



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

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# Global Commitment Register

March 14, 2024

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GCR 24-018  
PROPOSED

## **Developmental Services and Brain Injury Programs — Legally Responsible Individuals**

### **Policy Summary:**

The Vermont Medicaid program proposes to allow payment to legally responsible individuals in the Developmental Services and Brain Injury Programs administered by the Department of Aging and Independent Living (DAIL). Legally responsible individuals include parents (when the participant is a minor child), spouses, and legal guardians.

Payments to legally responsible individuals was a temporary option implemented via the Global Commitment 1115 Waiver Home and Community Based Service Flexibilities authorized during the Federal COVID-19 Public Health Emergency. It was effective January 27, 2020, and extended to March 29, 2024. [See GCR 20-077](#).

This policy change is being made to continue allowing payment to legally responsible individuals for services under Vermont's Global Commitment 1115 Waiver authority. This payment option addresses chronic issues related to the limited availability of service providers and allows legally responsible individuals to receive compensation for providing medically necessary care.

To develop this policy, DAIL engaged in input sessions with providers, families, and individuals with lived experience between the Summer of 2022 and Fall of 2023. These input sessions included opportunities to review a draft version of the policy for the Department to review and incorporate feedback.

The policy and payment criteria can be found in Attachment P Caregiver Reimbursement Protocol included on the next page. This policy is pending CMS final approval and will be adopted as Health Care Administrative Rule for the Developmental Disability Services and Brain Injury Programs. An additional comment period will be conducted during administrative rulemaking.

### **Effective Date:**

March 29, 2024.

**Authority/Legal Basis:**

[Global Commitment to Health Waiver](#)

**Population Affected:**

Developmental Disability and Brain Injury Programs.

**Fiscal Impact:** This change is expected to be budget neutral.

**Public Comment Period:**

March 14, 2024 – April 15, 2024

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](mailto:AHS.MedicaidPolicy@vermont.gov).

To be added to the GCR email list, send an email to [AHS.MedicaidPolicy@vermont.gov](mailto:AHS.MedicaidPolicy@vermont.gov).

**Additional Information:**

Attachment P Caregiver Reimbursement Protocol is included on the next page.

State of Vermont

Agency of Human Services

Attachment P Caregiver Reimbursement Protocol

Health Care Administrative Rules 7.200

Developmental Disability Services—Payment for Services Provided by Legally Responsible Individuals

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## Developmental Disability Services—Payment for Services Provided by Legally Responsible Individuals

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### 7.200 Developmental Disability Services—Payment for Services Provided by Legally Responsible Individuals

#### 7.200.1 Introduction

- (a) The intent of this policy is to operationalize how to pay Legally Responsible Individuals to provide extraordinary care to their adult children with developmental disabilities through Developmental Disabilities Home- and Community-Based Services (“DD HCBS”). The use of this policy, to pay an adult child’s Legally Responsible Individual to provide personal care and similar services, is not intended to replace other paid direct support professionals or natural supports. This policy does not apply to Family Managed Respite (“FMR”).
- (b) This policy is intended to be used when direct support professionals and/or independent direct support workers are not available to provide the services an individual has been approved for to ensure a person’s health and safety.
- (c) It is expected that the use of the policy will be reviewed periodically during its use for the appropriateness of continued application.

#### 7.200.2 Definitions

For the purposes of this rule, the term:

- (a) **“Activities of Daily Living”** is defined as the actions of dressing, bathing, grooming, eating, toileting, mobility, and physical transfers.
- (b) **“Adult Child”** means an individual enrolled in Developmental Disabilities Home- and Community-Based Services age 21 and older.
- (c) **“Community Support”** is defined as: support provided to assist individuals to develop skills and social connections. The support may include teaching and/or assistance in daily living, support to participate in community activities, and building and sustaining healthy personal, family and community relationships. Community support may involve individual support or group support (two or more people). Community support includes transportation to access the community. Support must be provided in accordance with the desires of the individual and their Individual Support Agreement and take place within settings that afford opportunities for choice and inclusion that are consistent with federal HCBS rules.<sup>1</sup>
- (d) **“Extraordinary Care”** means care provided to an adult child that exceeds the range of activities that a Legally Responsible Individual would ordinarily perform in the household on behalf of an individual without a disability or chronic illness of the same age, and which are necessary to assure the health and welfare of the individual and avoid institutionalization.
- (e) **“In-Home Family Support”** is defined as regularly scheduled, or intermittent hourly supports provided to an individual who lives in the home of unpaid family caregivers. Supports are provided on a less than full time (not 24/7) schedule.<sup>2</sup>
- (f) **“Instrumental Activities of Daily Living”** means light housework, laundry, meal preparation, transportation, shopping, communication, medication management, and money management.
- (g) **“Legally Responsible Individual”** means an individual’s spouse, or legal guardian, or the biological parent, adoptive parent, or stepparent of an adult child. Legally Responsible Individual does not include an adult child’s Power of Attorney.

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<sup>1</sup> [Developmental Disabilities Services Codes and Definitions for Home- and Community-Based Services](#)

<sup>2</sup> [Developmental Disabilities Services Codes and Definitions for Home- and Community-Based Services](#)

- (h) **“Personal Care or Similar Services”** means hourly services performed in the home or community provided to acquire, maintain, and promote skills related to independent living, including activities of daily, instrumental activities of daily living, navigation and engagement of community, and coordination of and participation in personal appointments. For Vermont Developmental Disabilities Home and Community Based Services, these services are provided within the services “Community Supports” and “Home Supports”.

### 7.200.3 Conditions for Payment

- (a) Payments can be made to Legally Responsible Individuals for extraordinary care provided to the designated adult child according to the conditions of this policy.
- (b) Legally Responsible Individuals can be paid to provide<sup>3</sup>:
- (1) Community Supports as defined in the [Developmental Disabilities Services Codes and Definitions for Home- and Community-Based Services](#).  
In-home Family Supports as defined in the [Developmental Disabilities Services Codes and Definitions for Home- and Community-Based Services](#).
- (c) Legally Responsible Individuals can be paid to provide care to their adult child due to the complexity of support needs including:
- (1) A lack of qualified direct support professionals or independent direct support workers, resulting in consistent gaps in services provision for 45 days or more.
    - This is defined as the individual receiving 50% of the community supports and/or in-home family supports authorized to the individual, within a 45-consecutive calendar day period.
    - This is reviewed and documented by the adult child’s case manager.
    - The Legally Responsible Individual must remain in the home to care for the adult child, or
  - (2) Complex medical support needs, as defined by the need for:
    - 2:1 staffing,
    - Support provided by clinically trained/credentialed staff (i.e., Licensed Nursing Assistant, Licensed Practical Nurse, etc.)
    - Nursing oversight,
    - Assessed to fall within the Supports Intensity Scale-Adult “Extraordinary medical support need” level of support. or
  - (3) Complex behavioral support needs, as defined by the need for:
    - 2:1 staffing,
    - Support provided by clinically trained/credentialed staff,
    - Clinical/psychiatric oversight,
    - Assessed to fall within the Supports Intensity Scale-Adult “Extraordinary behavior support need” level of support.
  - (4) Complex communication support needs, as defined by the need for:
    - Access to community aids, devices, programs, or other assistive technology,
    - Communication plan,
    - Consistent access to interpreters, facilitators, etc.
- (d) The individual’s team, consisting of case manager, direct service provider agency staff, individual, guardian (when there is one) and other people invited by the individual, will review the arrangement relating to paying the individual’s Legally Responsible Individuals based on the criteria included in this policy.

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<sup>3</sup> Refer to payment details in §7.200.5

- (e) Prior to making the determination that the Legally Responsible Individuals will be paid, the team will decide on the schedule for regular review of the arrangement. Once the plan is developed, the direct service provider agency will notify the Fiscal Employer/Agency (FE/A).
- (f) Monthly, the Adult Child's Case Manager will audit the Legally Responsible Individual's notes, which should include date and times of services provided, and progress toward Individual Service Agreement (ISA) goals made in the previous 30 days. Services must be accounted for and provided in accordance with the ISA in order for payment authorization to be rendered to the Fiscal Employer/Agent (FE/A).
  - (1) Whenever possible, the Case Manager will confirm the dates, times, amount, and nature of services provided with the Adult Child.
- (g) Payment will be calculated based on the current Collective Bargaining Agreement (CBA) minimum rate (inclusive of employer tax rate) and the amount of services provided by the Legally Responsible Individual, with a maximum of level of number of hours to be submitted for payment equal to the individual's authorized level of support or 40 hours per week, whichever is less.
- (h) Key components in making the determination to approve the arrangement must include:
  - Honoring the individual's choice,
  - Providing a confidential outlet for the individual to voice preference,
  - Ensuring the individual's health and safety is being appropriately met,
  - Lack of or limited availability of qualified staff,
  - Culturally and linguistically appropriate care,
  - Maintenance of unpaid family time,
  - Involvement of the person's circle of support, and
  - Process to review the efficacy of the arrangement and ongoing need to continue to have legally responsible Individuals as paid caregiver.

#### 7.200.4 Non-Covered Services

- (a) Legally Responsible Individuals cannot be paid to provide:
  - Service Coordination/Case Management
  - Clinical Services
  - Crisis Services
  - Employment Supports
  - Respite
  - Supportive Services
- (b) Legally Responsible Individuals cannot be paid to provide Shared Living, Shared Living Hourly, Supervised Living, or Staffed Living supports.
- (c) Only one Legally Responsible Individual per Adult Child can be designated for the paid arrangement at a time. Payment to a Legally Responsible Individual, alongside another caregiver, is allowable to provide support when the Adult Child requires 2:1 care.

#### 7.200. Oversight and Review

- (a) The arrangement will be reviewed periodically to ensure that it continues to meet the desires and best interests of the individual. The frequency of reviews will depend on individual circumstances and may be as frequent as monthly (30-days) but no less frequent than bi-annually (6-months).
- (b) Reviews will be completed by members of the individual's support team, including:
  - (1) Case Manager Entity—through monthly in-home/in-person visits, which may include unannounced home visits. More frequent visits may be provided when needed. The Legally Responsible Individual cannot deny the Case Manager access to the home.

- (2) Developmental Disabilities Services Division Quality Management Team—through an in-person/in-home visit as part of the agency’s annual onsite quality services review process, if the arrangement is in place during the Agency’s scheduled annual onsite quality review.
- (3) Direct Service Provider Agency—through monthly in-home/in-person visits, which may include unannounced home visits and the agency’s internal quality services review process. The Legally Responsible Individual cannot deny representatives from the Direct Services Provider agency access to the home.
- (4) Provide the Adult Child opportunities to speak privately with the Case Manager, representative of the Direct Service Provider Agency and DDS Quality Management Team (as applicable; where these occurred and what was discussed should be documented by the Case Manager.
- (c) Monthly in-home/in-person visits by team members should occur independently to allow maximum opportunity to assess the arrangement.
- (d) Legally Responsible Individuals must comply with all state and federal rules and regulations<sup>4</sup> to receive payment for care provided. Failure to meet these requirements will result in discontinuation of payment of Medicaid dollars to the Legally Responsible Individual.
- (e) Legally Responsible Individuals must meet the “Worker Qualifications” as described in [Medicaid Manual for Developmental Disabilities Services](#) (§1.8).
  - (1) Any required training will be provided or arranged by the Adult Child’s case manager.
- (f) During the periodic review of the arrangement, the team should document efforts made to move away from reliance on Legally Responsible Individuals(s) as paid support. These efforts should include recruitment of direct support workers, community integration activities, expansion of the individual’s circle of support, discussions with the individual about the decision, and desire to have it continue, and alternative options.
  - (1) Periodic review will consist of the Adult Child, the Legally Responsible Individual, the Adult Child’s Case Manager, a representative of the Direct Service Agency and any person of the Adult Child’s choosing to support them.
  - (2) The Adult Child, with the support of their Case Manager, and any person of their choosing, will direct the periodic review of the arrangement and be afforded the opportunity to speak privately about their preferences.
- (g) Documentation of the periodic review must include how the family maintains unpaid family time, how the team supports the individual and how the individual’s voice is heard and respected, how the Legally Responsible Adult(s) is supported, and the next steps for the team for the next review period.
- (h) Refusal to accept available staff does not support continued payment of a Legally Responsible Individual.

#### 7.200.5 Payments

- (a) The Case Manager would determine if a Legally Responsible Individual were to be paid based on a review of the previous 45 consecutive calendar days of an individual’s support needs and level of service provided, as well as other qualifying factors.
  - (1) The payment amount would be based on the level of support provided during the month, up to 40 hours per week, based on the process detailed in 7.200.5(b).
    - i. Payment amount is based the Adult Child’s level of need as evidenced by their needs assessment, Individual Support Agreement (ISA) ISA, ISA goals, the specific services provided in a given

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<sup>4</sup> Behavior Support Guidelines for Support Workers Paid with Developmental Services Funds  
 Critical Incident Reporting Guidelines  
 DAIL Background Check Policy  
 Health and Wellness Guidelines  
 Individual Support Agreement Guidelines  
 Vermont State System of Care Plan for Developmental Disabilities Services  
 42 CFR Parts 430, 431, 435, 436, 440, 441 and 447

month, and the authorized funding levels authorized by the Developmental Disabilities Services Division.

- (2) The Legally Responsible Individual must perform the work that any other direct support staff would be required to do, based on job duties and Individual Support Agreement goals.
  - (3) If a significant staffing change occurs mid-month, a Legally Responsible Adult could be provided with payment for the number of affected weeks, (i.e., partial payment).
- (b) Legally Responsible Individuals may be compensated under the following conditions:
- (1) After providing an attestation to the adult child's team, kept on file by the Case Manager and reviewed at the agreed upon intervals, that community and/or in-home family services are unavailable due to significant and recurring barriers.
  - (2) After providing an attestation to the adult child's team, kept on file by the Case Manager and reviewed at the agreed upon intervals, that they are able to deliver the community and/or in-home family services as indicated in the adult child's ISA.
  - (3) The Legally Responsible 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 Collectively Bargained minimum rate (Collective Bargained minimum wage plus associated employer tax rate), not a flexible rate.
- (c) Authorization Form submitted by the Case Manager to Fiscal Employer/Agency (FE/A) for payment. The authorization form must include, at a minimum:
- Legally Responsible Individual's (payee's) demographic information required to process payment,
  - Demographic information of individual receiving services required to process payment,
  - Service category,
  - Dates of service covered,
  - Total number of hours per week and weeks per month approved,
  - Approved rate (i.e., minimum for the state fiscal year),
  - Total amount authorized for payment, by service category and total, for the month,
  - Signature of authorized Case Manager.
  - Signature and attestation of Legally Responsible Individual of the work performed during the month as indicated on the Authorization Form.
- (d) Prior to initial payment, any time payments are restarted, or at the start of each state fiscal year, the FE/A will ensure that any payee is not contained on the Office of Inspector General (OIG) Exclusion List prior to making a payment.<sup>5</sup>
- (e) These payments will not be considered "tax-exempt Difficulty of Care Payments" as the individuals receiving the services will not have been placed in the Legally Responsible Individual's home by a placement agency, as required by the Internal Revenue Service ([IRS Bulletin 2014-7](#)). At the end of the tax year, the FE/A will supply a Form 1099 for any payee (Legally Responsible Individual) for whom payments processed exceed \$600 in the calendar year.
- (f) Case Managers are responsible to submit payment authorizations for services provided by Legally Responsible Individuals individual's authorized service plan. If the number of hours submitted exceeds the total authorized services for individual Community Supports or In-Home Family support, the Legally Responsible Individual may receive partial or no payment.
- (g) Payments will not exceed authorized service levels. Case Managers must ensure payment authorizations are within the scope of the approved service plan for the adult child.

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<sup>5</sup> This means that if a Legally Responsible Individual receives an initial or restarted payment for the month of June that an OIG Exclusion List check will be made for the initial/restarted payment in June and then again in July, at the beginning of the new state fiscal year.





State of Vermont

Agency of Human Services

Attachment P Caregiver Reimbursement Protocol

Health Care Administrative Rules 7.101

Brain Injury Program—Payment for Services Provided by Legally Responsible Individuals

## 7.101 Brain Injury Program—Payment for Services Provided by Legally Responsible Individuals

### 7.101.1 Introduction

- (a) The intent of this policy is to operationalize how to pay Legally Responsible Individuals to provide extraordinary care to Brain Injury Program (BIP) participants. The use of this policy, to pay a participant’s Legally Responsible Individual to provide personal care and similar services, is not intended to replace other paid direct primary or unpaid caregivers.
- (b) This policy is intended to be used when direct support professionals and/or independent direct support workers are not available to provide the services a participant has been approved for to ensure a person’s health and safety.
- (c) It is expected that the use of the policy will be time-limited and reviewed monthly by the case manager during its use for the appropriateness of continued application.

### 7.101.2 Definitions

For the purposes of this rule, the term:

- (a) **“Extraordinary Care”** means care to a BIP participant that exceed[s] the range of activities that a Legally Responsible Individual would normally perform in the household on behalf of a participant without a disability or chronic illness, and which are necessary to assure the health and welfare of the participant and avoid institutionalization. Circumstances identified as “extraordinary care” are defined below.
- (b) **“Legally Responsible Individual”** means a participant’s spouse, or legal guardian, or the biological parent, adoptive parent, or stepparent of a minor child. Legally Responsible Individual does not include an BIP participant’s Power of Attorney.
- (c) **“Life Skill Supports”** means services that implement a BIP Service Plans with the BIP participant on a one-to-one basis, providing training in specific activities of daily living in all necessary settings. Services are provided through the supervision of the case manager, and the supports carry out the specific therapeutic program that will be designed in consultation (when appropriate) with licensed speech, physical and occupational therapists, physicians, psychologist, vocational counselors, educators, family members, and others experienced in serving individuals with a traumatic brain injury.
- (d) **“Respite Care”** means relief from caregiving and supervision for primary caregivers.
- (e) **“Personal Care or Similar Services”** means hourly services performed in the home or community provided to acquire, maintain and promote skills related to independent living, including activities of daily, instrumental activities of daily living, navigation and engagement of community, and coordination of and participation in personal appointments. For Vermont Brain Injury Program, these services are provided within the services “Respite Services” or “Life Skills Supports”.

### 7.101.3 Conditions for Approval of Payment

- (a) Payment may be granted to allow Legally Responsible Individuals to provide the following services:
  - (1) Brain Injury Program services defined in [Vermont Traumatic Brain Injury Provider Manual](#), available on the Adult Services Division’s website.
    - Respite Care
    - Life Skills Supports
- (b) Payments may be granted upon a determination that:
  - (1) The payment will otherwise meet the goals of the Brain Injury Program, and
  - (2) The payment is necessary to protect or maintain the health, safety, or welfare of the participant.

- (c) Applicants, participants, and providers may submit requests for payment to the Department of Disabilities, Aging and Independent Living (DAIL) at any time.
- (d) Requests must be submitted in writing to DAIL and include:
- (1) A description of the participant’s specific unmet need(s) for which the request is necessary,
  - (2) An explanation of why the unmet need(s) cannot be met, and other options that have been explored,
  - (3) A description of the actual/immediate risk posed to the participant’s health, safety, or welfare.
  - (4) Payment requests must include the following key components:
    - Honoring the participant’s choice,
    - Providing a confidential outlet for the participant to voice preference,
    - Ensuring the participant’s health and safety is being appropriately met,
    - Lack of or limited availability of qualified staff,
    - Culturally and linguistically appropriate care,
    - Maintenance of unpaid family time,
    - Involvement of the person’s circle of support, and
    - Process to review the efficacy of the arrangement and ongoing need to continue to have Legally Responsible Individuals as paid caregivers.
- (e) Legally Responsible Individuals may be paid to provide care to a BIP participant due to one or more of the following:
- (1) A lack of qualified direct support professionals or independent direct support workers, resulting in consistent gaps in services provision for 45 consecutive calendar days or more.
    - This is defined as the participant receiving less than 50% of authorized life skills or respite services for 45 or more consecutive days.
    - This is reviewed and documented by the case manager.
  - (2) Complex support needs, as defined by the need for:
    - 2:1 staffing,
    - Clinical/psychiatric oversight,
    - Cognitive status is assessed to fall within the ILA (Independent Living Assessment) to be “severely impaired” ability to make decisions regarding tasks of daily life,
    - Requires 24/7 supervision or oversight.
  - (3) Communication support needs, as defined by the need for:
    - Access to community aids, devices, programs, or other assistive technology,
    - Communication plan,
    - Consistent access to interpreters, facilitators, etc.
  - (4) Payment to a Legally Responsible Individual, alongside another caregiver, is allowable to provide support when the BIP participant requires 2:1 care.

#### 7.101.4 Non-Covered Services

- (a) Legally Responsible Individuals cannot be paid to provide the following services defined in [Vermont Traumatic Brain Injury Provider Manual](#), available on the Adult Services Division website.
- Case Management
  - Community Supports
  - Employment Support
  - Rehabilitation Services
  - Psychology & Counseling Supports

#### 7.101.5 Oversight and Review

- (a) The arrangement will be reviewed periodically to ensure that it continues to meet the desires and best interests of the BIP participant. The frequency of reviews will depend on the BIP participant's circumstances and may be as frequent as monthly (30-days) but no less frequent than bi-annually (6-months).
- (b) Reviews will be completed by:
  - (1) Case Manager—through monthly in-home/in-person visits, which may include unannounced home visits.
  - (2) Adult Services Division Quality Management Unit—through an in-person/in-home visit as part of the provider agency's annual onsite quality services review process.
- (c) Monthly in-home/in-person visits by the case manager should occur *independently* to allow maximum opportunity to assess the arrangement. The Legally Responsible Individual cannot deny the Case Manager access to the home.
- (d) During the monthly review, the case manager must document efforts made to move away from reliance on Legally Responsible Individuals as paid support. These efforts should include recruitment of direct support workers, community integration activities, expansion of the participant's circle of support, discussions with the participant about the arrangement and desire to have it continue, and alternative options.
- (e) Documentation of the monthly review must include how the family maintains unpaid family time, how the case manager supports the participant and how the participant's voice is heard and respected and the next steps for the next review period.

#### 7.101.6 Payments

- (a) The Legally Responsible Individuals may be compensated under the following conditions:
- (b) The Legally Responsible Individual must provide an attestation, to be kept on file by the Case Manager and reviewed at the agreed upon intervals, that community and/or in-home family services are unavailable due to significant and recurring barriers.
  - (1) The Legally Responsible Individual must provide an attestation, to be kept on file by the Case Manager and reviewed at the agreed upon intervals, that they are able to deliver the community and/or in-home family services as indicated in the person-centered care plan.
  - (2) The Legally Responsible Individual will be paid according to the existing employer and employee relationship as outlined in the [ARIS employer handbook](#).
  - (3) The Legally Responsible Individual must complete all required Fiscal Employer/Agency (FE/A, i.e., ARIS Solutions) paperwork and be approved BIP employee prior to submitting timesheets and being paid for care provided.
  - (4) The Legally Responsible Individual must perform the work that any other direct support staff would be required to do, based on job duties and Person-Centered Plan goals.
  - (5) Legally Responsible Individuals will only be paid for services authorized within the participant's budget. If the number of hours submitted exceeds the total amount available in the budget to pay the Legally Responsible Individual, the Legally Responsible Individual may receive partial or no payment.
  - (6) Legally Responsible Individuals must be paid the current Collectively Bargained minimum rate (Collective Bargained minimum wage plus associated employer tax rate), not a flexible rate.
  - (7) Refusal to accept available workers does not support continued payment of a Legally Responsible Individual.
- (c) Case Managers are responsible for submitting payment authorizations for services provided by Legally Responsible Individuals pursuant to a BIP participant's authorized service plan.
- (d) Payments will not exceed authorized service levels. Case Managers must ensure payment authorizations are within the scope of the approved service plan for the BIP participant.