

	Addictive and Mental Disorders Division Severe and Disabling Mental Illness, Home and Community Based Services Waiver Manual
	Date effective: July 1, 2020 Date revised:
Policy Number: <i>SDMI HCBS 140</i>	Subject: Payment Made to Legally Responsible Individuals

Definition

- (1) A legally responsible individual is any person who has a duty under state law to care for another person. For the purpose of the Severe and Disabling Mental Illness, Home and Community Based Services waiver, a legally responsible individual is a spouse or a legal guardian.

Determination of Need

- (1) For services that allow a legally responsible individual to be paid for the provision of services, all of the following authorization criteria and monitoring provisions must be met. The service must:
- (a) meet the definition of a service/support as outlined in the federally approved waiver plan;
 - (b) be necessary to avoid institutionalization;
 - (c) be a service/support that is specified in the member’s Person-Centered Recovery Plan (PCRP);
 - (d) be paid at a rate that does not exceed what is allowed by the department for the payment of similar services; and
 - (e) be an extraordinary activity that is not something the legally responsible person would ordinarily perform or is legally responsible to perform.
- (2) The case management team (CMT) must assess the member’s need for extraordinary care using the following criteria:
- (a) the activity is one that the legal responsible individual is not legally responsible to provide;

AND

- (b) the member scores as severely or gravely impaired on the Addictive and Mental Disorders Division (AMDD) 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

- (c) the member scores a 4 (total dependence) in the Activities of Daily Living/Instrumental Activities of Daily Living section on the Level of Care form.

Provider Requirements

- (1) Legally responsible individuals must be employed by a provider agency.
- (2) Legally responsible individuals must meet the provider qualifications and training standards specified in the waiver for that service.

Service Requirements

- (1) The CMT must offer the member the choice of providers and document that the member chose a legally responsible individual as a provider in the PCRFP.
- (2) The provision of the service(s) needed must be an extraordinary activity that is not something the legally responsible individual would ordinarily perform or is responsible to perform.
- (3) The following services may be provided by a legally responsible individual:
 - (a) private duty nursing
 - (b) personal assistance;
 - (c) non-medical transportation; and
 - (d) respite.
- (4) In addition to the requirements for monthly contacts, quarterly reviews, and annual reviews, the CMT must review provider agency's monthly utilization report for hours of care provided by a family member and document this in the member's progress notes.
- (5) The CMT must check in with the legally responsible individual to see if there are concerns regarding the risk factors.
- (6) The CMT must have a back-up plan in the PCRFP that would provide relief to the caregiver in the event they are at risk.

Utilization

A legally responsible individual may not provide more than 40 hours of paid time in a seven-day period.