



# MARYLAND Department of Health

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

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## Office of Health Care Quality

Spring Grove Center, Bland Bryant Building, 55 Wade Avenue, Catonsville, MD 21228-4663

To: Assisted Living Programs and Residential Service Agencies

From: Patricia Tomsko Nay, MD, Executive Director *Patricia Tomsko Nay, MD*  
Carol Fenderson, Deputy Director, State Programs  
Margie Heald, Deputy Director, Federal Programs

Date: May 8, 2018

Re: Use of Outside Certified and Non-Certified Caregivers in Assisted Living Programs

The Office of Health Care Quality has recently received questions regarding whether a resident of an assisted living program (ALP) and/or the resident's family member may retain the additional services of certified and non-certified caregivers. Pursuant to the requirements below, in addition to the care provided by the ALP staff, a resident who resides in an ALP and/or the resident's family has the right to retain either a certified or non-certified individual to provide additional services to the resident. This transmittal replaces all previous guidance on this issue.

### **Certified and Non-Certified Caregivers Retained through a Residential Service Agency (RSA)**

#### ***Responsibility of the RSA***

If a resident and/or the resident's family member retains the use of a certified or non-certified caregiver through an RSA, the RSA must comply with the requirements under COMAR [10.07.05](#) (Residential Service Agencies). In complying with COMAR 10.07.05, the RSA, through its registered nurse, must determine whether the client requires the services of a certified caregiver or whether the services may be provided by an individual who is not certified.

In general, the scope of practice for certified nursing assistants (CNA) and geriatric nursing assistants (GNA) can be found in COMAR [10.39.01](#) (Board of Nursing – Certified Nursing Assistants) and is summarized on the Maryland Board of Nursing's website as:

All individuals who routinely perform nursing tasks delegated by a registered nurse or a licensed practical nurse must be certified by the Board of

Nursing. Certified nursing assistant is defined as an individual regardless of title, who routinely performs nursing tasks delegated by a registered nurse or a licensed practical nurse for compensation; and does not include a medication assistant or an individual who merely provides assistance with activities of daily living, unless the client's needs are such that adverse health consequences are predictable.”

<http://mbon.maryland.gov/Documents/cna-facts.pdf>

More specific information regarding the authority of a registered nurse or a licensed practical nurse to delegate nursing tasks to an individual can be found at COMAR [10.27.11](#) (Board of Nursing – Delegation of Nursing Functions).

In line with COMAR 10.39.01, an RSA may not knowingly provide or refer a caregiver who is not certified to provide services to a client unless the client: (1) Does not require the caregiver to provide assistance with activities of daily living; (2) Only requires assistance with activities of daily living and in the judgment of the supervising nurse, there are no predictable adverse health consequences; or (3) Signed a waiver of skilled services form as required under Regulation .12D of this chapter. See COMAR [10.07.05.10D](#).

In addition, the RSA must ensure that the caregiver is properly screened as required under COMAR [10.07.05.10](#) (i.e., a criminal history records check, basic health screening, employment information, etc.). The RSA must retain the required screening documents in the agency's business office.

### ***Responsibility of the ALP***

An ALP must comply with the requirements in COMAR [10.07.14](#). This includes documenting in the resident's service plan the resident's use of a certified or non-certified caregiver from an RSA. However, an ALP is not required to maintain a copy of the RSA's screening or personnel records in either the resident's record or the AL's personnel file. As stated above, that information will be retained by the RSA. The AL shall have documentation to show the name and contact information of the RSA through which the certified or non-certified caregiver is retained.

At all times, the AL must have sufficient staff to meet the needs of the residents served in the ALP. For example, if a caregiver assists a resident with grooming and dressing but fails to show for his or her shift, the ALP must have sufficient staff to meet the needs of that resident in the absence of the caregiver. This does not preclude a resident or the resident's family from retaining additional services of a certified or non-certified caregiver.

### **Certified and Non-Certified Caregivers Retained Independently from an RSA**

Nothing in this transmittal restricts or limits the gratuitous provision of care to a resident by family or friends. In addition, a cognitively capable adult ALP resident may retain a non-certified individual for assistance in treatments of a routine nature and in self-

administration of medication. Routine care means those activities necessary on a daily basis for the client to gain or maintain a level of functioning. See COMAR [10.27.11.01](#) and [.02](#).

A certified caregiver, including a CNA or GNA, who is retained by the resident or the resident's family, but who is not retained through an RSA, cannot perform nursing functions unless the delegating nurse employed or contracted by the ALP delegates the tasks to the certified caregiver. If the ALP delegating nurse delegates tasks to a certified caregiver retained by the resident or the resident's family, then the ALP must maintain a personnel file for the certified caregiver that includes documentation that the caregiver is free from tuberculosis, measles, mumps, rubella, and varicella, and that a criminal background or criminal history check has been completed.

An ALP shall document the use of a certified or non-certified caregiver retained by a resident or the resident's family member outside of an RSA in the resident's service plan. The ALP may develop additional policies that govern the use of such caregivers. The ALP maintains the responsibility of ensuring sufficient staff as outlined above.

If you have any questions regarding this transmittal, please contact Carol Fenderson, Deputy Director, State Programs, 410-402-8047, [carolm.fenderson@maryland.gov](mailto:carolm.fenderson@maryland.gov).