



ADMINISTRATIVE RULES OF MONTANA

37.90.462 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PROVISION OF SERVICES BY LEGALLY RESPONSIBLE INDIVIDUALS

- (1) A legally responsible individual (LRI) is an enrolled member's spouse or a court-appointed guardian for the enrolled member.
- (2) The following services may be provided by a LRI:
 - (a) private duty nursing;
 - (b) personal assistance;
 - (c) non-medical transportation;
 - (d) respite; and
 - (e) behavioral intervention assistant.
- (3) In order for a LRI to receive payment for services, it has to be demonstrated that services provided meet the following criteria:
 - (a) be a service/support identified in the approved SDMI HCBS waiver program application;
 - (b) be necessary to avoid institutionalization;
 - (c) be a service or support that is specified in the enrolled member's PCRP;
 - (d) be provided by a LRI who meets the provider qualifications and training standards specified in the waiver for that service;
 - (e) be paid at a rate that does not exceed what is allowed by the department for the payment of similar services; and
 - (f) be extraordinary care, as provided in (4).
- (4) The CMT must assess the enrolled member's need for extraordinary care using the following criteria:
 - (a) the activity is one that exceeds the range of activities that a legally responsible individual would ordinarily perform in the household on behalf of a person without a disability or chronic illness of the same age, and which are necessary to assure the health and welfare of the enrolled member and meet either (i) or (ii) as listed below:
 - (i) the enrolled member scores as severely or gravely impaired on the Behavioral Health and Developmental Disabilities (BHDD) Severe and Disabling Mental Illness (SDMI)

Home and Community Based Services (HCBS) Waiver Evaluation and Level of Impairment (LOI) Form in Areas One, Two, or Seven; or

- (ii) the enrolled member scores a 4 (total dependence) in the Activities of Daily Living/Instrumental Activities of Daily Living section on the Level of Care form.
- (5) An enrolled member must be offered a choice of providers. If the enrolled member or the enrolled member's authorized representative chooses a relative or legal guardian as a care provider, the choice must be documented on the PCR. In addition to case management, monitoring, and reporting activities required for all waiver services, the following requirements are applied when a relative or legal guardian is paid as a care provider:
 - (a) quarterly face-to-face reviews with the enrolled member of expenditures, and the enrolled member's health, safety, and welfare status;
 - (b) monthly reviews by the provider agency of hours billed for relative provided care;
 - (c) a relative or legal guardian who is an enrolled member's authorized representative may not also be paid to provide services; and
 - (d) an enrolled member's spouse employed by a personal care agency may not be reimbursed directly to provide personal care to the enrolled member.
- (6) A relative or legal guardian may not provide more than 40 hours of paid time in a seven-day period.
- (7) The CMT checks in with the LRI to see if there are concerns regarding the risk factors. A back-up plan is part of the PCR plan that would provide relief to the caregiver in the event they are at risk.

Authorizing statute(s): 53-2-201, 53-6-402, MCA

Implementing statute(s): 53-6-402, MCA

History: NEW, 2024 MAR p. 2234, Eff. 9/21/24.