Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES
## DIVISION OF SOCIAL SERVICES
## Statutory Authority: 31 Delaware Code, Chapter 5, Section 512 (31 Del.C. Ch.5, §512)

## PROPOSED

### PUBLIC NOTICE

## Private Duty Nursing Program Provider Specific Policy

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Division of Social Services Provider Manual and the Title XIX Medicaid State Plan to revise and clarify the criteria and reimbursement methodology for Private Duty Nursing (PDN) services. The proposal describes program eligibility; who can receive PDN services; who can provide the services and the requirements that must be met; program limitations; and, services a person can receive, if eligible.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by January 31, 2005.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**DSS PROPOSED REGULATIONS #04-24a**
**REVISIONS:**

Private Duty Nursing Program Provider Specific Policy

**1.0 Overview**

Up to 28 hours of private duty nursing (PDN) per week are included in the Managed Care Organization (MCO) benefit package for both the Diamond State Health Plan (DSHP) and the Delaware Healthy Children Program (DHCP). Additional private duty nursing hours may be covered as a wrap-around service for the DSHP. No additional private duty nurse hours are covered for the DHCP.

Medicaid clients age 21 years and over are eligible for up to eight hours of PDN daily. Children under age 21 are covered under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and may exceed this limit if medically necessary.

Providers shall refer to the Managed Care section of the General Policy for the required forms and procedures related to Diamond State Partners (DSP).

This manual reflects the policies as they relate to:

- Medicaid clients who are exempt from managed care coverage (see list of those exempt from managed care coverage in the Managed Care section of the General Policy)
- Medicaid clients enrolled in the DSHP whose medical need for private duty nursing has been determined by the Delaware Medical Assistance Program (DMAP) to exceed 28 hours per week.
- Medicaid clients whose medical need requires private duty nursing services in a non-institutional setting. This policy does not apply to waiver group homes.

1.1 Service Definition

1.1.1 ~~Private duty nursing~~ PDN services are available through the ~~Delaware Medical Assistance Program (DMAP)~~ DMAP for clients who require more individual and continuous skilled care than ~~is available from a visiting nurse or than is required to be provided in an inpatient setting by the nursing staff of a hospital or skilled nursing facility~~ home health services as defined in 42 CFR 440.80.

1.1.2 PDN services may be provided by a single nurse to an individual or to multiple clients in a non-institutional group setting as described above. The nurse-client ratio will not exceed 3 clients per nurse~~.~~ unless authorized by the Medical Review Team.

1.1.3 ~~Special a~~Arrangements for multiple clients in non-institutional settings may be considered if such

arrangements are medically appropriate and advantageous to both the client and to DMAP.

1.1.4 PDN services are provided to Medicaid clients in their home as an alternative to more expensive institutional care. Generally, the total cost of PDN services shall not exceed the cost of care provided in an institutional setting.

**2.0 Qualified Providers**

2.1 General Criteria

2.1.1 Private duty nursing may be provided by any registered nurse (RN), licensed practical nurse (LPN) or certified registered nurse practitioner ~~(CNP)~~ (CRNP) who has a professional license from the State to provide nursing services.

2.1.2 Home health agencies that employ and provide qualified nursing staff as described above or self-employed qualified nursing staff are considered qualified providers and may enroll as PDN providers.

2.1.2.1 Individual nurses, either employed by an agency or self-employed may provide no more than 16 hours of PDN services in a 24-hour period except in an emergency situation which will be reviewed by the Medical Review Team.

**3.0 Documentation**

3.1 Provider Requirements

3.1.1 The private duty nursing provider is required to keep the following documentation in the patient's record:

3.1.1.1 Documentation of orientation to client's care needs and demonstration of nursing skills necessary to deliver prescribed care.

3.1.1.2 ~~Maintain~~ A written plan of care that is established, signed and dated by the attending practitioner which includes orders for medications, treatments, nutritional requirements, activities permitted, special equipment and other ordered therapies.

3.1.1.3 ~~Renew~~ Orders renewed, signed and dated at least once every 60 days or ~~as often~~ sooner as the severity of the client's conditions requires.

3.1.1.4 Documentation that the nurse promptly alerts the practitioner to any changes that suggest a need to alter the plan of care.

3.1.1.5 Adequate documentation dated and signed by the nurse performing the service.

**4.0 Reimbursement**

4.1 Methodology

4.1.1 Private duty nursing services provided to eligible DMAP clients are reimbursed using prospectively determined ~~at a~~ rates ~~representing hourly or 15 minute units~~. The unit of service for agency providers is one hour, and for self-employed nurses is 15 minutes. A weekly maximum limit is established for each client by the DMAP based on the authorized services. ~~This limit is defined as the product of the hourly rate and the minimum number of hours necessary to maintain the client in the home as an alternative to institutionalization. Hours will not exceed eight hours daily for clients age twenty-one years and over.~~

4.1.2 ~~Hourly Hourly rrates~~ Rates for agency services are reviewed annually. The rate ~~represents the~~ will relate to the lowest prevailing usual and customary charge, as determined by a survey of all private duty nursing service ~~providers~~ agencies. ~~Providers~~ Agencies will be reimbursed the lower of their usual and customary charges or the maximum ~~hourly~~ rate.

4.1.3 Rates for self-employed nurses will be individually negotiated, but will not exceed a predetermined percentage of the agency rate. Rates may not be renegotiated more than once annually except in extenuating circumstances. Increases will be limited to the normal medical inflation used by DMAP. Self-employed nurses will be reimbursed the lower of their usual and customary charges or the maximum rate.

~~4.1.3~~ 4.1.4 Providers are not required to submit cost reports to the DMAP. There are no retrospective settlements on claims paid.

4.1.5 The baseline PDN reimbursement rate will normally represent services provided by one nurse to one client. An adjusted reimbursement rate per client will be established for medically appropriate PDN services provided by a single nurse for up to three clients. Maximum rates are established according to the following table:

| | | |
|---|---|---|
| One client: | Rate for One= | 100% of established |

| | | |
|---|---|---|
| | | baseline rate |
| Two clients | Rate for Each= | 50% of 143% of baseline rate |
| Three clients | Rate for Each= | 33% of 214% of baseline rate |

For example, if the baseline rate for one client is $21.00 per hour, the reimbursement rate for multiple client settings is as follows:

| | | |
|---|---|---|
| One Client: | Rate for each client= | $21.00 per hour (Baseline) |
| Two Clients | Rate for each client= | $15.00 per hour |
| Three Clients | Rate for each client= | $15.00 per hour |

**5.0 Prior Authorization**

5.1 Requirements

5.1.1 Private duty nursing services must be prior authorized by DMAP before ~~payment from the DMAP is made available~~ the services are rendered.

5.1.2 Private duty nursing services for clients who are eligible for the Elderly and Disabled HCBS Waiver program or the Assisted Living Medicaid Waiver program must be prior authorized by the nursing staff of the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). See the Index in back of General Policy for appropriate address and telephone number.

5.1.3 All other requests for prior authorization should be directed to the Medical ~~Review Team~~ Prior Authorization Units. ~~located in the Robscott Building~~ The New Castle County unit is located in the Robscott Building and the Kent/Sussex County unit is located in Georgetown (see the Index section in the back of General Policy for the address and telephone number of each Prior Authorization Unit).

5.1.4 The maximum number of hours provided by an individual nurse will be restricted to a level that can safely and reasonably be provided. No individual nurse will be authorized to work more than a 16 hour shift per day except in an emergency situation which will be reviewed by the Medical Review Team.

5.1.5 PDN hours must be used for the period of time in which they are authorized. If the authorized hours are not used they cannot be carried over into another time period.

5.2 General Guidelines for Private Duty Nursing Authorization

5.2.1 Initially, a DSS Medical Services Nurse completes a face-to-face medical assessment. The client will receive a written notice of approval or non-approval for PDN services.

5.2.2 The on-going need for PDN care is routinely/periodically re-evaluated. DSS may determine that because of parent/caregiver work schedule, stability of the patient, and other factors, that PDN hours may be reduced or increased.

5.2.3 PDN will only be authorized when there is at least one caregiver and one back-up caregiver willing and able to accept responsibility for the client's care when the nurse is not available. DSS expects that parents/ caregivers be willing and capable to accept responsibility for their relative/child's care. If the parent/caregiver cannot or will not accept responsibility for the client's care when PDN is not authorized or available, the client is deemed not to be in a safe environment and PDN will not be authorized.

5.2.4 DSS cannot guarantee that PDN services will be available from a specific home health agency.

5.2.5 DSS reimburses for medically necessary transportation through a Medicaid transportation broker. DSS expects the parent/caregiver to accompany the client in transport. If, because of employment or school, the parent/caregiver cannot accompany the client, the prior authorized PDN may accompany the client. If the client is transported to a medical appointment or the hospital with the PDN, as soon as the parent/caregiver arrives, the PDN service is no longer required. PDN will not be authorized for a nurse to accompany a client to a medical appointment or hospital stay when the parent/caregiver is available.

5.2.6 PDN may be approved to accompany school-age children with a compromised airway in transport to school and to provide medically necessary care during school hours.

5.2.7 DSS may approve PDN when a child is home sick with a cold, virus or normal childhood disease or there are unplanned school closures or inclement weather days. However, additional hours must be prior authorized. Home health agencies may not be able to provide "on demand or same day service." Families should contact DSS as soon as they know about an unplanned school closure, etc. and find a willing and available provider.

5.2.8 DSS may approve PDN to cover summer vacation as well as scheduled school year holiday vacations for school age children if parent/caregiver requests the coverage timely. Absence of parents/guardian from

the home for employment or work-related education reasons must be documented.

5.2.9 DSS projects a sufficient amount of hours per day. If the hours authorized are not used on a particular day, the hours do not carry over to the next day or weekend nor can the hours be "banked" to be used at a later time.

5.3 Determination of Hours Needed

5.3.1 DSS does not approve 24 hour on-going PDN services. DSS may approve 24 hours PDN for 3-4 days (trach and vent child/adult) to help parents/caregivers adjust and ensure all equipment is functioning. PDN reduces to 20 hours for 1-2 days. PDN then reduces to 18 hours then reduces to 16 hours, the maximum number of hours a day authorized for children (8 hours for adults).

5.3.2 PDN may be reduced further by school enrollment or attendance at a Prescribed Pediatric Extended Care (PPEC) facility. A home health aid or Certified Nursing Assistant (CNA) may be approved for some clients in lieu of PDN when appropriate and cost effective.

5.3.3 An increase in hours may be approved if additional hours will avoid hospitalization as a cost effective measure. This will depend on the medical necessity, the amount of additional hours needed and the letter of medical necessity from the admitting physician.

5.3.4 If a parent/caregiver needs hours for sleep and skilled care is required for a client with a compromised airway (trach/vent) during this sleep time, PDN is approved for a maximum of up to eight hours, generally eight hours within the range of 10 pm through 8 am.

5.3.5 PDN is adjusted to cover work and travel time of the parent/caregiver or to cover education (class schedule) and travel time of the parent, if there is not another parent/caregiver in the home. PDN is authorized for up to 40 hours per week plus an additional five hours for travel to and from work or school. Parent/guardian work hours/ schedule must be verified. PDN for education is for employment related classes, vo-tech, GED, high school, college, etc. and must be documented.

5.3.6 If medical care is needed, but it is less than skilled care, DSS may authorize a CNA or home health aid to provide medically necessary care if it is deemed to be the most appropriate and cost effective.

**DSS PROPOSED REGULATIONS #04-24b**
**REVISIONS:**

STATE PLAN UNDER TITLE XIX UNDER THE SOCIAL SECURITY ACT
STATE OF DELAWARE

ATTACHMENT 3.1-A
Page 3a Addendum

AMOUNT, DURATION AND SCOPE OF MEDICAL
AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

LIMITATIONS:

8. Private Duty Nursing Services: All requests for private duty nursing services must be prior authorized. Private duty nursing is available only for recipients who require more individual and continuous skilled care than ~~is available from a visiting nurse or routinely provided by the nursing staff of a hospital or nursing facility~~ home health services as defined in 42 CFR 440.80.

**DSS PROPOSED REGULATIONS #04-24c**
**REVISIONS:**

STATE PLAN UNDER TITLE XIX UNDER THE SOCIAL SECURITY ACT
STATE OF DELAWARE

ATTACHMENT 4.19-B
Page 10

DELAWARE RATES FOR PRIVATE DUTY NURSING

~~Private Duty Nursing Services, whether performed by a provider located in Delaware or a provider with an out-of-state location are reimbursed at a capped unit rate with weekly maximum dollar limit per client, as set by the Delaware Medicaid Program. The unit rates are reviewed whenever a rate increase is requested by a provider, but no more frequently than annually, by conducting a survey of agencies that provide private duty nursing services and capping the rate at the lowest level available of these prevailing rates. The weekly maximum dollar limit is derived by multiplying the capped unit rate by the minimum number of units necessary to maintain the client in the home as an alternative to institutionalization, but not to exceed eight (8) hours daily.~~

Private duty nursing services provided to eligible DMAP clients are reimbursed using prospectively determined rates. ~~represe~~ The unit of service for agency providers is one hour, and for self-employed nurses is 15 minutes. A weekly maximum limit is established for each client by the DMAP based on the authorized services.

~~Hourly r~~Rates for agency services are reviewed annually. The rate will relate to the lowest prevailing usual and customary charge, as determined by a survey of all private duty nursing service agencies. ~~Providers~~ Agencies will be reimbursed the lower of their usual and customary charges or the maximum ~~hourly~~ rate.

Rates for self-employed nurses will be individually negotiated, but will not exceed a predetermined percentage of the agency rate. Rates may not be renegotiated more than once annually except in extenuating circumstances. Increases will be limited to the normal medical inflation used by DMAP. Self-employed nurses will be reimbursed the lower of their usual and customary charges or the maximum rate.

Providers are not required to submit cost reports to the DMAP. There are no retrospective settlements on claims paid.

The baseline PDN reimbursement rate will normally represent services provided by one nurse to one client. An adjusted reimbursement rate per client will be established for medically appropriate PDN services provided by a single nurse for up to three clients. Maximum rates are established according to the following table:

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**8 DE Reg. 975 (01/01/05)**