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|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page iv |
| | Transmittal Letter CSN-3 | Date 09/16/22 |

4. Program Regulations

130 CMR 438.000: *Continuous Skilled Nursing Agency*

| | | |
|--|--|------|
| 438.401: | Introduction | 4-1 |
| 438.402: | Definitions | 4-1 |
| 438.403: | Eligible Members | 4-4 |
| 438.404: | Provider Eligibility | 4-4 |
| (130 CMR 438.405 through 438.407 Reserved) | | |
| 438.408: | Services Provided under Contract | 4-6 |
| 438.409: | Administrative Requirements | 4-6 |
| 438.410: | Clinical Eligibility for CSN Services | 4-7 |
| 438.411: | Prior Authorization (PA) Requirements | 4-8 |
| 438.412: | Notice of Prior Authorization and Clinical Eligibility Determination | 4-9 |
| 438.413: | Early and Periodic Screening, Diagnostic and Treatment Services | 4-10 |
| 438.414: | Administrative Care Management | 4-10 |
| 438.415: | Provider Responsibilities | 4-12 |
| 438.416: | Plan of Care Requirements | 4-16 |
| 438.417: | Quality Management, Utilization Review, and Reporting Requirements | 4-18 |
| 438.418: | Transfers and Discharge Planning | 4-19 |
| 438.419: | Conditions of Payment | 4-19 |
| 438.420: | Maximum Allowable Fees | 4-20 |
| 438.421: | Denial of Services and Administrative Review | 4-20 |
| 438.422: | Prohibited Marketing Activities | 4-21 |

| | | |
|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-1 |
| | Transmittal Letter CSN-1 | Date 01/01/22 |

438.401: Introduction

130 CMR 438.000 states the requirements for the payment of continuous skilled nursing (CSN) services provided by a CSN agency. All CSN agencies participating in MassHealth must comply with MassHealth regulations including, but not limited to, 130 CMR 438.000 and 450.000: *Administrative and Billing Regulations*.

438.402: Definitions

The following terms used in 130 CMR 438.000 have the meanings given in 130 CMR 438.402, unless the context clearly requires a different meaning. The reimbursed services defined in 130 CMR 438.402 are not determined by these definitions, but by the application of regulations elsewhere in 130 CMR 438.000 and 450.000: *Administrative and Billing Regulations*.

Accountable Care Organization (ACO) – an entity that enters into a population-based payment model contract with EOHHS as an accountable care organization, wherein the entity is held financially accountable for the cost and quality of care for an attributed or enrolled member population. ACOs include Accountable Care Partnership Plans, Primary Care ACOs, and MCO-administered ACOs.

Branch Office – a location or site from which a CSN agency provides services within a portion of the total geographic area served by the parent CSN agency. The parent CSN agency must provide supervision and administrative control of any branch office on a daily basis.

Calendar Week – seven consecutive days beginning Sunday at midnight and ending Saturday at 11:59 P.M.

Capitated Program – an ICO, SCO, ACO, or PACE organization, or any other entity that, according to a contract with EOHHS, covers home health and other medical services for members on a capitated basis.

Care Management – a function performed by the MassHealth agency or its designee that assesses and reassesses the medical needs of complex-care members and authorizes or coordinates long-term services and supports (LTSS) that are medically necessary for such members to remain safely in the community.

Certification Period – a period of no more than 60 days for which the member’s physician has certified that the plan of care is medically appropriate and necessary.

Clinical Manager – a registered nurse employed by the MassHealth agency or its designee, who performs the in-person assessment of a member for MassHealth coverage of CSN services and, if it is determined that CSN services are medically necessary, coordinates authorization of medically necessary LTSS for the member.

Complex-care Member – a MassHealth member whose medical needs, as determined by the MassHealth agency or its designee, are such that they require a nurse visit of more than two continuous hours of nursing services to remain in the community.

| | | |
|--|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-2 |
| | Transmittal Letter CSN-1 | Date 01/01/22 |
| Continuous Skilled Nursing Agency Manual | | |

Continuous Skilled Nursing (CSN) Agency – a public or private organization that provides CSN services to complex-care members within the member’s home.

Continuous Skilled Nursing (CSN) Services – skilled nursing care provided by a licensed nurse to complex-care members who require more than two continuous hours of nursing services per day.

Co-vending – an arrangement through which a member’s CSN services are provided by more than one CSN agency or independent nurses, with each provider obtaining its own MassHealth prior authorization to provide nursing services to the member.

Home Health Agency – a public or private organization that provides nursing and other therapeutic services to individuals whose place of residence conforms to the requirements of 42 CFR 440.70(c). Home health agency providers are governed by MassHealth regulations at 130 CMR 403.000: *Home Health Agency Services*.

Household – a place of residence where two or more people are living that is:

- (1) a group home, a residential care home, or other group living situation;
- (2) at the same street address if it is a single family house that is not divided into apartments or units; or
- (3) at the same apartment number or unit number if members live in a building that is divided into apartments or units.

Independent Nurse – a licensed nurse who independently enrolls as a provider in MassHealth to provide CSN services. Independent nurse providers are governed by 130 CMR 414.000: *Independent Nurse*.

Integrated Care Organization (ICO) – an organization with a comprehensive network of medical, behavioral health care, and long-term services and supports providers that integrates all components of care, either directly or through subcontracts, and has contracted with EOHHS and the Centers for Medicare & Medicaid Services (CMS), and been designated as an ICO to provide services to dual eligible individuals under M.G.L. c. 118E. ICOs are responsible for providing enrolled members with the full continuum of Medicare- and MassHealth-covered services.

Long-term Services and Supports (LTSS) – certain MassHealth-covered services intended to enable a member to remain in the community. Such services include, but are not limited to, home health, durable medical equipment, oxygen and respiratory equipment, personal care attendant, and other health-related services as determined by the MassHealth agency or its designee.

LTSS Needs Assessment – the standardized assessment the MassHealth agency or its designee uses to determine a member’s eligibility for CSN services and if found eligible, quantifies the medically necessary CSN and other LTSS services.

Managed Care Organization (MCO) – any entity with which the MassHealth agency contracts under its MCO program to provide, arrange for, and coordinate care and certain other medical services to members on a capitated basis, and is approved by the Massachusetts Division of Insurance as a health maintenance organization (HMO), and is organized primarily for the purpose of providing health care services.

| | | |
|--|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-3 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |
| Continuous Skilled Nursing Agency Manual | | |

Marketing – any communication from a CSN agency provider, or its agent, to a member, or his or her family or caregivers, that can reasonably be interpreted as intended to influence the member’s choice of CSN agency provider, whether by inducing that member

- (1) to retain that CSN agency provider to provide CSN services to the member;
- (2) not to retain CSN services from another CSN agency provider; or
- (3) to cease receiving CSN services from another CSN agency provider.

Medical History – a component of the member’s medical record that provides a summary of all health-related information about the member. A history includes, but is not limited to, medical and nursing-care histories as well as summaries of physician physical examination and nursing-assessment results.

Medical Record – documentation, maintained by the CSN agency, that includes medical history, nursing progress notes, the member’s plan of care, and other information related to the member.

Medical Records Release Form – a signed authorization from the member or the member’s parent or legal guardian, if the member is a minor, that allows the designated release to access the member’s confidential health information from other health-care providers.

Nurse – a person licensed as a registered nurse or a licensed practical nurse by a state's board of registration in nursing.

Nursing Services – the assessment, planning, intervention, and evaluation of goal-oriented nursing care that requires specialized knowledge and skills acquired under the established curriculum of a school of nursing approved by a board of registration in nursing. Such services include only those services that require the skills of a nurse.

Ordering Non-physician Practitioner – a nurse practitioner, physician’s assistant, or clinical nurse specialist who is licensed in the state of Massachusetts to perform medical services according to their scope of practice. Ordering non-physician practitioners are also allowed to conduct face-to-face encounters. Nurse midwives are not allowed to order home health services.

Primary Caregiver – the individual, other than the nurse, who is primarily responsible for providing ongoing care to the member.

Programs of All-inclusive Care for the Elderly (PACE) – the Programs of All-inclusive Care for the Elderly (PACE), as described in 42 CFR 460 and 130 CMR 519.007(C): *Program of All-inclusive Care for the Elderly (PACE)*.

Senior Care Organization (SCO) – a managed care organization that participates in MassHealth under a contract with the MassHealth agency to provide coordinated care and medical services through a comprehensive network to eligible members 65 years of age or older. SCOs are responsible for providing enrolled members with the full continuum of MassHealth-covered services, and for dual eligible members, the full continuum of MassHealth- and Medicare-covered services.

| | | |
|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-4 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |

Unfair or Deceptive Acts or Practices – any unfair or deceptive acts or practices, as that term is defined in M.G.L. c. 93A, § 2, and the regulations promulgated thereunder by the Massachusetts Attorney General.

438.403: Eligible Members

(A) (1) MassHealth Members. The MassHealth agency covers CSN services provided by CSN agencies only when provided to eligible MassHealth members, subject to the restrictions and limitations described in MassHealth regulations at 130 CMR 438.000 and 450.000:

Administrative and Billing Regulations. 130 CMR 450.105: *Coverage Types* specifically states, for each MassHealth coverage type, which services are covered, and which members are eligible to receive those services.

(2) Recipients of the Emergency Aid to the Elderly, Disabled and Children Program. For information on covered services for recipients of the Emergency Aid to the Elderly, Disabled and Children Program, see 130 CMR 450.106: *Emergency Aid to the Elderly, Disabled and Children Program*.

(B) For information on verifying member eligibility and coverage type, see 130 CMR 450.107: *Eligible Members and the MassHealth Card*.

438.404: Provider Eligibility

To participate in MassHealth as a MassHealth CSN agency provider, an agency must

(A) be accredited as a provider of home health services by a CMS-approved accrediting organization including one of the following: Accreditation Association for Ambulatory Health Care, Accreditation Commission for Health Care, Community Health Accreditation Partners, the Joint Commission on Accreditation of Healthcare Organizations, and meet all requirements of the CMS-approved accrediting organization; or

(B) be certified as a provider of home health services under the Medicare program by the Massachusetts Department of Public Health and meet all requirements within the Medicare Conditions of Participation for home health agency services;

(C) obtain a MassHealth provider number before providing CSN services;

(D) participate in, and be in compliance with, other MassHealth enrollment requirements that may include, but are not limited to, provider site visit requirements;

(E) accept MassHealth payments as payment in full for all CSN services;

(F) agree to comply with all the provisions of 130 CMR 438.000 and 130 CMR 450.000: *Administrative and Billing Regulations*, and all other applicable MassHealth rules and regulations;

(G) meet all provider participation requirements described in 130 CMR 438.000 and 130 CMR 450.000: *Administrative and Billing Regulations*;

| | | |
|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-5 |
| | Transmittal Letter CSN-1 | Date 01/01/22 |

(H) agree to periodic inspections, by the MassHealth agency or its designee, that assess the quality of member care and ensure compliance with 130 CMR 438.000;

(I) participate in any CSN agency provider orientation required by the Executive Office of Health and Human Services (EOHHS);

(J) submit to the MassHealth agency or its designee a statement of fiscal soundness attesting to the financial viability of the CSN agency provider supported by documentation to demonstrate that the provider has adequate resources to finance the provision of services in accordance with 130 CMR 438.000 and as specified in 130 CMR 438.415(D);

(K) notify the MassHealth agency in writing within 14 days of any change in any of the information submitted in the provider application in accordance with 130 CMR 450.223(B): *Provider Contract: Execution of Contract* including, but not limited to, change of ownership, change of address, change in status of accreditation and/or reaccreditation or Medicare certification, and additional CSN agency branch office; and

(L) An out-of-state provider must also
 (1) provide services to a member in accordance with 130 CMR 450.109: *Out-of-state Services*; and
 (2) participate in the Medicaid program in its state.

(130 CMR 438.405 through 438.407 Reserved)

| | | |
|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-6 |
| | Transmittal Letter CSN-1 | Date 01/01/22 |

438.408: Services Provided under Contract

(A) Introduction. A CSN agency may provide CSN services directly or through contractual arrangements made by the CSN agency. Whether the services are provided directly or through contracts, the CSN agency is responsible for submitting claims for services and for meeting the requirements in 130 CMR 438.000 and all other applicable state and federal requirements.

(B) Contract Requirements.

(1) If the CSN agency contracts with another provider participating in MassHealth (e.g., hospital, nursing facility, a home health agency, another CSN agency, or hospice), a written contract must document the services to be provided and the corresponding financial arrangements.

(2) If the CSN agency contracts with a provider that does not participate in MassHealth, the written contract must include

- (a) a description of the services to be provided;
- (b) the duration of the agreement and how frequently it is to be reviewed;
- (c) a description of how personnel are supervised;
- (d) a statement that the contracting organization will provide its services in accordance with the plan of care established by the member's physician in conjunction with the CSN agency's staff;
- (e) a description of the contracting organization's standards for personnel, including qualifications, functions, supervision, and in-service training;
- (f) a description of the method of determining reasonable costs and payments by the home health agency for the specific services to be provided by the contracting organization; and
- (g) an assurance that the contracting organization will comply with Title VI of the Civil Rights Act and all relevant MassHealth provider requirements.

438.409: Administrative Requirements

Whether services are provided by the CSN agency directly or through contractual arrangements made by the agency, the agency must

- (A) accept the member for treatment in accordance with its admission policies;
- (B) maintain a complete medical record as defined at 130 CMR 438.402 relating to all services provided in accordance with 130 CMR 438.415(C)(3);
- (C) obtain from the physician or ordering non-physician practitioner the required certifications and recertification's of the plan of care in accordance with 130 CMR 438.416(C); and
- (D) ensure that the CSN agency's staff review the medical necessity of services and the physician or ordering non-physician practitioner certification on a regular basis.

| | | |
|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-7 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |

438.410: Clinical Eligibility Criteria for CSN Services

(A) Clinical Criteria for Nursing Services.

- (1) A nursing service is a service that must be provided by a registered nurse or a licensed practical nurse to be safe and effective, considering the inherent complexity of the service, the condition of the patient, and accepted standards of medical and nursing practice.
- (2) Some services are nursing services on the basis of complexity alone (for example, intravenous and intramuscular injections). However, in some cases, a service that is ordinarily considered unskilled may be considered a nursing service because of the patient's condition. This situation occurs when only a registered nurse or licensed practical nurse can safely and effectively provide the service.
- (3) When a service can be safely and effectively performed (or self-administered) by the average nonmedical person without the direct intervention of a registered nurse or licensed practical nurse, the service is not considered a nursing service, unless there is no one trained and able to provide it.
- (4) Nursing services for the management and evaluation of a plan of care are medically necessary when only a registered nurse or licensed practical nurse can ensure that essential care is effectively promoting the member's recovery, promoting medical safety, or avoiding deterioration.
- (5) Medical necessity of services is based on the condition of the patient at the time the services were ordered and what was, at that time, expected to be appropriate treatment throughout the certification period.
- (6) A member's need for nursing care is based solely on his or her unique condition and individual needs, whether the illness or injury is acute, chronic, terminal, stable, or expected to extend over a long period.

(B) Clinical Eligibility for CSN Services. A member is clinically eligible for MassHealth coverage of CSN services when all of the following criteria are met.

- (1) There is a clearly identifiable, specific medical need for a nursing visit to provide nursing services, as described in 130 CMR 438.410(A), of more than two continuous hours;
- (2) The CSN services are medically necessary to treat an illness or injury in accordance with 130 CMR 438.410; and
- (3) Prior authorization is obtained by the CSN agency in accordance with 130 CMR 438.411.

(C) Member Must Be under the Care of a Physician or Ordering Non-physician Practitioner. The MassHealth agency pays for CSN services only if the member's physician or ordering non-physician practitioner certifies the medical necessity for such services on an established individual plan of care in accordance with 130 CMR 438.420. A member may receive CSN services only if he or she is under the care of a physician or ordering non-physician practitioner. The physician or ordering non-physician practitioner providing the certification of medical necessity must not be a physician or ordering non-physician practitioner on the staff of, or under contract with, the CSN agency or related home health agency.

(D) Safe Maintenance in the Community. The member's physician, ordering non-physician, and CSN agency must determine that the member can be maintained safely in the community with medically appropriate CSN services.

| | | |
|--|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-8 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |
| Continuous Skilled Nursing Agency Manual | | |

(E) Multiple-patient Care for CSN Services. The MassHealth agency pays for one nurse to provide CSN services simultaneously to more than one member, but not more than three members if

- (1) the members have been determined by the MassHealth agency or its designee to meet the criteria listed at 130 CMR 438.410(A);
- (2) the members receive services in their place of residence and during the same time period;
- (3) the MassHealth agency or its designee has determined that it is appropriate for one nurse to provide nursing services to the members simultaneously; and
- (4) the CSN agency has received a separate prior authorization for each member as described in 130 CMR 438.411.

(F) Limitations on Covered Services. The MassHealth agency pays for CSN services to a member who resides in a non-institutional setting, which may include, without limitation, a homeless shelter or other temporary residence or a community setting. The MassHealth agency does not pay for CSN services when a member is admitted to an emergency room, hospital, nursing facility, intermediate care facility for the intellectually or developmentally disabled, or any other institutional facility providing medical, nursing, rehabilitative, or related care. The MassHealth agency pays for CSN agency services when the CSN agency must accompany the member in transport to and from an institutional setting to ensure medical stability.

438.411: Prior Authorization Requirements

(A) Prior authorization must be obtained from the MassHealth agency or its designee as a prerequisite for payment for CSN services and before services are provided to the member. Without such prior authorization, CSN services will not be paid by the MassHealth agency.

(B) Prior authorization determines only the medical necessity of the authorized service, and does not establish or waive any other prerequisites for payment such as member eligibility or resort to health-insurance payment.

(C) The MassHealth agency or its designee will conduct the assessment of need for CSN services and coordinate other MassHealth LTSS for the member, as appropriate. When the MassHealth agency or its designee conducts an assessment of need for CSN services and authorizes CSN services for the member, the member will select the CSN agency who will be responsible for providing CSN services. The MassHealth agency or its designee will provide written notification of its assessment to the member, and if applicable, the CSN agency selected by the member.

(D) At the request of the MassHealth agency or its designee, CSN agencies are required to provide a signed plan of care under 130 CMR 438.416 and supporting clinical documentation including, but not limited to, nursing progress notes, medication records, and clinical logs to the MassHealth agency or its designee for all members authorized for CSN services.

| | | |
|--|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-9 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |
| Continuous Skilled Nursing Agency Manual | | |

(E) The MassHealth agency or its designee will specify on the prior authorization for CSN services the number of CSN hours that have been determined to be medically necessary and that are authorized for the provider to provide to the member per calendar week and the duration of the prior authorization. Any CSN hours provided to the member by the CSN agency that exceed what the MassHealth agency or its designee has authorized in a calendar week are not payable by MassHealth, except as described in 130 CMR 438.411(F).

(F) If there are unused hours of CSN services in a calendar week, they may be used at any time during the current authorized period.

(G) MassHealth members and/or primary caregivers will determine when authorized CSN hours will be used in order to best support the member's needs. This can include scheduling authorized nursing hours in increments of less than two hours in order to meet the member's needs and best utilize authorized hours.

(H) If the frequency of the nursing services needs to be adjusted because

- (1) the member's medical needs have changed from current authorization, the CSN agency must contact the MassHealth agency or its designee to request an adjustment to the prior authorization;
- (2) there is a change in other nursing services or care from current authorization (for example: PCA services, changes in Adult Day Health or Day Habilitation schedules, Adult Foster Care services), the CSN agency or the member may contact the MassHealth agency or its designee to request a review of the prior authorization.

(I) MassHealth or its designee may authorize additional medically necessary CSN services on a temporary three-month basis if the member meets the clinical criteria for nursing services and the primary caregiver is temporarily unavailable because he or she:

- (1) has an acute illness, has been hospitalized, or has a suspected illness;
- (2) has abandoned the member or has died within the past 30 days;
- (3) has a high-risk pregnancy that requires significant restrictions; or
- (4) has given birth within the four weeks prior to a request for additional services.

This temporary increase in authorized units will be evaluated at the end of the three-month period in order to determine whether additional authorization is needed.

(J) Prior authorization for CSN services may be approved for more than one CSN agency or independent nurse, or both, provided that

- (1) each provider is authorized only for a specified portion of the member's total hours; and
- (2) the sum total of the combined hours approved for co-vending providers does not exceed what the MassHealth agency or its designee has determined to be medically necessary and authorized for the member per calendar week.

438.412: Notice of Prior Authorization and Clinical Eligibility Determination

(A) Notice of Approval. For all approved prior authorization requests for CSN services, the MassHealth agency or its designee sends written notice to the member and the CSN agency, if applicable, specifying the frequency, duration, and intensity of care authorized, and the effective date of the authorization.

| | | |
|--|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-10 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |
| Continuous Skilled Nursing Agency Manual | | |

(B) Notice of Modification and Right of Appeal.

(1) For all modified prior authorization requests, the MassHealth agency or its designee notifies the member of the modification, reason, member's right to appeal, and appeal procedure. The CSN agency receives the information about the modification and the reason from the MassHealth agency or its designee.

(2) A member may request a fair hearing from the MassHealth agency if the MassHealth agency or its designee modifies a prior authorization request. The member must request a fair hearing in writing within 30 days after the date of the modification. The Office of Medicaid Board of Hearings conducts the hearing in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules.*

(C) Notice of Discontinuation and Right of Appeal.

(1) For members who no longer meet clinical criteria for CSN services, the MassHealth agency or its designee notifies the member and the CSN agency provider of the discontinuation and the reason for discontinuation. The member also receives notification of the member's right to appeal, and the appeal procedure.

(2) A member may request a fair hearing from the MassHealth agency if the MassHealth agency or its designee discontinues authorization of CSN services. The member must request a fair hearing in writing within 30 days after the date of the discontinuation. The Office of Medicaid Board of Hearings conducts the hearing in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules.*

438.413: Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services

The MassHealth agency pays for all medically necessary CSN agency services for EPSDT-eligible members in accordance with 130 CMR 450.140: *Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services: Introduction*, with prior authorization.

438.414: Administrative Care Management

For complex-care members, as defined in 130 CMR 438.402, the MassHealth agency or its designee provides administrative care management that includes service coordination with CSN agencies as appropriate. The purpose of care management is to ensure that a complex-care member is provided with a coordinated LTSS package that meets the member's individual needs and to ensure that the MassHealth agency pays for nursing and other community LTSS only if medically necessary in accordance with 130 CMR 450.204: *Medical Necessity*. The MassHealth member eligibility verification system identifies complex-care members.

(A) Care Management Activities.

(1) Enrollment. The MassHealth agency or its designee automatically assigns a clinical manager to members who may require a nurse visit of more than two continuous hours of nursing and informs such members of the name, telephone number, and role of the assigned clinical manager.

| | | |
|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-11 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |

(2) LTSS Needs Assessment. The clinical manager performs an in-person visit with the member, to evaluate whether the member meets the criteria to be a complex-care member as described in 130 CMR 438.402 and 438.410(B). If the member is determined to meet the criteria as a complex-care member, the clinical manager will complete a LTSS Needs Assessment. The LTSS Needs Assessment will include input from the member, the member's caregiver, if applicable, LTSS providers, and other treating clinicians. The LTSS Needs Assessment will identify

- (a) skilled and unskilled care needs within a 24-hour period;
- (b) current medications the member is receiving;
- (c) durable medical equipment currently available to the member;
- (d) services the member is currently receiving in the home and in the community; and
- (e) any other case management activities in which the member participates.

(3) Service Record. The clinical manager

- (a) develops a service record, in consultation with the member, the member's primary caregiver, and where appropriate, the CSN agency and the member's physician or ordering non-physician practitioner, that
 - 1. lists those LTSS services that are medically necessary, covered by MassHealth, and required by the member to remain safely in the community, and to be authorized by the clinical manager;
 - 2. describes the scope and duration of each service;
 - 3. lists other sources of payment (e.g., TPL, Medicare, DDS, AFC); and
 - 4. informs the member of his or her right to a hearing, as described in 130 CMR 438.414.
- (b) provides the member with copies of
 - 1. the service record, one copy of which the member or the member's primary caregiver is requested to sign and return to the clinical manager. On the copy being returned, the member or the member's primary caregiver should indicate whether he or she accepts or rejects each service as offered and that he or she has been notified of the right to appeal and provided an appeal form; and
 - 2. the LTSS Needs Assessment.
- (c) provides information to the CSN agency about services authorized in the service record that are applicable to the CSN agency.

(4) Service Authorizations. MassHealth or its designee will authorize those LTSS in the service record, including nursing, that require prior authorization and that are medically necessary, as provided in 130 CMR 438.413, and coordinate all nursing services, any applicable home health agency services, and any subsequent changes with the CSN agency, home health agency or independent nurse prior authorization, as applicable. MassHealth or its designee may also authorize other medically necessary LTSS including, but not limited to, Personal Care Attendant (PCA) Services, Therapy Services, Durable Medical Equipment (DME), Oxygen and Respiratory Therapy Equipment, and Prosthetic and Orthotics.

(5) Discharge Planning. The clinical manager may participate in member hospital discharge-planning meetings as necessary to ensure that medically necessary LTSS necessary to discharge the member from the hospital to the community are authorized and to identify third-party payers.

(6) Service Coordination. The clinical manager will work collaboratively with any other identified case managers assigned to the member.

| | | |
|--|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-12 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |
| Continuous Skilled Nursing Agency Manual | | |

- (7) Clinical Manager Follow-up and Reassessment. The clinical manager will provide ongoing care management for members to
- (a) determine whether the member continues to meet the definition of a complex-care member; and
 - (b) reassess whether services in the service record are appropriate to meet the member's needs.

(B) CSN Agency Care Management Activities. The CSN agency must closely communicate and coordinate with the MassHealth agency's or its designee's clinical manager about the status of the member's nursing needs, in addition, but not limited to

- (1) The amount of authorized CSN hours the agency is able and unable to fill upon agency admission, and periodically with any significant changes in availability;
- (2) Any recent or current hospitalizations or emergency department visits, including providing copies of discharge documents, when known;
- (3) Any known changes to the member's nursing needs that may affect the member's CSN needs;
- (4) Needed changes in the agency's CSN PA; and
- (5) Any incidents warranting an agency to submit to MassHealth or its designee an incident report. *See* 130 CMR 438.415(C)(2).

438.415: Provider Responsibilities

In addition to meeting all of the qualifications set forth in 130 CMR 438.000 and 130 CMR 450.000: *Administrative and Billing Regulations*, CSN agencies must meet all of the following requirements.

(A) Policies and Procedures. Each CSN agency must develop, maintain, review/update, and comply with comprehensive policies and procedures governing the delivery of CSN services which at a minimum must contain the following

- (1) administrative policies and procedures including, but not limited to,
 - (a) human resource and personnel;
 - (b) staff and staffing requirements;
 - (c) backup staff in the event coverage is required due to illness, vacation, or other reasons;
 - (d) staff education and training;
 - (e) CSN agency staff evaluation and supervision;
 - (f) emergencies including fire, safety and disasters, including notifying the fire department and police in emergencies;
 - (g) MassHealth member rights;
 - (h) human rights and nondiscrimination;
 - (i) incident and accident reporting;
 - (j) staff and member grievances;
 - (k) staff cultural competency;
 - (l) quality assurance and improvement;
 - (m) emergency services and plans for members;
 - (n) recognizing and reporting abuse (physical, sexual, emotional, psychological), neglect, self-neglect, and financial exploitation;

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|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-13 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |

- (o) Health Insurance Portability and Accountability Act (HIPAA); and
- (p) procedures to be followed if a member is missing or lost.
- (2) clinical policies and procedures including, but not limited to,
 - (a) clinical evaluations;
 - (b) privacy and confidentiality;
 - (c) documentation of visits and progress notes;
 - (d) medication management;
 - (e) infection control and communicable disease;
 - (f) discharge criteria;
 - (g) coordination of CSN services with other services the member is receiving, including co-venting;
 - (h) coordination of CSN services with other CSN providers. CSN providers must include how the provider ensures documentation is accessible to family and other providers;
 - (i) medical record management in the member's home;
 - (j) first aid and cardiopulmonary resuscitation requirements; and
- (3) any additional administrative or clinical policies the agency chooses to implement.

(B) Teaching Activities. During a CSN visit, the nurse may teach the member, family member, or caregivers how to manage the member's treatment regimen as applicable. Ongoing teaching should occur when there is a change in the procedure or the member's condition. All teaching activities must be documented in the member's record.

(C) Recordkeeping.

- (1) Administrative Records. CSN agencies must maintain administrative records in compliance with the record retention requirements set forth in 130 CMR 450.205: *Recordkeeping and Disclosure*. All records including, but not limited to the following, must be accessible and made available on site for inspection by the MassHealth agency:
 - (a) payroll and staff records, including evidence of completed staff orientation and training;
 - (b) financial records;
 - (c) staffing levels;
 - (d) complaints and grievances;
 - (e) contracts for subcontracted services, including a description of how the CSN agency will supervise the subcontracted services;
 - (f) contracts for independent contractor services; and
 - (g) job descriptions that include titles, reporting authority, qualifications, and responsibilities.
- (2) Incident and Accident Records. CSN agencies must maintain an easily accessible record of member and staff incidents and accidents. The record may be kept within the individual member medical record or employee record or within a separate, accessible file.
 - (a) The CSN agency must submit to the MassHealth agency or its designee an incident or accident report within five days under the following circumstances:
 - 1. an incident or accident that occurred during a CSN service visit that results in serious injury to the member;
 - 2. an incident or accident resulting in the member's unexpected death even if the CSN agency was not involved in the incident or accident;

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|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-14 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |

3. an incident of abuse or neglect involving a staff member of the CSN agency and the member; and
 4. an incident of abuse or neglect committed by another provider supporting the member concurrently as the CSN agency (if known).
- (b) The incident or accident report must include at least the following information:
1. general information including, but not limited to, members name and members MassHealth ID number;
 2. general nature of incident or accident; and
 3. any action that was taken as a result of the incident or accident including all outcomes.
- (3) Member Records. In order for a medical record to completely document a service to a member, the record must describe fully the nature, extent, quality, and necessity of the care furnished to the member. When the information contained in a member's record does not provide sufficient documentation for the service, the MassHealth agency may disallow payment (*see* 130 CMR 450.205: *Recordkeeping and Disclosure*).
- (a) The record maintained by a CSN agency for each member must conform to 130 CMR 450.000: *Administrative and Billing Regulations*. Payment for CSN services described in 130 CMR 438.000 requires complete documentation in the member's medical record. The CSN agency must maintain records for each member to whom services are provided and a copy of the member's complete medical record must be maintained in the member's home.
- (b) The CSN agency must maintain an up-to-date medical record of services provided to each member. The medical record must contain at least the following in addition to the information defined at 130 CMR 438.415(C):
1. the member's name, address, phone number, date of birth, and MassHealth ID number;
 2. the name and phone number of the member's primary care physician;
 3. the primary caregiver's name, phone number, and relationship to the member;
 4. the name and phone number of the member's emergency contact person;
 5. a copy of all verbal orders, properly authenticated;
 6. accessible and legible progress notes for each visit, signed by the person providing the service and that include the following information:
 - a. the full date of service and time that each visit began and ended;
 - b. all treatments and services ordered by the physician or ordering non-physician practitioner included in the member's plan of care and documentation of which treatments and services were provided during the visit and the member's response;
 - c. any additional treatment or service not included in the member's plan of care provided and the member's response, including documentation of medication administration as described in 130 CMR 438.415(C)(3)(b)8.;
 - d. any service or treatment the member may have declined during visit and explanation of denial;
 - e. the member's vital signs and any other required measurements as appropriate;
 - f. progress toward achievement of goals as specified in the plan of care including, when applicable, an explanation of why goals are not achieved as expected;

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|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-15 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |

- g. a pain assessment, as appropriate;
 - h. the status of any equipment maintenance and management, as appropriate; and
 - i. any contacts with physicians or other health-care providers about the member's needs or change in plan of care, as applicable.
7. a current medication administration list or other documentation, such as nursing notes, that includes the timing of administration as ordered, drug identification and dose, route of administration, the member's response to the medication being administered, and the signature of the person administering the medication;
 8. any clinical tests and their results, as applicable;
 9. a signed medical records release form, as applicable;
 10. the number of authorized nursing hours for their agency per calendar week for the member;
 11. the names and telephone numbers of all the providers involved in co-vending care, the number of nursing hours approved for each provider by the MassHealth agency or its designee, to the best of the agency's ability; and
 12. a copy of the CSN agency's current prior authorization.

(4) Access to Records Maintained in Member's Home. The CSN agency must maintain a copy of the member's medical record in the member's home as described in 130 CMR 438.415(C)(3). The copy of the member's medical record maintained in the member's home must be provided to the member, and make every attempt to coordinate care, and/or change in shifts with other CSN providers.

(5) Copies of Records. Upon the request of the member or the member's representative, the CSN agency must provide a copy of the medical record to the person or entity that the member or the member's representative designates. Additionally, upon request of the MassHealth agency or its designee, the CSN agency must provide a copy of the member's complete medical record.

(D) Statement of Fiscal Soundness.

(1) Submission Requirements. Under 130 CMR 438.404(J), CSN agencies must submit to MassHealth or its designee annually and at enrollment a statement of fiscal soundness attesting to the financial viability of the CSN agency. To satisfy the fiscal soundness requirement, the CSN agency must demonstrate a cash reserve sufficient to meet one month of financial obligations in the operation of the provider's CSN program including, but not limited to, timely payment of staff wages and the agency's general and professional liability insurance coverage and workers' compensation insurance coverage. If using a line of credit to meet the cash reserve requirement, the agency must demonstrate the line of credit has been approved by a financial institution.

(2) Submission Due Date. The CSN agency must submit to MassHealth or its designee a statement of fiscal soundness annually and by the end of May each year.

(3) Attestation. The CSN agency must attest that its available cash reserve will meet the average monthly cost at all times during the subsequent year.

(4) Noncompliance. For CSN agencies that fail to meet the fiscal soundness requirement pursuant to 130 CMR 438.404(G) and 130 CMR 438.415(D), MassHealth may take further action, such as imposing sanctions in accordance with 130 CMR 450.238: *Sanctions: General* including, but not limited to, termination of the provider as a MassHealth CSN agency.

| | | |
|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-16 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |

438.416: Plan of Care Requirements

All CSN services must be provided under an individualized plan of care developed for the member. The physician or ordering non-physician practitioner must sign the plan of care before services are provided to the member.

(A) Providers Qualified to Establish a Plan of Care.

- (1) The member's physician or ordering non-physician practitioner in consultation with the CSN agency must establish a written plan of care and the physician or ordering non-physician practitioner must recertify, sign, and date the plan of care every 60 calendar days.
- (2) The CSN agency may establish an additional nursing plan of care, when appropriate, that may be incorporated into the physician or ordering non-physician practitioner's plan of care, or be prepared separately. The additional plan of care does not substitute for the physician or ordering non-physician practitioner's plan of care.
- (3) If a CSN agency is co-venting a case with other CSN providers or home health agency providers, each provider is responsible for establishing a separate plan of care signed by the member's physician or ordering non-physician practitioner.

(B) Content of the Plan of Care. The orders on the plan of care must specify the total number of CSN hours that MassHealth or its designee have authorized to be provided to the member. The physician or ordering non-physician practitioner must sign and date the plan of care before the CSN agency submits its claim for those services to the MassHealth agency for payment. Alternatively, the physician or ordering non-physician practitioner must comply with the verbal order provisions at 130 CMR 438.416(D). Any increase in the total number of CSN hours must be requested in advance by the physician or ordering non-physician practitioner with verbal or written orders and authorized by the MassHealth agency or its designee. If the member is enrolled in the Primary Care Clinician (PCC) Plan, the CSN agency must communicate with the member's PCC both when the goals of the care plan are achieved and when there is a significant change in a member's health status. The plan of care must also include

- (1) the member's name and date of birth;
- (2) all pertinent diagnoses, including the member's mental, psychosocial, and cognitive status;
- (3) types of medical supplies and durable medical equipment required;
- (4) the member's prognosis, rehabilitation potential, functional limitations, permitted activities, nutritional requirements, medications, and treatments;
- (5) the total number of nursing hours requested by the CSN agency, if different than the total number of CSN hours authorized by MassHealth or its designee;
- (6) any teaching activities to be conducted by the nurse to teach the member, family member, or caregiver how to manage the member's treatment regimen (ongoing teaching may be necessary where there is a change in member's condition or treatment);
- (7) a description of the patient's risk for emergency department visits and hospital readmission, and all necessary interventions to address the underlying risk factors;
- (8) a plan for medical emergencies;
- (9) goals toward discharge planning from CSN services when appropriate; and
- (10) any additional items the CSN agency or physician or ordering non-physician practitioner chooses to include.

| | | |
|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-17 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |

(C) Certification Period. The plan of care required under 130 CMR 438.416(A)(1) must be reviewed, signed, and dated by a physician or ordering non-physician practitioner at least every 60 days, unless the provider follows the verbal order provisions at 130 CMR 438.416(D).

(D) Verbal Orders.

(1) Notwithstanding the requirements of 130 CMR 438.416(A), services that are provided from the beginning of the certification period (*see* 130 CMR 438.416(C)) and before the ordering physician or ordering non-physician practitioner signs the plan of care are considered to be provided under a plan of care established and approved by the physician or ordering non-physician practitioner if

- (a) the clinical record contains a documented verbal order from the ordering physician or ordering non-physician practitioner for the care before the services are provided; or
- (b) the physician or ordering non-physician practitioner signature is on the 60-day plan of care either before the claim is submitted or within 45 days after submitting a claim for that period.

(2) If the member has other health insurance (whether commercial or Medicare), the provider must comply with the other insurer's regulations for physician or ordering non-physician practitioner signature before billing the MassHealth agency.

(E) Corrections to the Plan of Care. When correcting errors on a paper plan of care before it is signed by the physician or ordering non-physician practitioner, the CSN agency staff must cross out the error with a single line and place his or her initials and the date next to the correction. The use of correction fluid or correction tape on a plan of care is not permitted.

(F) Face-to-face Encounter Requirements.

(1) A face-to-face encounter between the member and an authorized practitioner is required for initial orders for CSN services. A face-to-face encounter is not required when the plan of care is reviewed and revised as required at 130 CMR 438.416(C) or at resumption of CSN services.

(2) Authorized practitioners include

- (a) the ordering physician. In order to be an ordering physician, the physician must be enrolled in MassHealth;
- (b) the physician who cared for the member in an acute or post-acute care facility (acute/post-acute care attending physician) from which the member was directly admitted to CSN; or
- (c) certain authorized non-physician practitioners (NPP), which include one of the following in a CSN agency context:
 1. a nurse practitioner or clinical nurse specialist who is working in collaboration with the ordering physician or the acute/post-acute care attending physician;
 2. a certified nurse midwife; or
 3. a physician assistant under the ordering or acute/post-acute care attending physician.

| | | |
|--|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-18 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |
| Continuous Skilled Nursing Agency Manual | | |

(3) Documenting the Face-to-face Encounter in the Member’s Record.

(a) The face-to-face encounter must be documented in the member’s record either on the plan of care or in other medical notes sufficient to make the link between the individual’s health conditions, the services ordered, an appropriate face-to-face encounter, and actual service provision.

(b) The ordering or acute/post-acute care attending physician or ordering non-physician practitioner (but not NPP) may serve as the physician writing the plan of care. When the acute/post-acute care attending physician or ordering non-physician practitioner writes the plan of care, such attending practitioners must document that the face-to-face encounter is related to the primary reason the patient requires CSN services and that the encounter with an authorized practitioner occurred within the required timeframes. The plan of care or the medical notes must include which authorized practitioner conducted the encounter and the date of the encounter.

(c) If the face-to-face encounter was not provided by the ordering physician or ordering non-physician practitioner, the authorized practitioner who did conduct the face-to-face encounter is required to communicate the clinical findings of the face-to-face encounter to the ordering physician or ordering non-physician practitioner. This requirement is necessary to ensure that the ordering physician or ordering non-physician practitioner has sufficient information to determine the need for CSN services in the absence of conducting the face-to-face encounter himself or herself.

(d) The CSN agency must maintain a copy of the face-to-face documentation.

(G) MassHealth Members Enrolled in the Primary Care Clinician (PCC) Plan. If a member is enrolled in the PCC Plan, the CSN agency must provide the PCC with a copy of the member’s plan of care for each certification period.

438.417: Quality Management, Utilization Review, and Reporting Requirements

(A) A CSN agency must participate in any quality management and program integrity processes as required by the MassHealth agency and EOHHS including making any requested data available and providing access to visit the CSN agency’s place of business upon request by MassHealth or its designee.

(B) A CSN agency must submit requested documentation to the MassHealth agency or its designee for purposes of utilization review and provider review and audit, within the MassHealth agency’s or its designee’s time specifications. The CSN agency must provide the MassHealth agency or its designee with any supporting documentation the MassHealth agency or its designee requests, in accordance with M.G.L. c. 118E, § 38 and 130 CMR 450.000: *Administrative and Billing Regulations*.

(C) A CSN agency must provide MassHealth or its designee any requested documentation for purposes of a member’s medical necessity review for CSN services. The requested documentation must be submitted to MassHealth or its designee within the MassHealth agency’s or its designee’s time specifications.

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|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-19 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |

438.418: Transfers and Discharge Planning

(A) Discharge Procedures.

- (1) A member shall be discharged by the CSN agency provider under the following conditions
 - (a) upon the member's request;
 - (b) if the member no longer meets the clinical eligibility for CSN services;
 - (c) if the member selects another service that is duplicative of CSN services;
 - (d) if the member transitions to another CSN provider; or
 - (e) if the CSN agency ceases operations.
- (2) A member may be discharged by the CSN agency provider if the CSN agency cannot safely serve the member in the home due to the member or other persons in member's home being disruptive, abusive, or uncooperative to the extent that delivery of care is seriously impaired. Prior to discharge the CSN agency must
 - (a) notify the member, representative, ordering physician, and MassHealth or its designee that a discharge for cause is being considered;
 - (b) notify the member, representative, ordering physician, and MassHealth or its designee that a discharge is planned within 14 days of the date on the notice to ensure member or provider safety;
 - (c) make diligent efforts to solve the problem(s) present and document these efforts in the member's clinical records;
 - (d) provide the member and/or caregiver contact information for alternative CSN agency providers; and
 - (e) document the discharge and CSN agency activity related to the discharge in the member's clinical record.
- (3) When a CSN agency makes the determination that a member no longer meets the clinical eligibility for CSN services and would like to proceed with discharge as described in 130 CMR 438.418(A)(1)(b), the CSN agency must consult with the MassHealth agency or its designee at minimum 14 days prior to discharge planning to allow the MassHealth agency or its designee to perform a re-assessment of the member's medical necessity for CSN services as described in 130 CMR 438.414(A)(7).

438.419: Conditions of Payment

The following conditions for payment apply to all CSN services, in addition to conditions of payment described throughout 130 CMR 438.000.

(A) Place of Service. The MassHealth agency pays for CSN services provided to a member who meets the clinical criteria in 130 CMR 438.408 and resides in a noninstitutional setting, which may include, without limitation, a homeless shelter or other temporary residence or a community setting. In accordance with 42 CFR 440.70(c), the MassHealth agency does not pay for CSN services provided in a hospital, nursing facility, intermediate care facility, or any other institutional setting providing medical, nursing, rehabilitative, or related care. MassHealth will pay for CSN services when the CSN agency must accompany the member in transport to and from an institutional setting to ensure medical stability during transitions in and out of the institutional setting. CSN services provided to a member while under the care of an institutional setting will be viewed as duplication of services and not covered by MassHealth.

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|--|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-20 |
| | Transmittal Letter CSN-3 | Date 09/16/22 |
| Continuous Skilled Nursing Agency Manual | | |

(B) Medical Necessity Requirement. In accordance with 130 CMR 450.204: *Medical Necessity*, the MassHealth agency pays for only those CSN services that are medically necessary.

(C) Plan of Care. The MassHealth agency pays only for CSN services provided according to a plan of care authorized by a physician or a non-physician practitioner and that meets the plan of care requirements at 130 CMR 438.416.

(D) Prior Authorization. The MassHealth agency pays for CSN services only when prior authorization has been obtained from the MassHealth agency or its designee, in accordance with 130 CMR 438.411.

(E) Members for Whom Services Are Approved. The MassHealth agency does not pay for CSN services provided to any individual other than the member who is eligible to receive such services and for whom such services have been authorized by the MassHealth agency or its designee.

(F) Multiple-patient Care. The MassHealth agency pays for one nurse to provide CSN services in the same household and during the same time period to more than one member, but not more than three members, if

- (1) the members have been determined by the MassHealth agency or its designee to meet the criteria listed at 130 CMR 438.410;
- (2) the members receive services in the same household and during the same time period;
- (3) the MassHealth agency or its designee has determined that it is appropriate for one nurse to provide nursing services to the members simultaneously; and
- (4) the CSN agency has received a separate prior authorization from the MassHealth agency or its designee for each member as described in 130 CMR 438.413.

438.420: Maximum Allowable Fees

CSN agencies must accept MassHealth payment in full for CSN services in accordance with the rates and regulations established by EOHHS as set forth in 101 CMR 361.00: *Rates for Continuous Skilled Nursing Services*. Payments are subject to the conditions, exclusions, and limitations set forth in 130 CMR 438.000 and 450.000: *Administrative and Billing Regulations*.

438.421: Denial of Services and Administrative Review

(A) A failure or refusal by a CSN agency to furnish services that have been ordered by the member's attending physician or ordering non-physician practitioner and are within the range of payable services, constitutes a violation of 130 CMR 438.000 for which administrative sanctions may be imposed, with the exception of instances where the CSN agency does not have nursing availability to provide services.

| | | |
|---|---|-------------------------|
| Commonwealth of Massachusetts MassHealth Provider Manual Series Continuous Skilled Nursing Agency Manual | Subchapter Number and Title 4. Program Regulations (130 CMR 438.000) | Page 4-21 |
| | Transmittal Letter CSN-1 | Date 01/01/22 |

(B) When a CSN agency believes that services ordered by the attending physician or ordering non-physician practitioner are not payable under 130 CMR 438.000, the CSN agency must refer the matter to the MassHealth agency for a payment decision. If and to the extent the MassHealth agency determines that the ordered services are payable, the CSN agency must provide those services.

438.422: Prohibited Marketing Activities.

A CSN agency provider must not

(A) with the knowledge that a member is enrolled in a capitated program, engage in any practice that would reasonably be expected to have the effect of steering or encouraging the member to disenroll from the capitated program in order to obtain services on a fee-for-service basis;

(B) offer to a member, or his or her family or caregivers, in-person or through marketing any inducement to retain the CSN agency provider to provide CSN services, such as a financial incentive, reward, gift, meal, discount, rebate, giveaway, or special opportunity;

(C) pay a “finder’s fee” to any third-party in exchange for referring a member to the CSN agency provider; or

(D) engage in any unfair or deceptive acts or practices in connection with any marketing.

REGULATORY AUTHORITY

130 CMR 438.000: M.G.L. c. 118E, §§7 and 12.

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| <p style="text-align: center;">Commonwealth of Massachusetts MassHealth Provider Manual Series</p> <p style="text-align: center;">Continuous Skilled Nursing Agency Manual</p> | <p style="text-align: center;">Subchapter Number and Title 4. Program Regulations (130 CMR 438.000)</p> | <p style="text-align: center;">Page 4-22</p> |
| | <p style="text-align: center;">Transmittal Letter CSN-1</p> | <p style="text-align: center;">Date 01/01/22</p> |

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