

NC INNOVATIONS WAIVER TIPS:
RELATIVE/LEGAL GUARDIAN AS DIRECT SUPPORT EMPLOYEE
November 1, 2016

- The Relative/Legal Guardian as Direct Support Employee (RDSE) process is a NC Innovations Waiver policy that is based on North Carolina's application of federal requirements regarding the employment of relatives or legal guardians to provide NC Innovations Waiver services. Providers, Agencies with Choice, and Employers of Record (Providers) must be able to verify compliance with this NC Innovations Waiver policy.
- The RDSE process only applies to the employment of relative or legal guardians of **adults (ages 18 and older)** who participate in the NC Innovations Waiver.
- Relatives or legal guardians employed through the RDSE process must live in the home of the NC Innovations member.
- If providers hire a relative or legal guardian, the decision must be based on the inability to locate other qualified staff to provide NC Innovations Waiver services and must comply with the NC Innovations policy.
- Under the November 1 Waiver Amendment, the **only** NC Innovations Waiver service that relatives or legal guardians may provide is **Community Living and Support**.
- The RDSE process is an administrative process. Approval can only be granted for a relative or legal guardian to provide services and hours/units that have been authorized by Utilization Management for the member to receive.
- Providers **must** ensure that the relative or legal guardian meets the same qualifications for employment that any other person would need to meet, including all necessary licensures and/or certifications (i.e., if the care being provided would ordinarily require a licensed nurse, CNA I or CNA II, the relative or guardian providing care would be required to be a licensed nurse, CNA I or CNA II.) In order to be reimbursed for Medicaid services provided, the provider must ensure that the relative or legal guardian meets the qualifications listed in the NC Innovations Waiver for the specific service they are employed to provide.
- It is mandatory that the provider agency identifies back-up staff for each employee, including relatives or legal guardians.
- The RDSE policy typically allows for no more than 40 hours per week of services provided by **all** relatives or legal guardians residing in the member's residence. Forty hours or less must be reported to Cardinal Innovations via our website tool upon initial hire. Requests for 41 to 56 hours must be submitted to Cardinal Innovations via application, which is also found on our website. The NC Innovations Waiver Technical Amendment does not allow for provision of over 56 hours by relatives or legal guardians through the RDSE process.
- Cardinal Innovations Healthcare requests that justification provided (for relatives or legal guardians' employment) be employment-based. Employment-based justifications include:
 - No personnel is available with the appropriate skills/training to provide the service authorized

- No personnel is available during the hours when the service is needed (e.g., after-hours personal care services; after-hours safety supervision for a wandering member)
- No personnel are available within a specified distance of the site where the service is to be provided.
- Personnel are only available at a much higher cost.
- Examples of non-employment-based justifications are:
 - Family preference
 - Difficult history of member social interactions with non-family members
 - Difficulty of communication with the member
 - Complex member medical problems when appropriately credentialed non-family personnel are available
 - Use of a relative or legal guardian in the past
- Providers will re-certify relatives or legal guardians annually. Providers will report relatives or legal guardians working 40 hours or less per week via Cardinal Innovations' website tool. Providers will submit an application for relatives or legal guardians working 41-56 hours. Re-certification must be submitted at least 45 days in advance of the member's birth date.
- The provider will monitor the relative or legal guardian's service provision on-site at a minimum of one time per month.
- Care Coordination provides monthly face-to-face monitoring for all members receiving services provided by a relative or legal guardian.
- The staff selected to provide Medicaid billable services to the NC Innovations member should be the most qualified staff that the provider has available. Being the relative or legal guardian of a NC Innovations member does not guarantee employment through the RDSE process.
- Relative or legal guardian approvals can be discontinued if the relative or legal guardian fails to implement the service in compliance with the Medicaid service definition, fails to document the service and/or the need for exceptional care or otherwise creates a potential health and/or safety issue for the member.
- It is the responsibility of the provider to determine that the relative or legal guardian meets the qualifications, completes all paperwork and provides all needed and required training in support of the relative or legal guardian.
- It is very important that the staff qualifications and characteristics necessary to meet the member's needs and the qualifications for the service are discussed during the Individual Support Plan meeting. The following *sample* questions may clarify whether the employment of a relative or legal guardian is appropriate to meet the member's needs.
 - Is the employment of a relative or legal guardian developmentally and age-appropriate for the member?
 - Will employing a relative or legal guardian as paid staff allow the opportunity for the member to learn and adapt to different people and form new relationships?
 - Is the member learning flexibility and skills for increased independence?

- What are the plans to prepare the member in the event the relative or legal guardian is unavailable or unable to care for the member?
 - Does having a relative or legal guardian as paid staff expand the member's circle of support? What will be in place to ensure that the member's circle of support is expanding?
- If a relative or legal guardian is employed to provide NC Innovations Waiver services, the provider agency and planning team must ensure that safeguards are in place to ensure that decisions are made in the best interest of the member.