

8.5 FAMILY MEMBERS AS STAFF

A. **New Opportunities Waiver Rules Regarding Use of Family Members as Paid Direct Support** (Louisiana Register, Vol. 30, No. 6, June 20, 2004 §13901 Individualized and Family Support and §13907 Residential Habilitation – Supported Independent Living)

1. For Individual & Family Support (IFS) services - Reimbursement will not be paid for direct support services furnished by a legally responsible relative. A legally responsible relative is defined as the parent of a minor child, foster parent, curator, tutor, legal guardian, or the recipient's spouse.
2. For Supported Living (SL) services - Family members who are not legally responsible relatives as defined in §13901.D.1, can be SL workers provided they meet the same qualifications as any other SL worker. Legally responsible relatives may not be SL providers. Payment for SL does not include payments made directly or indirectly to members of the individual's immediate family. Minors living in their guardian's home are presumed not to need SL services. If SL services are needed, they must be requested with justification.
3. For Substitute Family Care (SFC) services - Immediate family members (mother, father, brother and/or sister) cannot be substitute family care parents.

B. **Act No. 333 (2008) and Limitations on Family Members as Paid Direct Support**

1. In the Regular Session, 2008, of the Louisiana Legislature, Act No. 333 was passed. This act requires the state Department of Health & Hospitals (DHH) to develop criteria regarding any parent, stepparent, grandparent, son, daughter, brother, sister, aunt, or uncle of a participant serving as a direct support worker. Act No. 333 (2008) Online document link:

<http://legis.state.la.us/billdata/streamdocument.asp?did=499966>

2. The Act asserts that general state policy is to not allow family to serve as a paid direct service worker unless the relative meets the criteria established by the rule and has

received a waiver issued by the secretary of DHH or his designee. The waiver must state that the relative is the best available appropriate direct service worker for the person using services. Family members who have acted as paid direct service workers prior to July 1, 2008 are grandfathered in and allowed to continue working as paid direct service workers.

3. As of June 2009, Act No. 333 is not yet in effect. DHH is still working on developing the criteria for family members as direct support and the process to apply for and get a waiver. Before these changes can be enacted, they must be posted in rule format, according to state regulations, and also receive approval at the federal level from the Centers for Medicare & Medicaid Services.

C. Support Team Discussion of Using Family Members as Paid Direct Support

1. Support teams should anticipate implementation of Act No. 333 by regularly discussing any use of family as paid direct service workers and by actively considering alternatives. In accordance with the act requirements, DHH will establish regulations for requests of waivers to enable family members to act as paid direct service workers. The following provides guidance for team discussion and consideration in preparation for a waiver request:
 - a. Is the use of a family member age and developmentally appropriate?
 - i. The team needs to consider the day from the person's perspective. Sometime having family around may be fine. Other times may not be. Does a 30 year-old generally have his mom accompany him to evenings out with friends? Not usually. Support teams must look at ways of using family as paid direct service workers in situationally appropriate times that are consistent with meeting the person's support needs.
 - ii. If using family as a paid direct service worker for some times makes sense, then consider including non-family members for shifts involving planned socializing and peer interaction.

- b. Will using family members as paid direct service workers enable the person to learn and to adapt to different people and also to form new relationships?
 - i. The support team must build in opportunities to meet different people and form relationships, including making choices about selection of different direct support workers.
 - ii. The support team must discuss any barriers to increased community integration or friendship development presented by use of family as paid direct service workers and how to address these barriers.
- c. Is the person learning flexibility and skills for increased independence?
 - i. The support team and IFS provider must reinforce with the family member that he/she is not in a “caretaking” role, but rather in a supportive role that is intended to encourage autonomy and skills building for independence in community living. The support team must ensure that the family member providing direct support approaches the job as such and does not present barriers to individual goals and treatment objectives.
 - a. Support teams should approach with considerable caution use of family as paid direct support for persons with significant behavioral challenges due to requirements of treatment plans and treatment objectives.
- d. What happens when the family caregiver is gone? Who else is prepared to step in and provide support?
- e. Is this in the best interest of the person in the long-term?
 - i. Is this something that is sustainable for the long-term? Continuity of care in provision of direct services is an important aspect of achieving personal outcomes, including goals, wellness, and progression of skills.

- f. Is this about the person's wishes, desires, needs, or about supplementing a family member's income?
 - i. Support teams must consider the motive and level of commitment of a family member requesting to act as a paid direct service worker. Protecting against exploitation is key. In the end, if a family member is only focused on money, the quality of care will be low, and the person will be put at risk.
2. Support teams should consider paying a family member in the following situations:
- a. Staff supports are required at difficult times of the day to get or schedule employees;
 - b. The participant lives in a rural or isolated area;
 - c. The family member may work on a temporary basis while other staffing options are explored;
 - d. When having a family member as staff:
 - i. Truly reflects the person's wishes and desires,
 - ii. Increases the person's quality of life in measurable ways,
 - iii. Increases the person's level of independence,
 - iv. Increases the person's choices, and

v. Increases access to the amount of service hours for needed supports;

3. Holding regular team discussions and considering all of the above factors will assist in the preparation of waiver requests once Act No. 333 goes into effect.