentation of tasks performed or not performed, arrival and departure times, and the dated signatures of the provider and the consumer or authorized representative verifying the service delivery upon completion of service delivery. 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.
- (11) 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.
- (12) Cooperate with ODJFS and its designee during all provider monitoring

activities by being available to answer questions during reviews, and by assuring the availability and confidentiality of consumer information and other documents that may be requested as part of provider monitoring activities.

- (13) Notify ODJFS or its designee within twenty-four hours and provide written documentation within five calendar days when the provider is aware of issues that may affect service delivery to the consumer. Issues may include, but are not limited to the following:
- (a) The consumer consistently declines services.
 - (b) The consumer moves to another residential address.
 - (c) There are changes in the physical, mental and/or emotional status of the consumer.
 - (d) There are changes in environmental conditions affecting the consumer.
 - (e) The consumer's caregiver status has changed.
 - (f) The consumer no longer requires medically necessary services as defined in rule 5101:3-1-01 of the Administrative Code.
 - (g) The consumer has experienced a reportable incident as set forth in rule 5101:3-45-05 of the Administrative Code.
 - (h) A referral has been made to a protective service agency on the consumer's behalf, or an active case is pending.
 - (i) The consumer is behaving inappropriately toward the provider.
 - (j) The consumer is consistently noncompliant with physician orders, or is noncompliant with physician orders in a manner that may jeopardize the consumer's health and welfare.
 - (k) The consumer's requests consistently conflict with the consumer's all services plan.
 - (l) The consumer has been hospitalized or visited the emergency room.

- (m) The consumer has been placed in an institutional setting.
- (n) The consumer is experiencing other health and welfare issues.
- (14) Make arrangements to accept all mail sent by ODJFS or its designee, including but not limited to, certified mail.
- (15) Submit written notification to the consumer and ODJFS or its designee at least thirty calendar days before the anticipated last date of service if the provider is terminating the provision of ODJFS-administered waiver services to the consumer. Exceptions to the thirty-day advance notification requirement are set forth in paragraphs (A)(15)(a) to (A)(15)(c) of this rule, and are subject to verbal notification within twenty-four hours of the last date of service, and written notification within five calendar days of the last date of service.
 - (a) Thirty-day advance notification is not required when the consumer:
 - (i) Has been hospitalized for at least three days;
 - (ii) Has been placed in an institutional setting;
 - (iii) Has been incarcerated;
 - (iv) Has died;
 - (v) Is terminating the services of the provider; or
 - (vi) Is no longer eligible for medicaid.
 - (b) Thirty-day advance notification is not required when the provider is furnishing services in an environment that places the provider in imminent danger.
 - (c) Thirty-day advance notification may be waived for the provider by ODJFS or its designee on a case-by-case basis.
- (B) ODJFS-administered waiver service providers may submit an e-mail address to ODJFS and/or its designee in order to receive electronic notification of any rule adoption, amendment or rescission, and any other communications from ODJFS or its designee that are not confidential pursuant to law.

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

- (1) Submit a claim for waiver services rendered while the consumer is hospitalized, institutionalized or incarcerated. The only exception to this prohibition is when the consumer is institutionalized for the purpose of receiving out-of-home respite as set forth on the consumer's all services plan.
- (2) Consume the consumer's food and/or drink without the consumer's offer and consent.
- (3) Bring children, pets, friends, relatives, other consumers or anyone else to the consumer's place of residence.
- (4) Take the consumer to the provider's place of residence.
- (5) Use illegal drugs or chemical substances.
- (6) Consume alcohol while delivering services to the consumer.
- (7) Deliver services to the consumer while under the influence of alcohol.
- (8) Report for duty or remain on duty when the provider is using any controlled substance. The exception would be when the use is pursuant to the instructions of a physician who has advised the provider that the substance does not adversely affect the provider's ability to deliver services to the consumer.
- (9) Deliver services to the consumer when the provider is medically, physically or emotionally unfit.
- (10) Discuss religion or politics with the consumer or others in the care setting.
- (11) Discuss personal issues with the consumer or others in the care setting.
- (12) Accept, obtain or attempt to obtain money or anything of value, including gifts or tips from the consumer, authorized representative, household members or family members of the consumer.
- (13) Borrow money, credit cards or other items from the consumer, authorized representative, household members or family members of the consumer.

- (14) Be designated on a financial account or credit card held by the consumer, authorized representative, household members or family members of the consumer.
- (15) Use the property of the consumer, authorized representative, household members or family members for personal gain.
- (16) Lend or give the consumer, authorized representative, household members or family members money or other personal items.
- (17) Engage with the consumer in sexual activity, or in conduct that may reasonably be interpreted as sexual in nature, regardless of whether or not the contact is consensual.
- (18) Engage in behavior that causes or may cause physical, verbal, mental or emotional distress or abuse to the consumer.
- (19) Engage in behavior that may reasonably be interpreted as inappropriate involvement in the consumer's personal relationships.
- (20) Leave the home for a purpose unrelated to the provision of services without notifying the agency supervisor, the consumer's emergency contact person, identified caregiver and/or case manager.
- (21) Use the consumer's motor vehicle, unless solely for the benefit of the consumer.
- (22) Engage 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 communications.
 - (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.
- (23) Sell to, or purchase from, the consumer products or personal items unless the provider is a family member and the transaction occurs when the provider is not furnishing waiver services.
 - (24) Engage in behavior that takes advantage of or manipulates the consumer, the consumer's authorized representative or family, or the ODJFS-administered waiver program rules resulting in an advantage for personal gain.
 - (25) Use information about the consumer, authorized representative or the consumer's family for personal gain.
- (D) ODJFS-administered waiver service providers shall not 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, or representative payee as that term is described in paragraph (D)(3) of this rule, unless one or more of the following exceptions applies:
- (1) A family member is appointed by the court pursuant to section 2111.01 of the Revised Code as a legal guardian for the consumer.
 - (2) 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.
 - (3) A parent or spouse is serving as the consumer's representative payee. For the purposes of this rule, "representative payee" means a parent or spouse who the consumer designates to receive and manage payments that would otherwise be made directly to the consumer.
 - (4) For non-family members, both of the following conditions apply:
 - (a) The provider was the consumer's paid medicaid provider before September 1, 2005; and
 - (b) The provider was 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 before September 1, 2005.

- (E) Agency providers shall pay applicable federal, state and local income and employment taxes in compliance with federal, state and local requirements.
- (F) Non-agency providers shall 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, non-agency providers must submit an ODJFS-approved affidavit stating that they paid their applicable federal, state and local income and employment taxes.
- (G) Failure to meet the requirements set forth in this rule may result in suspension of a provider's medicaid provider agreement in accordance with rule 5101:3-1-17.5 of the Administrative Code, or any of the actions set forth in rule 5101:3-45-09 of the Administrative Code including, but not limited to, termination of the medicaid provider agreement in accordance with rule 5101:3-1-17.6 of the Administrative Code. The provider shall be entitled to a hearing under Chapter 119. of the Revised Code in accordance with Chapter 5101:6-50 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates: 11/17/2014

Certification

Date

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