



STATE OF MARYLAND
DHMH

PT 16-05
Office of Health Services
Medical Care Programs

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201

Robert L. Ehrlich, Jr., Governor – Michael S. Steele, Lt. Governor – S. Anthony McCann, Secretary

MARYLAND MEDICAL ASSISTANCE PROGRAM
EPSDT: Private Duty Nursing Services Transmittal No. 9
Model Waiver Program Transmittal No. 22
Home Health Transmittal No. 41

January 28, 2005

TO: EPSDT Private Duty Nursing Providers
Model Waiver Nursing Providers
Home Health Agencies

FROM: *Susan J. Tucker*
Susan Tucker, Executive Director
Office of Health Services

NOTE: Please ensure that the appropriate staff members in your organization are informed of the contents of this transmittal.

RE: Proposed Amendments to COMAR 10.09.53 Early and Periodic Screening, Diagnosis, and Treatment: Private Duty Nursing Program

ACTION:
Final Regulations

EFFECTIVE DATE:
January 31, 2005

PROGRAM CONTACT PERSON:
Nancy Cutair, Chief
Division of Nursing Services
410-767-1448 or
1-877-4MD-DHMH, 1448

Amendments to Regulations .01-.06 under COMAR 10.09.53, Early and Periodic Screening, Diagnosis and Treatment: Private Duty Nursing Services, have been adopted with non-substantive changes made to some of the proposed regulations. These non-substantive changes are noted in the attached copy of the January 21, 2005 issue of the Maryland Register. The text of the proposed amendments was included with Early and Periodic Screening, Diagnosis and Treatment: Private Duty Nursing Services Transmittal No. 8.



One of the amendments imposes a new condition for participation as a private duty nursing provider. This amendment requires the provider to be a licensed residential services or home health agency. **Current Medical Assistance Program (Program) private duty nursing provider agencies that are not home health agencies or licensed residential service agencies will have six (6) months from the effective date of these regulations to obtain a residential service agency license from the Department of Health and Mental Hygiene's Office of Health Care Quality (OHCQ).** In addition to obtaining the requisite residential service agency licensure, private duty nursing agency providers that are not residential service agencies will need to complete a new provider application to participate in the Program and will receive a new provider number. Please note that the Program's staff will terminate all private duty nursing provider numbers for those agencies enrolled as service type 25 effective August 1, 2005. This service type is currently used to enroll non-residential service agencies as private duty nursing providers. Termination of the provider number will result in an agency's inability to receive reimbursement from the Program for services rendered to recipients after July 31, 2005. Please note that the licensure and enrollment process must be complete by August 1, 2005, as Program staff will not authorize the issuance of a provider number with a retroactive effective date.

An application for residential service agency licensure may be obtained by calling OHCQ at 410-402-8040. A new Program provider application for RSA service type 53 may be obtained by calling Provider Enrollment at 410-767-5340.

If you have any questions regarding these regulatory changes, please call Nancy Cutair of the Division of Nursing Services at 410-767-1448.

Attachment

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.20 Personal Care Services

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105,
Annotated Code of Maryland

Notice of Final Action

[04-108-F]

On December 27, 2004, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .01 and .03 — .05 under COMAR 10.09.20 Personal Care Services. This action, which was proposed for adoption in 31:9 Md. R. 728 — 729 (April 30, 2004), has been adopted with the nonsubstantive changes shown below.

Effective Date: January 31, 2005.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

Regulation .03A(7). After the word "English" language is added that clarifies the Department's intent that the English requirement should not be a categorical requirement that allows no exception regardless of circumstances. Accordingly, this regulation is clarified to permit waiver of the English requirement by agreement of the case monitoring agency, participant, and personal care provider or if the Department determines that a waiver is necessary.

Regulation .03A(12): This change conforms the regulation to current law, which authorizes private agency background checks. It is consistent with the Department's intent that background checks be performed by legally authorized entities in accordance with current law.

Regulation .04C(6): This regulation is amended to clarify the Department's intent regarding the performance of workplace services. The changes clarify that the services should be essential to the recipient's ability to obtain, as well as to maintain, gainful employment. The subsection is also amended to provide further clarification by including a list of specific services.

.03 Conditions for Participation.

A. To participate in the Program, the personal care provider shall:

(1) — (6) (proposed text unchanged)

(7) Be able to *speak*, read, write, and follow directions in English[.]; unless:

(a) The case monitoring agency, the participant, and the personal care provider uniformly agree to waive the English requirement; or

(b) The Department considers it necessary to waive requirement;

(8) — (11) (proposed text unchanged)

(12) [[Submit to a criminal background investigation conducted by the Criminal Justice Information System, Department of Public Safety and Correctional Services.]] Submit to a criminal background investigation conducted by:

(a) The Criminal Justice Information System, Department of Public Safety and Correctional Services; or

(b) A private agency in accordance with Health-General Article, §19-1901(h), Annotated Code of Maryland.

B. — E. (proposed text unchanged)

.04 Covered Services.

A. — B. (proposed text unchanged)

C. When a recipient is determined to need personal care services because of the need for assistance with activities of daily living, the Program may also cover:

(1) — (5) (proposed text unchanged)

(6) Performing services in the workplace directly related to a personal care need and essential to the recipient's ability to obtain or maintain gainful employment[.], including:

(a) Interviewing;

(b) Buying work-related materials; and

(c) Participating in programs that facilitate job placement skills such as resume development and interviewing techniques.

D. — F. (proposed text unchanged)

S. ANTHONY McCANN
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.53 Early and Periodic Screening, Diagnosis, and Treatment: Private Duty Nursing

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105,
Annotated Code of Maryland

Notice of Final Action

[04-262-F]

On December 27, 2004, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .01—.06 under COMAR 10.09.53 Early and Periodic Screening, Diagnosis, and Treatment: Private Duty Nursing. This action, which was proposed for adoption in 31:20 Md. R. 1491—1495 (October 1, 2004), has been adopted with the nonsubstantive changes shown below.

Effective Date: January 31, 2005.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

Regulation .01B(27): The definition of "witness" is clarified to reflect the Department's intent that a witness personally verify the provision of services, but that the verification does not need to take place at the time the service was provided.

Regulation .03E(14)(c): The word "summary" is deleted from the phrase "discharge summary plan". This change is made to clarify the Department's intent and eliminate potential confusion. This change conforms this regulation to other regulations in this chapter in which the term "discharge plan" is used to refer to the document that was characterized as the "discharge summary plan" in the proposed regulation.

Regulation .03K: The phrase "nurse's shift is not" is deleted and replaced with the phrase "nurse is not scheduled to work for". This change clarifies the Department's intent,

which is to ensure agencies do not have a nurse provide private duty nursing services to a recipient in excess of 16 hours without the Department's authorization.

Regulation .06A: The word "appropriateness" is deleted to bring this regulation into conformity with the deletion of the definition of "appropriate" in Regulation .01 and to clarify the Department's intent to eliminate references to appropriateness in this chapter.

Regulation .06B(4): The words "and appropriate" are deleted to bring this regulation into conformity with the deletion of the definition of "appropriate" in Regulation .01 and to clarify the Department's intent to eliminate references to appropriateness in this chapter.

Regulation .06J(5) and (6): The word "or" is deleted from §J(5), §J(6) is deleted. These changes bring this regulation into conformity with the deletion of the definition of "appropriate" in Regulation .01 and clarifies the Department's intent to eliminate references to appropriateness in this chapter.

.01 Definitions.

A. (proposed text unchanged)

B. Terms Defined.

(1)—(26) (proposed text unchanged)

(27) "Witness" means the recipient or an individual who, on behalf of the recipient, is able to personally verify **[[at the time of service]]** that the recipient received private duty nursing services.

.03 Conditions for Participation.

Requirements for participation in private duty nursing services are that a provider shall:

A.—D. (proposed text unchanged)

E. Develop policies for the delivery of services to participants, including policies on the following:

(1)—(13) (proposed text unchanged)

(14) Coordination of care, when appropriate, including:

(a)—(b) (proposed text unchanged)

(c) *Development of a discharge **[[summary]]** plan when the participant, the participant's legal representative, or the provider terminates care;*

F.—J. (proposed text unchanged)

K. *Ensure a **[[nurse's shift is not]]** nurse is not scheduled to work for more than 16 consecutive hours and that the individual is off 8 or more hours before starting another shift unless otherwise authorized by the Department;*

L.—O. (proposed text unchanged)

.06 Preauthorization Requirements.

A. The Department or the Department's designee shall preauthorize private duty nursing services, according to necessity, **[[appropriateness,]]** frequency, and duration, as a prerequisite to payment beyond the initial assessment.

B. Preauthorization is issued when:

(1)—(3) (proposed text unchanged)

(4) The Department or the Department's designee determines that the services are medically necessary **[[and appropriate]].**

C.—I. (proposed text unchanged)

J. Authorization shall be rescinded by the Department or the Department's designee when:

(1)—(3) (proposed text unchanged)

(4) *The recipient is admitted to a hospital for a period more than 72 consecutive hours; or*

(5) The Department or the Department's designee determines that the care is no longer medically necessary **[[or]].**

[[(6) The Department or the Department's designee determines that the care is no longer appropriate.]]

S. ANTHONY McCANN
Secretary of Health and Mental Hygiene

Title 14 INDEPENDENT AGENCIES

Subtitle 07 MARYLAND AUTOMOBILE INSURANCE FUND

14.07.02 Binding Rules

Authority: Insurance Article, §§0-509,
Annotated Code of Maryland

Notice of Final Action

[04-296-F]

On December 29, 2004, the Executive Director of the Maryland Automobile Insurance Fund adopted amendments to Regulation .04 under **COMAR 14.07.02 Binding Rules**. This action, which was proposed for adoption in 31:23 Md. R. 1667 (November 12, 2004), has been adopted as proposed.

Effective Date: January 31, 2005.

KENT KRABBE
Executive Director

Subtitle 27 MARYLAND ENVIRONMENTAL SERVICE

14.27.02 Human Resources System

Authority: Natural Resources Article, §§3-103.1 and 3-127,
Annotated Code of Maryland

Notice of Final Action

[04-298-F]

On December 29, 2004, the Director of the Maryland Environmental Service adopted the repeal of existing Regulation .25 and the adoption of new Regulation .25 under **COMAR 14.27.02 Human Resources System**. This action, which was proposed for adoption in 31:23 Md. R. 1667 — 1668 (November 12, 2004), has been adopted as proposed.

Effective Date: January 31, 2005.

JOHN S. SPARKMAN
Director
Maryland Environmental Service