



We have the legal right of way.

MEDICAID:

Denials or Reductions of Services Based on 'Natural Support'

Many people with disabilities in Ohio are enrolled on Medicaid home and community-based services waivers (for example, the Individual Options waiver or the Ohio Home Care waiver). These programs allow them to receive the services they need (like aides or nursing services) in their homes and communities rather than in an institution like a nursing facility or an intermediate care facility.

Some people who receive Medicaid waiver services are told that they either cannot receive additional services or that their services will be reduced because their needs can be met by "natural support." This FAQ explains what "natural support" is and how you can appeal when you are denied services because of "natural support." This FAQ, however, does not answer questions about the "shared living" service that is offered under some waivers. If you have questions about shared living, please feel free to contact Disability Rights Ohio's intake department at 800-282-9181, option 2.

There are many agencies that administer Ohio Medicaid waivers, including CareStar, Area Agencies on Aging, and county boards of developmental disabilities. This FAQ refers to all of these agencies as "the Medicaid agency."

What are natural supports?

Basically, natural supports are help and care that someone gets from their friends, family or community for free. This could include supports that family members provide, like basic personal care, transportation, attending social or recreational activities, laundry, meal preparation, or grocery shopping. It could also include supports that friends, neighbors and others in the community provide.

The Medicaid agency often assumes (sometimes incorrectly) that family members or other people who live with an individual can and will provide natural support. But federal law says that natural supports must be provided to someone voluntarily. The

federal regulation that says this is 42 C.F.R. § 441.301(c)(2)(v). In other words, no one should be forced to provide natural support. Individuals who receive services should also have a choice about whether they want to receive natural support from a particular person.

For example, in one case in Ohio, a person needed continuous support and supervision, and for years had received support in part by a paid provider and the rest by her brother as a natural support. The Medicaid agency reduced the person's aide hours because they thought the person's brother should provide more care as a "natural (unpaid) support" instead. Ultimately, the court said that the Medicaid agency made the wrong decision in that case. The court said that while the Medicaid agency must consider what natural supports are already in place, "compulsion of 'natural supports' is antithetical to law." Plus, the Court said that the Medicaid agency was wrong to just come up with a number that they thought someone could provide natural support without any facts to show it. The Medicaid agency must "provide a reasonable basis" for the number of hours they think someone can provide natural support. The court case is called *Mocznianski v. Ohio Dep't of Job & Family Servs.*, 195 Ohio App.3d 422, 2011-Ohio-4685, 960 N.E.2d 522, 530 (Ohio Ct. App. 2011).

Also, some people who get waiver services have been told that they must use natural support because waivers do not provide 24-hour care. This may not be true. It depends on what waiver you have. Some waivers do not provide 24-hour care, but other waivers can provide 24-hour care if it is medically necessary for that person and the services do not cost too much.

When will a Medicaid agency look into whether natural supports are available for you?

Any time your service plan is being reviewed or you ask for more services—especially services like personal care aides or transportation—the Medicaid agency will likely consider whether natural supports are an option. The Medicaid agency may review what natural supports are already in place or could be developed to meet your needs.

Do my family members have to provide natural support if they have been my paid providers?

The Medicaid agency may suggest that a family member should provide unpaid natural support instead of being a paid provider. The Medicaid agency may assume that a family member can continue to provide the same support to you without getting paid. However, many family members would have to find other jobs to support themselves and their families if they were no longer able to be your paid provider. If the Medicaid agency makes this assumption and you do not agree with it, you should discuss it with your case manager (and see below).

What if I do not agree that someone should provide natural support?

Sometimes people ask for more paid waiver services because their natural supports are no longer able to continue supporting them. Sometimes people's services are

reduced because the Medicaid agency believes that their needs can be met by natural supports. If the Medicaid agency denies your request for services or reduces your services, you have the right to appeal. The appeal process you should use depends on whether the decision was made by a managed care plan or a different agency. Your denial notice should explain how to appeal and the timeline for asking for an appeal. See DRO's FAQs on Medicaid Appeals for more information: <https://www.disabilityrightsohio.org/medicaid>.

To support your appeal, you can present evidence about why the person being asked to provide natural support cannot provide the required amount of natural support. When you are thinking about what evidence to bring, think about the following questions about the person being asked to provide natural support:

- Are they not around at the times that you need support? For example, do you need support at a time that the person is at work?
- Do they have the physical ability to provide the support? For example, do you need to be lifted out of bed, and the person cannot lift you?
- Do they have the mental ability to provide the support? For example, do you need complex or complicated support and the person cannot understand how to provide it to you, even with training?
- Do they have the equipment you need? For example, do you need to be transported, but the person does not have a reliable vehicle?
- Are they expected to provide too much natural support? For example, will the person not be able to get enough sleep, get to work or school or take care of their children or other family members because of the amount of natural support they are being asked to provide? While the focus of the Medicaid program is on the medical needs of the person, natural support providers must—at a minimum—have time to work, sleep, meet their personal care needs, and have some respite from caregiving.

If you are at a hearing, you can explain this information. But you should also gather documents that show why your needs cannot be met by the person being asked to provide natural support. This could include a doctor's letter that explains why the person physically cannot provide the services or a work schedule that shows when the person is unavailable.

If you have questions about your rights, please contact Disability Rights Ohio at 800-282-9181 and press option 2 for Intake.