

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
A Statement of Need and Fiscal Impact accompanies this form.

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|---|-------------------------------------|
| Oregon Health Authority (OHA), Division of Medical Assistance Programs (Division) | 410 |
| Agency and Division | Administrative Rules Chapter Number |
| Sandy Cafourek | 500 Summer St NE, Salem, OR 97301 |
| Rules Coordinator | Address |
| | (503) 945-6430 |
| | Telephone |

RULE CAPTION

Update Age Limitation, Identify Three PDN Programs, Update Benefit Package, Add CCOs
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

| | | | | |
|---------------|------------|------------------------------------|-----------|------------------|
| July 15, 2015 | 10:30 a.m. | 500 Summer St. NE, Salem, OR 97301 | Room 137D | Sandy Cafourek |
| Hearing Date | Time | Location | | Hearings Officer |

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND: OAR 410-132-0020; 410-132-0030; 410-132-0060; 410-132-0070; 410-132-0080; 410-132-0100; 410-132-0120, 410-132-0180, and 410-132-0200

REPEAL: OAR 410-132-0050

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 413.042

Other Auth.:

Stats. Implemented: ORS 414.065

RULE SUMMARY

The Private Duty Nursing (PDN) Services program administrative rules govern the Division of Medical Assistance Programs' (Division) private duty nursing services. In 2012, the Centers for Medicare and Medicaid Services (CMS) approved the PDN State Plan Amendment (SPA) adjustment to reflect current practice for age limitation (not covered if the client is 21 years of age or older). These rule changes will align the rule with the SPA and current practice. The rule amendments clarify the three distinct PDN programs under the Division, DHS, and ODE; introduce and define new terminology; and provide clarifying language. These rules also update the benefit package and add coordinated care organizations (CCO)'s. These rules are being amended to reflect current practice.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

July 17, 2015 by 5 p.m. Send written comments to: dmap.rules@state.or.us

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

| | | |
|---|--|---|
|  |  |  |
| Signature | Printed name | Date |

Note: Hearing Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

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|---|-------------------------------------|
| Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division) | 410 |
| Agency and Division | Administrative Rules Chapter Number |

Update Age Limitation, Identify Three PDN Programs, Update Benefit Package, Add CCOs
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: The amendment of OAR 410-132-0020, 410-132-0030, 410-132-0060, 410-132-0070, 410-132-0080, 410-132-0100, 410-132-0120, 410-132-0180, and 410-132-0200 and the repeal of 410-132-0050

Statutory Authority: 413.042
Other Authority: none
Stats. Implemented: 414.065

Need for the Rule(s): The Private Duty Nursing (PDN) Services program administrative rules govern the Division of Medical Assistance Programs' (Division) private duty nursing services. In 2012, the Centers for Medicare and Medicaid Services (CMS) approved the PDN State Plan Amendment (SPA) adjustment to reflect current practice for age limitation (not covered if the client is 21 years of age or older). The Division needs to amend these rules to align with the SPA and current practice. These amendments clarify the three distinct PDN programs in the Division, the Department of Human Services (Department), and the Oregon Department of Education (ODE). These rules introduce and define new terminology, provide clarification on billing and PDN requirements, and update the benefit package. These rules also add Coordinated Care Organizations (CCO).

Documents Relied Upon, and where they are available:
DMAP SPA at <http://www.oregon.gov/oha/healthplan/DataReportsDocs/Medicaid%20State%20Plan.pdf>
DHS rules, Chapter 411, Division 350 at http://www.dhs.state.or.us/policy/spd/rules/411_350.pdf

Fiscal and Economic Impact: No fiscal impact outside of state government.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): Amending these rules may have a fiscal impact on two offices within the Department of Human Services: The Office of Developmental Disability Services (ODDS) may experience a fiscal savings because they will be able to claim federal match for individuals aged 18-21 receiving PDN services under their program; and Aging and People with Disabilities (APD) may experience a small increase in the number of individuals aged 21 and older receiving services, which would result in a fiscal increase. However, that potential increase for APD would also be offset by the ability to claim federal match for this population. Amending these rules is not anticipated to have a fiscal impact on the Authority, other units of local government, the public, or businesses, including small businesses.

2. Cost of compliance effect on small business (ORS 183.336):

- a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: The Division does not currently track how many private duty nursing agencies are small or large businesses and no small businesses were identified at the RAC.
- b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: No additional reporting, recordkeeping, or other administrative activities are anticipated.
- c. Equipment, supplies, labor and increased administration required for compliance: No additional equipment, supplies, labor, or increased administration are anticipated.

How were small businesses involved in the development of this rule? No small businesses were identified at the RAC.

Administrative Rule Advisory Committee consulted? Yes. RAC participants included representatives from Care Oregon, DHS/ODDS, Payment Accuracy and Recovery/Provider Audit Unit.


Signature

DAVID SIMMITT 6/5/2015
Printed Name Date

DIVISION OF MEDICAL ASSISTANCE PROGRAMS

DIVISION 132

PRIVATE DUTY NURSING SERVICES

410-132-0020

Private Duty Nursing Services

(1) The practice of nursing is governed by the following: Oregon State Board of Nursing, ORS 678.010 to 678.410, and Oregon State Board of Nursing, chapter 851, divisions 031, 045, and 047.

(2) Private duty nursing is considered supportive to the care provided to a client by the client's family, foster parents, and/or delegated caregivers, as applicable. Nursing services must be medically appropriate. Medically appropriate for private duty nursing shift care is determined by qualifying for services based on the Private Duty Nursing Acuity Grid (DMAP 591). Increases or decreases in the level of care and number of hours or visits authorized shall be based on a change in the condition of the client, limitations of the program, and the ability of the family, foster parents, or delegated caregivers to provide care.

~~(3) The need for private duty nursing shall be established based on a physician's order and the following information:~~

- ~~(a) Nursing assessment;~~
- ~~(b) Nursing care plan;~~
- ~~(c) Documentation of condition and medical appropriateness;~~
- ~~(d) Identified skilled nursing needs;~~
- ~~(e) Goals and objectives of care provided.~~

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-132-0030

Definitions

(1) "Activities of daily living" means— ~~A~~activities usually performed in the course of a normal day in an individual's life including, but not limited to, ~~such as:~~ eating, dressing,

bathing and personal hygiene, mobility, bowel and bladder control, behavior modification, meal preparation, housecleaning, and food acquisition.

(2) "Admission" — means ~~a~~Acceptance of the client into the private duty nursing program contingent upon meeting the criteria as stated in rule.

(3) "Basic tasks of client/nursing care" means — ~~P~~procedures that do not require the education or training of a registered nurse or licensed practical nurse, ~~which that~~ cannot be performed by the client independently. Basic tasks of client/nursing care also means procedures that may be directed by the client. These basic tasks include, but are not limited to, activities of daily living. Basic tasks may will vary from setting to setting depending on the client population served in that setting and the acuity and /complexity of the client's care needs. Basic tasks may require the assignment and supervision of a licensed nurse. The need for supervision is at the discretion of the registered nurse. See State Board of Nursing rules that govern the practice of nursing.

(4) "Critical/fluctuating condition" means — ~~A~~a situation where the client's clinical and behavioral state is of a serious nature expected to rapidly change and be in need of continuous reassessment and evaluation.

(5) "Delegation" means — ~~A~~a registered nurse authorizes an unlicensed person to perform special tasks of client/nursing care in selected situations and indicates that authorization in writing. Delegation occurs only after assessment of a specific situation (including the ability of the delegate), teaching the task, and ensuring supervision. See State Board of Nursing rules that govern the practice of nursing.

(6) "Discharge" means the — ~~c~~Client no longer meets the Division of Medical Assistance Programs (~~Division~~) rules and criteria of the private duty nursing program.

(7) "Habilitation" — means services that are provided in order to assist an individual to acquire a variety of skills including self-help, socialization, and adaptive skills. Habilitation is aimed at raising the level of physical, mental, and social functioning of an individual. Habilitation is contrasted to rehabilitation, which involves the restoration of function an individual ~~person~~ has lost.

(8) "Home" means — ~~A~~a place of temporary or permanent residence, not including a hospital, intermediate care facility for individuals with ~~(ICF)/MR~~ intellectually disabilities (~~led~~ ICF/ID), nursing facility, or licensed residential care facility.

(89) "Maintenance care" means — ~~T~~the level of care needed when the goals and objectives of the care plan are reached, the condition of the client is stable or /predictable, the plan of care does not require the skills of a licensed nurse in continuous attendance, or the client, family, foster parents, or caregivers have been taught and have demonstrated the skills and abilities to carry out the plan of care.

(910) "Medically Fragile Children's Unit (MFCU) program" means— Aa Department of Human Services (Department) organizational unit that coordinates and may fund appropriate services for children ages 0 to 18 years with intensive medical needs that require in-home and technological supports and meet MFCU clinical criteria.

(101) "Member of the household" means— Aany individual person sharing a common home abode as part of a single family unit, including domestic employees, and others who live together as part of a family unit, but not including a roomer or boarder.

(142) "Plan of care" means— Wwritten instructions detailing how the client is to be cared for. The plan is initiated by the private duty nurse or nursing agency with input from the prescribing physician. See the "Documentation Requirements" section of the Private Duty Nursing Services administrative rules.

(123) "Private duty nursing shift care" means— Aan RN or LPN nursing service for the client's critical/fluctuating conditions requiring the need for reassessment and evaluation with a high probability that complications would arise without skilled nursing management of the treatment program supplied in a specified block of time.

(134) "Practice of nursing" means— Uusing the nursing process under doctor's orders to diagnose and treat human response to actual or potential health care problems, health teaching and health counseling, the provision of direct client care, and the teaching, delegation, and supervision of others who provide tasks of nursing care to clients. See State Board of Nursing rules that govern the practice of nursing.

(145) "Private duty nursing visit" means— RN or LPN skilled nursing services for non-critical/stable conditions requiring reassessment and evaluation with a moderate probability that complications would arise without skilled nursing management of the treatment program supplied on an intermittent per visit basis.

(156) "Respite" means— Sshort-term or intermittent care and supervision in order to provide an interval of rest or relief to family or caregivers.

(167) "Responsible unit" means— Tthe agency responsible for approving or denying prior authorization.

(178) "Shift" means— Ffour to twelve hours of private duty nursing.

(189) "Skilled nursing services" means— Cclient care services pertaining to the curative, restorative, or preventive aspects of nursing performed by or under the supervision of a registered nurse pursuant to the plan of care established by the physician in consultation with the registered nurse. Skilled nursing emphasizes a high level of nursing direction, observation, and skill. The focus of these services must be the use of the nursing process to diagnose and treat human responses to actual or potential health care problems, health teaching, and health counseling. Skilled nursing services include the provision of direct care and the teaching, delegation, and supervision of others who

provide tasks of nursing care to clients. ~~These~~ Such services ~~will~~ shall comply with the Nurse Practice Act and administrative rules of the Oregon State Board of Nursing, which rules are by this reference made a part of.

(1920) "Special tasks of client/nursing care" means— ~~T~~tasks that require the education and training of a registered nurse or licensed practical nurse to perform. Special tasks ~~may~~ will vary from setting to setting depending on the client population served in that setting and the acuity/complexity of the client's care needs. Examples of special tasks include, but are not limited to, administration of injectable medications, suctioning, and complex wound care.

(201) "Stable/predictable condition" means— ~~A~~ situation in which the client's clinical and behavioral status is known and does not require the regularly scheduled presence and evaluation of a licensed nurse. See State Board of Nursing rules that govern the practice of nursing.

(242) "Teaching" means— ~~T~~the registered nurse instructs an unlicensed individual person in the correct method of performing a selected task of client/nursing care. See State Board of Nursing rules that govern the practice of nursing.

(223) "Visit" means— ~~N~~nursing service supplied on an intermittent basis in the home.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-132-0050

Client Copayments

~~Copayments may be required for certain services. See OAR 410-120-1230 for specific details.~~

~~Stat. Auth.: ORS 413.042~~

~~Stats. Implemented: ORS 414.065~~

410-132-0060

Private Duty Nursing Transition into Maintenance

~~This rule does not pertain to individuals in the MFC program.~~

(1) Private duty nursing services become maintenance care when any one of the following situations occurs:

(a1) Medical and nursing documentation supports that the condition of the client is stable/predictable;

(b2) The plan of care does not require a licensed nurse to be in continuous attendance;

(c3) The client, family, foster parents, or caregivers have been taught the nursing services and have demonstrated the skills and ability to carry out the plan of care; or

(d4) The combined score on the Acuity Grid and Psychosocial Grid is less than 54.

(2) This rule does not apply to individuals in the MFC program.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-132-0070

Documentation Requirements

(1) Documentation of services provided ~~must~~ is to be maintained in the client's place of residence by the private duty nurse until discharged from service. Payment ~~will~~ may not be made for services where the documentation does not support the definition of skilled nursing. Documentation must meet the standards of the Oregon State Board of Nursing.

(2) The private duty nurse must ensure completion and documentation of a comprehensive assessment of the client's capabilities and needs for nursing services within ~~7~~ seven days of admission. Comprehensive assessments must be updated and submitted to the responsible unit by the next work day after any significant change of condition and reviewed at least every 62 days. Some examples of significant change in condition are hospital admission, emergency room visit, and change in status, death, or discharge from care.

(3) The nursing care plan must document that the private duty nurse, through case management and coordination with all interdisciplinary staff and agencies, provides services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each client in accordance with a written, dated, nursing care plan. The nursing care plan must:

(a) ~~The nursing care plan must be~~ Be completed within ~~7~~ seven days after admission for children and adolescents with short-term needs who are served through the Division. The nursing care plan must be reviewed, updated, and submitted whenever the client's needs change, but at least every 62 days;

(b) ~~The nursing care plan must~~ Ddescribe the medical, nursing, and psychosocial needs of the client and how the private duty nurse will actively coordinate and facilitate

meeting those needs. This description of needs must include interventions, measurable objectives, goals, and time frames in which the goals and objectives will be met and by whom;

(c) ~~The nursing care plan must include the rehabilitation potential including functional limitations related to Activities of Daily Living (ADL), types and frequency of therapies, and activity limitations per physician order;~~

(d) ~~The nursing care plan must include services related to school-based care according to the IEP Individual Education Plan, and the Individualized Family Service Plan, if applicable;~~

(e) ~~The nursing care plan must show coordination of all services being provided, including, but not limited to, for instance the client or representative, registered nurse (RN) case manager, Department of Human Services (DHS) case worker, physician, other disciplines involved, and all other care providers involved in the client's treatment plan;~~

(f) ~~The nursing care plan must include a statement of the client's potential toward discharge. Timelines must be included in the pPlan outline;~~

(g) ~~The nursing care plan must be available to and followed by all caregivers involved with the client's care of the client.~~

(4) Documentation of private duty shift care and responses to care must be written at least every hour in an accurate, timely, thorough, and clear manner on the narrative or flow sheet. Documentation must comply with the ~~and as~~ requirements of ~~d by the~~ Oregon State Board of Nursing (OSBN) in OAR chapter 851 and must include:

(a) The name of the client on each page of documentation;

(b) The date of service;

(c) Time of start and end of service delivery by each caregiver;

(d) Anything unusual from the standard plan of care must be expanded on the narrative;

(e) Interventions;

(f) Outcomes including the client's response to services delivered;

(g) Nursing assessment of the client's status and any changes in that status per each working shift; and

(h) Full signature of provider.

(5) Documentation of delegation, teaching, and assignment must be in accordance with the Oregon State Board of Nursing Rules.

(6) For documentation to be submitted with prior authorization, see OAR 410-132-0100.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-132-0080

Limitations

(1) General; pertains to both shift care and visits:

(a) Private duty nursing is not covered if the client is:

(A) Twenty-one years of age or older;

(B) A resident of a nursing facility;

(C) A resident of a licensed intermediate care facility for people/individuals with intellectual with _____ developmental disabilities (ICF/ID);

(D) In a hospital;

(E) In a licensed residential care facility;

(b) Private duty nursing is not covered solely to allow the client's family or caregiver to work or go to school;

(c) Private duty nursing is not covered solely to allow respite for caregivers or the client's family;

(d) Payment for private duty nursing ~~will~~may not be authorized for parents, siblings, grandparents, foster care parents, significant others, members of the client's household, or individuals paid by other agencies to provide caregiving services;

(e) Costs of private duty nursing services are not reimbursable if they are provided concurrently with care being provided under home health or hospice program rules;

(f) Home nursing visits as defined in the Home Enteral/Parenteral Nutrition and IV Services rules; are not covered in conjunction with private duty nursing services;

(g) These services are provided for individuals aged 0 to 21 who need PDN or the same or similar nursing services during school hours. These services are provided through

the school-based health services program in conjunction with the individual's Individual Education Plan (IEP) or Individualized Family Service Plan (IFSP) under the Individuals with Disabilities Education Act (IDEA);

~~(g) Private duty nursing is not automatically covered in the school setting even if the Individual Education Plan (IEP) or Individualized Family Service Plan (IFSP) indicates the need. The level of need still must be determined by the score on the Private Duty Acuity Grid. All other criteria and limitations must be addressed;~~

(h) Holidays are paid at the same rate as non-holidays;

(i) Hours nurses spend in training are not reimbursable;

(j) Travel time to reach the job site is not reimbursable;

(k) Maintenance care is not reimbursable, except for those individuals in the MFC program.

(2) Private duty nursing visit:

(a) The nursing care plan and documentation supporting the medical appropriateness for private duty nursing must be reviewed every 60 days to continue the service for children and adolescents with short-term needs who are served by the Division. Reviews must be conducted by the responsible unit;

(b) Private duty nursing visits are limited to two per day.

(3) Private duty nursing shift care:

(a) Medically appropriate private duty nursing shift care for clients up to ~~18~~ 21 years old, may be covered for acute episodes of illness, injury, or medical condition up to 62 continuous days in cases where it has been determined that skilled management by a licensed nurse is required;

(b) A client may be referred to the ~~Medically Fragile Children's Unit (MFCU) program;~~ to determine if they meet the criteria for MFCU program admission at the time of the initial request for services, ~~on or about day 50 of continuous service, or anytime thereafter (even if it is before the 62nd day)~~ if any of the following are determined to exist:

(A) The client's medical needs are for habilitation or maintenance; or

(B) The client's medical needs are long term.

(c) ~~Individuals who no longer qualify for Pprivate duty nursing shift care for clients age 18 and over will~~ shall be referred to the Department of Human Services (DHS) Aging

~~and People with Disabilities Division (APD) for determination of their long-term care needs;~~

(d) The number of hours of private duty nursing services that a client may receive is determined by the score on the Private Duty Nursing Acuity Grid (DMAP 591):

(A) The client must score greater than 60 points on the Acuity Grid to receive up to 24 hours per day immediately after discharge from a hospital or if there is a significant worsening or decline of condition; or

(B) The client must score 50 to 60 points on the Acuity Grid to receive up to 16 hours per day immediately after discharge from a hospital or if there is a significant worsening or decline of condition; or

(C) The client must score 40 to 49 points on the Acuity Grid to receive up to 84 hours per week immediately after discharge from a hospital or if there is a significant worsening or decline of condition; or

(D) If the score is 30 to 39 on the Acuity Grid, then the Private Duty Nursing Psychosocial Grid (DMAP 590) ~~will~~ shall be used to determine eligibility. If the score is 24 or above, the client may receive up to 84 hours per week of shift care.

(c) The banking, saving, or accumulating unused prior authorized hours used for the convenience of the family or caregiver is not covered.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-132-0100

Prior Authorization

(1) Private duty nursing providers must obtain prior authorization (PA) for all services.

(2) Providers must request PA as follows (see the Private Duty Nursing Services Supplemental Information booklet for contact information):

(a) For individuals served by the Medically Fragile Children's Unit program (MFCU) clients, from the Department's of Human Services (Department) MFCU Program;

(b) For clients enrolled in the fee-for-service (FFS) Medical Case Management (MCM) program, from the MCM contractor;

(c) For members/clients enrolled in a coordinated care organization (CCO) or prepaid health plan (PHP), from the CCO or the PHP;

(d) For all other clients, from the Division of Medical Assistance Programs.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-132-0120

Billing Information

(1) If the client has the OHP Plus Basic Health Care benefit package, but is not enrolled in a coordinated care organization (CCO) or prepaid health plan (PHP), bill with the appropriate Division of Medical Assistance Programs (Division) unique procedure codes and follow the instructions on how to complete the CMS-1500.

(2) Client copayments may be required for certain services. See OAR 410-120-1230 for specific details.

(23) Claims must be submitted your claim on a CMS-1500, electronically or on paper. Paper claims must be sent Send your paper CMS-1500 to the Division.

(43) For information about electronic billing, contact the Division's Electronic Billing Representative.

(54) When billing for clients with Medicare, bill on a CMS-1500 and enter the appropriate TPR Explanation Code in Field 9.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-132-0180

Procedure Codes

(1) All private duty nursing services require prior authorization. (See the definitions section of the administrative rules.)

(2) Private duty nursing visit:

(a) T1030 -- Nursing care, in the home, by registered nurse, per diem;

(b) T1031 -- Nursing care, in the home, by licensed practical nurse, per diem.

(3) Private duty nursing shift care:

(a) S9123 -- Nursing care, in the home, by registered nurse, per hour -- 1 unit equals one hour;

(b) S9124 -- Nursing care, in the home, by licensed practical nurse, per hour -- 1 unit equals one hour.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-132-0200

Provider Enrollment

~~In order for registered nurses or licensed practical nurses to be enrolled or continue enrollment as a Division of Medical Assistance Programs (Division) provider, registered nurses and licensed practical nurses must submit a copy of licensure must be submitted every two years upon renewal by the Oregon State Board of Nursing.~~

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065