**R539. Health and Human Services, Division of Services for People with Disabilities.**

**R539-16. Caregiver Compensation.**

**R539-16-1. Authority and Purpose.**

(1) Sections 26B-6-402 and 26B-6-403 authorize this rule and give the division responsibility for the administration of its services.

(2) This rule provides:

(a) definitions relating to the caregiver compensation service delivery method;

(b) eligibility requirements for the caregiver compensation service delivery method;

(c) oversight of the caregiver compensation service delivery method;

(d) applicability of the caregiver compensation service delivery method to HCBS waivers; and

(e) limitations and penalties relating to the caregiver compensation service delivery method.

**R539-16-2. Definitions.**

(1) Terms used in this rule are the same as defined in Rule R539-13. Additionally:

(2) "Waiver administrator" means a department employee responsible for administering and following the regulations of an HCBS waiver.

**R539-16-3. Eligibility and Authorization for the Caregiver Compensation Service Delivery Method.**

(1) Before the caregiver compensation service delivery method is authorized, whether the person is initially entering services or seeking to change to caregiver compensation in an existing service plan, the person's support coordinator shall confirm in writing, and annually thereafter, that:

(a) caregiver compensation services will support the person's independence and community integration;

(b) the caregiver has the capacity to meet the service-specific needs of the person as identified in the PCSP;

(c) the choice of using caregiver compensation reflects the person's wishes;

(d) the provision of caregiver compensation is based on the person's assessed needs; and

(e) the provision of caregiver compensation is in the person's best interest.

(2) The division shall deny the request to use the caregiver compensation service delivery method if any condition in Subsection (1) is not met.

**R539-16-4. Caregiver Compensation Service Delivery Method Specifications for the Community Supports Waiver, Community Transitions Waiver, and Acquired Brain Injury Waiver.**

(1) Services delivered through the caregiver compensation service delivery method are implemented in accordance with the terms published in the service descriptions in the provider contract or in the SAS service code descriptions on the division's website.

(a) The division shall communicate changes to SAS service code descriptions to fiscal agents before the implementation of the change.

(b) Fiscal agents shall communicate changes to SAS service code descriptions to SAS employers and SAS employees before the implementation of the change.

(2) The number of hours supported living services can be provided through the caregiver compensation service delivery method shall be approved by the RFS committee and based on assessed need. The number of authorized hours falls into one of four categories, reflected in this table:

|  |  |
| --- | --- |
| TABLE  Authorized Hours for Supported Living Services through the Caregiver Compensation Service Delivery Method | |
| Category | Authorized Hours |
| Category 1 | Up to 10 hours per week |
| Category 2 | Up to 20 hours per week |
| Category 3 | Up to 30 hours per week |
| Category 4 | Up to 40 hours per week |

(3) The categories represent the maximum number of compensated service hours a caregiver may receive to provide extraordinary care to a person.

(4) The category a person is determined eligible for is based on the assessed needs of the person and the specific waiver the person participates in.

(a) For a person participating in the Community Supports Waiver or Community Transitions Waiver, assessed need is determined by the person's Utah Comprehensive Assessment of Needs and Strengths (UCANS) score;

(b) For a person participating in the Acquired Brain Injury Waiver, assessed need is determined by the person's Utah Comprehensive Brain Injury Assessment (CBIA) score.

(c) Additional information provided by the support coordinator, in coordination with the family, including information related to medical or behavioral needs, shall also be considered.

(5) The caregiver compensation service delivery method is evaluated and approved or denied through the RFS process. If approved, the caregiver compensation service delivery method may be used to deliver supported living services to meet a person's needs.

(6) A support coordinator may submit a request through the RFS process for supported living services to be provided through the caregiver compensation delivery method when a person seeks to use caregiver compensation as the service delivery method to receive any of the person's needed supported living service, and:

(a) the person is entering services and is determined to need supported living;

(b) the person seeks to modify their PCSP and budget to move any part of the person's current budget to supported living delivered through the caregiver compensation service delivery method; or

(c) based on documentation provided through the RFS process, the RFS committee authorizes additional services due to an overall increase in the person's needs.

(7) Caregiver compensation shall be identified on the PCSP as the service delivery method for the person's supported living services when:

(a) the RFS committee has reviewed and approved the support coordinator's authorization for supported living to be delivered through the caregiver compensation service delivery method; and

(b) the number of hours requested by the support coordinator has been approved by the RFS committee pursuant to Sections R539-12-4 through R539-12-7 and this section.

**R539-16-5. Caregiver Compensation Service Delivery Method Specifications for the Limited Supports Waiver.**

(1) Services delivered through the caregiver compensation service delivery method are implemented in accordance with the terms published in the service descriptions in the provider contract or in the SAS service code descriptions on the division website.

(2) The caregiver compensation service delivery method is evaluated and approved or denied by the waiver administrator. If approved, the caregiver compensation service delivery method may be used to deliver attendant care to meet the person's needs.

(3) The caregiver compensation delivery method may not exceed the budget limitations in the Limited Supports Waiver. Caregiver compensation shall be identified on the PCSP as the service delivery method for the person's attendant care services when:

(a) the waiver administrator has reviewed and approved the support coordinator's authorization for attendant care to be delivered through the caregiver compensation service delivery method; and

(b) the number of hours requested by the support coordinator has been approved by the waiver administrator.

**R539-16-6. Caregiver Compensation Service Delivery Method Limitations.**

(1) A person may not exceed the budget limit in their person-centered budget.

(2) The caregiver compensation service delivery method of delivering supported living or attendant care services may not be provided at the same time as any other service.

(3) When supported living or attendant care services are delivered through the caregiver compensation service delivery method and as SAS, the caregiver may not serve as both the caregiver, or the SAS employee, and as the caregiver's supervisor, or the SAS employer.

(4) A person who enters services through the Emergency Services Management Committee described in Section R539-2-9 may not use the caregiver compensation service delivery method during the first year of receiving division services.

**R539-16-7. Caregiver Compensation Review Process, Recovery of Funds, and Penalties.**

(1)(a) Funds for supported living or attendant care services provided through the caregiver compensation service delivery method are public funds that are appropriated to, and approved by, the division.

(b) Funds are for the delivery of services for the person during the approved period and for the purposes stipulated in the service code descriptions.

(c) Public funds are subject to applicable federal, state, and local laws and regulations pertaining to the use of public funds.

(2) The division may require the person to use a contracted provider rather than the caregiver compensation service delivery method if the SAS employer fails to meet a requirement in:

(a) federal or state law or rule;

(b) the SAS employee agreement; or

(c) the SAS employer agreement.

(3) The support coordinator shall review any billing quarterly to ensure that, for each service, no duplication of a service, fraud, or overlap of submitted timesheets has occurred for SAS and provider-based caregiver compensation.

(4) The misuse of any funds provided for the caregiver compensation service delivery method for a purpose other than those in the service description may subject the caregiver and contracted provider, if applicable, to administrative sanctions, criminal prosecution, and liability for repayment of the misused funds.

(5) For any findings of duplication of services, erroneous timesheet submissions, or exceeding the amount of service authorized in the person's person-centered budget, the department:

(a) shall recover any associated fund; and

(b) may make a referral to the Utah Office of Inspector General and the Medicaid Fraud Control Unit if waste, fraud, or abuse of funds is suspected.

**KEY: people with disabilities, caregiver compensation, HCBS waiver, Medicaid**

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