



State of Vermont
Agency of Human Services
280 State Drive, Center Building
Waterbury, VT 05671-1000

Global Commitment Register

April 28, 2023

GCR 23-033
PROPOSED

Children's Personal Care Services – Parents and Family Members

Policy Summary:

The Vermont Medicaid program proposes to allow legally responsible individuals, including parents and other family members, to provide children's personal care services beyond the end of the federal COVID-19 public health emergency.

This was put in place as a temporary option on March 15, 2020, to ensure access to medically necessary personal care services through the Children's Personal Care Services (CPCS) program overseen by the Vermont Department of Health (See [GCR 20-044](#)). Vermont Medicaid obtained 1115 Global Commitment to Health Waiver authority to continue payment to legally responsible individuals beyond the end of the COVID-19 public health emergency.

Health Care Administrative Rule 4.233 titled Children's Personal Care Services outlines the conditions for payment for legally responsible relatives and will be adopted according to the Vermont Administrative Procedures Act. Conditions for payment include:

- Legally responsible individuals must provide an attestation to the Children's Personal Care Program that children's personal care services are unavailable from a personal care attendant due to significant and recurring barriers, and that they are able to deliver the medically necessary children's personal care services to the beneficiary.
- All providers of CPCS, including legally responsible relatives, must meet all existing requirements as described under the Medicaid State Plan, including Electronic Visit Verification requirements.

Effective Date:

May 11, 2023

Authority/Legal Basis:

[Medicaid State Plan](#)

[Global Commitment to Health Waiver](#)

Population Affected:

Children under 21

Fiscal Impact:

This change is expected to be budget neutral.

Public Comment Period:

April 28, 2023 – May 30, 2023

Send comments to:

Medicaid Policy Unit

280 State Drive, Center Building

Waterbury, VT 05671-1000

Or submit via e-mail to AHS.MedicaidPolicy@vermont.gov.

To be added to the GCR email list, send an email to AHS.MedicaidPolicy@vermont.gov.

Additional Information:

[Vermont Department of Health Children's Personal Care Services program information](#)

The annotated and clean text of the proposed Health Care Administrative Rule 4.233 Children's Personal Care Services can be found on the follow pages.

Children's Personal Care Services

74064.233 Children's Personal Care Services (10/29/2013, 13P016)

4.2337406.1 Definitions

~~As used in these regulations~~ For the purposes of this rule the term:

- (a) “Activities of Daily Living” (ADL) means activities including dressing, bathing, grooming, eating, transferring, mobility, and toileting.
- (b) “Children's Personal Care Services” (CPCS) means medically necessary services related to ADLs and IADLs that are furnished to a beneficiary, as part of Vermont Medicaid's Children's Personal Care Services Program.
- (c) “Electronic Visit Verification” (EVV) means a telephone and computer-based system that records information about the services provided.
- (d) “Employer” means the individual or entity who is responsible for the hiring of and ensuring payment to the personal care attendant when services are self-directed provider.
- (a)(e) “Functional ~~Ability Screening Evaluation Tool~~” means a State adopted standardized assessment tool to assist in the determination of medical necessity for children's personal care services.
- (b)(f) “Instrumental Activities of Daily Living” (IADL) means activities including personal hygiene, light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication management, and money management.
- (e)(g) “Legally Responsible Individual” means the beneficiary's biological parent, stepparent, adoptive parent, legal guardian, spouse, or civil union partner.

~~“Medical Necessity” shall have the same meaning as Section 7103 of this rule to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for people with developmental disabilities, or institution for mental disease.~~

(d)(h) “Personal Care Attendant” means an individual at least 18 years of age, ~~has~~ ^{having} successfully passed required background checks, ~~and~~ who is qualified to provide the children's personal care services ~~to a child~~. A personal care attendant ~~must~~ ^{may} not be a biological or adoptive parent, guardian, shared living provider, foster parent, step parent, domestic/civil union partner of the child's primary caregiver, or a relative serving in the primary caregiver capacity legally responsible individual.

(i) “Self-Directed” means children's personal care services that are managed and employed directly by the beneficiary, family member, guardian, or guardian's designee.

(e)(j) “Variance” means a decision by the Children's Personal Care Services Program to waive

certain restrictions, including hiring a personal care attendant less than 18 years old, waiving certain background check findings, and paying greater than the maximum wage established.

4.233.2 Covered Services

- (a) Covered children's personal care services must be medically necessary and may include:
- (1) Assistance with ~~ADLs, such as~~ bathing, dressing, grooming, bladder, or bowel requirements,
 - (2) Assistance with eating, ~~or drinking,~~ feeding, or dietary and diet activities,
 - (3) Assistance in monitoring vital signs,
 - (4) Routine skin care,
 - (5) Assistance with positioning, lifting, transferring, ambulation, and exercise,
 - (6) Set-up, supervision, cueing, prompting, and guiding, when provided as part of the assistance with ADLs,
 - (7) Assistance with age appropriate home management IADLs that ~~are linked to ADLs, and~~ are essential to the beneficiary's care at home,
 - (8) Assistance with taking medications management,
 - (9) Assistance with the use of durable medical equipment including adaptive or assistive devices ~~when linked to the ADLs, and~~
 - (10) Accompanying the recipient to clinics, physician office visits, or other trips which are medically necessary.

(b) Services shall must be individualized and shall be provided exclusively to the authorized individual beneficiary.

(b)(c) Children's personal care services can only be provided to one recipient at a time. Payment for services shall not exceed the amount awarded.

(1) Prior authorization shall be required prior to the provision of personal care services. Services must be provided in the most cost-effective manner possible.

4.233.3 7406.3 Eligibility for Care Criteria

- (a) To be eligible for children's pPersonal cCare sServices a beneficiary child must:
- (1) Be under the age of 21, ~~Have active Medicaid enrollment,~~
 - (2) Have a medical condition, disability, or cognitive impairment as documented by a physician, psychologist, psychiatrist, physician's assistant, advanced practice registered nurse, licensed mental health clinician, practitioner or other licensed clinician ~~and working within their scope of practice.~~
 - (3) Qualify for medically necessary children's personal care services based on functional limitations in age-appropriate ability to perform ADLs, as prior authorized by the Children's Personal Care Services Pprogram.
 - (4) Not be an inpatient or resident of a hospital, nursing facility, intermediate care facility for people with developmental disabilities, or institution for mental disease.

4.233.4 Prior Authorization

(a) Services must be prior authorized by the Children's Personal Care Services Program.

(b) The following is used to authorize the hours of children's personal care services:

- (1) A Functional Ability Screening Tool assessment of age-appropriate ability to perform ADLs completed by a state sanctioned assessor, and
- (2) Individualized clinical review of relevant supporting materials, description of direct

observation, diagnosis verification, and a care plan completed by an Agency of Human Services employed licensed clinician.

(c) Re-determination authorizing eligibility is required for services in accordance with the following:

- (1) Every twelve months from the initial authorization date through age 5,
- (2) Changing to every 3 years, from the last authorization date, if the beneficiary has two consecutive years of the same evaluation outcome, or
- (3) When there is a change in the beneficiary's ability to perform age-appropriate ADLs and IADLs.

4.233.547406.5 Qualified Providers

(a) The following individuals are eligible to ~~may~~ deliver children's personal care services through the Children's Personal Care Services Program:-

- (1) Personal care attendants, and
- (2) Legally responsible individuals.

4.233.65 Conditions for Coverage

(a) The coverage and conditions of this rule ~~only~~ apply to services that are delivered outside of any personal care services authorized as a component of the Medicaid School Based Health Services Program in accordance with an Individual Education Plan (IEP).

~~(a)(b)~~ A personal care attendant ~~is eligible to~~ ~~may be~~ deliver services when employed by a home health agency~~ies~~, ~~nursing service agencies~~, other agency~~ies~~ designated to furnish children's personal care services, ~~this service~~ or employed as a self-directed personal care attendant directly by the recipient, family, guardian, or guardian's designee.

(c) When children's personal care services are self-directed the following conditions apply: (known as self/family/surrogate directed services). In the case of self, family, or surrogate direction,

~~(1) the~~The employer must use the state ~~_~~-sanctioned fiscal employer agent for payroll and administrative services.

(1)

(2) The employer may pay pPersonal care attendants ~~may be paid~~ a flexible wage. The flexible wage must not be lower than ~~between~~ the minimum wage, as established by the applicable Collective Bargaining Agreement between the State of Vermont and Vermont Homecare United, American Federation of State County and Municipal Employees Council 93 – Local 4802, ~~or higher than the and~~ maximum wage published by the Children's Personal Care Program. ~~lower than the wage established by the current State of Vermont and the Vermont Homecare United American Federation of State County and Municipal Employee Council 93 – Local 4802, Collective Bargaining Agreement but may be reasonably higher.~~

(3) A variance to pay greater than the maximum wage ~~-may be requested by an employer to the Children's Personal Care Services Program. VUnreasonable variance requests are~~ will determined by Children's Personal Care Services Program. ~~not be granted.~~ Services ~~shall~~ must be provided in the most cost-effective manner possible. Different rates of pay may be paid to different personal care attendants providing services to the same beneficiary. The rate may be based on level of experience, specialized skills, shifts worked, and hiring needs determined by

the employer.

- (4) All services must be paid within the awarded amount. The awarded amount is based on the current Medicaid rate on file for the authorized hours of service. The current Medicaid rate is published on the website of the Vermont Department of Health's website Vermont Health Access. Payments made above the Medicaid rate on file will result in the beneficiary receiving fewer authorized hours of service, and may be found at <http://dvha.vermont.gov/> and is hereby incorporated by reference; or a flexible wage. The flexible wage shall not be lower than the current Medicaid rate on file but may be reasonably higher.
 - (5) The recipient, if an adult between the ages of 18 and 21, or his or her guardian, or the parent or guardian of a minor child, may select the personal care attendant's reasonable rate of pay. Different rates of pay may be paid to different personal care attendants providing services to the same child/beneficiary. The rate of pay may be based on level of experience, specialized skills, shifts worked, and hiring needs as determined by the employer.
 - (6)(5) Personal Care Attendant Wages and Payroll Taxes—The employer is responsible for paying the appropriate payroll taxes for a personal care attendant out of the awarded amount.
- (b)(d) Legally responsible individuals may be compensated for delivering children's personal care services under the following conditions:
- (1) The individual must provide an attestation to the Children's Personal Care Program that children's personal care services are unavailable from a personal care attendant due to significant and recurring barriers.
 - (2) The individual must provide an attestation to the Children's Personal Care Program that they are able to deliver the medically necessary children's personal care services to the beneficiary, and
—The individual must agree to use the state-sanctioned fiscal employer agent for billing and administrative services.
 - (3)
 - (4) Legally responsible individuals must be paid the current Medicaid rate on file, and not a flexible rate.
 - (1) The individual must not be listed on the U.S. Health and Human Services Office of Inspector General, List of Excluded Individuals/Entities.
 - (2) A personal care attendant may provide personal care services to only one recipient at a time.
 - (5)
- (c) A variance may be authorized by the Children's Personal Care Services Program to waive certain requirements including hiring a personal care attendant 16-18 years old, or certain background check findings.
- (e) Personal care providers must use a Vermont Medicaid authorized Electronic Visit Verification system to collect the following information every time services are provided:
- (1) Type of service performed,
 - (2) Date of service delivery,
 - (3) Start time and end time of service delivery,
 - (4) Location of service delivery,
 - (5) Name of the service provider, and
 - (6) Name of the beneficiary.

(f) Personal care providers are not required to use the EVV system under the following conditions:

- (1) When services are provided entirely outside of the beneficiary's home, or
- (2) When the personal care provider lives in the home with the beneficiary.

7406.64.233.6 Prior Authorization Requirements Determination of Personal Care Services

~~Services must be prior authorized by the Children's Personal Care Services Program. The State shall from time to time adopt and designate for use a functional evaluation tool.~~

~~The following is used to authorize the hours of children's personal care services: The functional evaluation tool shall assist in measuring the level of assistance a recipient requires in activities of daily living and such instrumental activities of daily living linked to the recipient's ADLs.~~

~~A Functional Ability Screening Tool assessment of age appropriate ability to perform ADLs, and~~

~~(1) Individualized clinical review of relevant supporting materials, description of direct observation, diagnosis verification, and a care plan.~~

~~(a) Prior authorization rReevaluations will occur in accordance with the following:~~

~~(1) Annually through age 5,~~

~~(2) Changing to every 3 years if the beneficiarychild has two consecutive years of the same evaluation outcome, or~~

~~When there is a change in the beneficiary's child's ability to perform ADLs and IADLs.~~

Children's Personal Care Services

4.233 Children's Personal Care Services

4.233.1 Definitions

For the purposes of this rule the term:

- (a) **“Activities of Daily Living”** (ADL) means activities including dressing, bathing, grooming, eating, transferring, mobility, and toileting.
- (b) **“Children's Personal Care Services”** (CPCS) means medically necessary services related to ADLs and IADLs that are furnished to a beneficiary, as part of Vermont Medicaid's Children's Personal Care Services Program.
- (c) **“Electronic Visit Verification”** (EVV) means a telephone and computer-based system that records information about the services provided.
- (d) **“Employer”** means the individual or entity who is responsible for the hiring of and ensuring payment to the personal care attendant when services are self-directed.
- (e) **“Functional Ability Screening Tool”** means a State adopted standardized assessment tool to assist in the determination of medical necessity for children's personal care services.
- (f) **“Instrumental Activities of Daily Living”** (IADL) means activities including personal hygiene, light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication management, and money management.
- (g) **“Legally Responsible Individual”** means the beneficiary's biological parent, stepparent, adoptive parent, legal guardian, spouse, or civil union partner.
- (h) **“Personal Care Attendant”** means an individual at least 18 years of age, has successfully passed required background checks, and who is qualified to provide children's personal care services. A personal care attendant must not be a legally responsible individual.
- (i) **“Self-Directed”** means children's personal care services that are managed and employed directly by the beneficiary, family member, guardian, or guardian's designee.
- (j) **“Variance”** means a decision by the Children's Personal Care Services Program to waive certain restrictions, including hiring a personal care attendant less than 18 years old, waiving certain background check findings, and paying greater than the maximum wage established.

4.233.2 Covered Services

- (a) Covered children's personal care services must be medically necessary and may include:
 - (1) Assistance with bathing, dressing, grooming, bladder, or bowel requirements,
 - (2) Assistance with eating, drinking, feeding, or dietary activities,
 - (3) Assistance in monitoring vital signs,

- (4) Routine skin care,
 - (5) Assistance with positioning, lifting, transferring, ambulation, and exercise,
 - (6) Set-up, supervision, cueing, prompting, and guiding, when provided as part of the assistance with ADLs,
 - (7) Assistance with age appropriate IADLs that are essential to the beneficiary's care at home,
 - (8) Assistance with taking medications,
 - (9) Assistance with the use of durable medical equipment including adaptive or assistive devices, and
 - (10) Accompanying the recipient to clinics, physician office visits, or other trips which are medically necessary.
- (b) Services must be individualized and be provided exclusively to the beneficiary.
- (c) Children's personal care services can only be provided to one recipient at a time.

4.233.3 Eligibility for Care

- (a) To be eligible for children's personal care services a beneficiary must:
- (1) Be under the age of 21,
 - (2) Have a medical condition, disability, or cognitive impairment as documented by a physician, psychologist, psychiatrist, physician's assistant, advanced practice registered nurse, licensed mental health clinician, or other licensed clinician working within their scope of practice.
 - (3) Qualify for medically necessary children's personal care services based on functional limitations in age-appropriate ability to perform ADLs, as prior authorized by the Children's Personal Care Services Program.
 - (4) Not be an inpatient or resident of a hospital, nursing facility, intermediate care facility for people with developmental disabilities, or institution for mental disease.

4.233.4 Prior Authorization

- (a) Services must be prior authorized by the Children's Personal Care Services Program.
- (b) The following is used to authorize the hours of children's personal care services:
- (1) A Functional Ability Screening Tool assessment of age-appropriate ability to perform ADLs completed by a state sanctioned assessor, and
 - (2) Individualized clinical review of relevant supporting materials, description of direct observation, diagnosis verification, and a care plan completed by an Agency of Human Services employed licensed clinician.
- (c) Re-determination authorizing eligibility is required for services in accordance with the following:
- (1) Every twelve months from the initial authorization date through age 5,
 - (2) Changing to every 3 years, from the last authorization date, if the beneficiary has two consecutive years of the same evaluation outcome, or
 - (3) When there is a change in the beneficiary's ability to perform age-appropriate ADLs and IADLs.

4.233.5 Qualified Providers

- (a) The following individuals are eligible to deliver children's personal care services through the Children's Personal Care Services Program:

- (1) Personal care attendants, and
- (2) Legally responsible individuals.

4.233.6 Conditions for Coverage

- (a) The coverage and conditions of this rule apply to services that are delivered outside of any personal care services authorized as a component of the Medicaid School Based Health Services Program in accordance with an Individual Education Plan (IEP).
- (b) A personal care attendant is eligible to deliver services when employed by a home health agency, other agency designated to furnish children's personal care services, or employed as a self-directed personal care attendant.
- (c) When children's personal care services are self-directed the following conditions apply:
 - (1) The employer must use the state sanctioned fiscal employer agent for payroll and administrative services.
 - (2) The employer may pay personal care attendants a flexible wage. The flexible wage must not be lower than the minimum wage, as established by the applicable Collective Bargaining Agreement between the State of Vermont and Vermont Homecare United, American Federation of State County and Municipal Employees Council 93 – Local 4802, or higher than the maximum wage published by the Children's Personal Care Program.
 - (3) A variance to pay greater than the maximum wage may be requested by an employer to the Children's Personal Care Services Program. Variance requests are determined by the Children's Personal Care Services Program. Services must be provided in the most cost-effective manner possible. Different rates of pay may be paid to different personal care attendants providing services to the same beneficiary. The rate may be based on level of experience, specialized skills, shifts worked, and hiring needs determined by the employer.
 - (4) All services must be paid within the awarded amount. The awarded amount is based on the current Medicaid rate on file for the authorized hours of service. The current Medicaid rate is published on the Vermont Department of Health's website. Payments made above the Medicaid rate on file will result in the beneficiary receiving fewer authorized hours of service.
 - (5) The employer is responsible for paying the appropriate payroll taxes for a personal care attendant out of the awarded amount.
- (d) Legally responsible individuals may be compensated for delivering children's personal care services under the following conditions:
 - (1) The individual must provide an attestation to the Children's Personal Care Program that children's personal care services are unavailable from a personal care attendant due to significant and recurring barriers,
 - (2) The individual must provide an attestation to the Children's Personal Care Program that they are able to deliver the medically necessary children's personal care services to the beneficiary, and
 - (3) The individual must agree to use the state sanctioned fiscal employer agent for billing and administrative services.
 - (4) Legally responsible individuals must be paid the current Medicaid rate on file, and not a flexible rate.
 - (5) The individual must not be listed on the U.S. Health and Human Services Office of Inspector General, List of Excluded Individuals/Entities.

- (e) Personal care providers must use a Vermont Medicaid authorized Electronic Visit Verification system to collect the following information every time services are provided:
 - (1) Type of service performed,
 - (2) Date of service delivery,
 - (3) Start time and end time of service delivery,
 - (4) Location of service delivery,
 - (5) Name of the service provider, and
 - (6) Name of the beneficiary.

- (f) Personal care providers are not required to use the EVV system under the following conditions:
 - (1) When services are provided entirely outside of the beneficiary's home, or
 - (2) When the personal care provider lives in the home with the beneficiary.

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