

To summarize, when a state provides for payment to legally responsible individuals for the provision of personal care or similar services, the services will be equivalent to services supplied by other types of providers. The waiver must also specify:

- The types of legally responsible individual (as defined in state law or regulations) to whom payment may be made;
- The waiver personal care or similar services for which payment will be made;
- How the state distinguishes extraordinary care from ordinary care;
- The state policies to determine that the provision of personal care or similar services by a legally responsible individual is in the best interests of the participant;
- When the legally responsible individual has decision-making authority over the selection of providers of waiver services, the state's process for ensuring that the legally responsible individual uses substituted judgement on behalf of the individual;
- Any limitations of the circumstances under which payment will be authorized;
- Any limitations on the amount of services for which payment will be made;
- Any additional safeguards not specified above the state implements when legally responsible individuals provide personal care or similar services;
- How the state implements required oversight, such as determining that payments are made only for services rendered.

CMS Review Criteria

When the waiver provides for the payment for personal care or similar services to legally responsible individuals for extraordinary care, the waiver specifies:

- The types of legally responsible individuals to whom payment may be made;
- The waiver personal care or similar services for which payment may be made;
- The method for determining that the amount of personal care or similar services provided by legally responsible individual is "extraordinary care," exceeding the ordinary care that would be provided to a person without a disability or chronic illness of the same age, and which are necessary to assure the health and welfare of the participant and avoid institutionalization;
- The state policies to determine that the provision of personal care or similar services by a legally responsible individual is in the best interests of the participant;
- When the legally responsible individual has decision-making authority over the selection of providers of waiver services, the state's process for ensuring that the legally responsible individual uses substituted judgement on behalf of the individual;
- Any limitations on the circumstances under which payment will be authorized or the amount of personal care or similar services for which payment may be made;
- Any additional safeguards the state implements when legally responsible individuals provide personal care or similar services; and
- The procedures that are used to implement required state oversight, such as ensuring that payments are made only for services rendered.

Item C-2-e: State Policies Concerning Payment for Waiver Services Furnished by Relatives/ Legal Guardians

Instructions

This item concerns state policies regarding payment for waiver services rendered by relatives and/or legal guardians that do not fall within the scope of Item C-2-d. Select whether the state makes payments to relatives or legal guardians for any waiver service (besides personal care or a similar service furnished by a legally responsible individual as described in C-2-d). If the state makes payments to relatives and/or legal guardians for waiver services, select one of the next three choices and provide the additional information under the selected choice.

Technical Guidance

At the option of the state, waiver services may be provided by a relative and/or legal guardian of the participant. When responding to this item, keep in mind that Item C-2-d addresses extraordinary care payments to legally responsible individuals who furnish personal care or similar services to a waiver participant. **For the purposes of this item, legally responsible individuals are considered to be a type of “relative” with respect to payments for the provision of waiver services other than personal care or similar services.** When a relative or legal guardian may be paid to provide waiver services, the relative or legal guardian must meet the provider qualifications that have been specified for the service. Services must be monitored as provided in Appendix D-2 and there must be a properly executed provider agreement.

When relative/legal guardians deliver services, all required statutory and regulatory components of 1915(c) waivers must continue to be met, including, but not limited to, an individual’s free choice of providers, adherence to person-centered service planning, health and welfare oversight, and ensuring community integration consistent with the home and community-based settings regulations.

This item presents four response choices as follows:

- **No Payments.** A state may elect not to make payments to relatives or legal guardians for the provision of any waiver services.
- **Specific Circumstances.** A state may elect to pay relatives or legal guardians for the provision of specified waiver services only in *specific circumstances*. Such circumstances must be specified by the state. Specific circumstances might include: (a) the lack of a qualified provider in remote areas of the state; (b) the lack of a qualified provider who can furnish services at necessary times and places; (c) the unique ability of a relative or legal guardian to meet the needs of a person; and/or, (d) other circumstances specified by the state.

When this choice is selected, the waiver must specify the following:

- The types of relatives or legal guardians that may be paid to furnish waiver services. For example, a state may specify that relatives may be paid to furnish services but not legal guardians. The state may specify that only relatives who do not live in the same household as the participant may be paid to furnish services. A state may specify that certain types of relatives may be paid to furnish services

(e.g., grandparents of the participant) but others may not (e.g., legally responsible individuals). A state may provide that legally responsible individuals may be paid to furnish services (other than personal care or similar services, which have been addressed in Item C-2-d) that require specialized skills (e.g., nursing or physical therapy), provided that the legally responsible individual is not legally obligated to furnish such services.

- The types of waiver services, and any limitations on the amount of waiver services, for which payment may be made to a relative or legal guardian. Non-legally responsible individuals may be permitted to furnish personal care or similar services.
- The specific circumstances when payment may be made to a relative or legal guardian. The waiver also must describe the method for determining when these circumstances apply.
- When payment may be made to a relative/legal guardian, the waiver should include the state policies for determining that the provision of waiver services by a legal guardian is in the best interests of the waiver participant.
- When the relative/legal guardian has decision-making authority over the selection of providers of waiver services, the state's process for ensuring that the legally responsible individual uses substituted judgement on behalf of the individual;
- Any additional safeguards the state implements when relatives/legal guardians provide waiver services; and
- The procedures that are followed to ensure that payment is made only for services rendered.

In Appendix C-3, there is the opportunity to select whether a waiver service may be provided by a legally responsible individual or a relative/legal guardian. When this choice has been selected, the selection in Appendix C-3 is qualified by the response to this item (i.e., "relative/legal guardian" means the types that are specified in this item). It is not necessary to repeat the information provided in response to this item in the service specifications.

- **Specific Circumstances Do Not Apply.** A state may provide that relatives or legal guardians are permitted to be paid for rendering waiver services but not limit payment for such services to specific circumstances. That is, provided that the relative otherwise meets the qualifications to provide a service, the state will make payment to the relative or legal guardian. When this selection is made:
 - Specify any limitations on the types of relatives or legal guardians who may furnish services (e.g., whether legally responsible individuals are excluded).
 - In Appendix C-3, for each waiver service that a relative or legal guardian may furnish, check off relative/legal guardian as a provider type. When relative/legal guardian is not checked off in Appendix C-3, the state does not allow relatives or legal guardians to be paid to furnish the service. For example, if this selection has been made in Item C-2-e and transportation is the only service that has been checked off in Appendix C-3, then only the relatives or legal guardians specified here may be paid to furnish transportation and they may not be paid to provide any other waiver services.
 - Specify the state policies to determine that the provision of waiver services by a relative/legal guardian is in the best interests of the participant.

- When the relative/legal guardian has decision-making authority over the selection of providers of waiver services, the state’s process for ensuring that the legally responsible individual uses substituted judgement on behalf of the individual.
- Specify the procedures that have been established to ensure that payment is made only for services rendered.
- **Other Policy.** Select this choice when either of the foregoing two choices does not accommodate the state’s policies. For example, the state may restrict payment for waiver services to specific circumstances in the case of some services or certain types of relatives or legal guardians but not in the case of other services or other types of relatives or legal guardians. When this choice is selected, the information provided in the text field should parallel that required in the foregoing choices, depending on whether specific or extraordinary circumstance are involved.

CMS Review Criteria

When the waiver provides for the payment of services furnished by relatives or legal guardians:

- The types of relatives or legal guardians to whom payment may be made are specified.
- The waiver services for which payment may be made to relatives or legal guardians are specified.
- When relatives or legal guardians may be paid to furnish waiver services only in specific circumstances, the waiver specifies the circumstances and the method of determining that such circumstances apply.
- Limitations on the amount of services that may be furnished by a relative or legal guardian are specified.
- The state policies to determine that the provision of waiver services by a relative/legal guardian is in the best interests of the participant are specified.
- When the relative/legal guardian has decision-making authority over the selection of providers of waiver services, the state has a process in place for ensuring that the relative/legal guardian uses substituted judgement on behalf of the individual.
- Any additional safeguards the state implements when relatives/legal guardians provide waiver services are specified.
- The waiver specifies the procedures that are employed to ensure that payment is made only for services rendered.

Item C-2-f: Open Enrollment of Providers

Instructions

In the text field, specify the processes that are employed to assure that all willing and qualified providers have the opportunity to enroll as waiver service providers.

Technical Guidance

Except when a section 1915(c) waiver operates concurrently with a waiver granted under section 1915(b) of the Act waiving section 1902(a)(23) with respect to Medicaid beneficiary free choice of provider, any willing and qualified provider must be afforded the opportunity to enroll as a Medicaid provider. A willing provider is an individual or entity that executes a Medicaid provider agreement and accepts the state’s payment for services rendered as payment in full. A qualified provider is a provider that meets the provider qualifications set forth in the approved waiver. In accordance with 42 CFR § 431.51, the state must provide for the *continuous, open enrollment* of waiver service providers.