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## Power of Attorney Rules Reminder

This is an important reminder of the following requirement of the Community HealthChoices (CHC) Program - Appendix C: Participant Services C-2: General Service Specifications (3 of 3) - **Provision of Personal Care or Similar Services by Legally Responsible Individuals** - which states:

*“A legally responsible individual is any person who has a duty under state law to care for another person and typically includes: (a) the parent (biological or adoptive) of a minor child or the guardian of a minor child who must provide care to the child or (b) a spouse of a waiver participant. Except at the option of the State and under extraordinary circumstances specified by the state, payment may not be made to a legally responsible individual for the provision of personal care or similar services that the legally responsible individual would ordinarily perform or be responsible to perform on behalf of a waiver participant.”*

*\*<https://www.pa.gov/content/dam/copapwp-pagov/en/dhs/documents/contact/dhs-offices/documents/oltil/oltil-waivers/CHC-1915c-Appendix-C.pdf>*

PA Health & Wellness (PHW) does not make payment to legally responsible individuals for furnishing Respite, Personal Assistance Services and Participant-Directed Services to Participants of the CHC Program. This restriction ensures a clear separation between decision-making authority and compensated care. This applies to the Participant-Directed Services model AND agency model of Personal Assistance Services (PAS).

This means that family members can provide Respite, Personal Assistance Services and Participant-Directed Services, however PHW will not pay for services furnished by the Participant’s Spouse, Legal Guardian, Representative Payee, or Power of Attorney (POA). Otherwise, there are no restrictions on the types of family members who may provide Respite, Personal Assistance Services and Participant-Directed Services.

**Important!** Family members who provide Respite, Personal Assistance Services and Participant-Directed Services must meet the same Provider qualification standards as direct care workers who provide Respite, Personal Assistance Services and Participant-Directed Services to non-relatives.

| Who CAN be a caregiver?  | Who CANNOT be a caregiver in PA?   |
|--|--|
| <p>A caregiver can be a family member or friend who is:</p> <p><input checked="" type="checkbox"/> At least 18 years of age or older</p> | <p>PHW will not pay for services furnished by:</p> <p><input checked="" type="checkbox"/> A Participant’s Spouse</p> <p><input checked="" type="checkbox"/> A Participant’s Legal Guardian</p> |

|   |   |
|---|---|
| <input checked="" type="checkbox"/> NOT the Participant's spouse, POA, or payee.<br><input checked="" type="checkbox"/> At a minimum: <ul style="list-style-type: none"> <li>✓ Tuberculosis (TB) tested</li> <li>✓ A resident of Pennsylvania or a bordering-State to Pennsylvania</li> <li>✓ Criminal history check in accordance with 55 PA Code, Sections 52.19-52.20.</li> <li>✓ Child abuse clearance (as required in Appendix C-2-b)</li> <li>✓ Complies with 55 PA Code 1101</li> <li>✓ Fulfills training and certification rules</li> </ul> | <input checked="" type="checkbox"/> A Participant's Representative Payee<br><input checked="" type="checkbox"/> A Participant's Power of Attorney (POA)*<br><input checked="" type="checkbox"/> Anyone under 18 years old<br><input checked="" type="checkbox"/> Parents of their minor children<br><input checked="" type="checkbox"/> Spouses providing care for each other |
|---|---|

\*<https://www.pa.gov/content/dam/copapwp-pagov/en/dhs/documents/contact/dhs-offices/documents/oltl/oltl-waivers/CHC-1915c-Appendix-C.pdf>

### Expired Appendix K Flexibilities

Effective May 11, 2023, the Office of Long-Term Living (OLTL) returned to normal, Pre-COVID, pre-emergency operations as approved in the CHC waiver. Spouses, legal guardians, and persons with power of attorney may no longer serve as paid direct care workers after May 11, 2023. <https://www.medicaid.gov/state-resource-center/downloads/pa-0386-0235-combined-appendix-k-appvl-17.pdf>.

### Reporting Suspected FWA

If you suspect that a Participant's caregiver is a spouse or POA, please report to PHW Fraud, Waste & Abuse (FWA):

- Email: [PHWFWA@PaHealthWellness.com](mailto:PHWFWA@PaHealthWellness.com)
- Call PHW's anonymous and confidential FWA Hotline: 1-866-685-8664

### For more information, please visit

- Freedom Care: <https://freedomcare.com/can-a-family-member-get-paid-to-be-a-caregiver-in-pennsylvania/>
- Legal Zoom: <https://www.legalzoom.com/articles/power-of-attorney-requirements-in-pennsylvania>
- Chosen Family Home Care: <https://www.chosenfamilyhomecare.com/pennsylvanias-chc-medicaid-waiver-a-guide-to-services-at-home/>
- Appendix C: Participant Services; Appendix C-1/C-3: Summary of Services Covered and Services Specifications: <https://www.pa.gov/content/dam/copapwp-pagov/en/dhs/documents/contact/dhs-offices/documents/oltl/oltl-waivers/CHC-1915c-Appendix-C.pdf>

- APPENDIX K: Emergency Preparedness and Response and COVID-19 Addendum:  
<https://www.medicaid.gov/state-resource-center/downloads/pa-0386-0235-combined-appendix-k-appvl-17.pdf>