



## Paying Family Caregivers and Addressing Conflict-of-Interest: A Guideline for MCO Interdisciplinary Team Staff

**Purpose:** The purpose of this memo is: 1) to provide assistance to interdisciplinary teams (IDTs), including IDT staff and the member/legal representative, when the issue of paying family members, or legally appointed representatives, to provide care, arises within the context of the member-centered planning process; and 2) to address potential conflict-of-interest matters related to paying family members, guardians or powers of attorney for health care or finances.

### Background:

Family Care<sup>1</sup> is a comprehensive and flexible long-term care service delivery program, which strives to foster the independence and quality of each member's life, while recognizing the need for interdependence and support. At the core of the program is a strong member-centered planning process that identifies the member's natural supports. Natural supports include the member's network of family, friends and community supports, and incorporates ways for those supports to become part of the member's care plan. Family Care is not intended to replace care and assistance that family and friends provide. Rather, Family Care is intended to support and enhance those natural, unpaid support networks.

Family Care IDT staff recognize that members' relationships with their natural supports are vital to their quality of life, and allow for the development of additional connections and relationships. For this reason, recognizing and including natural supports in the member's care plan is important. It is also a way to ensure that Managed Care Organizations (MCOs) do not supplant personal relationships and supports with paid services that may not be necessary or may not provide the quality of life that a member receives from natural supports.

Even with the recognition of the importance of family and other natural supports in members' lives, there will be instances when it is **appropriate and necessary** for the MCO to purchase supports, and pay caregivers, including the member's family and other people in his or her natural support network. This memo includes guidelines for IDTs, both staff and members, to use when considering payment to family members and/or legal representatives for services.

There is no "one size fits all" explanation of when an MCO should pay for services from someone in the member's natural support network. The Resource Allocation Decision (RAD)

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<sup>1</sup> Unless stated otherwise, references to the Family Care program include Family Care, Family Care Partnership and PACE.

process is always utilized when determining the supports and services that the member needs, without regard to the payment source.

**Definitions:**

**Conflict-of-Interest:** A situation where a person, or agency, planning or providing services to the member has an interest in, or the potential to benefit from, a particular decision, outcome, or expenditure.

**Interdisciplinary Team:** The member and individuals the MCOs identify to provide care planning and services to members.

**Interdisciplinary Team (IDT) Staff:** Individual employees assigned to an IDT that have specialized knowledge of the conditions of the target population served by the MCO, the full-range of long-term care resources and community alternatives.

**Legal Decision-Makers:** A person, or agency who stands in place of, and represents the interests of, the member. This includes guardians and people or agencies with powers of attorney for health care (POA-HC) or finances (POA-F) authority.

**Member:** A person who is currently enrolled in an MCO.

**Member-Centered Plan (MCP):** A record that documents a process by which the member and the IDT staff further identify, define and prioritize the member's outcomes initially identified in the comprehensive assessment. The MCP also identifies the services and supports, paid or unpaid, provided or arranged by the MCO including the frequency and duration of each service (e.g., start and stop date), and the providers(s) that will furnish each service. The MCP identifies long-term care outcomes, personal experience outcomes and any risks.

**Natural Supports:** The social network, such as family, friends, neighbors, and other community activities or services that may be available to provide assistance to the member.

**Paid family caregivers:** The member's family members, including spouses, are identified as a worker to deliver a paid service on the MCP.

**Resource Allocation Decision (RAD) process:** The Department's approved method of determining needed services and authorizing these services.

## I. Policy and RAD Authorization Guidelines

### Policy

Family Care policy, as defined in the Medicaid waivers approved by the Centers for Medicare and Medicaid Services (CMS), is that family members, including spouses, or legal representatives may be paid by the MCO for services if the IDT authorizes the service. The IDT needs to consider the following to determine whether to authorize the service:

1. The member's preference is for the family member to provide the service;

2. The family member meets the MCO's provider qualification standards for its subcontractors or employees providing the same service; and
3. The family member will either:
  - a) Provide an amount of service that exceeds normal family care giving responsibilities for a person in a similar family relationship who does not have a disability; or
  - b) Demonstrate that he or she must forego paid employment in order to provide the service and is not receiving a pension, including Social Security retirement benefits.

### **Guidelines**

In general, the IDT may consider compensation to family members or legal representatives for needed services or supports that exceed the typical caregiving/support responsibilities for any family member of the same age. These are considered a "special caregiving responsibility" due to the member's disability.

1. Types of Services
  - a) Services that are **typically assumed to be the responsibility of family members, whether they reside with, or separate from the member**, are: routine laundry, meal preparation, grocery shopping, housecleaning (particularly if the living space is shared by the caregiver), general companionship, non-medical supervision, assisting with mobility, transportation or escorting a person to occasional medical appointments.
  - b) Services that are **typically assumed to exceed the caregiving/support responsibilities of a family member, whether they reside with, or separate from the member**, are: toileting, bathing (other than set-up), other personal care the member is unable to complete, frequent laundry due to incontinence/illness, medical transportation, complete transfer assist or other unique services that may be considered by the IDT for member-specific situations.
2. Other Considerations for the IDT:
  - What is the nature of the relationship (close/intimate or acquaintance)?
  - Are there any issues/concerns related to the background check or other issues related to the potential caregivers' ability to provide the service?
  - Does the caregiver live with the member? If not, then is the distance the person must travel to provide care and support reasonable?
  - Consider, judiciously and without personal judgment, how the caregiver and/or member are contributing to household expenses. For example, the member may be living with a family member and contributing to more than his/her share of household expenses. Or the caregiver may be living in the member's home and not contributing to expenses.

- Is the caregiver receiving payment for care by other sources, or are there other resources that available for payment, such as Veterans' Aid and Attendance?
- Consider paying for supervision if the Family Care member has behavioral/mental health issues, such as wandering or offensive or violent behavior towards others, or self-abuse.
- Consider paying a family caregiver on a time-limited, provisional basis until further information can be gathered. Then revisit and reassess the situation as needed.
- Is the member capable, but needs encouragement and support, to do tasks for him or herself? IDT staff should foster the member's independence.

## II. Working with Family or Legal Representative Caregivers

### Assessing and Monitoring Caregiver Competency

Because of the potential for conflict-of-interest, IDT staff must work closely with the legal decision-maker, or family members, to continually assess their ability to perform the caregiving duties. Consider asking the potential caregiver the following questions during the care planning process:

- Do you feel you have the skill level and/or training needed to provide the support the member needs? If not, then what training would you need?
- What is the backup plan should you be unable to do the tasks at the time needed, or in the manner needed?
- Are there others who could provide the same care more efficiently or in a more experienced manner? How would you, as the legal decision-maker, support consideration of this if you were currently being paid to provide the care?
- How will you ensure that standards for services that you deliver to the person are equal or better than a support agency that could be hired independently? Are there specific reasons you believe you are better qualified to provide this level of care, outside of the member's preference?

Revisit these questions with any changes to the member's plan of care, but no less than annually.

MCOs must ensure that caregivers subject to DHS 12 undergo background checks. This may include providers who are family members, or legal decision-makers. In self-directed supports (SDS), the Fiscal Agent must complete a background check on all prospective, paid caregivers to whom DHS 12 applies. If a background check finds a conviction, then the IDT should consider the following when determining who is the appropriate caregiver:

- The reason for the conviction(s) and length of time since the conviction(s);
- The relevance of the conviction(s) to the caregiver role;
- The vulnerability of the member;
- The preference of the member; and
- Whether the caregiver has been successful in caring for the member prior to the request to be paid.

IDT staff will monitor the service plan and performance of the guardian/POA-HC caregiver as long as the caregiving relationship exists. The IDT must consider the frequency with which the IDT staff will meet with the member and the guardian/POA-HC to ensure that the member's outcomes are properly addressed.

### **Supporting Caregivers**

It is crucial for IDT staff to assess the family caregiver's status and capacity to deliver care. The IDT should assess this status whether the family caregiver is paid or a natural support. The IDT should consider the following questions as part of this assessment:

- Are the approved hours and tasks manageable given the caregiver's health and difficulty of tasks? Is there a need for respite care?
- Would the caregiver benefit from support groups or individual counseling? IDT staff can help caregivers locate these community resources.
- Would day center/treatment or Adult Day Care be an option to give the caregiver a break during the day?
- Are any adaptive aids, durable medical equipment, or home modifications needed to make caregiving more manageable?
- Can the member be home alone? If not, then is there a need for other supervision while the caregiver is away? Can the member be alone for periods of time with electronic monitoring devices, such as a Personal Emergency Response System?
- Is there a need for training in hands-on skills that can help the caregiver to provide care?
- Is there a plan in place should the caregiver become ill and unable to perform his/her tasks? Best practice promotes having back up care providers. To assure continuity of care, it might make sense to schedule regular caregiving time to the backup worker. This also provides some respite for the primary caregiver.

Occasionally a natural support will consider significantly reducing or quitting his/her regular paying job in order to provide full-time paid care for the member. It is important that the IDT staff provide sufficient information on the MCO's policies for the person to make an informed decision. Elements that need to be discussed include:

- A determination that the person is qualified to provide care and the member is requesting the person;
- Clarity that payments may stop during hospitalization or placement in alternative care settings. A Medicare episode may cause an interruption in authorized hours for caregivers.
- Clarity that if the member's assessed needs decrease, then the amount of paid care may also be reduced.
- Clarity that care plan assessment may result in different supports or services being identified.
- Clarity that continuing paid compensation is not guaranteed.

### III. Conflict-of-Interest

#### Policy

When a person, or entity other than the member, is involved in the planning and/or delivery of services to the member, *and* the person or entity has the potential to benefit from a particular decision, outcome or expenditure, then a potential conflict-of-interest is present. Given the role of guardians and POAs, and of some family members in planning and approving the care plan, a potential or real conflict-of-interest may exist.

CMS and DHS policy does not prohibit payment to caregivers who are family members, including spouses, or legal decision-makers for the member. Also, there is no legal prohibition for legal decision-makers to accept payment from the MCO for direct care for the member. However, the MCO has a responsibility to mitigate any potential conflict-of-interest. Mitigation may include completion of background checks, discussions with the member/legal decision-maker to identify potential conflicts-of-interest, and standardizing hiring practices and monitoring procedures.

The request by a legal decision-maker to be paid for a member's services is treated the same as any other member service requests. The IDT should use the MCO's RAD guidelines for the relevant services. The MCO must use the RAD to determine whether a legal decision-maker is the most appropriate provider of paid services.

#### Assessing and Addressing Potential Conflict-of-Interest

Once it is determined that the legal decision-maker, or family member, will be the paid caregiver, the IDT staff needs to identify and discuss the inherent conflict-of-interest in this type of arrangement, as well as the potential consequences should problems arise. RAD documentation should clearly indicate the IDT's exploration of all options with the member and his/her guardian or family member. The plan will incorporate any information that is relevant to the potential conflict-of-interest. In addition, the IDT staff should document the discussion related to conflict-of-interest, and that the legal-decision maker, or family member, was told that the IDT staff must intervene should there be a negative impact on the member's rights as a result of this arrangement.

The legal decision-maker or family member needs to have an agreed upon *backup plan* in the event that an actual conflict involving the member's care arises. The IDT staff should develop a secondary plan so that if issues do arise, then the IDT is prepared to respond and react appropriately. The intent is to assure member safety and rights throughout the planning process.

If the legal decision-maker or family member also has *financial decision-making authority* for the member, then additional "checks and balances" must be incorporated into the member-centered plan. The IDT staff must inform the guardian, or POA-F, that the MCO is obligated to take action if the guardian, or POA-F, indicates that he or she has a personal interest in the member's funds, or if the legal decision-maker displays any behavior that appears to be a conflict-of-interest, such as being financially dependent on the member.

For *self-directed services (SDS)*, when possible, the legal decision maker will be hired via the co-employment relationship since the co-employer is then able to help mitigate some of the

inherent conflict-of-interest. If the member is using a Fiscal/Employer Agent SDS option, then the MCO will encourage the guardian or POA to designate someone else, other than the guardian, to approve his/her time sheets. In addition, the MCO fiscal oversight team will closely monitor timesheets to assure accuracy of reporting and payment.

### **Common Issues and Potential Solutions**

Common issues or dilemmas that might arise, along with possible interventions to consider, include:

- The member's needs changed, or the caregiver's ability, or time availability, to provide needed care changed.
  - **Action:** The IDT performs an updated assessment and applies the RAD process to determine whether the MCP is still a good solution to supporting the member health and safety needs, and personal and long-term care outcomes.
- It becomes apparent that the caregiver requires training that is more specialized.
  - **Action:** The IDT determines whether training will assist the caregiver and applies the RAD to determine the options. The IDT monitors the results of the training through more frequent IDT staff contacts with the member and caregiver.
- The member or caregiver requests more hours of service.
  - **Action:** The IDT re-assesses the member's needs and applies the RAD.
- More than 40 hours of care per week are determined necessary by the IDT.
  - **Action:** The IDT applies the RAD and also considers limiting the paid guardian/POA-HC/family-decision maker to 40 hours of paid time per week. The IDT considers whether additional supports or other services are needed by using the RAD.
- The IDT assessment indicates that the care provided is not meeting the member's needs.
  - **Action:** The IDT addresses concerns with the caregiver; applies the RAD and considers options that best support the member's needs.
- The member is determined to be at risk because care is not being properly delivered.
  - **Action:** The IDT completes a risk assessment and refers to Adult Protective Services, if necessary. The IDT also takes other appropriate actions to assure the member's health and safety.

**Contact:** Please email any questions regarding this memo to [DHSOFCE@wisconsin.gov](mailto:DHSOFCE@wisconsin.gov).

**References:** DHS-MCO contract – 2014 contract references:

- Article I. Definitions
- Article V. Care Management, C. Assessment and Member Centered Planning Process

**Attachment:** At-a-Glance Memo Summary

## At-a-Glance Memo Summary: Paying Family Caregiver Guidelines

<b>Policy and Guidelines for Paying Family Members and Legal Representatives</b>	
Natural supports – A person(s) already in the member’s life regardless of payment source.	<p>Recognizing and including natural supports in the care plan is important.</p> <ul style="list-style-type: none"> <li>• Meaningful relationships with the member’s natural supports are vital to his/her quality of life.</li> <li>• Including natural supports in the care plan ensures that meaningful relationships and supports are not supplanted with paid services.</li> </ul>
Paid family members and natural supports.	<ul style="list-style-type: none"> <li>• Potential paid caregivers include the member’s family and other people in his/her natural support network.</li> <li>• There is no “one size fits all” explanation of when to pay for services from someone in the member’s natural support network, including family members and legal representatives.</li> <li>• Always use the RAD to determine how to make sure needed supports and services are provided to the member, without regard to the payment source.</li> </ul>
Policy related to paying family members or legal decision-makers for member services.	<ul style="list-style-type: none"> <li>• Family members, including spouses and legal decision-makers, <b>may</b> be paid by the MCO upon IDT authorization of the service.</li> <li>• Considerations:               <ol style="list-style-type: none"> <li>1) The member’s preference is for the family member/legal representative to provide the service.</li> <li>2) The family member/legal representative meets the MCO’s provider qualification standards for its subcontractors or employees providing the same service.</li> <li>3) The family member will either:                   <ol style="list-style-type: none"> <li>a. Provide an amount of service that exceeds normal family caregiving responsibilities for a person in a similar family relationship who does not have a disability; or</li> <li>b. Foregoes paid employment in order to provide the service and is not receiving a pension, including Social Security retirement benefits.</li> </ol> </li> </ol> </li> <li>• In general, family members or legal representatives may be compensated for services/supports needed that exceed the typical caregiving/support responsibilities for any family member of the same age, and would be considered a “special caregiving responsibility” due to the member’s disability.</li> </ul>
Typical services from family members, whether they reside with, or separate from the member.	Routine laundry, meal preparation, grocery shopping, housecleaning, particularly if the living space is shared by the caregiver, general companionship, non-medical supervision, assisting with mobility, transportation and escorting to occasional medical appointments.
Services that exceed typical family responsibilities, whether they reside with, or separate	Toileting, bathing (other than set-up), other personal care the member is unable to do for himself or herself, frequent laundry due to incontinence/illness, medical transportation, complete transfer assist, or other unique services that may be considered by the IDT for member-specific situations.

<p>from, the member.</p>	
<p>Questions to consider.</p>	<ul style="list-style-type: none"> <li>• Does the caregiver live with the member? If not, then is the distance the person must travel to provide care and support reasonable?</li> <li>• What is the nature of the relationship (close/intimate or acquaintance)?</li> <li>• If the caregiver is living in the member’s home and not contributing to household expenses, then the IDT may consider whether it is appropriate to pay for care.</li> <li>• If a member contributes more than his/her own fair share for household expenses, then consider whether it is appropriate to pay for care as well.</li> <li>• Is the member capable, but unwilling to do tasks for him or herself? IDT staff should foster independence.</li> <li>• Is the caregiver receiving payment for care by other sources, or are there other resources available for payment, such as Veterans Aid and Attendance?</li> </ul>
<p><b>Working with Caregivers</b></p>	
<p>Assessing and monitoring caregiver competency.</p>	<ul style="list-style-type: none"> <li>• There is a potential for conflict-of-interest when paying family or legal representatives.</li> <li>• The IDT must assess a caregiver’s ability to perform caregiving tasks on a regular basis.</li> <li>• Questions for the IDT to ask potential and ongoing caregivers:             <ul style="list-style-type: none"> <li>– Do you feel you have the skill level and/or training needed to provide the support the member needs? If not, then what training would you need?</li> <li>– What is the backup plan should you be unable to do the tasks at the time needed, or in the manner needed?</li> <li>– If others could provide the same care more efficiently or in a more experienced manner, then how would you, as the legal-decision maker, support consideration of this if you were currently being paid to provide the care?</li> <li>– How will you ensure that the standards for the services that you deliver to the person are equal to, or better than, a support agency that could be hired independently? Are there specific reasons you believe you are better qualified to provide this level of care, outside of the member’s preference?</li> </ul> </li> <li>• Background check requirements apply to people employed by or under contract with a covered entity under DHS 12. If there is a conviction, then consider the following when determining who is the appropriate caregiver:             <ul style="list-style-type: none"> <li>– The reason for the conviction(s) and length of time since the conviction(s);</li> <li>– The relevance of the conviction(s) to the caregiver role;</li> <li>– The vulnerability of the member;</li> <li>– The preference of the member; and</li> <li>– Whether the suggested caregiver has been successful in caring for the member prior to the request to be paid.</li> </ul> </li> <li>• IDT staff monitor performance of the family or legal representative caregiver as long as the caregiving relationship exists.</li> </ul>
<p>Supporting caregivers.</p>	<ul style="list-style-type: none"> <li>• The IDT assesses for the caregiver’s ability to deliver the paid care.             <ul style="list-style-type: none"> <li>– Are the approved hours and tasks manageable given the caregiver’s health and difficulty of tasks? Is there a need for respite care?</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>- Would the caregiver benefit from support groups or individual counseling? IDT staff can help caregivers locate these community resources.</li> <li>- Would day center/treatment or Adult Day Care be an option to give the caregiver a break during the day?</li> <li>- Are any adaptive aids, durable medical equipment or home modifications needed to make caregiving more manageable?</li> <li>- Can the member be home alone? If not, then is there a need for other supervision while the caregiver is away? Can the member be alone for periods of time with electronic monitoring devices, such as a Personal Emergency Response System?</li> <li>- Is there a need for training in hands-on skills that can help the caregiver to provide quality care?</li> <li>- Is there a plan in place if the caregiver is ill and unable to perform her/his tasks? Best practice promotes having back up people available if needed. To assure continuity of care, it might make sense to schedule regular caregiving time to the backup worker. This also provides some respite for the primary caregiver.</li> <li>• If potential caregivers are considering reducing or stopping other work to provide care, then the IDT should:             <ul style="list-style-type: none"> <li>- Assure that the member is interested in the person as a caregiver;</li> <li>- Assure that the person is qualified to provide care and meet member’s needs; and</li> <li>- Assure that the person understands there is no guarantee of continuing paid compensation:                 <ul style="list-style-type: none"> <li>o Payments may stop during hospitalization, placement in alternative settings or a Medicare episode.</li> <li>o Member retains the choice of provider and may want to stop the provider’s services at any time.</li> <li>o Amount of care needed may decrease.</li> <li>o Care plans may change services or providers.</li> </ul> </li> </ul> </li> </ul>
<b>Conflict-of-Interest</b>	
<p>Family Care policy.</p>	<ul style="list-style-type: none"> <li>• Potential for conflict-of-interest is present when:             <ul style="list-style-type: none"> <li>- A person or entity other than the member is involved in the planning and/or delivery of services to the member, and</li> <li>- The person has the potential to benefit from a particular decision, outcome or expenditure.</li> </ul> </li> <li>• Given the role of guardians and POAs-HC, and of some family members, a potential or real conflict-of-interest may exist.</li> <li>• CMS and DHS allow payment to family members including spouses and legal decision-makers.</li> <li>• The MCO has a responsibility to mitigate any potential conflict-of-interest. Mitigation may include completion of background checks, discussions with the member/guardian/POA-HC to identify potential conflicts-of-interest, and standardized hiring practices and monitoring procedures.</li> <li>• Request by a family member/legal representative to be paid is treated in the same as any other member service requests; the IDT uses the RAD to determine who is the most appropriate provider of paid services.</li> </ul>

<p>Assessing and addressing potential conflict-of-interest.</p>	<ul style="list-style-type: none"> <li>• The IDT staff discusses with the potential caregiver the conflict-of-interest and potential consequences in this type of arrangement, and documents the discussion.</li> <li>• The RAD documentation clearly indicates exploration of options with the member and potential caregiver.</li> <li>• The caregiver will agree on a <i>backup plan</i> in the event of a potential conflict-of-interest.</li> <li>• If the caregiver has <i>financial decision-making authority</i> for the member, then additional “checks and balances” must be incorporated into the member-centered plan.</li> <li>• In SDS it is advisable that the caregiver be hired via the co-employment relationship.</li> <li>• If the member is using a Fiscal/Employer Agent SDS option, then someone other than the caregiver should review and approve timesheets.</li> <li>• The IDT staff will closely monitor timesheets in such circumstances.</li> <li>• Guardians who are paid caregivers may want to <i>inform the court</i> about this activity as a protection for both the guardian and the ward.</li> </ul>
<p>Common issues and possible interventions.</p>	<ul style="list-style-type: none"> <li>• Determine if the member’s needs changed, or if the caregiver’s ability or time available to provide needed care changed.             <ul style="list-style-type: none"> <li>– <b>Action:</b> Then perform an updated assessment. Apply the RAD process and determine if this is still a good solution to supporting the member health and safety needs, and personal and long-term care outcomes.</li> </ul> </li> <li>• It is apparent that the caregiver requires training that is more specialized.             <ul style="list-style-type: none"> <li>– <b>Action:</b> The IDT will determine whether the training will assist the caregiver. Apply the RAD to determine the options. Monitor the results of the training, perhaps by more frequent IDT staff contacts with member and caregiver.</li> </ul> </li> <li>• The member requires more hours of service.             <ul style="list-style-type: none"> <li>– <b>Action:</b> The IDT will reapply the RAD to the decision for increased hours and the provider of those services.</li> </ul> </li> <li>• The member needs more than 40 hours of care per week.             <ul style="list-style-type: none"> <li>– <b>Action:</b> The IDT should consider limiting the paid guardian/POA-HC/family decision-maker to 40 hours of paid time per week, and consider additional supports by using the RAD.</li> </ul> </li> <li>• The IDT assessment indicates that the care provided is not supporting the member’s needs.             <ul style="list-style-type: none"> <li>– <b>Action:</b> The IDT will address these concerns with the caregiver; apply the RAD and consider options that best support the member’s needs and are most cost-effective.</li> </ul> </li> <li>• The member is at risk.             <ul style="list-style-type: none"> <li>– <b>Action:</b> The IDT will complete a risk assessment and refer to Adult Protective Services, if appropriate. The IDT will take action to assure the member’s health and safety.</li> </ul> </li> </ul>

The IDT staff shall identify potential conflict-of-interest situations that affect the member’s care and either eliminate the conflict-of-interest, or when necessary, monitor and manage it to protect the interest of the member (DHS/MCO contract 2014 V. Care Management, C. Assessment).