

Coronavirus Disease 2019 (COVID-19):

Clarification Regarding Hours of Intellectual Disability/Autism (ID/A) Waiver Services Provided by Relatives or Legal Guardians

ODP Announcement 20-090

AUDIENCE:

- Individuals and Families
- Providers of ID/A Waiver Services
- Managing Employers in the Agency With Choice Model
- Common Law Employers in the Vendor Fiscal/Employer Agent Model
- Supports Coordinators
- Administrative Entities
- All other interested stakeholders

PURPOSE:

This communication provides guidance regarding services rendered by relatives or legal guardians to individuals enrolled in the Consolidated, Community Living or Person/Family Directed Support waivers, also known as the Intellectual Disability/Autism (ID/A waivers).

DISCUSSION:

In response to the COVID-19 pandemic, the Office of Developmental Programs (ODP) requested and received approval from the Centers for Medicare and Medicaid Services (CMS) through Appendix K, for the ability to allow more flexibility in the types of ID/A waiver services that relatives and legal guardians can provide as well as the number of hours of services that relatives and legal guardians can provide. The flexibilities and requirements were previously published in Announcements 20-027 and 20-072. Based upon feedback from stakeholders, this communication reiterates the types of waiver

services that can be provided by relatives and legal guardians and provides additional guidance regarding the number of hours that relatives and legal guardians can be reimbursed for the provision of ID/A waiver services.

Services That Relatives and Legal Guardians Can Provide

The following table outlines the services that relatives and legal guardians can provide as qualified direct service professionals or support service professionals (through a participant-directed services model) to an individual enrolled in an ID/A waiver. The table also provides information about whether the service can be rendered as a result of the ID/A waivers that were approved by CMS prior to the start of the COVID-19 pandemic or whether they can only be rendered as a result of the approval of Appendix K. When Appendix K is listed, this means relatives and legal guardians can only provide the service during the period that Appendix K is effective, currently March 11, 2020 through March 10, 2021.

Service Name	Allowable Through Regular ID/A Waivers or Appendix K
In-Home and Community Support	Regular Waiver
Companion	Regular Waiver
Residential Habilitation (including Supplemental Habilitation)	Appendix K
Supported Living (including Supplemental Habilitation)	Appendix K
Life Sharing (including Supplemental Habilitation)	Regular Waiver
Respite	Regular Waiver
Supported Employment	Regular Waiver
Supports Broker	Regular Waiver
Shift Nursing	Regular Waiver
Transportation Mile	Regular Waiver

As described in the regular ID/A waivers, relatives and legal guardians can be reimbursed to provide waiver services when the following conditions are met:

- The individual has expressed a preference to have the relative or legal guardian provide the service(s);
- The service provided is not a function that the relative or legal guardian would normally provide for the individual without charge in the usual relationship among members of a nuclear family;
- The service would otherwise need to be provided by a qualified provider of services funded under the Waiver;
- The relative or legal guardian is not the common law employer or managing employer for the individual that they will provide services to. The only service a common law employer or managing employer may receive payment for is Transportation (Mile); and
- The service is provided by a relative or legal guardian who meets the qualification criteria that are established by ODP.

Hours of Reimbursable In-Home and Community Support and Companion Services

When the county an individual resides in is in the green phase, the following requirements apply within 45 calendar days of the county moving to the green phase:

- Any one relative or legal guardian may provide a maximum of 40 hours per week of authorized In-Home and Community Support services or a combination of In-Home and Community Support and Companion services (when both services are authorized in the ISP).
- Multiple relatives or legal guardians may provide any combined amount of In-Home and Community Support and/or Companion services authorized in the ISP (commonly referred to as the “60 hour rule”). This is a change from previous guidance in [Announcement 20-072, At-A-Glance Guide](#).
- An exception may be made to the limitation on the number of hours of In-Home and Community Support and Companion services provided by relatives and legal guardians at the discretion of the employer of the individual who is providing services when there is an emergency or an unplanned departure of a regularly scheduled worker for up to 90 calendar days in any fiscal year.
- In-Home and Community Support or Companion services can be provided through traditional providers or one of the participant-directed services models,

Agency With Choice or Vendor Fiscal/Employer Agent. More information about Guidance Regarding Limits on the Number of Hours of In-Home and Community Support and Companion by Relatives, Legal Guardians can be found on pages 220 and 221 of the [Individual Support Plan Manual](#).

- If the number of units of authorized services was increased while the county an individual resides in was in the red or yellow phase, the number of units of authorized services must return to the number of units authorized in the individual's ISP prior to the COVID-19 pandemic unless there has been a change in the individual's needs that requires the increase in services to continue. This is new guidance.
 - Units may be transferred between services that were authorized prior to the COVID-19 pandemic. For example, if an individual was authorized for Community Participation Support services prior to the COVID-19 pandemic and the individual chooses not to resume Community Participation Support services, those service units may be transitioned to another service such as In-Home and Community Support or Companion services.