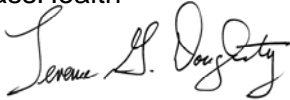




**MassHealth
Personal Care Agency Bulletin 5
July 2011**

TO: Personal Care Agencies Participating in MassHealth
FROM: Terence G. Dougherty, Medicaid Director 
RE: Clarification of MassHealth Personal Care Regulations

Background

The MassHealth personal care regulations state that when a personal care agency is determining the number of hours of physical assistance that a MassHealth member (consumer) requires for instrumental activities of daily living (IADLs), the agency must assume that any family members living with the consumer will provide assistance with most of the consumer's IADL needs. For example, if the consumer is living with a family member, it must be assumed that routine laundry, housekeeping, shopping, meal-preparation, and clean-up performed by the family member will include the related IADL needs of the consumer. (See 130 CMR 422.410(C)(1).)

Clarification

The personal care regulations at 130 CMR 422.402 define "family member" as

- the spouse of the consumer;
- the parent of a minor consumer, including an adoptive parent; or
- any legally responsible relative.

This definition is in accordance with federal Medicaid regulations that define family member to include relatives who are "legally responsible" and that prohibit legally responsible relatives from being paid as a personal care attendant. (See 42 CFR 440.167.)

MassHealth interprets "legally responsible relative" to include a relative who is a legal (court-appointed) guardian of the consumer (regardless of whether the relative has a duty to provide the consumer with direct physical care). A relative who merely has a power of attorney where the consumer is the principal, or who has been designated as a health care proxy for the consumer, is not considered to be a "legally responsible relative."

***Adult Consumers Living
with a Family Member***

A relative who is a legal guardian of an adult (aged 18 or older) consumer is a legally responsible relative, and thus meets the regulatory definition of a “family member.” Accordingly, where an adult consumer is living with his or her relative who is the consumer’s legal guardian, that relative is a “family member” for purposes of determining the number of hours of physical assistance that the consumer requires for IADLs. In accordance with 130 CMR 422.402, the personal care agency must thus assume that routine laundry, housekeeping, shopping, meal preparation, and clean-up will be performed by that family member for the IADL needs of the consumer.

***Family Members Unable
to Provide IADL
Assistance***

If a family member, as defined by 130 CMR 422.402, is unable to provide assistance with the consumer’s IADL needs, the personal care agency must provide written justification as to why the family member is unable to provide such assistance. A letter from the family member’s physician is not required.

Questions

If you have any questions about the information in this bulletin, please contact MassHealth Customer Service at 1-800-841-2900, e-mail your inquiry to providersupport@mahealth.net, or fax your inquiry to 617-988-8974.
