

Post PHE Training for OCDD Self Directed Individuals and Self-Direction Employers

Objectives

- Understand all home and community based exceptions/flexibilities that are “unwinding”
- Understand Role of Employer/Self-Direction Authorized Representative
- Understand Family Members Living in the Same Home as Paid Caregivers or Legally Responsible Individuals as Paid Caregivers

General Overview

- COVID Public Health Emergency (PHE) has ended – PHE flexibilities currently in place will either change or go away by November 11, 2023
- Your support coordinator will talk to you about your individual circumstances, and they will make changes to the plan of care if needed.
- If you can't get information you need from your support coordinator, ask for the support coordination supervisor; if they can't help, call your Local Governing Entity / Human Services District or Authority
- Changes made are following substantial input from individuals and families receiving services, LGEs, support coordination representatives, and provider representatives.

COVID PHE Waiver Flexibilities / Exceptions: What happens after 11/11?

Waiver Participant and Direct Support Worker Living in the Same Home

- Prior to COVID: could NOT occur
- If worker living in same home is NOT family member → will NO LONGER be able to serve as paid staff, unless they are part of Companion Care or Monitored In-Home Caregiving.
- If worker living in same home IS family member → MUST begin following new guidelines [to be covered later in presentation]

Monitored In-Home Caregiving (MIHC)

- NOW or ROW participant who lives at home with caregiver who is willing/able to provide 24 hour supports
- Caregiver receives a “per diem” or daily rate for providing necessary care and supports; no EVV is required
- Provider sends nurse and care manager to home for assistance
- Can be offered as service option when family or non-family members living in the home with a participant want to continue to provide services for the participant
- Daily rate or Per diem to provider: \$90.03/day for Level I Care; \$135.04/day for Level II Care – Provider negotiates payment to caregiver

16 Hour Rule

- Should NEVER be planned on regular/routine basis
- ONLY work over 16 hours in 24 hour period for UNPLANNED situations WHERE
 - Other paid staff or natural support is UNAVAILABLE AND
 - Participant cannot be left alone; requires caregiver at all times
- NO prior approval will be needed when these instances happen; However, review at specific levels will be needed if it happens
 - Each instance → employer
 - 5 or more times in quarter → support team
 - Additional 5 or more times in next quarter → LGE
 - Additional 5 or more times in next quarter → OCDD Central Office
- Focus of review: identify and address barriers or challenges

Sharing of staff support across two waivers

- WILL be able to share across two waivers (NOW, ROW, CCW) with the same employer.
- Two types of sharing to consider / offer:
 - Roommate sharing – participants live in the same home and share staff for portion or all day
 - Casual sharing – participants do not live in same home but share staff to do preferred activities together
- Must include sharing across waivers in the Plan of Care on “Shared Supports Document”

Additional 20 hours a week of in-home support for Children's Choice Waiver

- Cap will NO LONGER be adjusted to allow additional hours
 - If there are remaining “additional hours” as of 11/12, these will not carry over for the remainder of Comprehensive Plan of Care (CPOC) year
- Beginning 11/12, cap is \$20,650 per year
- Can also access EPSDT-PCS in addition to family support hours

Virtual Support Coordination Visits

- Waiver participants and families may request the support coordinator conduct a virtual visit twice per year if certain conditions are met.
- The virtual visits do not have to be planned on an annual basis, they can be requested when needed
- A virtual visit is NOT guaranteed when the participant/family asks because
 - Some situations will require face-to-face visits
 - State Office can determine if a face-to-face visit must occur

Categories Where Quarterly Virtual Visits ARE NOT Allowed

- For **ALL** participants, The **Initial or Annual Plan of Care, 6-9 month Children's Choice, and one other quarterly** Meeting **MUST** occur face-to-face in the home
- For participants whose paid caregiver **IS** a family member living in the home and/or a Legally Responsible Individual, **ALL** Visits must occur face-to-face in the home
- For those participants who utilize the Monitored In Home Caregiving (MIHC) Service, **ALL** visits must occur face-to-face
- For those participants who **ONLY** utilize the Support Coordination service, **ALL** visits must occur face-to-face

Virtual Visit Criteria

The following criteria must be met:

- Any Request for Virtual Visit must be initiated by the participant/family
- Participant and SC must have a portable device with a camera, format capabilities and internet services necessary to complete a virtual visit that includes the ability for the SC to view the home and the participant in order to complete the observation required for the visit.
- Participant/Family understand HIPAA requirements and how to use virtual format
- No known Critical Incidents that have occurred in the last 2 years in the following categories:
 - Report of any of the “major” critical incident categories per Operational Intruction-F5 (posted on OCDD website)
 - Report of Abuse, Neglect, Exploitation, Extortion to Child Protection / Adult Protection / Elderly Protection Services
 - Report of Involvement with Law Enforcement
 - Restraint use
 - More than 3 reports of the same incident in the last 6 months
- Progress is being made towards goals in POC, *(cont’d...)*

Virtual Visit Criteria Continued

- No identified challenges/changes in providing supports
- No known unsafe living conditions, lack of sanitation, lack of food/supplies etc.
- No known significant changes in medication, medication errors, trips to the ER etc.
- No known changes in behavior, medical status or appearance (i.e., weight gain/loss)
- No change or anticipated change in the plan of care that requires a revision

Role of Employer/Self-Direction Authorized Representative

Self-Direction Employer Responsibilities

- Each person who chooses to receive services through self-direction must identify who the “employer” will be and document this with the Fiscal Employer Agent. The employer can be themselves or a self-direction authorized representative.
- The person identified as the “self-direction authorized representative” may or may not be a person who assists a person and is identified as their authorized representative for other activities.
- The employer will now be responsible to view a training and sign an attestation form that they understand these responsibilities. The Support Coordinator will show where the training can be accessed and provide the attestation form.

Self-Direction Employer Responsibilities (cont.)

- Review each payroll report to ensure employees are being paid the correct rate and for the correct number of hours worked;
- Verify there are enough hours to continue to receive paid services through the remainder of the quarter.
- Contact the Fiscal Employer Agent if payroll reports not received.
- Ensure employee background checks and required screenings done on regular basis.
- Report critical incidents to support coordinator as soon as possible.

Self-Direction Employer Requirements

- Must be at least 21 years of age and live in Louisiana in close proximity to participant
- Must adhere to health and welfare safeguards identified by the team, including monitoring and risk assessment
- Must ensure services are documented in service notes and watch to verify that each worker follows plan
- Must ensure workers use Electronic Visit Verification to clock in and clock out for their shift and that services are provided with participant present
- Must understand participant's rights and responsibilities and ensure they are respected

Self-Direction Employer Requirements (cont)

- Must ensure family members living in the home are not scheduled for more than 40 hours per week
- Must ensure workers are not working another job at the same time they are caring for participant and billing Medicaid
- Must immediately report allegations of abuse/neglect/exploitation
- Must understand and follow Self-Direction handbook

Self-Direction Employer Requirements

- Must ensure worker is completing activities directly for the participant and as outlined on the plan of care
- Must immediately provide documentation and interview upon request from any applicable regional, state, or federal agency regarding the services provided

Self-Direction Employer as the Worker

- The person identified as the self-direction employer may not also serve as the paid worker / employee.
- If the self-direction employer has been serving as worker, the following can be considered:
 - Shift to a traditional provider agency and be hired by the provider agency to continue to provide paid support
 - Identify an alternate self-direction authorized representative who meets all requirements and can follow regulations
 - **Note: The potential employee who relinquished their employer/authorized rep designation will still be subject to best interest and extraordinary care requirements if person is a family member and/or legally responsible individual.**

Family Living in the Same Home Serving as Paid Staff

Family Members Serving as Paid Staff

What has ALWAYS been allowable

- Family members who DO NOT live with the recipient were ALWAYS allowed to serve as paid staff so long as:
 - They were NOT the legally responsible individual
 - They met all the other requirements and regulations for being a DSW

This CONTINUES to be an option available

What is CHANGING

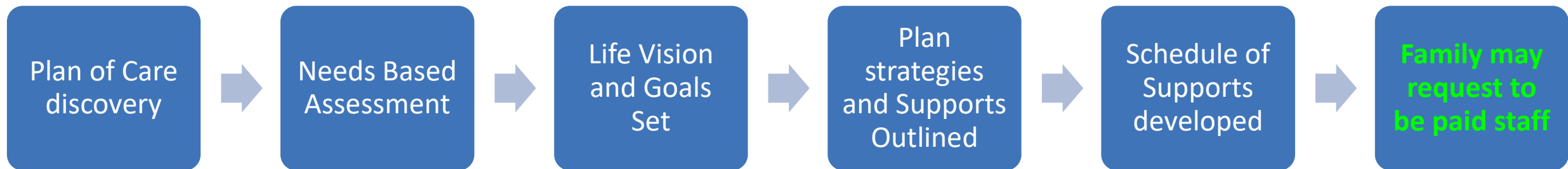
- Family members who DO live with recipient MAY be able to serve as paid staff, IF:
 - It is in the best interest of the individual
 - Individual wants family to be paid staff
- Legally Responsible Individuals MAY be able to serve as paid staff, IF:
 - Extraordinary care is needed
 - They are NOT the Employer/Authorized Rep for Self-direction
- Applicable safeguards/guardrails in place

These are Federal Requirements

Guiding Considerations

- Purpose of HCBS services is to provide ADDITIONAL support to individuals and their families to keep families together and to assure individuals can continue to live/work/etc. in their local communities
 - Non-paid family relationships and time needs to be preserved
 - Family burnout and fatigue should be considered and steps taken to avoid
 - Individuals should have meaningful relationships outside family and the individuals that support them
- Future planning for the person's supports and support network over time should be considered
 - Efforts to support the person to be as independent as possible
 - Building friendships, relationships and community connections

WHEN does family as paid staff get discussed



OR SC may suggest consideration IF finding staff is difficult

General Considerations

- Family living in the home serving as paid staff have same expectations as other workers when providing services:
 - Meet all direct support worker qualifications per licensing
 - Must complete all required direct support worker training, plus complete a “Family as Paid Caregiver” Training and sign an attestation form that they understand expectations and requirements – (Note: SC responsible for showing)
- Each family member living in the home may work up to 40 hours / week (if there are 40 allocated hours in the week); hours not increased when family is paid staff
- Paid family member must be hired by self-direction employer

Exclusionary Considerations

Family Members will not be approved to serve as paid staff under the following circumstances

- Name on the OIG Exclusion List, Direct Support Worker Registry or CNA Registry
- Conviction that bars employment
- Known APS/CPS/EPS substantiated instances of abuse/neglect/exploitation
- Waiver participant says they do NOT want family to be paid staff
 - Consistently in private and team discussions
 - Privately with SC and then family does not object
- Clear evidence the CPOC activities/supports are not occurring
- More than one incident of family not following requirements in attestation form
- Clear evidence family member is unable to provide all supports in plan

Circumstances Requiring Discussion/Consideration

Support Coordinator is responsible for determining if family as paid caregiver is in best interest of individual by considering the following:

- Any instances of alleged but not confirmed abuse/neglect/exploitation
- Any one incident of family not following requirements in attestation form
- Waiver participant says privately to provider agency they do not want family to be paid staff but shares yes with family
- Person is experiencing regression on goals for increased independence
- Person is not doing preferred activities to frequency they would like
- Unclear if family member can provide all supports in the plan

Establishing Best Interest

- ANY exclusionary circumstances → STOP the family member cannot serve as paid staff
- Any areas for discussion/consideration → additional team discussions & document in plan
- Team discussion around:
 - Increasing independence
 - Supporting community involvement
 - Maintaining time as family
 - Preferred activities match
 - Expanding relationships
 - Individual's choice

AFTER planning for goals and needed supports, IF family as paid staff is requested/needed AND the family member LIVES WITH the recipient, THEN consideration of BEST INTEREST MUST OCCUR

Assuring Self Determination and Individual Choice

During discussions with the recipient:

- SC explains rights/responsibilities
- Formal/informal supporters for decision making
- Discussion of family member who wants to also serve as paid staff

Individual Choice MUST be addressed to assure BEST INTEREST and SELF DETERMINATION have been honored; Age specific consideration do exist:

- Youth under age 15: defer to legal guardian
- Ages 16-17: conversation separately with youth will occur; supporter may be present
- Adults (18+): separate conversation with recipient regardless of legal status; supporter may be present

Extraordinary Care

- In Louisiana, a legally responsible individual (LRI) is: parent of a minor child, spouse, or curator / continued tutor for an adult.
- A LRI can ONLY serve as paid staff when extraordinary care is needed. To establish Extraordinary Care the following must be considered:
 - Availability of other qualified support staff
 - Type of support/care needed compared to what would typically be expected for a legally responsible individual
 - Expectations of some support/interaction/relationship with legally responsible individual that is NOT paid

Extraordinary Care

In considering if the support/care needed is beyond the expectations of a legally responsible individual, the following are age related criteria:

- < age 5: MUST be linked to significant medical, nursing, behavioral support needs [significant help with ADLs is typical for these ages]
- Ages 5-12: ONLY if care/support is outside what can be provided in traditional school, day care or after care systems [some supervision and support in ADLs occurs during these ages]
- Ages 13-18: Level of support results in inability to be left alone (ie., after school) or the person is placed on home-bound education and qualified direct support professionals cannot be found
- Adults: meet the inability to locate qualified staff

Lack of qualified staff

- This is NOT the following:
 - Subjective feeling or statement from the LRIs
 - Preference to not have others in the home
- MUST be able to confirm one of the following:
 - No staff are able to be located/hired
 - Staff that apply are not able to provide the needed supports
 - LRI has unique ability to meet the needs of the participant (i.e., special skills, training, license that is tied to the support needed)
- For those who do not want others coming in the home, there are other options within the waiver like companion care or MIHC that could be accessed

Legally Responsible Individuals (LRI) as DSWs, Including Parents and Spouse

- SC will perform review of best interest and extraordinary care requirements and prepare attestation.
- Employer must have Attestation from SC to pay a DSW that is a Legally Responsible Relative (LRI) effective 11/12/23.
- Attestation required even if the LRI does not live with the participant.
- Communicate any concerns to SC as soon as possible.

Monitoring/Ongoing Discussion Requirements

- The self-direction employer is responsible for ensuring that all workers follow the plan of care, state and federal regulations, and requirements in the attestation form for workers who live in the same home as the participant.
- The self-direction employer is responsible for notifying the Support Coordinator of any identified concerns with the family living in the home continuing to be the paid staff and documenting these concerns.
- At the quarterly meeting, the support coordinator will document in the Quarterly progress note to include the following:
 - Documentation IF NO concerns AND person remains satisfied
 - IF CONCERNS OR individual SATISFACTION in question → lead discussion and document any decisions, changes, actions in progress note
 - Update plan as needed

Documenting in the Plan

What's Important To Me	Best Interest Discussion
Important Routines/Schedules/Rituals/Non Negotiables	Self Determination Discussion
Qualities of people who Support ME: What I Want.	Extraordinary Care Discussion

Family Member Living in the Home is Paid Caregiver Legally Responsible Individual is Paid Caregiver

Contact Emails

OCDD-HCBS@la.gov

SelfDirection@la.gov

THANK YOU

