DISABILITY RIGHTS
NORTH CAROLINA
Champions for Equality and Justice

Relatives as Providers (RDSE) under the Innovations Waiver

Family members providing paid care, or Relatives as Direct Service Employees (RDSEs), have become a necessary component of the service delivery system for some Innovations Waiver (Waiver) participants in North Carolina. The increased need for RDSEs is largely due to the lack of a robust and adequate provider network throughout the state—particularly for participants who live in geographically remote locations and/or for participants who have intense and complicated medical and behavioral needs. The federal Centers for Medicare and Medicaid Services (CMS) have authorized the use of RDSE under the current Waiver (as they were in several previous CAP-MR and CAP-I/DD Waivers), and, for some Waiver participants, RDSEs may be an appropriate and efficient way for the State Medicaid program to meet these individuals' needs.

Disability Rights North Carolina believes RDSEs should be allowed to provide medically necessary services as long as the core purposes of the Waiver of promoting independence and increased community integration are fulfilled. Disability Rights NC advocates for an individualized approach dictated by the individuals' specific needs and circumstances to determining whether a relative should be allowed to provide paid, direct care. The interests of individuals with disabilities in receiving adequate and competent care, particularly recipients with more complicated needs, are served when there is an adequate choice of providers, including RDSEs.

Which Relatives May Provide Services?

Although State and Managed Care Organization (MCO) policies express a preference for non-relatives to provide paid, direct care, the Waiver describes the limited situations in which a relative or legal guardian may be paid to provide services.

> [1] Legal guardians, parents of **adult** participants (18 and older), and other relatives who live in the home of the participant may provide *some* Waiver services. Relatives specifically excluded from this policy include biological or adoptive parents of a minor child, stepparents of a minor child, or the spouse of

a Waiver participant.[2]

What Services May be Provided by the RDSE and in What Amount?

According to the Waiver and the North Carolina Division of Medical Assistance Clinical Coverage Policy 8P, relatives or legal guardians may provide Community Networking, Day Supports, In-Home Skill Building, In-Home Intensive Supports, Personal Care Services, and Residential Supports.

Who Determines if I Can Be a Relative Provider (RDSE)?

Although a Waiver participant has a choice of providers within the closed, MCO provider network, this choice does not necessarily give the individual the right to choose his or her parent to provide services. Parents or relatives who provide paid support for their adult children through the Waiver program must obtain prior approval from the MCO before they will be authorized to provide services. Provider agencies are required to submit documentation to the MCO demonstrating that the parent is qualified to provide the service, along with the justification for using the relative as the service provider rather than an unrelated provider. When determining if it is appropriate for a relative to be an RDSE, the MCO must follow the rules of the Waiver, as approved by CMS, and the technical guidance from the State.

Under What Circumstances May a Relative Provide Services?

The Waiver, as approved by the CMS, describes the limited situations in which a relative or legal guardian may be paid to provide Waiver services.[3] In order to become an RDSE, the relative must meet the same provider qualifications as any other unrelated staff is required to do in order to provide services under the Waiver.[4] Additionally, when a relative applies to be an RDSE, the MCO, as well as the employing provider agency, must generally consider whether having a parent or legal guardian provide services is in the best interest of the recipient or serves the community integration purposes of the Waiver.[5]

According to the Waiver and related policies, relatives may provide services when: (1) no other staff is “available” to provide the service, or (2) a qualified staff is only willing to provide the service at an extraordinarily higher cost than the fee charged by the family member. Disability Rights NC has frequently seen circumstances in which it seems clear that no unrelated staff member is “available” or “qualified” to provide the service to the participant. For instance, if the participant lives in a rural area where there are no, or limited, provider agencies operating close enough to provide the services, or in situations where

individuals have extreme medical or behavioral needs such that there are no willing providers able to provide adequately trained and consistent staffing to effectively manage a recipients needs.

How Many Service Hours Can I Provide as an RDSE?

The amount, duration, and frequency of the Waiver participant's authorized service plan will dictate how many and what type of service hours the RDSE can perform. Curently, several of the MCOs are taking a blanket approach and limiting relative providers to no more than 40 hours per week. However, there is no provision in the Waiver, the Waiver Technical Guide, or Clinical Coverage Policy 8P that absolutely limits a relative to 40 hours per week of services. Rather, the Waiver states:

> Ordinarily, no more than 40 hours of service per week or seven daily units per week may be approved for service provision between all relatives who reside in the same household as the waiver participant. Additional service hours furnished by a relative or legal guardian who resides in the same household as the waiver participant may be authorized to the extent that another provider is not available or is necessary to assure the participant's health and welfare.[6]

Furthermore, Clinical Coverage Policy 8P states that where additional hours exceeding a "recommended" 40 hour cap are requested, the participant/provider should provide justification as to why other providers are not available; along with assurances of provider choice and that the individual will not be isolated from the community.[7] Consequently, the Waiver requires that the MCO consider risk to the participant's health and safety as well as the availability of other qualified providers when determining how many hours the RDSE can perform.

What Information Should I Include with the RDSE Application?

The individual seeking to become an RDSE should work with the employing provider agency to thoroughly demonstrate why no other unrelated provider is available or qualified to provide the service, as well as how the participant's health and safety may be at risk if paid outside staff is used rather than the RDSE. Disability Rights NC recommends that the application include information pertaining to some or all areas below:

- All attempts made to secure, interview, or retain other unrelated providers; frequency turnover and the time it takes to interview, train, and hire new

staff; the impact on the recipient of frequent turnover or lack of trained staff (e.g. former abuse/neglect, serious medication mistakes, theft by workers, regression or other negative impact);

- Instances of having to cover for late or no-show paid staff, and the impact on the participant, as well as the impact on the family and the family member's other employment, if applicable;

- Records of uncompensated time that you are performing actual services (not natural supports);

- Particular, individual circumstances of the recipient that make relatives providing services more effective (e.g. nighttime sleep issues that cause the participant to be tired during the day resulting in frequent napping and any Personal Care Service or In-Home Skill Building worker would have to clock out during those times, making it difficult to find staff other than the relative who could perform this "on call" role without compensation);

- Efforts the RDSE makes to get the participant out in the community in an attempt to socialize them and integrate the participant into various settings outside the home environment;

- Concerns regarding communication issues and behavior problems, any history of difficulties with outside workers (i.e. participant does not communicate when they are sick or in pain or allow strangers to take care of personal hygiene needs, but relatives know what signs to look for to provide proper care);

- Any medical, behavioral or other treatment for which the relative is specially trained to provide to the participant to ensure their health and welfare (i.e. requires nightly medication for seizures which must be given carefully and then closely monitored for side effects, specialized physical therapy, etc.); and

- Any safety issues that arise when outside staff are employed as opposed to when an RDSE is employed (i.e. Was the participant able to reduce medications or decrease disruptive behaviors when a relative provided the service?)

Also, when applying to be an RDSE, the relative should also consider and answer the following questions from the Innovations Waiver Technical Guide. Some, but not all, MCOs routinely include these questions as part of the RSDE

application. Disability Rights NC recommends that you answer them even if you are not required by the provider agency to do so.

- As an adult is it appropriate to still have mom and dad with the participant throughout the day?
- Does having a family member as direct support staff expand the participant's circle of support or risk shrinking it?
- Is this about the participant's wishes, desires, needs or about supplementing a family member's income?
- If a family member supports an individual from birth onwards into adulthood, does the individual learn to adapt to different people and increase their flexibility and independence?
- If a participant with a disability is always supported by a family member, what happens when that caregiver ages/dies?
- Who else has knowledge of the participant?
- Can a family member be a barrier to increased community integration or friendship development?

All of this information can be provided within the RDSE application and/or supplemented with additional documentation in the form of letters, logs, evaluations, or assessments. The information can be provided by anyone with knowledge of the circumstances necessitating the RDSE request, including treating clinicians, the participant, family members, providers, and/or teachers. Disability Rights NC strongly recommends that you collect and include in your application any documentation that verifies or reinforces the reasons as to why a relative is a more suitable care provider than outside paid staff under the circumstances discussed in the request.

What Happens if I Get Approved to Be an RDSE?

If an individual is approved as an RDSE, the provider agency as well as the participant's care coordinator is responsible for monitoring the relative's provision of services on-site, at a minimum of once per month. In instances where relatives have reasonably demonstrated their qualifications to serve as a direct care provider, they are held to the same standards of accountability as any other agency provider to ensure the health, safety, and welfare of the participant.

Currently, even if an RDSE application is approved, the employing provider agency is supposed to continue their efforts to locate an unrelated staff member. Additionally, the relative will have to continue to request to be an RDSE every plan year. Because the MCOs presently require this continuous justification by RDSEs and their employing agency, it is necessary to document the continuing need – not only for the services themselves – but also for the relative to provide them. Where possible, the MCO may want to see a transition or fading plan to allow outside staff to gradually provide a greater number of services. Even if the need for the relative caregiver is not about the participant's comfort level with outside staff, but problems related to geographic remoteness and the availability of qualified staff, it will still be necessary to continue documenting the need and the continued lack of community capacity.

What Can I Do If My Application to be an RDSE is Denied?

Currently, there is no clear process for challenging an MCO's decision to deny a relative as provider or to reduce the number of service hours that they can provide. Participants are directed to file an internal grievance or complaint with the MCO without being offered any appeal rights to the Office of Administrative Hearings (OAH). This can be a confusing process to navigate, and although the words "grievance" and "appeal" are sometimes used interchangeably, they have very different meanings. If a participant receives a letter that says the Medicaid-funded service or equipment he/she requested is denied or reduced, there is a right to appeal this decision to OAH because an "action" has occurred. Conversely, for complaints that are not related to denials or reductions in services and so not considered "actions," the MCO must provide a "grievance" process. In general, an "action" refers to services that have been denied, reduced, suspended, or terminated by the MCO.[8] The grievance process is completely internal to the MCO and there is no right to "appeal" a grievance decision of the MCO to OAH.[9] However, some MCOs allow for further internal review if you do not like their original grievance decision.

The MCOs have taken the position that the only recourse for a Waiver participant, denied their choice of relative as provider or the number of service hours that relative may provide, is to grieve the matter internally. Disability Rights NC disagrees with this interpretation of applicable laws. The Office of Administrative Hearings has dismissed several cases regarding this issue that have been brought by the individual seeking to be a parent provider or RDSE.[10] Nevertheless, an appeal brought on behalf of the participant may be more successful. Disability Rights NC takes the position that the participant has a right to appeal a denial, in certain circumstances. Those circumstances include instances where the MCO's

refusal to permit the RDSE to provide services acts as an effective denial of services because there are no other available or qualified unrelated staff (as required by the Waiver) to perform the authorized services. However, in situations where outside staff is available and qualified, the participant may not have the right to appeal to OAH because the participant does not have a right to choose one particular provider at the exclusion of all others, although they are entitled to a choice of providers.

Regardless of whether an MCO denial of a relative provider results in filing an internal grievance or an appeal to OAH by the participant, it is important to remember what is relevant when challenging the decision—how the loss of the RDSE impacts the participant. Although loss of income to the RDSE and employment instability may be valid and legitimate concerns, the focus when challenging a denial of an RDSE, or a reduction in the hours that they may provide services, needs to remain on the medical necessity of the RDSE (if applicable) to the participant, and how no other unrelated providers are available and qualified to provide the service hours. Therefore, it will be important to show that the circumstances under which a relative may provide Waiver services are met and that the factors that the MCO were supposed to consider were not addressed in their decision to deny the application or reduce the service hours provided by the RDSE.

What is Disability Rights NC Doing Regarding the RDSE Policy?

Disability Rights NC understands the difficulty faced by relative providers who are asked to relinquish some or all of their service hours. Often, the relative has left jobs to care for their children or family member because competent workers could not be found. The search for consistent and qualified staff members is hampered by the low hourly wages paid to these workers. Disability Rights NC also recognizes that RDSEs face significant consequences when their service hours are cut, in addition to the negative impact faced by the participant. MCOs currently require families to exhaust inappropriate outside providers after being denied an RDSE application, resulting in participants going without services when no appropriate staff can be found. In other cases, parents or other family members continue to provide the services but are not compensated for this work. Compounding the problem, MCOs do not issue appeal rights for denials of RDSE applications even when the failure to approve the RDSE acts as an effective denial of services. The vast majority of family members who have contacted Disability Rights NC appear to meet Waiver criteria to provide service hours for their relative (i.e., they have exhausted all attempts to find non-relative, qualified staff, there are particular needs the relatives are uniquely qualified to provide, medical necessity

for the recipient's health and welfare indicate this is appropriate, and it is cheaper). Nevertheless, these relatives are facing restrictions and denials that are rarely explained by the MCO and often appear to be arbitrary.

Currently, we are actively addressing this issue with the North Carolina Department of Health and Human Services, the state agency ultimately responsible for administration and oversight of the Medicaid Waiver program. Our goal is to achieve more consistent and individualized determinations for RDSE applications and to ensure State and MCO compliance with Federal law. If you have any questions about the information in this document or the attachments, you may contact us by phone or email.

Attachments: *Pages from the NC Innovations Waiver*
Pages from the NC Innovations Technical Guide
Sample Petition for Contested Case Hearing

Request for an Amendment to a §1915(c) Home and Community-Based Services Waiver

I. Request Information

A. The **State** of **North Carolina** requests approval for an amendment to the following Medicaid home and community-based services waiver approved under authority of §1915(c) of the Social Security Act.

B. **Waiver Title** (*optional*): **NC Innovations**

C. **CMS Waiver Number:** **0423.01**

D. **Amendment Number** (*Assigned by CMS*):

E.1 **Proposed Effective Date:** December 1, 2012

E.2 **Approved Effective Date** (*CMS Use*):

II. Purpose(s) of Amendment

Purpose(s) of the Amendment. Describe the purpose(s) of the amendment:

The NC Innovations waiver provides support for individuals with intellectual and other developmental disabilities and has operated concurrently with a 1915(b) waiver since April 1, 2005. The waivers initially operated as a pilot program in a five-county area through a single MH/DD/SAS local management entity (LME) operating as a prepaid inpatient health plan. A waiver amendment was submitted and approved by CMS effective October 1, 2011 expanding the service area from five to 65 of North Carolina's 100 counties. The primary purpose of the current amendment is expansion of the waiver to 34 of the 35 remaining counties according to the schedule below. The 35th county, Guilford, will transition to the waiver effective upon waiver renewal April 1, 2013. Individuals in the expanded service area will transition from the CAP-MR/DD Comprehensive and Supports waivers (0662) and (0663) to NC Innovations. The waiver will be administered locally through LMEs operating as prepaid inpatient health plans. The 34 expansion counties and their associated LMEs are:

- **January 1, 2013: Centerpoint LME: Davie, Forsyth, Rockingham and Stokes counties.**
- **January 1, 2013: Alliance Behavioral Healthcare LME: Durham, Cumberland, Johnston and Wake counties.**
- **January 1, 2013 implementation anticipated but may be delayed until February 1, 2013: Coastal Care LME: Brunswick, Carteret, Pender, New Hanover and Onslow counties.**

☐	**Yes**. The State makes payment to legally responsible individuals for furnishing personal care or similar services when they are qualified to provide the services. Specify: (a) the legally responsible individuals who may be paid to furnish such services and the services they may provide; (b) State policies that specify the circumstances when payment may be authorized for the provision of ***extraordinary care*** by a legally responsible individual and how the State ensures that the provision of services by a legally responsible individual is in the best interest of the participant; and (c) the controls that are employed to ensure that payments are made only for services rendered. *Also, specify in Appendix C-3 the personal care or similar services for which payment may be made to legally responsible individuals under the state policies specified here.*

e. **Other State Policies Concerning Payment for Waiver Services Furnished by Relatives/Legal Guardians**. Specify state policies concerning making payment to relatives/legal guardians for the provision of waiver services over and above the policies addressed in Item C-2-d. *Select one*:

☐	The State does not make payment to relatives/legal guardians for furnishing waiver services.
■	The State makes payment to relatives/legal guardians under ***specific circumstances*** and only when the relative/guardian is qualified to furnish services. Specify the specific circumstances under which payment is made, the types of relatives/legal guardians to whom payment may be made and the services for which payment may be made. Specify the controls that are employed to ensure that payments are made only for services rendered. *Also, specify in Appendix C-3 each waiver service for which payment may be made to relatives/legal guardians.*

The following relatives may provide services: legal guardians, parents of adult participants and other relatives who live in the home of the participant. The waiver services that relatives or legal guardians may provide are community networking, day supports, in-home skill building, in-home intensive supports, and residential supports. Payments are made to relatives/legal guardians in the following circumstances:

1. **The relative or legal guardian must meet the provider qualifications for the service.**
2. **A qualified provider who is not a relative or legal guardian is (a) not available to provide the service or (b) is only willing to provide the service at an extraordinarily higher cost than the fee or charge negotiated with the qualified family member or legal guardian.**
3. **The relative or legal guardian is not paid to provide any service that they would ordinarily perform in the household for an individual of similar age who does not have a disability.**
4. **A relative and/or legal guardian who resides in the same household as the waiver participant and who exercises the Employer Authority (employer of record) on behalf of the participant in an individual/family directed service arrangement may not furnish a service that is subject to the Employer Authority. The Managing Employer in an Agency with Choice model may not furnish a service that is subject to the manager employer's direction.**
5. **Provider agencies, employers of record, and managing employers (through the Agency with Choice) must submit documentation to THE PIHP to demonstrate that the relative or legal guardian meets the qualifications to provide the service along with the justification for using the relative as the service provider rather than an unrelated provider. THE PIHP must prior authorize the provision of services by the relative or legal guardian.**
6. **Ordinarily, no more than 40 hours of service per week, or seven daily units per week, may be approved for service provision between all relatives who reside in the same household as the waiver participant. Additional service hours furnished by a relative or legal guardian who resides in the same household as the waiver participant may be authorized to the extent that another provider is not available or is necessary to ensure the participant's health and welfare.**
7. **When a relative or legal guardian is the service provider, provider agencies, Employers of Record, and/or the managing employers, as appropriate, monitor the relative's or legal guardian's provision of services on-site, at a minimum of one time per month.**
8. **When a relative or legal guardian is the service provider, THE PIHP care coordinator monitors the relative's provision of services on-site at a minimum of one time per month.**
9. **Payments are only made for service authorized by THE PIHP in the ISP.**
10. **For NC Innovations waiver services, the same monitoring procedures apply to parents and legal guardians as apply to provider agencies to ensure that payments are made only for services rendered.**
11. **Biological or adoptive parents of a minor child, stepparents of a minor child or the spouse of a waiver participant are not paid for the provision of waiver services.**
12. **The use of a neutral advocate will be required for all relatives who are legal guardians to ensure that the desires and needs of the waiver participant are addressed by the ISP planning team.**

D	Relatives/legal guardians may be paid for providing waiver services whenever the relative/legal guardian is qualified to provide services as specified in Appendix C-3. Specify any limitations on the types of relatives/legal guardians who may furnish services. Specify the controls that are employed to ensure that payments are made only for services rendered. *Also, specify in Appendix C-3 each waiver service for which payment may be made to relatives/legal guardians.*
D	Other policy. *Specify*:

e. Open Enrollment of Providers. Specify the processes that are employed to assure that all willing and qualified providers have the opportunity to enroll as waiver service providers as provided in 42 CFR §431.51:

Under its risk contract with DMA, THE PIHP must establish policies and procedures to monitor the adequacy, accessibility and availability of its provider network to meet the needs of individuals served through the concurrent §1915(b)/ §1915(c) waivers. THE PIHP must analyze its provider network and demonstrate an appropriate number, mix and geographic distribution of providers, including geographic access by beneficiaries to practitioners and facilities. The analysis is reviewed by DMA at the beginning of each contract period; at any time there has been a significant change in PIHP operations that may affect the adequacy of capacity and services, including changes in services, benefits, geographic service areas or payments or enrollment of a new population in the concurrent waivers; and annually thereafter during the annual site visits by the Intradepartmental Monitoring Team (IMT). Whenever network gaps are noted, THE PIHP submits to DMA a network development strategy or plan to fill the gaps, as well as periodically reports to DMA on the implementation plan or strategy.

Quality Management: Qualified Providers

As a distinct component of the State's quality management strategy, provide information in the following fields to detail the State's methods for discovery and remediation.

a. Methods for Discovery:

a.i.a Sub-Assurance: The State verifies that providers initially and continually meet required licensure and/or certification standards and adhere to other standards prior to their furnishing waiver services.

For each performance measure/indicator the State will use to assess compliance with the statutory assurance, complete the following. Where possible, include numerator/denominator. Each performance measure must be specific to this waiver (i.e., data presented must be waiver specific).

For each performance measure, provide information on the aggregated data that will enable the State to analyze and assess progress toward the performance measure. In this section provide information on the method by which each source of data is analyzed statistically/deductively or inductively, how themes are identified or conclusions drawn, and how recommendations are formulated, where appropriate.

NorthCarolina

Innovations Technical Guide

Version 1.0 – June 2012

www.ncdhhs.gov/dma

nc dma

Division of Medical Assistance

Documentation
Provider Agencies are responsible for the development of short range goals and task analysis/strategies.

The task analysis is a process for determining in detail the specific behaviors required of staff to assist the participant with the implementation of an outcome. Task analysis is the analysis of how a task is accomplished, including a detailed description of any unique factors involved in or required for one or more people to perform a given task. For example: a task analysis would be used to assist a participant with a specific self-help or daily living skill.

A strategy is a long- term plan of action designed to achieve a particular outcome. Strategies are used to make a problem easier to understand and solve.

Free Choice of Providers
Participants will have free choice of providers within the PIHP network and may change providers as often as desired. If an individual's Medicaid changes to one of the counties within the PIHP region and is already established with a provider who is not a member of the network, PIHP makes every effort to arrange for the participant to continue with the same provider if the participant so desires. In this case, the provider would be required to meet the same qualifications as other providers in the network. In addition, if a participant needs a specialized Medicaid service that is not available through the network, the PIHP arranges for the service to be provided outside the network if a qualified provider is available. Finally, except in certain situations, participants are given the choice between at least two providers. Exceptions would involve institutional services or highly specialized services that are usually available through only one facility or agency in the geographic area. A listing of network providers will be made available to participants and their families for review. The Care Coordinator can assist the family to identify providers who have:

- Geographic Availability
- Cultural Specialty
- Disability Specific Specialties

Employment of Relatives/Legal Guardian as Providers
If during the recruitment process, a Relative/Legal Guardian living in the **home of the waiver participant,** applies for employment with a PIHP Provider Agency the Provider Agency must follow the process designated by the PIHP to review and approve this employment arrangement.

Questions to consider prior to hiring a relative or family member:

- Is this about the participant's wishes, desires, needs or about supplementing a family member's income?
- As an adult is it appropriate to still have mom and dad with the participant throughout the day?
- If a family member supports an individual from birth onwards into adulthood, does the individual learn to adapt to different people and increase he/she flexibility and independence?

- If a participant with a disability is always supported by a family member, what happens when that caregiver ages/dies? Who else has knowledge of the participant?
- Can a family member be a barrier to increased community integration or friendship development?
- Does having a family member as direct support staff expand the participant's circle of support or risk shrinking it?

- Services are for participants who have been receiving services from direct care staff while in state and who are unable travel without their assistance
- Participants who live in alternative family living homes or foster homes may receive services when traveling with their alternative family living or foster family out of state under these guidelines
- Participants who are residing in residential settings are allowed to go out of state on vacation with their residential provider and continue to receive services as long as the participant's cost of care does not increase.
- Written prior approval of this request for their staff to accompany families/ participants out of state must be received from the supervisor of the staff person and the PIHP. See Appendix J for the form that is submitted to the PIHP.
- Waiver services may not be provided outside of the United States of America.
- Provider Agencies must ensure that the staffing needs of all their participants can be met.
- Supervision of the direct service employee and monitoring of care must continue.
- The ISP must not be changed to increase services while out of state. Services can only be reimbursed to the extent they would be had they been provided in state, and only for the benefit of the participant.
- Respite services **are not** provided during out of state travel since the caregiver is present during the trip.
- If licensed professionals are involved, Medicaid cannot waive other state's licensure laws. A NC licensed professional may or may not be licensed to practice in another state.
- Medicaid funds cannot be used to pay for room, board, or transportation costs of the participant, family, or staff.
- Provider agencies, Employers of Record and Agencies With Choice assume all liability for their staff when out of state.

Provision of North Carolina Innovations Waiver Service by a Participant's Family Member
The biological or adoptive parent of a minor child, step-parents of a minor child, or spouse of a waiver participant **may not be paid** to provide waiver services to a waiver participant. Other relatives, including legal guardians, may be hired to provide waiver services subject to specifications in the service definition. Relatives and legal guardians of children who are not the biological or adoptive parent of the minor child, step-parents of a minor child may provide services subject to specifications in the service definition.

The following policy applies to legal guardians, parents of adult participants and other relatives **who live in the home of the participant**:

- The waiver services that relatives or legal guardians may provide are Community Networking, Day Supports, In-Home Intensive Supports, In-Home Skill Building, Personal Care Services and Residential Supports.
- The relative or legal guardian must meet the provider qualifications for the service.
- A qualified provider who is not a relative or legal guardian is (a) not available to provide the service or (b) is only willing to provide the service at an extraordinarily higher cost that the fee or charge negotiated with the qualified family member or legal guardian.

- The relative or legal guardian is not paid to provide any service that they would ordinarily perform in the household for an individual of similar age who does not have a disability.
- The Employer of Record or Managing Employer in an Agency with Choice model may not furnish a service that is subject to the Employer of Record or Managing Employer's direction.
- Ordinarily, no more than 40 hours of service per week or seven daily units per week may be approved for service provision between all relatives who reside in the same household as the waiver participant. Additional service hours furnished by a relative or legal guardian who resides in the same household as the waiver participant may be authorized to the extent that another provider is not available or is necessary to assure the participant's health and welfare.
- When a relative or legal guardian is the service provider, provider agencies, and/or the Managing Employers, as appropriate, monitor the relative or legal guardian's provision of services on-site, at a minimum of one time per month.
- When a relative or legal guardian is the service provider, the Care Coordinator monitors the relative's provision of services on-site at a minimum of one time per month.
- Payments are only made for service authorized by the PIHP in the Individual Support Plan.
- For NC innovations Waiver services, the same monitoring procedures apply to parents and legal guardians as apply to provider agencies to ensure that payments are made only for services rendered.
- The use of a neutral advocate is required for all relatives who are legal guardians to ensure that the desires and needs of the waiver participant are addressed by the ISP planning team.

Provider Agencies, Employers of Record and Managing Employers (through the Agency with Choice) submit documentation to the PIHP that demonstrate that the relative or legal guardian meets the qualifications to provide the service along with the justification for using the relative or legal guardian as the service provider rather than an unrelated provider. The request must be approved prior to service provision by the relative or legal guardian. The forms used to make this request are located in Appendix P. Requests that are not approved may be grieved by the Provider Agency, Employer of Record or Managing Employer through the Agency with Choice. Participants or family members/guardians dissatisfied with the decision may file a complaint.

Provider Qualifications and Verification of Provider Qualifications

Agencies providing NC Innovations Services must meet all rules, governing the licensing and operation of such agencies as specified by the Department of Health and Human Services (DHHS), the Division of Health Service Regulation (DHSR), the Division of Medical Assistance (DMA), and Division of Mental Health, Developmental Disabilities and Substance Abuse (DMH/DD/SAS) Services, as applicable. Agencies that provide NC Innovations Services must have a contract with the PIHP for the service or services that the agency provides.

Provider requirements for each service are specified following each service definition. Both requirements for direct service employees employed by provider agencies, Employers of Record and Agencies With Choice are specified as applicable for each

MEDICAID HEARING REQUEST FORM

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF (1)_____

(2)_____ (Name of Recipient/Guardian) _____ PETITIONER, v. NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES And _____ (MCO) RESPONDENT. (The State agency or board about which you are complaining)	**PETITION FOR A CONTESTED CASE HEARING**

SEND COPY OF FORM TO:
Office of Administrative Hearings (OAH)
Attention: Clerk of Court
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone: 919-431-3000
Fax: 919-431-3100

I hereby ask for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because the Respondent has:
(Briefly state facts showing how you believe you have been harmed by the State agency or board.)

_____

_____

_____

Name of Representative _____ Name of Recipient _____

Relationship to Recipient _____ Address _____ Telephone Number _____

(3) Because of these facts, the State agency or board has: (check at least one from each column)

_____deprived me of property;
_____ordered me to pay a fine or civil penalty; or
_____otherwise substantially prejudiced my rights;

AND

_____exceeded its authority or jurisdiction;
_____acted erroneously;
_____failed to use proper procedure;
_____acted arbitrarily or capriciously; or
_____failed to act as required by law or rule.

(4) Date: _____ (5) Your phone number: ( ) _____

(6) Print your full address: _____

(street address/p.o. box) (city) (state) (zip)

(7) Print your name: _____

(8) Your signature: _____

You must mail or deliver a **COPY** of this Petition to the Department of Health and Human Services and the MCO.

CERTIFICATE OF SERVICE

I certify that this Petition has been served on the State agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed **OR** by delivering it to the named agency or board:

Department of Health and Human Services
Attention: General Counsel
2001 Mail Service Center
Raleigh, NC 27699-2001

_____(MCO name)
Director of Grievance and Appeals
_____(MCO address)

This the_____day of_____, 20_____.

_____
(your signature)

When you have completed this form, you **MUST** mail or deliver the **ORIGINAL AND ONE COPY** to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

Disability Rights North Carolina
3724 National Drive, Suite 100
Raleigh, North Carolina 27612
www.disabilityrightsnc.org

919-856-2195
877-235-4210 (toll free)
888-268-5535 (TTY)
919-856-2244 (fax)

[1] The full Waiver document may be accessed at, http://www.ncdhhs.gov/dma/lme/Innovations_Amendment_5.pdf.
[2]Waiver, Appendix C-2: 9(12); Division of Medical Assistance, Clinical Coverage Policy 8P, Attachment F: Relative as Provider, p. 95. However, there are some rare instances when 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. CMS Medicaid Manual 4442.3, B(2).
[3] Waiver, Appendix C-2: 9.
[4] Technical Guide, p. 102.
[5] Technical Guide, p. 93.
[6] Waiver, Appendix C-2: 9(7). See NC Innovations Manual, 6/25/12, p. 103.
[7]NC Division of Medical Assistance Clinical Coverage Policy 8P, Attachment F: Relative as Provider, p. 95.
[8] An "action" is defined as: "(1) The denial or limited authorization of a requested service, including the type or level of service; (2) The reduction, suspension, or termination of a previously authorized service; (3) The denial, in whole or in part, of payment for a service; (4) The failure to provide services in a timely manner, as defined by the State; (5) The failure of an MCO or PIHP to act within the timeframes provided in § 438.408(b); or (6) For a resident of a rural area with only one MCO, the denial of a Medicaid enrollee's request to exercise his or her right, under § 438.52(b)(2)(ii), to obtain services outside the network." 42 C.F.R. § 438.400(b).
[9] N.C. Gen. Stat. §108D-12(c).
[10] A handful of decisions by OAH within the last year made clear to parents pursuing appeals of these decisions have not found a forum *Aley v. NCDHHS and Cardinal Innovations*, 13MED14780/18349, (2013); *Miller v. Alliance Behavioral Healthcare*, 14MED02052 (2014); *Hiatt v. Partners Behavioral Health Management*, 14MED00562/14MED00563/14MED00564 (2014).