

**REIMBURSING
PARENTS
OF
MINOR CHILDREN**



Minnesota Department of **Human Services**

INTRODUCTION

Children with special health needs often require care that goes beyond what is normally expected from their families. Through the years, the Department of Human Services has received requests to pursue reimbursement for parents who provide care to their minor children with special needs, particularly when the family reduces work or is unable to work due to unavailability of paid caregiver assistance. In addition, the Minnesota Disability Law Center, ARC Minnesota, and the Developmental Disabilities Council have expressed interest in pursuing this option.

Historically, the federal Health Care Financing Administration (HCFA) has restricted family members from being reimbursed for providing services that are funded through Medicare and Medicaid. This restriction has specifically excluded parents of minor children from being reimbursed for providing personal care services. Appendix A (page 12) contains references from the Code of Federal Regulations and the State Medicaid Manual.

However, due to parent requests, HCFA developed a policy to allow parents to be reimbursed in limited circumstances for children who are receiving services through a home and community-based services waiver. This policy may also be used for State Plan home care services and allows MA payment to a parent who meets the following criteria:

- The parent is qualified to provide extraordinary services requiring specialized skills, such as skilled nursing
- The parent is not already legally obligated to provide the services
- There is adequate justification as to why the parent is the provider of care (e.g., lack of other qualified provider in remote areas)
- There are strict controls in place to assure that payment is made to the parent only in return for specific services rendered.

See Appendix A for the State Medicaid Manual reference for home and community-based services.

BACKGROUND

During the last few months, a workgroup of Department staff met to research and explore alternatives that would allow parents of minor children to be reimbursed. All of the options considered are based on the understanding that other providers are not available to deliver the services, and that parents will not be reimbursed for supports they are legally obligated to provide as part of parenting. Some of the service options discussed include allowing parents to be reimbursed for:

- Services that require a professional certification or license
- Only skilled nursing
- Any specialized service beyond what a parent would be expected to provide to a child of the same chronological age

The intent of offering options for parents to be reimbursed is to address the labor shortage by increasing the worker supply for specialized services that the parent is qualified to perform. The desired benefits could include:

- Increased stability for the child
- Better quality of services because “staff turnover is not an issue”
- The parent being more aware of the child’s preferences and needs
- Avoiding out-of-home placement in a more restrictive setting, such as hospitalization.
- Less expense to Medical Assistance. Services provided in the home are generally less expensive than services provided in more restrictive settings
- Situations for the parent to afford to spend more time at home with their family.

On the other hand, there are many issues involved with payment to parents of minor children. Some of these issues include:

- Potential for parents to become exhausted if they are not relieved by outside caregivers
- Potential for an increase in parental fees, due to increased income. Currently, parents pay a fee based on income for children who access Medical Assistance through the TEFRA option or home and community-based services waivers.
- Oversight of the outcome and services delivered by parents may be problematic
- Public perception and opinion of paying parents to care for their child

- Inconsistent with other state policies that expect parents to be financially responsible for their children and for more children to grow up in families where work is a way of life. Questions may arise on when a situation is so different that it warrants paying parents to care for their child(ren).
- Financial hardship could be experienced if a parent is relying on this income to help support the family and a circumstance changes that would make the parent ineligible to be reimbursed for services. For example, staff becomes available through a provider.
- Agencies that typically provide the services may put less effort into trying to find staff and resources.

RECOMMENDATIONS

Based on the limitations of the current federal regulations for home and community-based services waivers (Attachment A), parents of minor children can be reimbursed for providing services for a child who:

1. Needs extraordinary services requiring specialized skills that the parent is qualified for, but not legally obligated to provide
2. Is receiving services through a home and community-based services waiver which in Minnesota, includes the:
 - Home and Community-Based Waiver for Persons with Mental Retardation or Related Conditions (MR/RC Waiver)
 - Community Alternative Care for Chronically Ill Individuals (CAC)
 - Community Alternatives for Disabled Individuals (CADI)
 - Traumatic Brain Injury Waiver (TBIW).

The Department recommends that amendments to the home and community-based services waivers be pursued to allow parents of minor children to be reimbursed for specialized services when there is no other provider available. Because there are no federal regulations prohibiting parents to receive payment for Medicaid specialized home care services, the Department also recommends that the same amendments be made to the State Medicaid Plan. The Department also recommends that the following considerations be included in the amendments due to the number of potential issues:

- Standards which will ensure the health, safety and welfare of the child and the family
- Defining "extraordinary services requiring specialized skill" to include private duty nursing, physical therapy, occupational therapy, speech therapy, and respiratory therapy. (Paying parents to provide personal care assistant services is prohibited by federal regulations.)
- Requiring the parent to be licensed or professionally certified to provide the above services
- The parent would also be required to meet criteria similar to relative hardship waivers for personal care assistant services
- The number of hours a parent could be reimbursed would be limited in accordance with wage and hour laws
- Current assessment and authorization procedures for home care services and home and community-based services waivers by the county would be followed. The assessment for determination of a child's needs and subsequent search for a provider would have to be done prior to a parent requesting to be reimbursed.
- The county arranging the home and community-based services would be responsible for assuring the child's health and safety.

Though this option would provide one way to address the lack of paid providers and services available to children and families, counties need to work with the Department to assure that other options are available to assist families. Other services, such as respite, are vitally needed to help prevent out-of-home placement of children, promote integration of the child into the community and minimize conditions that lead to abusive situations.

Code of Federal Regulations (CFR) and the State Medicaid Manual References

MEDICARE

42 CFR, part 411, section 12: Charges imposed by an immediate relative or member of the beneficiary's household.

(a) Basic rule. Medicare does not pay for services usually covered under Medicare if the charges for those services are imposed by—

- (1) An immediate relative of the beneficiary.
- (2) A member of the beneficiary's household.

(b) Definitions. As used in this section—

- (1) Husband or wife.
- (2) Natural or adoptive parent, child, or sibling
- (3) Stepparent, stepchild, stepbrother, or stepsister.
- (4) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in law, or sister-in-law.
- (5) Grandparent or grandchild.
- (6) Spouse of a grandparent or grandchild.

Member of a household means any person sharing a common abode as part of a single family unit, including domestic employees and others who live together as part of a family unit, but not including a mere roomer or boarder.

MEDICAID

42 CFR, part 440, section 167 Personal care services.

Unless defined differently by a State agency for purposes of a waiver granted under part 441, subpart G of this chapter—

(a) "Personal care services" means services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are--

- (1) Authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State;

(2) Provided by an individual who is qualified to provide such services and who is not a member of the individual's family; and

(3) Furnished in a home, and at the State's option, in another location.

(b) For purposes of this section, "family member" means a legally responsible relative.

State Medicaid Manual § 4480. Personal Care Services

D. Definition of Family Member.--Personal care services may not be furnished by a member of the beneficiary's family. Under the new final rule, family members are defined to be "legally responsible relatives." Thus, spouses of recipients and parents of minor recipients (including stepparents who are legally responsible for minor children) are included in the definition of family member. This definition necessarily will vary based on the responsibilities imposed under State law or under custody or guardianship arrangements. Thus, a State could restrict the family members who may qualify as providers by extending the scope of legal responsibility to furnish medical support.

MEDICAID HOME AND COMMUNITY-BASED SERVICES WAIVERS

State Medicaid Manual §4442.3

Definition of Services.--"Home and community-based services" means services that are furnished under a waiver granted under the provisions of Part 441, Subpart G of 42 CFR.

B. Considerations Related to Specific Services.—

1. FFP [federal financial participation] is not available for personal care services or any waiver services when provided to recipients by legally responsible relatives, i.e., spouses or parents of minor children, when the services are those that these persons are already legally obligated to provide.
2. Services provided by relatives or friends, except as noted in B.1., may be covered only if the relatives or friends meet the qualifications for providers of care, there are strict controls to assure that payment is made to the relative or friend as providers only in return for specific services rendered, and there is adequate justification as to why the relative or friend is the provider of care, e.g., lack of other qualified provider in remote areas. *Medicaid payment may be made to qualified parents of minor children or to spouses for extraordinary services requiring specialized skills (e.g., skilled nursing, physical therapy) which such people are not already legally obligated to provide.*