

**NEW YORK STATE
MEDICAID PROGRAM**

**PRIVATE DUTY NURSING MANUAL
POLICY GUIDELINES**

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Section I - Requirements for Participation in Medicaid

Enrollment of providers of private duty nursing (PDN) services to Medicaid recipients shall be limited to home care service agencies licensed in accordance with the provisions of Part 765 Title 10, Rules and Regulations of the Department of Health (DOH) and to private practicing licensed practical nurses (LPN) and registered professional nurses (RN).

All nurses providing PDN services must possess a license to practice in the State of New York and be currently registered by the New York State Education Department (NYSED).

A nurse who practices in another state and provides PDN to a New York Medicaid recipient who is temporarily located outside New York State (NYS) must be currently licensed and registered with the appropriate agency of the state in which he/she practices.

Providers must be enrolled in the NYS Medicaid Program prior to the start of service.

Note: Independent enrollment in the Medicaid Program does not constitute an exception to, or expansion of, the LPN scope of practice, as defined by Section 6902(2) of the State Education Law.

The practice of nursing by LPNs must be under the direction of a RN, licensed physician or other licensed health care provider legally authorized to direct LPNs.

Written Order Required

PDN services may be rendered only under the direction of a physician as part of a comprehensive program of care. **Each provider is required to obtain a physician's written recommendation or order prior to the provision of such services.**

Orders may also be written by certified nurse practitioners who are currently registered by the NYSED and enrolled in the NYS Medicaid Program.

Record Keeping Requirements

A record of the patient's care shall be maintained within the patient's home. The documentation in the record shall include:

- The physician's current written order and treatment plan, both of which shall be revised as the needs of the patient dictate;

- The dates and hours of private duty nursing care provided, the identity of the LPN or RN who provided the care;
- Patient status as observed, measured and evaluated by the nurse providing the care;
- A record of the administration of the patient's medications and other treatments, the response to said medications and/or treatments;
- A record of other therapies provided and the observed functioning and adequacy of the supporting medical therapies and equipment.

Medical Review

Periodic documentation of the patient's progress, in accordance with the written order, should be made by the providing nurse to the attending physician.

Section II - Private Duty Nursing Services

Under the NYS Medicaid Program, medically necessary nursing services may be provided to eligible individuals in their homes or in the home of a responsible person.

Reimbursable services include skilled nursing care rendered directly to the individual and instructions to his/her family in the procedures necessary for the patient's treatment.

All nursing services must be in accordance with, and conform to, the ordering physician's treatment plan.

Nursing Services in the Home

PDN services may be provided upon a written physician's order and when a written assessment from a Certified Home Health Agency (CHHA), local department of social services (LDSS), or recognized agent of an LDSS indicates that the patient is in need of either:

- Continuous nursing services which are beyond the scope of care available from a CHHA; or,
- Intermittent nursing services which are normally provided by a CHHA but which are unavailable.

It is expected that those nursing services be provided by a Licensed Home Care Services Agency (LHCSA) and that full and primary use be made of the services provided by such agencies.

Services may be provided by RN or LPN on a private practitioner basis only when it has been determined that:

- There is no approved home health agency in the area to provide the needed skilled nursing services; or
- The patient requires individual and continuous nursing care beyond that which is available from a home health agency.

The written assessment shall include the reasons why the CHHA cannot service this particular case as well as the CHHA's independent recommendations as to the level and frequency of services medically necessary.

The nurse completing the written assessment shall not be a provider of the PDN care to the patient, nor shall he/she be affiliated with the patient's family or the patient's physician.

Section III - Basis of Payment for Services Provided

Reimbursement for nursing services will be at hourly fees not to exceed those negotiated by the LDSS Commissioners on behalf of their respective counties and approved by the DOH, Office of Health Systems Management and by the State Budget Director.

Reimbursement will not be made to a recipient's relative who provides PDN services.

Claims for services provided in increments other than full hours should be rounded up or down to the nearest full hour where appropriate.

Prior Approval

Prior approval of the Medicaid Medical Director (Medicaid Director) or his/her designee is required for all PDN services. All PDN services shall be in accordance with the attending physician's written order and treatment plan.

Approval for PDN services shall be at the LPN level unless:

- The physician's order specifically justifies in writing the reasons why RN nurse services are necessary. In this case the Medicaid Director or local designee must be in agreement.
- The required skills are outside the scope of practice for an LPN as determined by the NYSED.

Each prior approval request shall identify the name(s) of the PDN provider(s) who will be providing the nursing services requested.

Prior approval requests shall identify the name(s) of informal support caregiver(s) and a statement from the ordering practitioner (or educator) and the informal support caregiver(s) that the named individual(s) are trained and capable of meeting all of the skilled and unskilled needs of the patient.

Prior approval requests shall be accompanied by a written physician's order. Physician's orders shall reference all diagnoses, medications, treatments, prognoses and other pertinent information relevant to the nursing plan of care.

Additional clinical and/or social information may be required at the discretion of the Medicaid Director or his/her designee.

In the instance that PDN services are to be provided wholly or in part by an **independently enrolled** LPN or RN, the ordering physician must certify the following in writing:

- He or she is willing to be responsible for oversight of the independent nurse to ensure adherence to the prescribed treatment plan; and
- The ordering physician (or his/her designee) will be available to consult with the independent nurse should the patient's medical condition change or treatment plan needs updating.
- The ordering physician will provide, or arrange, appropriate direction to any independently enrolled LPN working the case in accordance with State Education Law.

Initial approval of PDN services shall be for a period of no more than three (3) months but may be for a lesser period if so determined in the medical judgment of the Medicaid Director or his/her designee.

Approval for continued PDN care beyond three months or the lesser period determined by the Medicaid Director or his/her designee shall be contingent upon:

- a reassessment by a CHHA, LDSS or recognized agent of a LDSS,
- updated medical orders from the prescribing physician and
- presentation of clinical evidence to the Medical Director or his/her designee which supports the appropriateness of the continuation of care.

When, at any time, the Medicaid Director or his/her designee determines that PDN services are no longer clinically appropriate or safe, and the patient continues to request nursing care, the patient shall be advised of the determination and of their right to request a Fair Hearing.

When the determination to discontinue PDN services is made, the Medicaid Director or his/her designee may authorize continuation of the nursing services for a period of time sufficient to permit implementation of an alternate treatment plan.

Prior approvals must be obtained before services commence; except in cases of emergency. In that instance, no more than two days [48 consecutive hours] will be approved retrospectively.

In cases where services are provided on an emergency basis, the Medicaid Director or his/her designee must be notified on the next business day.

In limited circumstances, prior approval may be granted retrospectively at the discretion of the Medicaid Director, or his/her designee, providing the prior approval request is received by the Medicaid Director or his/her designee within ninety (90) days of the date service was provided.

Prior approval of PDN services is not a guarantee that there will be sufficient licensed agency or independently enrolled personnel to service a case.

Out-of-State Providers

NYS Medicaid recipients occasionally seek the services of an out-of-state provider. Private practicing nurses and nursing agencies must be enrolled in the NYS Medicaid Program and may accept an appropriately completed written recommendation from an out-of-state physician who is duly licensed in the state where that practitioner is located.

In the event that a NYS Medicaid recipient who is temporarily residing outside NYS requires the care of a PDN, services may be provided only by nurses who meet the certification requirements of the state in which they are practicing and be enrolled in the NYS Medicaid Program.

Out-of-state nurses who wish to provide services within NYS must possess a license and current registration from the NYSED.

PDN services, whether rendered or ordered by an out-of-state provider, must conform to the prior approval requirements outlined in this Manual.

For more information regarding the provision of out-of-state medical care and services, please refer to the [Information for All Providers, General Policy](#) manual.

Participants of the Long Term Home Health Care Program Waiver

PDN services, as described in this manual, are not available to participants of the Long Term Home Health Care Program (LTHHCP) waiver.

All nursing services in the LTHHCP are provided or arranged for and billed by the LTHHCP provider.

Section IV - Unacceptable Practices

In addition to the guidelines that appear in the [Information for All Providers, General Policy](#) manual, PDN providers are specifically prohibited from engaging in practices considered unacceptable, including but not limited to the following:

- Offering cash payments to a physician;
- Entering into agreements or arrangements of any kind with any practitioner or representative of a health facility whereby any benefit, financial or otherwise, shall accrue to the parties of such agreement;
- Billing for services available free of charge to the general public;
- Billing for services not properly ordered by a qualified or otherwise legally authorized physician or certified nurse practitioner;
- Nursing services provided by an individual nurse exceeding sixteen (16) hours in a 24-hour period;
- Billing for services provided by the patient's spouse, parent, grandparent, son, son-in-law, daughter, daughter-in-law, brother, or sister;
- Billing for PDN services while patient is receiving health care services in a physician's office, clinic, hospital or other medical facility;
- Operating a motor vehicle while the nurse is purported to be providing nursing services.

Section V – The Care at Home Waiver Program

The Care at Home (CAH) program is a home and community based waiver program for children under the age of 18 designed to care for a child in the home.

Determining a CAH child's Medicaid eligibility is a two-step process:

- First, the child must be ineligible when parental income and resources are deemed available.
- Subsequently, the child's Medicaid eligibility is determined disregarding the parental income and resources and using any income and resources belonging to the child.

After Medicaid eligibility is established, the child must then meet several other requirements in order to participate in the CAH program. These requirements are:

- The child must be under 18 years of age; have a continuous 30 day hospital stay after 12/1/85 (some cases, 30 within 90 days);
- Be certified physically disabled based on SSI criteria;
- Require the level of care provided in a hospital or skilled nursing facility; and
- Be able to be cared for safely in the community and at no greater cost to Medicaid than in the appropriate facility.

The three waiver services in CAH are:

- Respite,
- Case Management and
- Home Adaptation.

In addition, these children also have access to all medically necessary Medicaid State Plan services.

There are currently five Medicaid CAH Waivers in New York State.

Oversight on a daily basis for CAH I and II is the responsibility of the DOH, in conjunction with the LDSS.

For CAH III, IV and VI, daily oversight is the responsibility of the Office of Mental Retardation and Developmental Disabilities (OMRDD) and its local Developmental Disabilities Service Offices (DDSOs).

Nursing providers who render Private Duty Nursing (PDN) services to children enrolled in the Medicaid CAH waiver programs must claim for reimbursement using the appropriate CAH nursing procedure code and the fee assigned by the LDSS, which has fiscal responsibility for the child.

There is no prior approval for PDN services in CAH.

The CAH skilled nursing procedure codes and locally assigned private duty nursing fees for each LDSS are **not** published in this manual.

The only source for the fee assigned to each case is the fiscally responsible LDSS. It is imperative that PDN providers contact the LDSS to obtain the correct fee amount and associated documentation.

It is the responsibility of each nursing provider to obtain a statement from the LDSS documenting the hourly fee that the LDSS has approved for that particular case and the procedure code to be utilized.

The document should be signed by the provider and a signed copy returned to the LDSS to indicate that the provider acknowledges and agrees to bill the approved county fee.

Each LDSS has a CAH coordinator that can answer questions and provide the required information to nursing providers. **Providers must retain this statement in each child-specific record.**

When a child is approaching his/her 18th birthday, the case manager and LDSS staff must begin to transition him/her from the CAH waiver.

If the child is authorized for regular Medicaid and continues to need PDN, a prior approval request must be submitted as directed in other sections of this manual. The PDN prior approval should be in place before the child has moved out of CAH.

Section VI - Definitions

For purposes of the Medicaid Program and as used in this Manual, the following terms are defined to mean:

Certified Home Health Agency

A certified home health agency (CHHA) holds a certification issued by the State Commissioner of Health in addition to being an agency licensed to provide home health services.

The agency can be public or private, a non-profit organization, or a subdivision of such an agency or organization, which is primarily engaged in providing, directly or through arrangement, skilled nursing services and other therapeutic services to home-bound patients.

Such services are provided on a part-time or intermittent basis, in a place of residence that is used as the individual's home.

Licensed Home Care Services Agency

A Licensed Home Care Services Agency (LHCSA) refers to an organization primarily engaged in providing, directly or through contract arrangement, skilled nursing services and other therapeutic services to home-bound patients.

Such services are provided on a long-term, continuous basis, in a place of residence that is used as the individual's home.

A LHCSA is one that has been licensed by the State Commissioner of Health as evidenced by its possession of a current license.

Licensed Practical Nurse

A Licensed Practical Nurse (LPN) refers to an individual who is licensed and currently registered to practice the profession of nursing as an LPN pursuant to Article 139 of the NYS Education Law.

Registered Professional Nurse

A Registered Nurse (RN) refers to an individual who is licensed and currently registered to practice the profession of nursing as a registered professional nurse pursuant to Article 139 of the NYS Education Law.