

Requirements for Services Provided by Legally Responsible Individuals(LRIs), Relatives, and Legal Guardians

The Developmental Disabilities Supports Division (DDSD) and the Human Services Department received approval from Centers for Medicare and Medicaid Services (CMS) for permanent payment to legally responsible individuals (LRIs), relatives and legal guardians for specific waiver services. CMS guidelines and significant feedback from stakeholders were used to develop requirements for services where payment to LRI’s, relatives or legal guardians are allowed. Services, requirements, system, and definitions are detailed below.

Waiver	Services allowed pay to LRIs, Relatives and Legal Guardians
DD Waiver	Family Living (only if not an LRI) Customized In Home Supports Customized Community Supports Community Integrated Employment Respite
Mi Via Waiver	All Mi Via Waiver services, excluding Consultant Services, Customized Group Supports Services, and Individual Directed Goods and Services
Supports Waiver	Customized Community Supports (only if not an LRI) Supported Employment (only if not an LRI) Personal Care (only if not an LRI) Respite (only if not an LRI)
Medically Fragile Waiver	Home Health Aide Private Duty Nursing Respite

Requirements to Allow Waiver Payment to LRIs, Relatives and Legal Guardians

1. Professional or corporate guardians may not be paid for providing any waiver services.
2. When an LRI, relative, or legal guardian is chosen to provide services, the planning process must protect against self-referral by demonstrating that the LRI, relative or legal guardian is selected as the *best fit*. This may include explanations such as:
 - Direct support professionals (DSP) are not available to serve the individual or the selected agency provider is unable to hire or maintain DSP.
 - Language is a factor in service delivery and the self-directed Employer of Record (EOR), or the agency-based provider selected is unable to find DSP who can communicate in the language of the individual.
 - There are other extraordinary circumstances in the individual’s situation, e.g., the unique ability of the relative or legal guardian to meet the needs of the cultural or care needs of individual.
 - Hiring the LRI, relative or legal guardian is the preference of the individual in services.

3. The following must be documented in the individual's Individual Service Plan (ISP)/ Service and Support Plan (SSP):
 - *Best fit* information identified through the person-centered planning process in #2.
 - How the individual was included in the decision to hire an LRI, relative or legal guardian.
 - Backup plan.
4. The ISP/SSP and number of units per service requested to be provided by the LRI, relative or legal guardian must address participant preferences and needs. Units may not be determined to maximize payment to LRIs, relatives and legal guardians at the cost of removing other needed services on the budget.
5. Specifically, when an LRI is providing a service that includes an element of personal care in the scope, LRIs can only be paid for what is considered extraordinary care. DDSD must be made aware of the LRI providing care and the extraordinary care circumstances at least annually, using a form that includes:
 - The participant, LRI, and the service(s) being provided.
 - The extraordinary care circumstances.

Note: Any personal care is considered extraordinary care on the Medically Fragile Waiver due to medical complexity of all individuals on that waiver.
 - Signature that attests to understanding that more than forty (40) hours of services in a seven (7)-day period may not be provided as an LRI due to the existing duty of care responsibilities.
6. One LRI, relative or legal guardian may provide more than one service type if they are qualified for each service and the overall planning for support and services does not routinely rely on a single LRI, relative or legal guardian.

Note: In DD Waiver, Family Living providers are the exception. Family Living providers cannot be paid for a second service because they are already paid for daily, 24/7 residential service.
6. Each waiver's case manager/consultant's routine monthly monitoring visits will include documentation for ongoing best fit, back up planning, and participant satisfaction in the decision to hire LRI, relative or legal guardian.

System Updates

1. DDSD will review and enhance required trainings where appropriate to ensure training addresses person centered planning, back up planning and safeguarding against self-referral when LRIs, relatives or legal guardians are selected to provide services.
2. The Division of Health Improvement, Quality Management Bureau will add check points to their survey tools related to the LRI, relative or legal guardian requirements.

Definitions

Domestic Partnership: A domestic partnership is a personal relationship shared between two people who are not legally married. Characteristics of a domestic partnership often include living together, joint property ownership, mutual financial obligations, sharing of assets, and/or raising children together. New Mexico recognizes domestic partnerships that are established in jurisdictions where those unions are legally permitted. Domestic partnership agreements are not legally recognized within the state of New Mexico.

Extraordinary Care: By extraordinary, CMS means care exceeding the range of activities that a legally responsible individual would ordinarily perform in the household on behalf of a person without a disability or a chronic illness of the same age, and which are necessary to assure the health and safety of the individual and avoid institutionalization.

Legally Responsible Individual: A person who has a duty under state law to care for another person. This typically includes: the parent (biological, legal, or adoptive) of a minor child, a guardian who must provide care to an eligible recipient under 18 years of age, or the spouse of an eligible recipient. (8.314.6.7 New Mexico Administrative Code). *An LRI does not include the parent of an adult even if the parent is a legal guardian.*

Personal Care: Personal Care provides support for Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). Personal Care is included within the scope of a variety of waiver services with different titles like Community Integrated Employment, Customized Community Supports, Customized In-Home Supports, and Respite.

Self-Referral: Self-referral is when a person who has decision making authority over the selection of the provider or paid direct support professional selects themselves in their interest versus participant best interest and without regard for the waiver participant's choice. It represents a financial conflict of interest.

Spouse: An individual who is legally married to another individual, married by common law, or their relationship is otherwise acknowledged in some legal manner such as a domestic partnership established in jurisdictions where those unions are legally permitted.