

## Tips for Legally Responsible Individuals as Paid Waiver Caregivers

### Background

During the COVID-19 pandemic, flexibilities were put in place for the first time in Virginia to allow parents and spouses, called legally responsible individuals (LRIs) to be paid by the Medicaid Waiver program to provide care to their own minor children or spouses. This flexibility was very popular and was made permanent in November 10, 2023, but the permanent allowance does have more rules and restrictions than the flexibilities allowed during the pandemic.

### Allowable Activities

LRIs may be paid for providing “extraordinary care,” meaning care above and beyond what the parent or spouse would usually due in their role. For children under age 18, that would mean tending to needs above and beyond what would be provided to same age children without disabilities. Examples may include assistance with activities of daily living, access to the community, monitoring of health status, and related duties.

### Eligibility

For LRIs to be eligible to provide care, they must be selected by the Waiver user, and this choice should be in the best interests of the individual receiving care. They should also show that within the last six weeks, they’ve made efforts to find other caregivers and have not been successful. Examples could be ads posted that received no responses, interview notes showing why applicants were not a good fit for the role, or documentation from hired caregivers who have called out and/or quit. This process will need to be documented on the LRI Extraordinary Care Form and submit it to the Service Facilitator or agency to revise the Plan of Care Form (DMAS 97 A/B). There will be separate Plans of Care of there are paid LRI and non-LRI (regular attendants) providing care. These documents will be reviewed by Support Coordinators (for DD Waiver users), CCC Plus Care Managers (for CCC Plus Waiver users), or DMAS (for CCC Plus Fee for Service clients) for review and approval within 10 business days. A copy will also be sent to DMAS for all users.

As of November 10, 2023, LRIs authorized under the Appendix K flexibilities during COVID will not be paid any longer unless they have submitted a new LRI packet to their Fiscal Agent. This may be done through December 31, 2023.

### Limitations and Restrictions

LRIs may provide up to 40 hours per week in paid care providing assistance with activities of daily living. Note this is the total number of hours an LRI can be paid to perform, regardless of the number of Waiver users in the home. During each shift, they should document the work they did on the DMAS 487 LRI form. They do not need to clock in and out using Electronic Visit Verification (EVV) if they live in the same household as the Waiver user.

If an LRI is the paid caregiver, all respite hours are forfeited, even if there is another unpaid caregiver in the home and/or other paid attendants providing care.

If the LRI is the paid caregiver, the other LRI (e.g., other parent) may not be the Employer of Record (EOR) who signs timesheets and oversees care. The EOR must reside within 50 miles of the Waiver user.

if the Waiver recipient is a minor. This could be another family member or friend, or the Waiver user could opt to receive services through a home care agency that would take on this role. The DMAS 95B form must be filled out to show that the proposed EOR is appropriate.

## Resources

- To ask us a question on any topic, visit [www.thearcofnova.org/answers](http://www.thearcofnova.org/answers)
- To see the DMAS forms referenced on this handout, visit <https://www.dmas.virginia.gov/providers/long-term-care/waivers/legally-responsible-individuals/>
- To see a video from DMAS with this information, visit <https://youtu.be/B9hMCvS8IE8?si=y0BbGXHFemtHRLmP>