

To: Division of Participant Enrollment and Service Review
Division of Clinical Support
Division of Nursing Services

From: Chief, Division of Clinical Support, Office of Long Term Services and Supports

Date: March 25, 2022

Re: Standard Operating Procedure – Continuous Skilled Nursing Needs and Personal Assistance Services

PURPOSE:

The purpose of this communication is to 1) standardize policy and procedures for the Office of Long Term Services and Supports (OLTSS) when reviewing plans of service (POS) for participants enrolled in the Community Personal Assistance Services (CPAS), Community First Choice (CFC), Home and Community-Based Options Waiver (HCBOW) and Increased Community Services (ICS) programs and 2) outline the criteria for determining when a continuous skilled nursing need exists and its implications on the receipt of personal assistance services (PAS) through the CFC program.

BACKGROUND:

As defined in Code of Maryland Regulations (COMAR) 10.09.84.14, PAS includes the following when provided by a personal assistance provider:

- (1) Assistance with activities of daily living (ADL);
- (2) Delegated nursing functions if this assistance is:
 - (a) Specified in the participant’s plan of service; and
 - (b) Rendered in accordance with the Maryland Nurse Practice Act, COMAR 10.27.11, and other requirements of the Maryland Board of Nursing;
- (3) Assistance with tasks requiring judgment to protect a participant from harm or neglect;
- (4) Assistance with or completion of instrumental activities of daily living (IADL), provided in conjunction with the services covered under §B(1)—(3) of this regulation; and
- (5) Assistance with the participant’s self-administration of medications, or administration of medications or other remedies, when ordered by a physician.

Skilled nursing tasks are tasks that are routinely performed by a registered nurse (RN) or licensed practical nurse (LPN). “Delegation” is defined in COMAR 10.27.11.02B(6) as the act of authorizing an unlicensed individual, a certified nursing assistant (CNA) or a certified medication technician (CMT) to perform acts of registered nursing or licensed practical nursing. As further outlined in COMAR 10.27.11.03(B), a nursing task delegated by a nurse shall be:

- (1) Within the area of responsibility of the nurse delegating the act;

- (2) Such that, in the judgment of the nurse, it can be properly and safely performed by the unlicensed individual, CNA or CMT without jeopardizing the client welfare; and
- (3) A task that a reasonable and prudent nurse would find is within the scope of sound nursing judgment.

As defined in COMAR 10.09.53.01B(22), "private duty nursing (PDN) services" are skilled nursing services for recipients who require more individual and continuous care than is available under the home health program, and which are provided by an RN or an LPN, in a recipient's own home or another setting when normal life activities take the recipient outside his or her home. PDN includes the Rare and Expensive Case Management (REM) program, the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program and the Home Care for Disabled Children Under a Model Waiver (Model Waiver). The Division of Nursing Services (DONS), within the OLTSS, oversees the provision of PDN services in each of the above programs. Medicaid participants may also receive PDN services through private medical insurance.

As outlined in COMAR 10.09.53.04A(6), PDN services include supervision of family caregivers in the home while family caregivers practice the skills necessary to provide care to the recipient in accordance with the established plan of care. Per COMAR 10.09.53.04A(10), a participant has at least one caregiver willing and able to accept responsibility for the participant's care when the nurse, CNA, or HHA is not available.

As outlined in COMAR 10.09.53.05B, PDN services, to substitute for care ordinarily rendered by the caregiver or caregivers, shall be considered medically necessary when a participant requires an awake and alert caregiver at all times and the caregiver or caregivers provide documentation, including work schedule, commuting times, and school attendance records as defined in Regulation .01 of the chapter, that substitute care is necessary to allow employment or school attendance.

ELIGIBILITY:

Individuals that have needs that require the continuous judgment, knowledge, and skill of a nurse have a continuous skilled nursing need.

Individuals that have been determined by the DONS to have a continuous skilled nursing need require a level of care that is greater than that which can be provided by an unlicensed individual, CNA or CMT, unless the services are provided gratuitously by family or friends. Participants enrolled in the CPAS, CFC, HCBOW and ICS programs are eligible to receive PAS, which are provided by an unlicensed individual, CNA or CMT. Providing PAS to individuals with a continuous skilled nursing need is inconsistent with currently accepted standards of good medical practice, and does not meet the health and safety needs of the individual (COMAR 10.09.84.02B(17)). As such, individuals that have been determined to have a continuous skilled nursing need that are enrolled in the CPAS, CFC, HCBOW or ICS programs are not eligible to receive PAS.

PROCEDURE:

Determining if an individual has a continuous skilled nursing need:

1. During the first level of POS review, if the applicant/participant requested PAS, Division of Participant Enrollment and Service Review staff should review the special program code¹ section within LTSS*Maryland*. If the applicant/participant is concurrently enrolled in a program that offers PDN services, proceed to 1a. If the applicant/participant is not concurrently enrolled in a program that offers PDN services, proceed to 2.
 - a. Request a Service Report/Letter from The Coordinating Center (TCC) outlining any services that the participant receives through REM, EPSDT or the Model Waiver programs.
 - b. After receipt of services documentation, determine if the applicant/participant receives any PDN services and if so, the number of hours:
 - i. If an applicant/participant has case management services only, proceed to step 2.
 - ii. If an applicant/participant receives PDN services, review the Service Report/Letter and PDN assessment in conjunction with the interRAI, Plan of Care (POC), medical documentation, and task schedule to determine:
 1. Frequency of PDN - Section B (include all types of PDN services; for example, those received through Medicaid, while at school, and/or through private insurance),
 2. All supports in place - Section C (e.g., PDN services, CFC services, school supports, informal supports), and
 3. Needs - Sections D-H, K (e.g., skilled nursing tasks).
 - iii. If an applicant/participant has both daytime and nighttime PDN services - STOP - Deny the request for PAS for zero (0) hours due to the DONS providing PDN based on continuous skilled nursing need. Refer the plan to the DONS for a coordinated review. If Division staff are unable to determine the presence of skilled nursing needs, consult with the Clinical Unit.
 - iv. If an applicant/participant has any nursing needs that require 24 hour monitoring (e.g., ventilator) by an RN or LPN, requires non-delegable interventions every four (4) hours or less (e.g., tracheal suctioning every two (2) hours), or requires interventions every four (4) hours or less that are delegable, but are not being delegated by a Residential Service

¹ See Appendix A

Agency (RSA) - STOP - Deny the request for PAS for zero (0) hours due to the applicant/participant's continuous skilled nursing need. Refer the plan to the DONS for a coordinated review. If Division staff are unable to determine the presence of skilled nursing needs, consult with the Clinical Unit.

- v. If an applicant/participant has any nursing needs that don't require completion by an RN or LPN every four (4) hours or less (e.g., Stage 3 wound dressing changes twice daily), review the POS as per existing policy. If Division staff are unable to determine the presence of skilled nursing needs, consult with the Clinical Unit.
2. Review all documentation: interRAI, POC, task schedule, and medical documentation.
 3. If an applicant/participant has any nursing needs that require 24 hour monitoring (e.g., ventilator) by an RN or LPN, requires non-delegable interventions every four (4) hours or less (e.g., tracheal suctioning every two (2) hours), or requires interventions every four (4) hours or less that are delegable, but are not being delegated by an RSA - STOP - Deny the request for PAS for zero (0) hours due to the applicant/participant's continuous skilled nursing need. Refer the plan to the DONS for a coordinated review. If Division staff are unable to determine the presence of skilled nursing needs, consult with the Clinical Unit.
 4. If an applicant/participant has any nursing needs that don't require completion by an RN or LPN every four (4) hours or less (e.g., Stage 3 wound dressing changes twice daily), review the POS as per existing policy. If Division staff are unable to determine the presence of skilled nursing needs, consult with the Clinical Unit.