

**Guidance to Case Managers/Early Interventionists
For Assisting With the Determination of Legal Responsibility**

State Medicaid policy does not allow the following family member/relatives to be paid for providing care or services to Medicaid beneficiaries under any circumstances:

1. The spouse of a Medicaid beneficiary;
2. A parent of a minor Medicaid beneficiary;
3. A step parent of a Medicaid beneficiary;
4. A foster parent of a “minor” Medicaid beneficiary; or
5. Any other legally responsible guardian of a Medicaid beneficiary.

If a relative/family member is unsure about whether or not he/she is the legally responsible guardian of the Medicaid beneficiary, please consider and discuss with him/her the following indicators. Please remember that you do not need to reach a decision on your own. If, after considering the indicators noted, there are questions regarding legal responsibility, please forward pertinent information and questions to DDSN Central Office Waiver Staff and a legal opinion will be sought.

Is the Medicaid beneficiary a minor (under age 18)?

A minor must have a legally responsible guardian/be in someone’s custody. For most minors, the parents are the legal guardian. For parents not to be the legal guardian, some legal/court action has to have occurred. If no legal/court action has occurred, the parents are the legal guardians.

- If the relative is not the minor’s parent, has anyone gone to court to get custody of this child?
- Are there legal documents/court papers stating who has custody of the minor?

Is the Medicaid beneficiary an adult (18 years of age or older)?

People over the age of 18 are assumed to be competent and therefore may not have a legally responsible guardian. Parents are not automatically the legally responsible guardian of an adult with a disability. In order for anyone to be the legally responsible guardian of an adult, some sort of legal/court action has to have occurred.

- Are there legal documents/court papers stating that the person is not competent and appointing a guardian?
- If the documents exist, do they indicate the action to be a general adjudication or is the adjudication limited?
- If limited, is the adjudication limited to health care decisions? *If so, the person is considered to be the legally responsible guardian and, therefore, cannot be paid for services.*
- If limited, is the adjudication limited to financial decisions/conservator appointed? *If so, the person may not be legally responsible; please forward to DDSN Central Office Waiver staff for a legal opinion.*

If there are any doubts/questions regarding legal responsibility, submit, in writing, a description of the concern/situation and any other pertinent information, including copies of legal/court documents, to DDSN Central Office Waiver staff.