4. Program Regulations

130 CMR 414.000: *Independent Nursing Services*

414.401: Introduction

130 CMR 414.000 states the requirements for the payment of nursing services provided by an independent nurse participating in MassHealth and applies to nurses who contract independently with MassHealth. All independent nurses participating in MassHealth must comply with MassHealth regulations including, but not limited to, 130 CMR 414.000 and 450.000: *Administrative and Billing Regulations*.

414.402: Definitions

The following terms used in 130 CMR 414.000 have the meanings given in 130 CMR 414.402 unless the context clearly requires a different meaning. The reimbursability of services defined in 130 CMR 414.402 is not determined by these definitions, but by the application of regulations elsewhere in 130 CMR 414.000 and 450.000: *Administrative and Billing Regulations.*

Accountable Care Organization (ACO). An entity that enters into a population-based payment model contract with the Executive Office of Health and Human Services (EOHHS) as an ACO, 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 managed care organization–administered ACOs.

Calendar Week. Seven consecutive days beginning Sunday at 12:00 A.M. and ending Saturday at 11:59 P.M.

Capitated Program. An integrated care organization, senior care organization, ACO, or Program of All-inclusive Care for the Elderly 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 (RN) employed by the MassHealth agency or its designee, who performs the in-person assessment of a member for MassHealth coverage of continuous skilled nursing (CSN) services and, if it is determined that CSN services are medically necessary, coordinates authorization of medically necessary LTSS for the member.

Complex Care Assistant Services. Medically necessary services as described in 130 CMR 438.000: *Continuous Skilled Nursing Agency Services* and identified in the CSN provider's plan of care that is delivered to complex care members.

Continuous Skilled Nursing (CSN) Agency. A public or private organization that provides CSN services to complex care members within their homes. CSN agency providers are governed by MassHealth regulations at 130 CMR 438.000: *Continuous Skilled Nursing Agency Services*.

Continuous Skilled Nursing (CSN) Services. A nurse visit of more than two continuous hours of nursing services.

Co-vending. An arrangement through which a member's CSN services are provided by one or more CSN agencies or independent nurses, with each provider possessing 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*.

Household. A place of residence where two or more people are living that is

(1) a group home, a residential care home, or another 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 with MassHealth to provide CSN services. Independent nurse providers are governed by 130 CMR 414.000.

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 (DME), oxygen and respiratory equipment, personal care attendant (PCA) services, and other health-related services as determined by the MassHealth agency or its designee.

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 independent nurse, 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 releasee to access the member's confidential health information from other health care providers.

Member with Medical Complexity. An individual who is a MassHealth member and 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.

Nurse. A person licensed as an RN or a licensed practical nurse (LPN) by a state's board of registration in nursing.

Nursing Progress Notes. A component of the medical record that indicates the outcome of nursing interventions.

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 Massachusetts to perform medical services according to their scope of practice. Ordering non-physician practitioners are also allowed to conduct face-to-face encounters. In the case of nurse practitioners and clinical nurse specialists, ordering is permitted only when the nurse is under the supervision of a physician or has a collaborative practice agreement with a physician.

Primary Natural Caregiver – the individual, other than the nurse, who is primarily responsible for providing ongoing care to the member and is also connected to the member in some other way, such as a parent, spouse, other family member, or close friend.

414.403: Eligible Members

(A) (1) MassHealth Members. The MassHealth agency covers nursing services provided by independent nurses only when provided to eligible MassHealth members, subject to the restrictions and limitations described in MassHealth regulations at 130 CMR 414.000 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*.

414.404: Provider Eligibility

To participate in MassHealth as a MassHealth independent nurse provider, a nurse must

(A) be licensed and in good standing as a nurse by the board of registration in nursing, or equivalent agency, for the state(s) in which the nursing services are provided;

(B) meet all provider eligibility requirements in 130 CMR 450.212: *Provider Eligibility: Eligibility Criteria*, including 130 CMR 450.212(A)(6);

(C) at the time of enrollment, satisfy at least one of the following experience qualifications:

(1) Demonstrated work experience:

(a) Have at least three years' experience providing direct patient care as a licensed nurse;

(b) Have at least two years' work experience providing CSN services through a qualified agency provider; or

(c) Have worked as a licensed nurse for at least one year in an intensive care unit or acute care unit; or

(2) Submit to the MassHealth agency or its designee documentation that demonstrates that services provided by the nurse will meet the following criteria.

(a) The nurse will provide CSN services to an identified MassHealth member or members in the same household.

(b) The MassHealth member and/or their representative has provided written consent to work with this provider as an independent nurse, without having met the experience requirements described under 414.404(C)(1).

(c) If the independent nurse would like to work with another MassHealth member before they have met the experience requirements described under 413.404(C)(1), they must obtain written consent from that MassHealth member and/or their representative and must submit documentation to the MassHealth agency or its designee.

(D) sign a MassHealth provider contract and receive a MassHealth provider number. The MassHealth agency does not pay an independent nurse for nursing services provided before the date on which the nurse is approved by the MassHealth agency to participate in MassHealth;

(E) agree to comply with all the provisions of 130 CMR 414.000, 130 CMR 450.000: *Administrative and Billing Regulations*, and all other applicable MassHealth rules and regulations, including but not limited to administrative tasks such as maintenance of the member's record;

(F) participate in any independent nurse provider orientation and training required by EOHHS;

(G) maintain their own general and professional liability insurance to protect against claims of negligence, damage, or injury to a member or their property;

(H) have an active certification, valid course completion card, or equivalent documentation reflecting completion of a basic life support (BLS) course with an in-person component from a reputable organization, including but not limited to, the American Red Cross or American Heart Association;

(I) agree, and respond in a timely manner, to periodic audits by the MassHealth agency or its designee that assess the quality of member care and ensure compliance with 130 CMR 414.000; and

(J) 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*.

414.405: Provider Responsibilities

The independent nurse must do the following.

(A) Maintain current physician or non-physician practitioner orders as described in 130 CMR 414.412 for all CSN services provided to members.

(B) Document all care provided to the member as described in 130 CMR 414.417.

(C) Maintain a copy of the member's record in the member's home and retain a copy of the member's record in a secure location that meets federal and state requirements for confidential patient information and protected health information. This could include a password-protected, electronic record that is only accessible by the independent nurse.

(D) Comply with requests from the MassHealth agency or its designee for annual Criminal Offender Record Information and Sexual Offender Record Information requirements and other provider requirements.

(E) Comply with all federal and state requirements for nurses and health care workers, including but not limited to, M,G,L, c. 112, §§ 74 through 81T and 244 CMR 9.00: *Standards of Conduct for Nurses*;

(F) Comply with the reporting, surveillance, isolation, and quarantine requirements as established under 105 CMR 300.000. If an independent nurse is directed by their local board of health and/or the Department of Public Health to stop providing direct care, the independent nurse must contact the MassHealth agency or its designee to end any prior authorizations they have in place for CSN services.

(G) Provide all skilled care as prescribed and include teaching during a CSN visit. During a CSN visit, the independent nurse may teach the member, family members, or primary natural caregivers how to manage the member's treatment regimen as applicable. Ongoing teaching must 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.

(H) Make every attempt to coordinate care and/or changes in shifts with other CSN providers.

(I) Adhere to the applicable scope of nursing licensure as established at 244 CMR 3.00: *Registered Nurse and Licensed Practical Nurse*.

(J) Follow any guidance established by EOHHS regarding discharge and transfer policies for MassHealth members.

(K) Adhere to all regulations set forth in 130 CMR 414.000.

(130 CMR 414.406 through 414.407 Reserved)

414.408: Continuous Skilled Nursing Services

(A) Clinical Eligibility for Continuous Skilled Nursing 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 414.408(B), of more than two continuous hours;

(2) the CSN services are medically necessary to treat an illness or injury in accordance with 130 CMR 414.409(C); and

(3) the nurse has obtained prior authorization in accordance with 130 CMR 414.413.

(B) Clinical Criteria for Nursing Services.

(1) A nursing service is a service that must be provided by an RN or LPN 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 an RN or LPN 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 an RN or LPN, the service is not considered a nursing service, unless there is no one trained and able to provide it.

(4) The independent nurse must assess the member to ensure that continued nursing services are necessary. 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.

(5) A member's need for nursing care is based solely on their unique condition and individual needs, whether the illness or injury is acute, chronic, terminal, stable, or expected to extend over a long period.

(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 414.412. A member may receive CSN services only if the member is under the care of a physician or ordering non-physician practitioner. Independent nurses who are also qualified as ordering non-physician practitioners may neither certify the medical necessity nor establish the plan of care for members for whom they are providing CSN services.

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

E) Clinical Eligibility for CSN Training Time. A MassHealth member is eligible for CSN training time when an independent nurse begins working with a MassHealth member for the first time and requires training for the member's specific care needs.

414.409: Conditions of Payment

(A) Place of Service. The MassHealth agency pays for nursing services provided by an independent nurse to a member who meets the clinical criteria in 130 CMR 414.408 and resides in a noninstitutional setting, which may include, without limitation, a homeless shelter or other temporary residence or a community setting. The MassHealth agency pays for nursing services provided by an independent nurse when the independent nurse must accompany the member in transport to or from an institutional setting to ensure medical stability during transitions in or out of the institutional setting. The MassHealth agency does not pay for nursing services provided by an independent nurse when the member is under the direct care of a hospital or emergency room, nursing facility, intermediate care facility, or any other institutional setting providing medical, nursing, rehabilitative, or related care.

(B) Limit of Hours. The MassHealth agency does not pay an independent nurse for more than 60 hours of nursing care provided during any consecutive seven-day period or for more than 12 hours within a 24-hour period, regardless of the number of MassHealth members receiving care from the independent nurse. An independent nurse may work up to 16 hours within a 24-hour period under the following circumstances:

(1) An emergency, where no other paid or unpaid trained caregiver is available to care for the member. In this case,

(a) An independent nurse may work up to 16 hours within a 24-hour period provided that the member has CSN hours authorized and available for use.

(b) The independent nurse must notify the MassHealth agency or its designee by the next business day and provide the reason for working more than 12 hours within a 24-hour period.

(2) The MassHealth member or their representative has provided written or verbal confirmation to the MassHealth agency or its designee that they approve the independent nurse to work up to 16 hours within a 24-hour period, including the length of time they are requesting that the independent nurse work up to 16 hours in a 24-hour period; so long as

(a) the independent nurse does not work for another member or employer during the remaining eight hours of the same 24-hour period in which they work up to 16 hours; and

(b) the independent nurse submits a signed attestation to the MassHealth agency or its designee affirming that they will not work or seek alternative employment for the remaining eight hours of the same 24-hour period.

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

(D) Plan of Care. The MassHealth agency pays only for nursing services that are provided pursuant to a plan of care authorized by a physician or non-physician practitioner and meet the plan of care requirements in 130 CMR 414.412(B).

(E) Continuous Skilled Nursing. The MassHealth agency pays for CSN services when

(1) the member meets the clinical eligibility criteria for CSN services as stated in 130 CMR 414.408;

(2) the CSN services are provided under an individualized plan of care developed for the member in accordance with 130 CMR 414.412; and

(3) prior authorization for CSN services has been obtained from the MassHealth agency or its designee, in accordance with 130 CMR 414.413.

(G) Teaching Activities. As part of a regular nursing treatment service, the independent nurse must teach a member, family member, or caregivers how to manage the member's treatment regimen. (F) Members for Whom Services Are Approved. The MassHealth agency does not pay for nursing 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.

(H) Continuous Skilled Nursing Service Documentation in the Member's Home. The independent nurse and any other nursing providers must maintain a copy of the member's medical record in the member's home. The record must include the total number of approved nursing hours for the member, 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, and all other recordkeeping requirements as described in 130 CMR 414.417(E).

(I) CSN Training Time.

(1) The MassHealth agency will reimburse for CSN training time when the following conditions have been met:

(a) The independent nurse is newly working with the member and requires training for the MassHealth member's specific care needs;

(b) The independent nurse receives in-home, member-specific training from

1. another CSN provider who is familiar with the member's care; or
2. the member's natural caregiver or other family member who is familiar with the member's care; and

(c) The independent nurse uses the CSN training time units within the first six weeks of the prior authorization period.

(2) Independent nurses providing training to other CSN providers may not use CSN training time units. CSN training time units may only be used by the independent nurse when the independent nurse is receiving in-home, member-specific training.

414.410: Multiple-patient Care

(A) 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 414.408;

(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 independent nurse has received a separate prior authorization from the MassHealth agency or its designee for each member as described in 130 CMR 414.413.

(B) Services provided pursuant to 130 CMR 414.410(A) must be billed by using the multiple-patient service code and modifier that reflects the number of members receiving the services.

414.411: Administrative Care Management

For complex care members, as defined in 130 CMR 414.402, the MassHealth agency or its designee provides care management that includes service coordination with independent nurses as appropriate. The purpose of care management is to ensure that a complex care member is provided with a coordinated LTSS service package that meets the member's individual needs and to ensure that the MassHealth agency pays for nursing and other LTSS only if they are 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 it has determined 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.

(2) LTSS Needs Assessment. The clinical manager performs an in-person visit with the member to evaluate whether they meet the criteria to be a complex care member as described in 130 CMR 414.402. If the member is determined to meet the criteria for a complex care member, the clinical manager will complete an LTSS needs assessment. 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) DME currently available to the member;
(d) services the member is currently receiving in the home and in the community; and
(e) any 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 natural caregiver, and where appropriate, the independent nurse 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.*, third-party liability, Medicare, Department of Developmental Services, adult foster care); and
4. informs the member of their right to a hearing, as described in 130 CMR 414.414;

(b) provides the member with copies of the service record, one copy of which the member or the member's primary natural caregiver is asked to sign and return to the clinical manager. On the copy being returned, the member or the member's primary natural caregiver must indicate whether they accept or reject each service as offered and that they have been notified of the right to appeal and provided an appeal form; and
(c) provides information to the independent nurse about services authorized in the service record that are applicable to the independent nurse.

(4) Service Authorizations. The MassHealth agency or its designee will authorize the LTSS services in the service record, including nursing, that require prior authorization and that are medically necessary, as provided in 130 CMR 414.413, and coordinate all nursing services and any subsequent changes with the CSN agency, home health agency, or independent nurse prior authorization, as applicable. The MassHealth agency or its designee may also authorize other medically necessary LTSS including, but not limited to, PCA services, complex care

assistant services, therapy services, DME, oxygen and respiratory therapy equipment, and prosthetics and orthotics.
(5) Discharge Planning. The clinical manager may participate in member hospital discharge-planning meetings as necessary to ensure that LTSS that are medically 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.
(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 plan are appropriate to meet the member's needs.

(B) Independent Nurse—Coordination with the Clinical Manager. The independent nurse 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, including, but not limited to, the following: (1) the number of authorized CSN hours the independent nurse is able and unable to fill upon accepting the member's case, and periodically 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 their CSN needs;
(4) needed changes in the independent nurse's CSN prior authorization; and
(5) any incidents or accidents warranting an independent nurse submitting to the MassHealth agency or its designee an incident or accident report (*see* 130 CMR 414.417(H)).

414.412: Plan of Care

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. On request, the independent nurse must make the plan of care available to the member and/or the member's representative.

(A) Providers Qualified to Establish a Plan of Care.
(1) The member's physician or the ordering non-physician practitioner in consultation with the independent nurse 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 independent nurse may establish an additional plan of care, when appropriate, that may be incorporated into the physician's or ordering non-physician practitioner's plan of care or be prepared separately. The additional plan of care does not substitute for the physician's or ordering non-physician practitioner's plan of care.
(3) If an independent nurse is co-vending a case with other providers, each provider is responsible for establishing a separate plan of care signed by the member's physician or ordering non-physician practitioner.

(4) Independent nurses who are qualified ordering non-physician practitioners may neither certify the medical necessity nor establish the plan of care for members for whom they are providing CSN services.

(B) Content of the Plan of Care. The orders on the plan of care must specify the total number of CSN hours that MassHealth agency or its designee has authorized to be provided to the member. The physician or ordering non-physician practitioner must sign and date the plan of care before the independent nurse submits the claim for the services to the MassHealth agency for payment. Alternatively, the physician or ordering non-physician practitioner must comply with the verbal order provisions in 130 CMR 414.412(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 independent nurse 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 DME 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 independent nurse, if different from the total number of CSN hours authorized by the MassHealth agency 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) all skilled nursing interventions to be provided, including the frequency, clinical assessment(s), and clinical parameters triggering escalation to the treating provider;
(8) a description of the patient's risk for emergency department visits and hospital readmission, and all necessary interventions to address the underlying risk factors;
(9) a plan for medical emergencies;
(10) goals toward discharge planning from CSN services when appropriate; and
(11) any additional items the independent nurse or physician or non-physician practitioner chooses to include.

(C) Certification Period. The plan of care required under 130 CMR 414.412(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 in 130 CMR 414.412(D).

(D) Physician Verbal Orders.

(1) Notwithstanding the requirements of 130 CMR 414.412(A), services that are provided from the beginning of the certification period (*see* 130 CMR 414.412(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 60 days after a claim is submitted 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 copy of the plan of care before it is signed by the physician, the independent nurse must cross out the error with a single line and place their 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) MassHealth Members Enrolled in the Primary Care Clinician Plan. If a member is enrolled in the PCC Plan, the independent nurse must provide the PCC with a copy of the member's plan of care for each certification period.

414.413: 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 independent nurse 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 independent nurse selected by the member.

(D) 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 member per calendar week and the duration of the prior authorization. Any CSN hours provided to the member by the independent nurse 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 414.413(H).

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

(1) the member's medical needs have changed from current authorization, the independent nurse must contact the MassHealth agency or its designee to request an adjustment to the prior authorization; or

(2) there is a change in other nursing services or care from current authorization (*e.g.*, PCA services, changes in adult day health or day habilitation schedules, adult foster care services), the independent nurse or the member must contact the MassHealth agency or its designee to request a review of the prior authorization.

(F) Prior authorization for CSN services may be approved for more than one independent nurse or CSN agency, 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, except as described in 130 CMR 414.413(H).

(G) The independent nurse must contact the MassHealth agency or its designee for all prior authorization requests in accordance with the MassHealth agency's administrative and billing regulations and instructions and must submit such requests to the appropriate addresses listed in Appendix A of the *Independent Nurse Manual*.

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

(I) In connection with a prior authorization, at the request of the MassHealth agency or its designee, the independent nurse is required to provide to the MassHealth agency or its designee a signed plan of care under 130 CMR 414.412 and supporting clinical documentation including, but not limited to, nursing progress notes, medication records, and clinical logs for all members authorized for CSN services.

(J) The MassHealth agency or its designee may authorize additional medically necessary CSN services on a temporary, three-month basis if the member meets the clinical criteria for CSN services and the primary natural caregiver is unavailable because they

(1) have an acute illness, have been hospitalized, or have a suspected illness; (2) have abandoned the member or have died in the past 30 days;

(3) have a high-risk pregnancy that requires significant restrictions;

(4) have given birth within the four weeks before a request for additional services;

(5) require surgery and/or are recovering from surgery in the hospital, in a rehabilitation facility, or at home; or

(6) are required to be away from the MassHealth member for an extended period of time.

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

(K) MassHealth members and/or primary natural caregivers will determine when authorized independent nurses 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.

414.414: Notice of Approval or Denial of Prior Authorization

(A) Notice of Approval. For all approved prior authorization requests for nursing services, the MassHealth agency or its designee will send written notice to the member and the independent nurse specifying the frequency and duration of care authorized and the effective date of the authorization.

(B) Notice of Denial or Modification and Right of Appeal.

(1) For all denied or modified prior authorization requests, the MassHealth agency or its designee will notify both the member and the independent nurse of the denial or modification, reason, right to appeal, and appeal procedure. The independent nurse will receive 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 denies or modifies a prior authorization request. The member must request a fair hearing in writing within 60 days after the date of the denial or modification unless otherwise decided by EOHHS. The Office of Medicaid Board of Hearings will conduct 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 will notify the member and the independent nurse of the discontinuation and the reason for it. The member will also receive notification of their 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. Any fair hearing request must be made in writing within 30 days after the date of the discontinuation. The Office of Medicaid Board of Hearings will conduct the hearing in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

414.415: 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.

414.416: Overtime

(A) The MassHealth agency will pay an overtime rate for nursing services provided by an independent nurse when the following conditions are met:

(1) prior authorization for overtime has been obtained from the MassHealth agency or its designee; and

(2) nursing services are provided by the same independent nurse and exceed 40 hours in a given calendar week for one MassHealth member.

(B) The MassHealth agency or its designee will only evaluate and authorize overtime on request by the independent nurse.

(C) In no event will any independent nurse be authorized for a total of more than 60 hours of nursing care provided during any seven-day calendar week, regardless of the number of MassHealth members receiving care from the independent nurse.

414.417: Recordkeeping Requirement and Utilization Review

(A) The record maintained by an independent nurse for each member must conform to 130 CMR 450.000: *Administrative and Billing Regulations*. Payment for any service listed in 130 CMR 414.000 requires full and complete documentation in the member's medical record. The independent nurse must maintain records for each member to whom nursing services are provided.

(B) In order for a medical record to completely document a service to a member, the record must disclose fully the nature, extent, quality, and necessity of the nursing services 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 450.000: *Administrative and Billing Regulations*).

(C) The independent nurse 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 MassHealth agency or its designee may periodically review a member's plan of care and other records to determine if services are medically necessary in accordance with 130 CMR 414.409(C). The independent nurse 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*.

(D) The independent nurse must maintain an up-to-date medical record of nursing services provided to each member that must be reviewed by the independent nurse at least monthly. The medical record must contain at least the following:

(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 natural caregiver's name, address, phone number, and relationship to member;
(4) the name and phone number of the member's emergency contact person;
(5) a copy of the approved prior authorization decision;
(6) a copy of the plan of care signed by the member's physician and, if appropriate, verbal orders signed by the physician;
(7) a medical history as defined in 130 CMR 414.402;
(8) accessible and legible nursing progress notes for each visit, signed by the independent nurse, 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 that are included in the member's plan of care, as well as documentation of the treatments and services that were provided during the visit and the member's response;
    (c) any additional treatment or service that is not included in the member's plan of care provided, as well as the member's response, including documentation of medication administration as described in 130 CMR 414.417(D)(9);
    (d) any service or treatment the member may have declined during the visit and an explanation of the denial;
    (e) the member's vital signs and any other required measurements;

(f) progress toward achievement of long- and short-term goals as specified in the plan of care, including, when applicable, an explanation of why goals are not achieved as expected;
(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;

(9) a current medication-administration list or other documentation, such as nursing notes, that includes the time of administration as ordered, drug identification and dose, the route of administration, the member's response to the medication being administered, and the signature of the person administering the medication;
(10) documentation about teaching provided to the member, member's family, or primary natural caregiver by the independent nurse on how to manage the member's treatment regimen, any ongoing teaching required by a change in the procedure or the member's condition, and the response to the teaching, if applicable;
(11) any clinical tests and their results;
(12) the names and telephone numbers of all the providers involved in co-vending care and the number of nursing hours approved for each provider by the MassHealth agency or its designee, to the best of the independent nurse's ability;
(13) a signed medical records release form; and
(14) a discharge summary, if applicable, including the reason for discharge and any activities completed by the independent nurse related to the discharge.

(E) The independent nurse must maintain a copy of the member's medical record in the member's home as described in 130 CMR 414.417(D). The copy must be made available to the member and/or their representative on request. The independent nurse must make every attempt to coordinate care and/or changes in shifts with other CSN providers.
(F) The independent nurse is responsible for maintaining the member's medical record. The independent nurse must maintain the member's original medical record along with current and previous certification period documentation in accordance with 130 CMR 414.417(A) and (B).

(G) On the request of the member or their representative, the independent nurse must provide a copy of the medical record free of charge to a person or entity that the member or their representative designates. Additionally, on request of the MassHealth agency or its designee, the independent nurse must provide a copy of the member's complete medical record to the agency or designee.

(H) Incident and Accident Records. The independent nurse must maintain an easily accessible record of the members' incidents and accidents. The record may be kept in the individual member medical record.

(1) The independent nurse must submit to the MassHealth agency or its designee an incident or accident report within five days under the following circumstances:
(a) an incident or accident that occurred during a CSN service visit that results in serious injury to the member;
(b) an incident or accident resulting in the member's unexpected death even if the independent nurse was not involved in the incident or accident;
(c) an incident of abuse or neglect involving the independent nurse and the member; or
(d) an incident of abuse or neglect committed by another provider who was supporting the member (if known).

(2) The incident or accident report must include at least the following:
(a) general information including but not limited to the member's name and MassHealth ID number;
(b) the general nature of the incident or accident; and
(c) any action that was taken as a result of the incident or accident, including all outcomes.

414.418: Maximum Allowable Fees

(A) Independent nurse providers must accept MassHealth payment in full for nursing services according to the rates and regulations established by EOHHS as set forth in 101 CMR 361.00: *Rates for Continuous Skilled Nursing Agency and Independent Nursing Services*. Payments are subject to the conditions, exclusions, and limitations set forth in 130 CMR 414.000 and 450.000: *Administrative and Billing Regulations*.

(B) The payments made by the MassHealth agency to the independent nurse constitute payment in full for nursing services as well as for all administrative duties relating to such services.

414.419: Transfers and Discharge Planning

(A) Discharge Procedures.
(1) An independent nurse may discharge a MassHealth member upon the member's request or when the independent nurse may no longer serve the member, such as under the following conditions:
(a) if the member no longer meets the clinical eligibility for CSN services;
(b) if the member selects another service that is duplicative of CSN services;
(c) if the member transitions to another CSN provider; or
(d) if the independent nurse ceases enrollment with the MassHealth agency.
(2) A member may be discharged by the independent nurse provider if the independent nurse cannot safely serve the member in the home due to the member or other persons in the member's home being disruptive, abusive, or uncooperative to the extent that delivery of care is seriously impaired. Prior to discharge, the independent nurse must
(a) notify the member, representative, ordering physician, and the MassHealth agency or its designee that a discharge for cause is being considered;
(b) notify the member, representative, ordering physician, and the MassHealth agency or its designee at least 14 days in advance that a discharge is planned to ensure member or provider safety. If the independent nurse has documented that continued provision of CSN services poses significant risks to provider safety, an independent nurse may discontinue services and discharge the member immediately;
(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 providers; and
(e) document the discharge and independent nurse activity related to the discharge in the member's clinical record.
(3) An independent nurse may not discharge a MassHealth member in violation of any discrimination provisions established in state or federal law;

(4) When an independent nurse makes the determination that a member no longer meets the clinical eligibility for CSN services and would like to proceed with discharge as described at 130 CMR 414.419(A)(1)(a), the independent nurse must consult with the MassHealth agency or its designee at minimum 14 days before the planned discharge to allow the MassHealth agency or its designee to perform a reassessment of the member's medical necessity for CSN services as described at 130 CMR 414.411(A)(7).

(5) When an independent nurse ceases to provide continuous skilled nursing services and does not plan to provide continuous skilled nursing services in the future, they must notify the MassHealth agency, its designee, and any MassHealth members it serves. In addition, the independent nurse must

(a) provide the member and/or caregiver the number of non-billed units remaining on the prior authorization;

(b) provide the member and/or caregiver contact information for alternative CSN providers;

(c) work with the MassHealth agency or its designee to assist in the transfer of members' care to another CSN provider; and

(d) end their enrollment as a MassHealth independent nurse provider.

414.420: Denial of Services and Administrative Review

(A) A failure or refusal by an independent nurse to furnish services that have been ordered by the member's attending physician and that are within the range of payable services is not an action by the MassHealth agency or its designee that a member may appeal, but such failure or refusal constitutes a violation of 130 CMR 414.000 for which administrative sanctions may be imposed.

(B) When an independent nurse believes that services ordered by the attending physician are not payable under 130 CMR 414.000, the independent nurse 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 independent nurse must provide those services.

414.421: Prohibited Marketing Activities

An independent nurse 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 their family or caregivers, in person or through marketing any inducement to retain the independent nurse 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 independent nurse; or

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

414.422: Providing Continuous Skilled Nursing Services out of State

The MassHealth agency does not pay an independent nurse to provide CSN services outside Massachusetts unless all of the following conditions are met:

(A) The independent nurse has a current prior authorization to provide CSN services as described in 130 CMR 414.413; and

(B) The independent nurse has an active nursing license in the state where the member is present or that the member plans to travel to.

REGULATORY AUTHORITY

130 CMR 414.000: M.G.L. c. 118E, §§ 7 and 12.