

TO BE RESCINDED

5160-46-04.1 **Ohio home care waiver program: home care attendant services.**

(A) The following definitions are applicable to this rule:

- (1) "Adult" means an individual at least eighteen years of age.
- (2) "Authorizing health care professional" means a health care professional who, pursuant to section 5166.307 of the Revised Code, authorizes a home care attendant to assist an individual enrolled on the Ohio home care waiver with self-administration of medication, nursing tasks, or both. The individual, the authorized representative, legally responsible family member, legal guardian and foster caregiver are prohibited from being the authorizing health care professional.
- (3) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.
- (4) "Custodian" has the same meaning as in section 2151.011 of the Revised Code.
- (5) "Gastrostomy tube" means a percutaneously inserted catheter that terminates in the stomach.
- (6) "Group setting" means a situation in which a home care attendant service provider furnishes home care attendant services in accordance with this rule, and as authorized by the Ohio department of medicaid (ODM), to two or three individuals who reside at the same address.
- (7) "Guardian" has the same meaning as in section 2111.01 of the Revised Code.
- (8) "Health care professional" means a physician or registered nurse who holds a current, valid unrestricted license.
- (9) "Home care attendant" means a provider, holding a valid medicaid provider agreement in accordance with section 5166.301 of the Revised Code and paragraph (F) of this rule, who is authorized to provide home care attendant services to a specific individual enrolled on the Ohio home care waiver.
- (10) "Individual enrolled on the Ohio home care waiver" and "individual receiving services" mean the same as "consumer" as defined in section 5166.30 of the Revised Code.
- (11) "Jejunostomy tube" means a percutaneously inserted catheter that terminates in the jejunum.

- (12) "Medication" means a drug as defined in section 4729.01 of the Revised Code.
 - (13) "Minor" means an individual under eighteen years of age.
 - (14) "Nursing tasks" means skilled tasks that would otherwise be performed by a registered nurse (RN), or a licensed practical nurse (LPN) at the direction of an RN.
 - (15) "Oral medication" means any medication that can be administered through the mouth, or through a gastrostomy tube or jejunostomy tube if through a pre-programmed pump or through a syringe. Oral medication may include medication administered through a metered dose inhaler.
 - (16) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.
 - (17) "Practice of nursing as a registered nurse," "practice of nursing as a licensed practical nurse (LPN)", and "registered nurse (RN)" have the same meanings as in section 4723.01 of the Revised Code. "Registered nurse" includes an advance practice nurse as defined in section 4723.01 of the Revised Code.
 - (18) "RN home care attendant service visit" means the face-to-face visit every ninety days between the RN and the individual receiving home care attendant services as required by paragraph (F)(15) of this rule.
 - (19) "Schedule II, " "schedule III," "schedule IV" and "schedule V" have the same meaning as in section 3719.01 of the Revised Code.
 - (20) "Topical medication" means any medication that is applied to the outer skin, including transdermal medications and eye, ear and nose drops. Topical medication may also include vaginal or rectal suppositories.
- (B) Home care attendant services are services provided to an individual enrolled on the Ohio home care waiver by an unlicensed non-agency provider in accordance with this rule. Home care attendant services include, but are not limited to, tasks that would otherwise be performed by an RN or an LPN at the direction of an RN. Home care attendant services include:
- (1) Assistance with self-administration of medications as set forth in paragraph (D) of this rule.
 - (2) Assistance with the performance of nursing tasks as set forth in paragraph (E) of this rule.

- (3) Tasks performed as part of personal care aide services as described in paragraph (B)(1) of rule 5160-46-04 of the Administrative Code when performed during a home care attendant service visit. Personal care aide tasks are not reimbursable separately as personal care aide services when they are performed during a home care attendant service visit.
- (C) If the individual has an authorized representative, the authorized representative shall be present and awake during the delivery of home care attendant services.
- (D) Assistance with self-administration of medication.
- (1) A home care attendant shall assist an individual enrolled on the Ohio home care waiver with the self-administration of only the following medication:
 - (a) Oral medications;
 - (b) Topical medications;
 - (c) Subcutaneous injections only for routine doses of insulin;
 - (d) Programming of a pump only used to deliver a routine dose of insulin;
 - (e) Medication administered via stable, labeled gastrostomy or jejunostomy tubes using pre-programmed pumps; and
 - (f) Doses of schedule II, schedule III, schedule IV and schedule V drugs only when administered orally or topically.
 - (2) Medication shall be maintained in its original container and the attached label shall match the dosage and means of administration set forth on the ODM 02389 "Home Care Attendant Medication Authorization" form (7/2014). The label on the container shall display all of the following information for the individual enrolled on the Ohio home care waiver:
 - (a) The individual's full name;
 - (b) A dispensing date within the prior twelve months; and
 - (c) The exact dosage and means of administration.
 - (3) For schedule II, schedule III, schedule IV and schedule V drugs, all of the following additional requirements shall apply:
 - (a) Medication(s) shall have a warning label on the bottle;

- (b) The home care attendant shall count the medication(s) in the presence of the individual enrolled on the Ohio home care waiver or the authorized representative and shall record the count on a log located in the individual's clinical record.
- (c) The medication(s) shall be recounted by the home care attendant in the presence of the individual enrolled on the Ohio home care waiver or the authorized representative at least monthly, and the count shall be reconciled on a log located in the individual's clinical record. The home care attendant shall notify the authorizing health care professional, in writing, within twenty-four hours if:
 - (i) The medication(s) is missing; or
 - (ii) The count of medication(s) cannot be reconciled.
- (d) The medication(s) shall be stored separately from all other medications, and secured and locked at all times when not being administered in order to prevent access by unauthorized individuals.

(E) Assistance with the performance of nursing tasks.

- (1) A home care attendant may provide assistance with the performance of nursing tasks that are not expressly excluded in accordance with paragraph (E)(2) of this rule.
- (2) A home care attendant shall not assist an individual who is receiving home care attendant services with the performance of any of the following nursing tasks:
 - (a) Intravenous (IV) insertion, removal or discontinuation;
 - (b) Intramuscular injections;
 - (c) IV medication administration;
 - (d) Subcutaneous injections, except for routine doses of insulin pursuant to paragraph (D)(1)(c) of this rule;
 - (e) Programming of a pump used to deliver medications (including, but not limited to epidural, subcutaneous and IV), except for routine doses of insulin pursuant to paragraph (D)(1)(d) of this rule;
 - (f) Insertion or initiation of infusion therapies; and

(g) Central line dressing changes.

(3) Performance of nursing tasks shall be summarized and submitted on the ODM 02390 "Home Care Attendant Skilled Task Authorization" form (7/2014).

(F) In order to provide services to an individual enrolled on the Ohio home care waiver and to submit a claim for reimbursement, home care attendants must meet all of the following requirements:

(1) Be at least eighteen years of age.

(2) As part of the medicaid provider agreement application process, provide ODM with evidence to its satisfaction of the following:

(a) Submission of the ODM 02389 "Home Care Attendant Medication Authorization" form (7/2014) and/or ODM 02390 "Home Care Attendant Skilled Task Authorization" form (7/2014) as prescribed by paragraph (G) of this rule.

(b) Meeting the personnel qualifications specified in 42 C.F.R. 484.4 (as in effect on October 1 2014) for home health aides, or successfully completing at least one of the following:

(i) A competency evaluation program, or training and competency evaluation program approved or conducted by the Ohio department of health under section 3721.31 of the Revised Code; or

(ii) A training program approved by ODM that includes training in at least all of the following and provides training equivalent to a training and competency evaluation program specified in paragraph (F)(2) (b)(i) of this rule, or meets the requirements of 42 C.F.R. 484.36(a) (as in effect on October 1, 2014):

(a) Basic home safety;

(b) Universal precautions for the prevention of disease transmission, including hand-washing and proper disposal of bodily waste and medical instruments that are sharp or may produce sharp pieces of broken;

(c) Personal care aide services that are specific to the individual receiving services; and

- (d) The labeling, counting and storage requirements for schedule II, schedule III, schedule IV and schedule V medications.
- (c) Completion of training and instruction, prior to beginning home care attendant services, about how to deliver the specific home care attendant services authorized by the individual's authorizing health care professional. The training shall be specific to the individual enrolled on the Ohio home care waiver and may be provided by the individual's authorizing health care professional, and/or the individual receiving services or the authorized representative in cooperation with the individual's health care professional as indicated on the ODM 02389 "Home Care Attendant Medication Authorization" form (7/2014) and/or ODM 02390 "Home Care Attendant Skilled Task Authorization" form (7/2014), as appropriate.
- (d) Performance of a successful return demonstration of the home care attendant service to be provided if requested by the individual enrolled on the Ohio home care waiver or the authorizing health care professional.
- (e) Completion of a course in first aid that:
- (i) Is not provided solely through the internet;
 - (ii) Includes hands-on training provided by a certified first aid instructor;
 - (iii) Requires the individual to perform a successful return demonstration of what was learned in the course; and
 - (iv) Includes certification that education was received from the authorizing health care professional about health and welfare considerations appropriate for an individual or group setting.
- (3) Be a non-agency provider who holds a current, valid medicaid provider agreement as a home care attendant and complies with sections 5166.30 to 5166.3010 of the Revised Code and rules set forth in Chapters 5160-45 and 5160-46 of the Administrative Code.
- (4) Request reimbursement for the provision of home care attendant services in accordance with rule 5160-46-06.1 of the Administrative Code.
- (5) Not be the authorized representative of the individual receiving services.
- (6) Not be the legally responsible family member as that term is defined in rule 5160-45-01 of the Administrative Code of the individual receiving services.

- (7) Not be the legal guardian or foster caregiver of the individual receiving services.
- (8) Not be the authorizing health care professional of the individual receiving services.
- (9) Be identified as the provider, and have specified on the individual's all services plan that is prior-approved by ODM or its designee, the number of hours for which the provider is authorized to furnish home care attendant services to the individual enrolled on the Ohio home care waiver.
- (10) Have a valid social security number, and one of the following forms of identification:
 - (a) Alien identification;
 - (b) State of Ohio identification;
 - (c) A valid driver's license; or
 - (d) Other government-issued photo identification.
- (11) Be able to read, write and understand English at a level that enables the provider to comply with all requirements set forth in the administrative rules governing the Ohio home care waiver.
- (12) Be able to effectively communicate with the individual receiving services.
- (13) Provide home care attendant services for only one individual, unless authorized to provide services in a group setting in accordance with paragraph (F)(14) of this rule.
- (14) If authorized, provide services to two or three individuals enrolled on the Ohio home care waiver in a group setting. Authorization on a case-by-case basis is subject to approval based on a clinical review conducted by ODM in consultation with the individual receiving services, the authorized representative, authorizing health care professional, case manager and the individual's team. The clinical review will address the needs and desires of the individual receiving services, the skill level and training needs of the home care attendant and the ability to assure the health and welfare of the individuals enrolled on the Ohio home care waiver served by the home care attendant.
- (15) Secure the services of an RN, with agreement of the individual receiving services and participate in a face-to-face visit at least every ninety days with the individual receiving services and the RN for the purpose of answering any

questions the home care attendant and/or individual receiving services have about meeting care needs, medications and other issues.

- (a) The RN performing an RN home care attendant service visit shall:
 - (i) Possess a current, valid and unrestricted license with the Ohio board of nursing;
 - (ii) Possess an active Ohio medicaid provider agreement;
 - (iii) Be identified on the approved all services plan of the individual receiving services; and
 - (iv) Comply with the conditions of participation as set forth in rule 5160-45-10 of the Administrative Code.
 - (b) The first visit between the home care attendant and the RN shall occur upon the initiation of home care attendant services. The case manager shall also be present at the first visit.
 - (c) The home care attendant and the RN shall document the activities of the visit in the clinical record of the individual receiving services.
 - (d) The home care attendant shall discuss the results of the RN home care attendant service visit with the case manager and the individual receiving services and/or the authorized representative.
 - (e) When the RN performs an RN home care attendant service visit, the RN shall bill the state plan nursing assessment code set forth in appendix A to rule 5160-12-08 of the Administrative Code.
- (16) Completion of at least twelve hours of in-service continuing education regarding home care attendant services annually. Evidence of completion must be submitted to ODM no later than the annual anniversary of the issuance of the home care attendant's initial medicaid provider agreement. Continuing education topics include, but are not limited to, health and welfare, cardiopulmonary resuscitation (CPR), patient rights, emergency preparedness, communication skills, aging sensitivity, developmental stages, nutrition, transfer techniques, disease-specific trainings and mental health issues.
- (G) The ODM 02389 "Home Care Attendant Medication Authorization" form (7/2014) and/or the ODM 02390 "Home Care Attendant Skilled Task Authorization" form (7/2014), as appropriate, shall contain all of the following:

- (1) Written consent from the individual enrolled on the Ohio home care waiver or the authorized representative, as applicable, allowing the home care attendant to provide home care attendant services, and assuming responsibility for directing the home care attendant.
- (2) Written statement from the authorizing health care professional attesting that the individual enrolled on the Ohio home care waiver or the authorized representative has demonstrated the ability to direct the home care attendant. The written statement shall also indicate whether the home care attendant has demonstrated the ability to furnish the home care attendant service to the individual enrolled on the Ohio home care waiver. The statement shall include all of the following:
 - (a) The name and address of the individual receiving home care attendant services;
 - (b) A description of the specific nursing task or self-administration of medication that the home care attendant will assist with, including, in the case of assistance with self-administration of medication, the name, dosage, and route of administration of the medication;
 - (c) The times or intervals when the home care attendant is to assist the individual receiving services with the self-administration of each dosage of the medication or with the performance of nursing tasks;
 - (d) The dates on which the home care attendant is to begin and cease providing assistance;
 - (e) A list of severe adverse reactions that the home care attendant must report to the individual's health care professional should the individual experience one or more reactions;
 - (f) At least one telephone number at which the home care attendant can reach the individual's health care professional in an emergency for consultation after contacting emergency personnel;
 - (g) At least one fax number at which the home care attendant can reach the authorizing health care professional when the home care attendant observes that scheduled medication(s) is missing or cannot be reconciled; and
 - (h) Instructions the home care attendant must follow when assisting the individual receiving services with the performance of a nursing task or the self-administration of medications, including, but not limited to,

instructions for maintaining sterile conditions and for the storage of task-related equipment and supplies.

(H) The individual enrolled on the Ohio home care waiver shall:

- (1) Choose to receive home care attendant services from a non-agency provider.
- (2) Upon initiation of services, participate with the case manager in the development and maintenance of a written back-up plan. The authorizing health care professional and/or the home care attendant may also participate in the development and maintenance of the back-up plan.

(a) The back-up plan shall meet the needs of the individual enrolled on the Ohio home care waiver in the event:

(i) The regularly scheduled home care attendant cannot or does not meet his or her obligation to provide services to the individual receiving services; or

(ii) The individual receiving services and/or the authorized representative is not able to direct home care attendant services.

(b) As authorized by the case manager,

(i) Waiver nursing as set forth in rule 5160-46-04 of the Administrative Code, and/or private duty nursing or home health nursing as set forth in Chapter 5160-12 of the Administrative Code, may be used as back-up to provide assistance with self-administration of medications and the performance of nursing tasks;

(ii) Personal care aide services as set forth in rule 5160-46-04 of the Administrative Code may be used as back-up for personal care aide tasks; and

(iii) Back-up may include informal caregivers.

(I) All home care attendants must maintain a clinical record for each individual served in a manner that protects the confidentiality of the record and for the purpose of contributing to the continuity of the individual's care. Home care attendants must maintain the clinical records at their place of business, and maintain a copy in the home of the individual receiving services. The individual shall identify a location in his or her residence where a copy of the clinical record will be safely maintained. The clinical records must contain the following information:

- (1) Identifying information including, but not limited to, name, address, age, date of birth, sex, race, marital status, significant phone numbers and health identification numbers for the individual.
- (2) The medical history of the individual.
- (3) The name of, and contact information for all of the licensed health care professionals serving the individual.
- (4) A copy of the initial and all subsequent all services plans.
- (5) Documentation of all drug and food interactions, allergies and dietary restrictions.
- (6) A copy of any advance directives including, but not limited to, a "do not resuscitate order" (DNR) or a "medical power of attorney," if they exist.
- (7) The ODM 02389 "Home Care Attendant Medication Authorization" form (7/2014) and/or an ODM 02390 "Home Care Attendant Skilled Task Authorization" form (7/2014), as appropriate.
- (8) Documentation of home care attendant services performed or not performed, arrival and departure times, and the dated signature of the provider, and individual receiving services or the authorized representative, verifying the service delivery upon its completion and arrival and departure times. The signature method of choice for the individual receiving services or the authorized representative shall be documented on the all services plan, and shall include, but not be limited to, any of the following: a handwritten signature, initials, a stamp or mark, or an electronic signature.
- (9) A copy of the log detailing the count and reconciliation of schedule II, schedule III, schedule IV and schedule V drugs for which assistance with self-administration is provided.
- (10) Progress notes signed and dated by the home care attendant, documenting all communications with the case manager, health care professionals including the authorizing health care professional, and other members of the individual's team, and documenting any unusual events occurring during the visit, and the general condition of the individual enrolled on the Ohio home care waiver.
- (11) Documentation of the face-to-face RN home care attendant service visits every ninety days between the home care attendant, individual enrolled on the Ohio home care waiver and RN, and of any resulting activities, in accordance with paragraph (F)(15) of this rule.

- (12) A discharge summary, signed and dated by the departing home care attendant at the point the home care attendant is no longer going to provide services, or when the individual enrolled on the Ohio home care waiver no longer wants or needs home care attendant services. The summary should include documentation regarding progress made toward achievement of goals as specified on the all services plan and indicate any recommended follow-ups or referrals.
- (J) If ODM or its designee determines that the individual enrolled on the Ohio home care waiver cannot meet the requirements of this rule, or the health and welfare of the individual receiving home care attendant services cannot be assured, then ODM or its designee may prohibit the individual from receiving home care attendant services. The individual shall be afforded notice and hearing rights in accordance with division 5101:6 of the Administrative Code.
- (K) A home care attendant who provides home care attendant services to an individual enrolled on the Ohio home care waiver in accordance with the limitations set forth in this rule, including activities in accordance with the authorizing health care professional's authorization, shall not be considered to be engaging in the practice of nursing as an RN or an LPN in violation of section 4723.03 of the Revised Code.
- (1) The individual who is receiving home care attendant services or a provider shall report to ODM all instances in which a home care attendant appears to have:
- (a) Provided nursing services, other than assistance with self-administration of medication or the performance of nursing tasks as authorized in this rule;
or
 - (b) Provided services not in accordance with the authorizing health care professional's authorization.
- (2) ODM may initiate an investigation based on the report, and shall report its findings to the Ohio board of nursing.

Effective: 1/1/2019

Five Year Review (FYR) Dates: 10/15/2018

CERTIFIED ELECTRONICALLY

Certification

12/20/2018

Date

Promulgated Under: 119.03
Statutory Authority: 5166.30, 5166.02
Rule Amplifies: 5166.309, 5162.03, 5166.3010, 5166.308, 5166.307,
5166.306, 5166.305, 5166.304, 5166.303, 5166.302,
5166.301, 5166.30, 5164.02
Prior Effective Dates: 07/01/2010, 08/01/2015