Legally Responsible Person/Legally Responsible Individual/Legal Guardian as Paid Caregiver Review Tool for Community Alternatives Program for Children

Instructions

This document is intended as a guide to be used by Case Management Entities (CMEs) and the Comprehensive Independent Assessment Entity (CIAE) in evaluating the criteria for extraordinary circumstances (EC) to allow a Legally Responsible Person /Legally Responsible Individual /Legal Guardian (collectively, "LRI") to serve as the Paid Caregiver.

A request for the LRI to act as paid caregiver must be accompanied by written documentation demonstrating that extraordinary circumstance(s) criteria have been met. Acceptable documentation includes (but is not limited to):

- A letter from the beneficiary's treating practitioner[1] dated no earlier than 6 months prior to date of the request for the LRI to act as paid caregiver that includes:
    - a statement that the extraordinary circumstances (EC) are met (see below);
    - a brief summary (1-3 sentences) that explains why the applicable EC(s) are met;
    - a statement that in the beneficiary's treating practitioner's medical opinion, the LRI is capable of furnishing the services and is recommended by the beneficiary's treating practitioner to furnish the services being requested, to include any limitations on the services that may be furnished by the LRI;
    - Signed, with indication of credentials, and dated by the beneficiary's treating practitioner.

  OR
- Specific medical documentation and/or medical records applicable to the appropriate EC; see *Documentation Options for Extraordinary Circumstance CAP/C Criteria* below.

Requests for an LRI to act as paid caregiver requires validation that extraordinary circumstances are or continue to be met annually or at the end of the period the LRI is approved to act as a paid caregiver, whichever is earlier. A request for the LRI to act as paid caregiver may be made at any time that EC exist.

During the quarterly in-home visit, if the CME identifies a significant change in circumstances or needs impacting whether EC criteria are or continue to be met **and** impacts the health, safety or

[1] For the purposes of this document, "treating practitioner" means the beneficiary's medical treating physician (MD/ DO), Nurse Practitioner, or Physician Assistant.

well-being of the beneficiary, the change in EC criteria shall be documented in the beneficiary's record and the beneficiary's plan of care updated and submitted for review and approval by the CIAE. If the change in circumstance means that the EC criteria are no longer met, an adverse decision notice with appeal rights and explanation of what criteria are not met shall be issued.

Note: A parent is a legal guardian of a minor child unless the parent's guardianship has been terminated by a court order or another legal document.

EC Criteria Checklist:

For the purposes of the statement that "EC criteria are met" for the LRI to serve as paid caregiver, the treating practitioner letter or documentation must demonstrate that ALL criteria in at least ONE of the following EC (A.-E.) are met (select all that apply):

A: Unavailability of Providers:

- ☐ There are no available CNAs in the CAP/C beneficiary's county or adjunct counties; and
- ☐ The CAP/C beneficiary needs extensive to maximal assistance with bathing, dressing, toileting and eating daily to prevent institutionalization.

B: Short Term Isolation:

- ☐ The CAP/C beneficiary requires short-term isolation, 90 days or less; and
- ☐ The CAP/C beneficiary needs extensive to maximal assistance with bathing, dressing, toileting and eating; and
- ☐ The CAP/C beneficiary chooses to receive care in their home instead of an institution.

C: Inability to Maintain Work:

- ☐ The CAP/C beneficiary requires physician-ordered 24-hour direct observation and/or supervision related to the primary medical condition(s); and
- ☐ The LRI is not able to maintain full or part-time employment due to absences, interruptions or termination arising from the beneficiary's need for observation/ supervision.

D: Uniquely Capable

- ☐ The CAP/C beneficiary has specialized health care that can only be provided by the LRI; and
- ☐ The beneficiary requires extensive to maximal assistance with bathing, dressing, toileting and eating.

E: Health and Safety Require

- ☐ circumstances place the CAP/C beneficiary's health, safety and well-being in jeopardy absent the LRI acting as paid caregiver.

Documentation Options for Extraordinary Circumstance CAP/C Criteria:

(Age 17 and under)

AT LEAST one of the criteria, A through E below, must be fully met.

A: Unavailability of Providers There are no available CNAs in the CAP/C beneficiary's county or adjunct counties through a Home Health Agency or In-Home Aide Agency due to a lack of qualified providers, and the CAP/C beneficiary needs extensive to maximal assistance with bathing, dressing, toileting and eating daily to prevent institutionalization.

Documentation must demonstrate that the beneficiary's circumstances meet the following:

- Beneficiary needs extensive to maximal assistance with bathing, dressing, toileting and eating daily above and beyond what is age appropriate to prevent institutionalization, as evidenced in the beneficiary's medical record, treating practitioner letter, or most recent assessment.

  AND EITHER…

- Documentation from the beneficiary's treating practitioner states that there are no available CNAs in the beneficiary's county or adjacent counties; or documentation reflects reasonable efforts to secure a CNA to furnish services to the beneficiary;

  OR

- Beneficiary's treating practitioner has written a letter that includes:

  - A statement that there are no CNAs available to treat the beneficiary with 1-3 sentences explaining of how the treating practitioner has come to that conclusion;
  - a statement that in the beneficiary's treating practitioner's medical opinion, the LRI is capable of furnishing the services and is recommended by the beneficiary's treating practitioner to furnish the services being requested, to include any limitations on the services that may be furnished by the LRI; and
  - signature of the beneficiary's treating practitioner, with indication of credentials, and dated by the beneficiary's treating practitioner.

B: Short Term Isolation The CAP/C beneficiary requires short-term isolation, 90 days or less, due to experiencing an acute medical condition/health care issue requiring extensive to maximal assistance with bathing, dressing, toileting and eating, and the CAP/C beneficiary chooses to receive care in their home instead of an institution.

Documentation must demonstrate that the beneficiary's circumstances meet the following:

- Beneficiary needs extensive to maximal assistance with bathing, dressing, toileting and eating daily above and beyond what is age appropriate to prevent

institutionalization, as evidenced in the beneficiary's medical record, treating practitioner letter, or most recent assessment.

AND EITHER…

- Beneficiary has a documented acute medical condition requiring short term isolation;

OR

- Beneficiary's treating practitioner has submitted a letter that includes:
  - A statement that the beneficiary requires short-term isolation with 1-3 sentences explaining of how the physician has come to that conclusion; and
  - a statement that in the beneficiary's treating practitioner's medical opinion, the LRI is capable of furnishing the services and is recommended by the beneficiary's treating practitioner to furnish the services being requested, to include any limitations on the services that may be furnished by the LRI; and
  - signature of the beneficiary's treating practitioner, with indication of credentials, and dated by the beneficiary's treating practitioner.

C: Inability to Maintain Work The CAP/C beneficiary requires physician-ordered 24-hour direct observation and, or supervision specifically related to the primary medical condition(s) to assure the health and welfare of the CAP/C beneficiary and avoid institutionalization, and the legal guardian is not able to maintain full or part-time employment due to multiple absences from work to monitor and/or supervise the CAP/C beneficiary; regular interruption at work to assist with the management of the CAP/C beneficiary's monitoring or supervision needs; or an employment termination.

Documentation must demonstrate that the beneficiary's circumstances meet the following:

- Beneficiary has physician-ordered 24-hour direct observation/supervision related to primary medical condition(s);

AND

- Documentation reflects that the LRI is unable to maintain full or part-time employment due to any of the following:
  - Frequent absences
  - Work interruptions
  - Job loss

OR

- Beneficiary's treating practitioner has submitted a letter that includes:

- A statement that the beneficiary requires 24-hour observation/ supervision that prevents the LRI from maintaining employment, with 1-3 sentences explaining of how the beneficiary's treating practitioner has come to that conclusion; and
- a statement that in the beneficiary's treating practitioner's medical opinion, the LRI is capable of furnishing the services and is recommended by the beneficiary's treating practitioner to furnish the services being requested, to include any limitations on the services that may be furnished by the LRI; and
- signature of the beneficiary's treating practitioner, with indication of credentials, and dated by the beneficiary's treating practitioner.

D: Uniquely Capable The CAP/C beneficiary has specialized health care that can only be provided by the legal guardian, as indicated by medical documentation, and these health care needs require extensive to maximal assistance with bathing, dressing, toileting and eating to ensure the health and welfare of the CAP/C beneficiary and avoid institutionalization.

Documentation must demonstrate that the beneficiary's circumstances meet the following:

- Beneficiary needs extensive to maximal assistance with bathing, dressing, toileting and eating daily above and beyond what is age appropriate to prevent institutionalization, as evidenced in the beneficiary's medical record, treating practitioner letter, or most recent assessment.

  AND EITHER…

- The beneficiary has specialized health care needs that can only be provided by the LRI, as indicated by medical documentation.

  OR

- Beneficiary's treating practitioner submits a letter that includes:

  - A statement that the beneficiary has special health care needs that require extensive to maximal assistance and can only be provided by the LRI, with 1-3 sentences explaining of how the physician has come to that conclusion; and
  - a statement that in the beneficiary's treating practitioner's medical opinion, the LRI is capable of furnishing the services and is recommended by the beneficiary's treating practitioner to furnish the services being requested, to include any limitations on the services that may be furnished by the LRI; and
  - signature of the beneficiary's treating practitioner, with indication of credentials, and dated by the beneficiary's treating practitioner.

A legal guardian is not disqualified from meeting extraordinary circumstances solely by the use of approved respite hours.

E: Health and Safety Require Other documented extraordinary circumstances not previously mentioned that place the CAP/C beneficiary's health, safety and well-being in jeopardy resulting in an institutional placement.

Documentation must demonstrate that the beneficiary's circumstances meet the following:

- Other documented issues jeopardizing health, safety or well-being.

OR

- Beneficiary's treating physician submits a letter that includes:
  - a statement explaining the issues jeopardizing the beneficiary's health, safety, or well-being that cannot be mitigated by the traditional (provider-led) CAP/C services;
  - a statement that in the beneficiary's treating practitioner's medical opinion, the LRI is capable of furnishing the services and is recommended by the beneficiary's treating practitioner to furnish the services being requested, to include any limitations on the services that may be furnished by the LRI; and
  - signature of the beneficiary's treating practitioner, with indication of credentials, and dated by the beneficiary's treating practitioner.

Documentation Options for Extraordinary Circumstance CAP/C Criteria:

(Age 18 and older with legal guardian)

Documentation must demonstrate that the beneficiary's situation must meet one of the three criteria below to qualify.

1. The beneficiary is experiencing a cognitive or intellectual limitation, and the presence of an unfamiliar individual is more disruptive than productive, and the beneficiary requires additional assistance with activities of daily living (ADLs) than ordinary as identified in a service plan.

Documentation must demonstrate that the beneficiary's circumstances meet the following:

- The beneficiary has a cognitive or intellectual limitation
- The presence of an unfamiliar individual is documented to be more disruptive than productive
- Beneficiary requires additional assistance with ADLs (e.g. maximal to extensive assistance) as identified in a service plan
- Physician letter provided addressing this criterion.

2. The beneficiary is in an area with limited access to service providers and the assessment of needs identifies that the waiver participant requires five or more hours per day of uninterrupted personal care.

Documentation must demonstrate that the beneficiary's circumstances meet the following:

- The beneficiary lives in an area with limited access to service providers
- The beneficiary requires five or more hours per day of uninterrupted personal care.
- Physician letter provided addressing this criterion

3. The beneficiary has a secondary diagnosis of mental illness or an intellectual disability and the behavior, because of this illness, poses harm to an unfamiliar person or past behaviors have alienated service providers.

Does the beneficiary's situation meet the following criteria? (Check all that apply)

- The beneficiary has a secondary diagnosis of mental illness or an intellectual disability
- Due to illness, the beneficiary's behaviors pose harm to an unfamiliar person OR the beneficiary's past behaviors have alienated service providers
- Physician letter provided addressing this criterion