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422.401: Introduction

130 CMR 422.000 contains regulations governing the Personal Care Attendant (PCA) program under MassHealth. All PCAs and transitional living providers participating in MassHealth, as well as all Personal Care Management (PCM) agencies and fiscal intermediaries under contract with MassHealth to provide PCM and fiscal intermediary functions, must comply with regulations governing MassHealth, including, but not limited to, MassHealth regulations at 130 CMR 422.000 and 130 CMR 450.000: *Administrative and Billing Regulations*.

422.402: Definitions

The following terms used in 130 CMR 422.000 have the meanings given in 130 CMR 422.402 unless the context clearly requires a different meaning. Payment for services defined in 130 CMR 422.402 is not determined by these definitions, but by application of 130 CMR 422.000 and 130 CMR 450.000: *Administrative and Billing Regulations*.

Activities of Daily Living (ADLs). Those specific activities described in 130 CMR 422.410(A) and in the Contract for Personal Care Management (PCM) Services. Such activities are performed by a personal care attendant (PCA) to physically assist a member with mobility, taking medications, bathing or grooming, dressing, passive range of motion exercises, eating, and toileting.

Activity Form. The timesheet, in a form and format designated by the MassHealth agency, including through the use of Electronic Visit Verification (EVV), to be used by the member, the member's surrogate or administrative proxy, if any, and the PCA for recording all PCA activity time for each pay period.

Activity Time. The actual amount of time spent by a PCA physically assisting the member with ADLs and Instrumental Activities of Daily Living (IADLs). Activity time is reported on the activity form.

Administrative Proxy. The member's legal guardian, a family member, or any other person as identified in the service agreement who is responsible for performing certain administrative functions related to PCA management that the member is unable or unwilling to perform.

Administrative Tasks. Tasks, such as claims processing, recordkeeping, and reporting, required by the Executive Office of Health and Human Services (EOHHS) fiscal intermediary contract and performed by the fiscal intermediary.

Assessment. A PCM agency's determination of a member's ability to manage the PCA program independently and the ability of a surrogate or administrative proxy, if any, to manage the PCA program on behalf of the member. The PCM agency conducts an assessment of a member and surrogate or administrative proxy, if any, in accordance with 130 CMR 422.422(A) and the contract for PCM functions. The result of an assessment of the member is a determination that the member either requires a surrogate or administrative proxy to receive PCA services or can manage the PCA program independently. The result of an assessment of the surrogate or

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administrative proxy, if any, is a determination about whether the surrogate or administrative proxy can appropriately and effectively manage the PCA program on behalf of the member.

Day/Evening Hours. 6:00 A.M. to 12:00 A.M.

Electronic Visit Verification (EVV). The method or system designated or approved by EOHHS to electronically verify service delivery in the form and format as required by the MassHealth agency.

Employer Expense Component. The portion of the PCA rate designated as reimbursement to members for their mandated employer's share of social security, federal and state taxes, unemployment insurance taxes, Medicare, and workers' compensation premiums.

Employer-required Tasks. Tasks described in the EOHHS contract with the fiscal intermediary that relate to the member's employment of PCAs, including, but not limited to

- (a) employer obligations, including filing the member's federal and state taxes, withholding PCA taxes, paying unemployment insurance taxes, purchasing worker's compensation insurance, and preparing the PCA payroll;
- (b) payroll responsibilities, including reviewing activity forms and verifying prior authorization status; and
- (c) fiscal functions, including generating and distributing checks.

Evaluation. An initial determination by the PCM agency of the scope and type of PCA services to be provided to a member who meets the qualifications of 130 CMR 422.403. The evaluation is conducted in accordance with 130 CMR 422.422(C) or 422.438(B).

Family Member. The spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.

Fiscal Intermediary. An entity contracting with EOHHS to perform employer-required tasks and related administrative tasks including, but not limited to, tasks described in 130 CMR 422.419(B).

Functional Skills Training. Instruction provided by a PCM agency in accordance with 130 CMR 422.421(B), including in-person comprehensive functional skills training, in-person issue-focused functional skills training, and telephonic functional skills training, to assist members who have obtained prior authorization for PCA services and their surrogates and administrative proxies, if necessary, in developing the skills and resources to maximize the member's management of the PCA program, including, but not limited to, personal health care, PCA services, activities of daily living, and activities related to the fiscal intermediary.

Holiday. New Year's Day; Martin Luther King Jr. Day; Juneteenth; Independence Day; Thanksgiving Day; and Christmas Day.

Instrumental Activities of Daily Living (IADLs). Those specific activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed

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by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive PCA services.

Intake and Orientation. Functions provided to or for a member who seeks PCA services, but for whom the MassHealth agency has not yet granted a prior authorization for PCA services. These functions include, but are not limited to, determination of initial eligibility for PCA services; instruction and orientation in the rules, policies, and procedures of the PCA program; instruction in the member's rights and responsibilities when using PCA services; instruction in the role of the PCM agency and the fiscal intermediary, including the use of activity forms and EVV; and instruction in the skills and tasks necessary to manage PCA services.

Licensed Practical Nurse (LPN). A person currently licensed as a licensed practical nurse by the Massachusetts Board of Registration in Nursing and in good standing with the Board.

Member. A person determined by the MassHealth agency to be eligible for MassHealth.

Nurse Practitioner. A registered nurse who has successfully completed a formal education program for nurse practitioners as required by the Massachusetts Board of Registration in Nursing, and who is responsible for the oversight of the member's health care. A nurse practitioner who prescribes medication must be certified by the Federal Drug Enforcement Administration (DEA).

Occupational Therapist. A person currently licensed by and in good standing with the Massachusetts Board of Allied Health Professionals, and currently certified by and in good standing with the National Board for Certification in Occupational Therapy.

Overtime Requiring Authorization. Activity time performed by a PCA in excess of the weekly hour limit specified in 130 CMR 422.418(A).

Paid Earned Time. Paid time off from work used pursuant to a collective bargaining agreement effective in accordance with M.G.L. c. 118E, § 73, and c. 150E.

Passive Range of Motion Exercises (Passive ROM). Movement applied to a joint or extremity by another person solely for the purpose of maintaining or improving the distance and direction through which a joint can move.

Pay Period. Two consecutive work weeks.

PCA Rate. The rate of payment for activity time performed by PCAs in accordance with EOHHS regulations at 101 CMR 309.00: *Rates for Certain Services for the Personal Care Attendant Program.*

PCA Wage Component. The portion of the PCA rate designated as the PCA's gross hourly wage.

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Primary Care Physician (PCP) Summary Form. A MassHealth-issued form detailing a member's medical conditions and care needs signed by a member of the PCP team at the member's doctor's office.

Personal Care Attendant (PCA). A person who meets the requirements of 130 CMR 422.404(A)(1) and who is hired by the member or surrogate to provide PCA services. In addition, for the sole purpose of M.G.L. c. 118E, §§ 70 through 75, a PCA is a person who is hired by the member or surrogate to provide PCA services through a senior care organization (SCO) contracting with the MassHealth agency pursuant to M.G.L. c. 118E, § 9D or a person who is hired by the member or surrogate to provide PCA services through an integrated care organization (ICO) contracting with the MassHealth agency pursuant to M.G.L. c. 118E, § 9F. Unless explicitly stated in 130 CMR 422.000, the SCO's MassHealth contract, or the ICO's MassHealth contract, no other provisions of 130 CMR 422.000 apply to any SCO, ICO, or PCA hired by any eligible MassHealth member through a SCO or ICO.

Personal Care Attendant Program (PCA Program). A MassHealth program under which PCA services and associated personal care management and fiscal intermediary functions are available to MassHealth members including, for the sole purpose of M.G.L. c. 118E, §§ 70 through 75, those services and functions when provided through a senior care organization (SCO) as defined in M.G.L. c. 118E, § 9D, or an integrated care organization (ICO) as defined in M.G.L. c. 118E § 9F. Unless explicitly stated in 130 CMR 422.000, the SCO's MassHealth contract, or the ICO's MassHealth contract, no other provisions of 130 CMR 422.000 apply to any SCO, ICO, or PCA hired by an eligible MassHealth member through a SCO or ICO.

PCA Provider Number. A sequence of characters or numbers provided by the fiscal intermediary and assigned to each PCA that uniquely identifies each PCA regardless of the number of members who employ the PCA or the number of fiscal intermediaries who perform employer-required tasks for the PCA.

PCA Services. Physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410.

Personal Care Management (PCM) Agency. A public or private agency or entity under contract with EOHHS to provide PCM functions in accordance with 130 CMR 422.000 and the PCM agency contract.

PCM Functions. Administrative functions provided by a PCM agency to a member in accordance with a contract with EOHHS, including, but not limited to, functions identified in the PCM agency contract and 130 CMR 422.419(A).

Physician Assistant. A mid-level medical practitioner who works under the supervision of a licensed physician (MD) or osteopathic physician (DO) and who has graduated from an accredited physician assistant program and is certified by and in good standing with the Massachusetts Board of Registration of Physician Assistants.

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Prior Authorization (PA) Period. The dates authorized by the MassHealth agency designating the duration of services covered by the prior authorization.

PA Request. A request to initiate, continue, or adjust a member's prior authorization for PCA services or transitional living services that the PCM agency must submit to the MassHealth agency in accordance with 130 CMR 422.416, the PCM agency contract, or 130 CMR 422.431. The MassHealth agency may approve, deny, modify, or defer a PA request.

Reevaluation. An assessment of a member's continuing need for PCA services to be provided to a member who requests a continuance of PCA services because the current authorization is expiring. The reevaluation must be conducted in accordance with 130 CMR 422.422(D).

Registered Nurse. A person currently licensed as a registered nurse by the Massachusetts Board of Registration in Nursing and in good standing with the Board.

Service Agreement. A written plan of services, consistent with the requirements of 130 CMR 422.423 and the PCM agency contract, that is developed jointly by the PCM agency, the member, and the member's surrogate or administrative proxy, if any. The service agreement describes the responsibilities of the PCA, the member, the surrogate or administrative proxy, the fiscal intermediary, and the PCM agency as they relate to the management of the member's PCA program. If the member does not require a surrogate or administrative proxy, the service agreement must state that the member is solely responsible for the management tasks, including hiring, firing, scheduling, training, supervising, and otherwise directing PCAs. The service agreement must also describe the type and frequency of functional skills training that the member and the surrogate or administrative proxy, if appropriate, receives from the PCM agency to manage the PCA program successfully.

Surrogate. The member's legal guardian, family member, or other person older than 18 years of age as identified in the service agreement who is responsible for performing certain PCA management tasks that the member is unable or unwilling to perform.

Transitional Living Program. A program of services that may be offered by an organization in a structured group-living environment, for members with severe disabilities who demonstrate an aptitude for independent living, but who can clearly benefit from functional skills training and supervised experience in management of health care, PCA services, and community activity in gaining the ability and confidence necessary to achieve independent living.

Weekly Hour Limit. The weekly hour limit established pursuant to 130 CMR 422.418(A)(1).

Work Week. A seven-day period beginning Sunday at 12:00 A.M. and ending the consecutive Saturday at 11:59 P.M.

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422.403: Eligible Members

- (A) (1) MassHealth Members. MassHealth covers PCA services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in 130 CMR 450.105: *Coverage Types* which 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*.
- (C) MassHealth covers PCA services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met.
- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
 - (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance.
 - (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
 - (4) The MassHealth agency has determined that the PCA services are medically necessary.

422.404: Provider Eligibility

- (A) Provider Qualifications.
- (1) Personal Care Attendants. To provide personal care attendant (PCA) services described in 130 CMR 422.411(A) and the service agreement established pursuant to 130 CMR 422.423, the PCA must
- (a) be legally authorized to work in the United States;
 - (b) not be on the List of Excluded Individuals and Entities as provided by the Office of Inspector General of the U.S. Department of Health and Human Services, or other applicable lists excluding individuals or entities from participating in MassHealth under state or federal law;
 - (c) have a current and valid PCA provider number;
 - (d) be employed by a member to provide PCA services. To be eligible to be employed by a member to provide PCA services, a PCA must
 1. not be a family member, as defined in 130 CMR 422.402;
 2. not be the member's surrogate or administrative proxy;
 3. not be the member's foster parent;
 4. be at least 16 years of age;
 5. be physically able to perform the tasks they are being hired to perform by the member or the member's surrogate;
 6. be able to understand and carry out directions given by the member or the member's surrogate;

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7. be willing to receive training and supervision in all PCA services provided by the member or the member's surrogate;
8. not be receiving compensation from any other person or entity for that activity time; and
9. enter into a PCA provider agreement to perform PCA services.

(2) Providers of Transitional Living Services. To provide transitional living services described in 130 CMR 422.431 through 422.441, the organization must

- (a) submit a proposal for review by the MassHealth agency in accordance with MassHealth's proposal requirements;
- (b) obtain written authorization from the MassHealth agency to become a MassHealth provider of transitional living services;
- (c) demonstrate the appropriate licensure or program accreditation by a recognized body for the provider's type of program; and
- (d) obtain a MassHealth provider number.

(B) Scope of Services.

(1) Personal Care Attendants. Individuals who provide PCA services must provide services in accordance with 130 CMR 422.000 and the scope of services described under 130 CMR 422.419(C) and the service agreement established pursuant to 130 CMR 422.423.

(2) Transitional Living Services. Organizations that provide transitional living services must provide services in accordance with 130 CMR 422.431 through 422.441, and in accordance with the MassHealth agency's proposal requirements for transitional living services.

422.405: Personal Care Management Agency and Fiscal Intermediary Functions

(A) Personal Care Management Agencies.

(1) Personal Care Management Agency Functions. Organizations that contract with the MassHealth agency to provide PCM agency functions must perform the range of functions specified in the PCM agency contract and contained within 130 CMR 422.000. Such functions include, but are not limited to, those described in 130 CMR 422.419(A).

(2) Selecting a Personal Care Management Agency. The member selects the PCM agency from the PCM agencies under contract with MassHealth to perform this function. The PCM agency selected by the member will conduct the PCA evaluation and provide PCM functions to the member.

(3) Reassignment to a Personal Care Management Agency. The MassHealth agency may reassign a member to another PCM agency selected by the MassHealth agency, if, in the sole determination of the MassHealth agency, the PCM agency selected by the member

- (a) becomes unavailable for any reason;
- (b) is unable or unwilling to provide PCM functions pursuant to the requirements set forth in 130 CMR 422.000; or
- (c) is not in compliance with its obligations as set forth in its contract with the MassHealth agency.

(4) An organization may apply to the MassHealth agency to become a PCM agency only during the time that the MassHealth agency opens a request for responses for PCM functions.

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(B) Fiscal Intermediary.

(1) Fiscal Intermediary Functions. The organization that contracts with the MassHealth agency to provide fiscal intermediary functions must provide such functions in accordance with the fiscal intermediary contract and with 130 CMR 422.000. Fiscal intermediary functions must include, but are not limited to, those described in 130 CMR 422.419(B).

(2) PCM Agencies and the Fiscal Intermediary. PCM agencies that do not exclusively provide transitional living services under 130 CMR 422.431 through 422.441 must work with the fiscal intermediary selected by the MassHealth agency for all eligible MassHealth members that the PCM agency serves.

(3) Reassignment to a Fiscal Intermediary. The MassHealth agency may reassign PCM agencies to a fiscal intermediary selected by the MassHealth agency, if, in the sole determination of the MassHealth agency, the fiscal intermediary selected by such PCM agency

(a) becomes unavailable for any reason;

(b) is unable or unwilling to provide fiscal intermediary functions pursuant to the requirements set forth in 130 CMR 422.000 and 450.000: *Administrative and Billing Regulations*; or

(c) is not in compliance with its obligations as set forth in its contract with EOHHS.

(4) An organization may apply to the MassHealth agency to become a fiscal intermediary only during the time that the MassHealth agency opens a request for responses for fiscal intermediary functions.

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422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL.

- (1) Mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) Assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
- (3) Bathing or grooming: physically assisting a member with bathing, personal hygiene, or grooming;
- (4) Dressing: physically assisting a member to dress or undress;
- (5) Passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
- (6) Eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
- (7) Toileting: physically assisting a member with bowel or bladder needs.

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member during transportation to and from medical providers; and
- (4) special needs: assisting the member with
 - (a) the care and maintenance of wheelchairs and adaptive devices;
 - (b) completing the paperwork required for receiving PCA services when an EVV live-in exemption has been approved; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance for IADLs. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM agency must assume the following.

- (1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.
- (2) When a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

(D) Determining the Number of Hours of Physical Assistance for Minor Members. In determining the number of hours of physical assistance that a member requires under 130 CMR

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422.410(A) and (B), and in addition to the assumptions described at 130 CMR 422.410(C), the member who is a minor (younger than 18 years old) will be evaluated with consideration to, and taking into account, reasonable expectations of parental responsibility and circumstances related to parental ability as well as whether and to what extent the minor member is substantially meeting developmental milestones, as detailed in the operating standards.

422.411: Covered Services

(A) MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D), and as authorized by the MassHealth agency.

(B) MassHealth covers transitional living program services provided by an organization in accordance with 130 CMR 422.431 through 422.441 and the MassHealth agency's proposal requirements.

422.412: Noncovered Services

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;
- (D) time when a PCA is not providing assistance with ADLs or IADLs;
- (E) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
- (F) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (G) services provided by family members, as defined in 130 CMR 422.402;
- (H) surrogates and administrative proxies, as defined in 130 CMR 422.402;
- (I) PCA services provided to a member without the use of EVV as required by the MassHealth agency;

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(J) required parental responsibilities for children younger than 18 years of age as indicated by the child's developmental milestones, as detailed in the operating standards; and

(K) personal care services provided by a PCA that exceed 66 hours per week in the aggregate.

422.413: Payment for PCA Services

MassHealth authorizes the following types of payment to PCAs for the performance of PCA services.

(A) Activity time performed pursuant to 130 CMR 422.411(A);

(B) Overtime requiring authorization in accordance with 130 CMR 422.418(A);

(C) Payment for juror service in accordance with 130 CMR 422.418(B);

(D) PCA holiday rate determined in accordance with 101 CMR 309.00: *Rates for Certain Services for the Personal Care Attendant Program* for activity time performed between the hours of 6:00 A.M. through 12:00 A.M. on New Year's Day; Martin Luther King, Jr. Day; Juneteenth; Independence Day; Thanksgiving Day; and Christmas Day;

(E) Paid earned time used pursuant to a collective bargaining agreement effective in accordance with M.G.L. c. 118E, § 73, and c. 150E;

(F) Completion of new hire orientation pursuant to a collective bargaining agreement effective in accordance with M.G.L. c. 118E, § 73, and c. 150E;

(G) Time spent traveling between the homes of members for whom the PCA is providing PCA services in accordance with the collective bargaining agreement M.G.L. c. 118E, § 73, and c. 150E; and

(H) Complex care differential paid to PCAs providing MassHealth-covered PCA services to members with a complex care authorization in accordance with 130 CMR 422.414 and 130 CMR 422.418(C).

422.414: Complex Care Authorization

The MassHealth agency, or its designee, determines complex care authorizations for members who meet the clinical eligibility criteria in accordance with 130 CMR 422.414 (A).

(A) Complex Care Authorization Clinical Eligibility. MassHealth members may qualify for a prior authorization for PCA complex care if their evaluation for PCA services demonstrates clinical need for either

- (1) digital stimulation related to bowel regimen; or
- (2) enteral feeding tube.

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(B) Prior Authorization Requirement. The complex care authorization is determined in accordance with 130 CMR 422.416. The MassHealth agency may, at its discretion, request additional information to evaluate a member's request for a complex care authorization including, but not limited to, documentation supporting the medical need for one or more activities identified at 130 CMR 422.414(A).

(C) Complex Care Differential Payment. Complex care differential payments are made in accordance with 130 CMR 422.418(C).

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422.416: PCA Program: Prior Authorization for PCA Services

The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services. 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 utilization of other potential sources of health care as described in 130 CMR 503.007: *Potential Sources of Health Care* and 517.008: *Potential Sources of Health Care*. Prior authorization for PCA services does not authorize member scheduling of PCA overtime, which is described in 130 CMR 422.418. All requests for prior authorization for PCA services must include the provider number of the fiscal intermediary and be submitted on MassHealth forms in accordance with the billing instructions in Subchapter 5 of the *Personal Care Manual* and 130 CMR 422.416. The MassHealth agency responds to requests for prior authorization in accordance with 130 CMR 450.303: *Prior Authorization*.

(A) Initial Request for Prior Authorization for PCA Services. With the exception of 130 CMR 422.416(D), PCM agencies must submit the initial request for prior authorization for PCA services to the MassHealth agency within 45 days of the date of the receipt of the PCP Summary Form. Requests for prior authorization for PCA services must include

- (1) the completed MassHealth Application for PCA Services, PCP Summary Form, and MassHealth Evaluation for PCA Services;
- (2) the completed MassHealth Prior Authorization Request form;
- (3) any documentation that supports the member's need for PCA services. This documentation must
 - (a) identify a permanent or chronic disability that impairs the member's ability to perform ADLs and IADLs without physical assistance; and
 - (b) state that the member requires physical assistance with two or more ADLs as defined in 130 CMR 422.410(A); and
- (4) the completed and signed assessment of the member's ability to manage the PCA program independently.

(B) Adjustment of Current Prior Authorization. Prior authorization requests to increase or decrease the number of hours of PCA services must be submitted to the MassHealth agency by the member's PCM agency in writing within 30 days of the member or surrogate request, and include

- (1) a copy of the original prior authorization request and PCA evaluation;
- (2) a written summary of the specific adjustment requested that includes the reason for the adjustment and the specific ADLs or IADLs for which an increase or decrease in PCA services is being requested, including the number of units, the number of hours, and the duration of time for which the adjustment is being requested; and
- (3) other supporting documentation, such as a letter from the member's physician, nurse practitioner, or physician assistant stating that the need for an adjustment in the member's authorized number of hours of PCA services is a result of changes in the member's medical condition, functional status, or living situation that affects the member's ability to perform ADLs and IADLs without physical assistance.

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(C) Continuation of PCA Services. To ensure the continuation of PCA services, PCM agencies must request prior authorization from the MassHealth agency at least 21 days before the expiration date of the current prior authorization period. The PCM agency must include in its prior authorization request the documentation described in 130 CMR 422.416(A) but an electronic medical record (EMR) may be submitted in lieu of a PCP Summary Form if the consumer does not require complex care tasks. The MassHealth agency will continue to pay for PCA services during its review of the new PA request only if the MassHealth agency has received the new prior authorization request at least 21 days before the expiration of the current prior authorization period. If the MassHealth agency does not receive the new prior authorization request at least 21 days before the expiration date, the MassHealth agency may stop payment for PCA services after the expiration date.

(D) Special Conditions.

- (1) The MassHealth agency, or its designee, reserves the right to conduct the PCA evaluation for purposes of authorizing PCA services or coordinating other MassHealth services, as appropriate. When the MassHealth agency, or its designee, conducts a PCA evaluation and authorizes PCA services for the member, the member will select the PCM agency that will be responsible for providing PCM functions. The MassHealth agency, or its designee, will provide written notification to the PCM agency selected by the member, who must provide all other PCM functions, as appropriate, including, but not limited to, providing orientation, functional skills training, and developing, in conjunction with the member, a service agreement.
- (2) When the MassHealth agency or its designee conducts an evaluation of the member's need for PCA services, the MassHealth agency will not pay a PCM agency for an evaluation.
- (3) The PCM agency must contact MassHealth, or its designee, within 24 hours of an inquiry for PCA services for a member who is being discharged from a nursing facility or other inpatient facility. The MassHealth agency may, at its discretion, exercise its right to conduct the PCA evaluation and coordinate other MassHealth services in accordance with 130 CMR 422.416(D).

(E) Utilization of Authorized PCA Services.

- (1) Notification. If the MassHealth agency approves or modifies a prior authorization request for PCA services, the notice to the member will specify the number of hours of PCA services that the MassHealth agency determines are medically necessary and reimbursable by MassHealth at the PCA rate for each week during the duration of the member's prior authorization period.
- (2) Adjustments to PCA Hours. PCM agencies may request an adjustment to the member's authorized number of hours of PCA services if there is a change in the member's medical or functional status that affects the member's ability to perform ADLs or IADLs without physical assistance. *See* 130 CMR 422.416(B).
- (3) Overutilization of PCA Hours.
 - (a) The fiscal intermediary will notify the member and the PCM agency when the member repeatedly submits activity forms in excess of the PCA hours per week that the MassHealth agency has authorized pursuant to 130 CMR 422.416(E).

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(b) When contacted by the fiscal intermediary pursuant to 130 CMR 422.416(E)(3)(a), the PCM agency will provide functional skills training to the member or surrogate or administrative proxy, if appropriate, to, at minimum

1. inform the member and surrogate or administrative proxy of the member's and surrogate's or administrative proxy's responsibility to utilize PCA services in accordance with the number PCA hours per week authorized by the MassHealth agency pursuant to 130 CMR 422.416(E) and provide instruction regarding proper submission of activity forms, as appropriate; and
2. inform the member that the member may, if appropriate, request an adjustment in accordance with 130 CMR 422.416(B).

(c) If the member continues to overutilize PCA services after intervention from the fiscal intermediary and the PCM agency in accordance with 130 CMR 422.416(E)(3)(a) and (b), the fiscal intermediary will notify the MassHealth agency.

(d) The MassHealth agency reserves the right to take action to ensure that the PCA services reimbursed by the MassHealth agency are medically necessary, including, but not limited to, directing the fiscal intermediary to stop payment of PCA hours submitted on the activity form that are in excess of the number of PCA hours per week authorized by the MassHealth agency pursuant to 130 CMR 422.416(E).

(e) The MassHealth agency, the fiscal intermediary, and the PCM agency are not responsible for reimbursement of PCA services provided to a member in excess of the total number of hours authorized by the MassHealth agency during a prior authorization period.

422.417: PCA Program: Notice of Approval, Denial, or Modification of Prior Authorization Request

(A) Notice of Approval. If the MassHealth agency approves a PA request for PCA services, the MassHealth agency will send written notice to the member, the PCM agency, and the fiscal intermediary regarding the frequency, duration, and intensity of care authorized, as well as the expiration date of the authorization.

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

(1) If the MassHealth agency denies or modifies a prior authorization request for PCA services, the MassHealth agency will send written notice to the member, the PCM agency, and the fiscal intermediary. The notice will state the reason for the denial or modification and will inform the member of the right to appeal and of the appeal procedure.

(2) If the MassHealth agency denies or modifies a prior authorization request for PCA services, or approves a prior authorization with a fewer number of hours from the immediately preceding prior authorization that ended within the past year of the present prior authorization approval date, a member may appeal by requesting a fair hearing. The request for a fair hearing must be made in writing to the MassHealth Board of Hearings in accordance with the timelines in 130 CMR 610.015(B): *Time Limitation on the Right of Appeal*. Requests for continuation of services during an appeal must be made in accordance with 130 CMR 610.036: *Continuation of Benefits Pending Appeal*. The MassHealth Board of Hearings will conduct the fair hearing in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

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422.418: PCA Program: Special Payments

(A) Overtime Requiring Authorization.

(1) Weekly Hour Limit. Subject to the conditions for authorization set forth in 130 CMR 422.418(A)(2), all members are limited to scheduling an individual PCA to work no more than 50 hours per week, inclusive of time during which such individual PCA works providing PCA services for other members.

(2) Authorization to Schedule an Individual PCA to Work in Excess of the Weekly Hour Limit. Before scheduling a PCA to work in excess of the weekly hour limit, a member must obtain authorization from the MassHealth agency, or its designee. The MassHealth agency, or its designee, will provide such authorization only if one or more of the following conditions apply and the member has satisfied the conditions for authorization at 130 CMR 422.418(A)(4).

(a) The member has a temporary need to schedule an individual PCA to work in excess of the weekly hour limit, but not more than 66 hours per week;

(b) The member has a long-term need to require an individual PCA to work in excess of the weekly hour limit but not more than 66 hours per week to provide continuity of care;
or

(c) The member has an emergency need that requires an individual PCA to work in excess of the weekly hour limit due to an unforeseen event that prevented the member's regularly scheduled PCA from providing PCA services to the member in a particular work week, resulting in an emergency need for another PCA to immediately provide PCA services in excess of the weekly hour limit for that week, but not more than 66 hours per week.

(3) Member Responsibility.

(a) A member must submit a request for authorization to schedule a PCA to work in excess of the weekly hour limit in the following manner.

1. For requests for authorization pursuant to 130 CMR 422.418(A)(2)(a) or (b), prior to scheduling an individual PCA to work in excess of the weekly hour limit, the member must submit a request to the PCM agency in the form and format specified by the MassHealth agency, and in accordance with 130 CMR 422.420(A)(13).

2. For requests for authorization pursuant to 130 CMR 422.418(A)(2)(c), the member must immediately notify the PCM agency of the request in accordance with 130 CMR 422.420(A)(13) and if such emergency arises during nonbusiness hours, the member must notify the PCM agency's 24-hour messaging service.

(b) When submitting a request pursuant to 130 CMR 422.418(A)(3), the member must provide the PCM agency with, at a minimum, information sufficient to demonstrate the satisfaction of each of the conditions in 130 CMR 422.418(A)(4)(a).

(4) Conditions for Authorization.

(a) The MassHealth agency, or its designee, authorizes a member to schedule an individual PCA to work in excess of the weekly hour limit only when all of the following conditions are met.

1. The member has demonstrated, to the satisfaction of the MassHealth agency, that the member's request to schedule an individual PCA to work in excess of the weekly hour limit meets one or more of the conditions set forth in 130 CMR 422.418(A)(2);

2. The member has demonstrated, to the satisfaction of the MassHealth agency, that

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the member has attempted to contact, at a minimum, all persons who are either employed by the member or listed as available in accordance with 130 CMR 422.419(A)(15) and 422.420(A)(16); and

3. The request meets the requirements of 130 CMR 422.418(A)(3).

(b) The MassHealth agency may, at its discretion, request additional information to evaluate a member's request to schedule an individual PCA to work in excess of the weekly hour limit including, but not limited to

1. the member's PCA schedule for a specific work week that includes the names of all PCAs employed by the member;

2. for requests for authorization pursuant to 130 CMR 422.418(A)(2)(c), the name of the regularly scheduled PCA that was unable to provide PCA services;

3. documentation that demonstrates, to the satisfaction of the MassHealth agency, that the member has attempted to hire additional PCAs; and

4. the list of PCAs contacted in accordance with 130 CMR 422.418(A)(4)(a)2.

(5) Notification to the Member, PCM Agency, and Fiscal Intermediary.

(a) Notice of Approval. If the MassHealth agency approves a request to schedule an individual PCA to work in excess of the weekly hour limit, it sends written notice to the member, the PCM agency, and the fiscal intermediary.

(b) Notice of Denial or Modification. If the MassHealth agency denies or modifies a request to schedule an individual PCA to work in excess of the weekly hour limit, the MassHealth agency notifies the member, the PCM agency, and the fiscal intermediary. The notice states the reason for the denial or modification and informs the member of the right to appeal and of the appeal procedure.

(c) Request for Fair Hearing. If the MassHealth agency denies or modifies a request to schedule an individual PCA to work in excess of the weekly hour limit, a member may appeal the denial or modification by requesting a fair hearing. The request for a fair hearing must be made in writing to the MassHealth Board of Hearings in accordance with the timelines in 130 CMR 610.015(B): *Time Limitation on the Right of Appeal*. Requests for continuation of services during an appeal must be made in accordance with 130 CMR 610.036: *Continuation of Benefits Pending Appeal*. The MassHealth Board of Hearings conducts fair hearings in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

(6) Expiration of Authorizations to Schedule an Individual PCA to Work in Excess of the Weekly Hour Limit.

(a) The MassHealth agency's authorization for a member to schedule an individual PCA to work in excess of the weekly hour limit will expire in accordance with the following.

1. For temporary authorizations pursuant to 130 CMR 422.418(A)(2)(a), the authorization will expire 12 weeks after the date of authorization;

2. For long-term authorizations pursuant to 130 CMR 422.418(A)(2)(b), the authorization will align with the clinical prior authorization dates established in accordance with 130 CMR 422.416; and

3. For emergency authorizations pursuant to 130 CMR 422.418(A)(2)(c), the authorization will be limited to the particular work week specified in the request.

(b) Members who continue to require an individual PCA to work in excess of the weekly hour limit may submit new requests for authorization to schedule a PCA to work in excess of the weekly hour limit.

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(B) Juror Service Performed by a Personal Care Attendant. MassHealth provides reimbursement to members for PCAs who are required to perform juror service during regularly scheduled work hours for a maximum of three days when the following conditions are met.

(1) Member Responsibility. Within 14 days of the PCM agency's receipt of documentation from the state or federal court that the personal care attendant has performed juror service, the member must provide the PCM agency with

(a) the number of hours that the PCA was regularly scheduled to work during the time juror service was required; and

(b) documentation from the appropriate state or federal court that the PCA has performed juror service. This documentation must consist of either

1. for state jury service, a copy of the Certificate of Juror Service issued by the Massachusetts Office of the Jury Commissioner, verifying the date(s) that the PCA has been called for juror service; or

2. for federal jury service, a copy of the Attendance Sheet issued by the Federal District Court, verifying the date or dates that the PCA has been called for juror service.

(2) PCM Agency Responsibility. Within three days of receipt of the required documentation from the member in accordance with 130 CMR 422.418(B)(1), the PCM agency must forward to the MassHealth agency

(a) a written request for an increase in the number of hours of PCA services based on the number of hours of juror service performed by the PCA during regularly scheduled work hours, but no greater than three working days; and

(b) documentation provided by the member as specified in 130 CMR 422.418(B)(1).

(3) Conditions for Payment. MassHealth will provide reimbursement to members for regular rates paid to PCAs who performed juror service up to the first three days of juror service if the following conditions are met.

(a) The time that the PCA is required to perform juror service must occur during the same time that the PCA was regularly scheduled to work for the member;

(b) The number of hours requested for reimbursement by the member for juror service performed by a PCA must not be greater than the number of hours the PCA was regularly scheduled to work for the member; and

(c) All the requirements in 130 CMR 422.418(B) must be met.

(C) Complex Care Differential Payment. MassHealth will pay a differential to individuals who provide PCA services to a member with a complex care authorization in accordance with 130 CMR 422.414.

(1) Conditions for Authorization. The MassHealth agency, or its designee, determines a member has a complex care authorization only when the conditions provided at 130 CMR 422.414 are met.

(2) Conditions for Payment. The complex care differential payment is paid in addition to the applicable PCA rate for that PCA when all the following conditions are met.

(a) The MassHealth member has a complex care authorization pursuant to 130 CMR 422.414;

(b) The PCA has completed new hire orientation (NHO), or is exempt from the NHO requirement, in accordance with the collective bargaining agreement; and

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(c) The PCA provides MassHealth-covered PCA services to a member with a complex care authorization pursuant to 130 CMR 422.414.

(3) Applicability of Complex Care Differential Payments. The complex care differential payment is applicable only to activity time providing MassHealth-covered PCA services to a member with a complex care authorization. The complex care differential payment is not applicable to activity time for members without a complex care authorization or other time or payments that are not activity time, such as payment for juror service in accordance with 130 CMR 422.413(C), payment for paid earned time in accordance with 130 CMR 422.413(E), NHO payments in accordance with 130 CMR 422.413(F), and travel time in accordance with 130 CMR 422.413(G).

422.419: PCA Program: Scope of PCA Services and Personal Care Management and Fiscal Intermediary Functions

- (A) The PCM Agency. The PCM agency must provide personal care management functions in accordance with 130 CMR 422.000 and its contract with EOHHS, including, but not limited to
- (1) maintaining a communication system that is accessible to members on a 24-hour basis;
 - (2) responding to member inquiries about the MassHealth agency's prior authorization decisions within the timeframes specified in the contract and in 130 CMR 422.000;
 - (3) maintaining records in accordance with 130 CMR 422.446 and the PCM agency contract;
 - (4) conducting a formal, written assessment of the member's ability to manage the PCA program independently and, if applicable, conducting a formal, written assessment of the ability of the surrogate or administrative proxy to manage the PCA program on behalf of the member in accordance with 130 CMR 422.422(A) and the PCM agency contract, and in the form and format required by the MassHealth agency;
 - (5) performing evaluations and reevaluations of members who are eligible for PCA services in accordance with 130 CMR 422.422(C) and (D) and the PCM agency contract;
 - (6) submitting to the MassHealth agency all requests for prior authorization for PCA services in accordance with the procedures and timelines identified in the PCM agency contract, 130 CMR 422.416(A) through (C), and 422.418;
 - (7) developing in conjunction with the member and the member's surrogate, if any, a formal, written service agreement for the member in accordance with 130 CMR 422.423 and the PCM agency contract, and in the form and format required by the MassHealth agency;
 - (8) providing intake and orientation to determine a member's initial eligibility for PCA services, and to instruct the member in the rules, policies, and regulations of the PCA program and the skills and functions necessary to manage the PCA program in accordance with 130 CMR 422.421(A) and the PCM agency contract;
 - (9) providing functional skills training to instruct the member and the surrogate or administrative proxy, if applicable, as necessary, in the basic requisites of appropriate management of the PCA program in accordance with 130 CMR 422.421(B) and the PCM agency contract;
 - (10) maintaining policies and procedures for the receipt and timely resolution of member complaints in accordance with the PCM agency contract;
 - (11) providing written information to members in a language and format that is understandable to them;
 - (12) providing PCM functions that are culturally sensitive;

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- (13) seeking out and including member input and feedback into the PCM functions provided by the PCM agency;
- (14) educating members and surrogates and administrative proxies about the tools available to promote PCA services that are safe, such as the availability of Criminal Offender Record Information (CORI), Disabled Persons Protection Commission (DPPC), the sex offender registry, and reporting abuse of those 60 and older to Elder Services;
- (15) working with the member to establish and maintain a current list of available PCAs who can be contacted when an unforeseen event occurs that prevents the member's regularly scheduled PCA from providing services;
- (16) developing creative methods to assist members in the recruitment of PCAs;
- (17) establishing a cooperative working relationship with the fiscal intermediary by
 - (a) working with the fiscal intermediary for all members served by the PCM agency;
 - (b) assisting new members in enrolling with the fiscal intermediary before hiring PCAs;
 - (c) educating members about the role of the fiscal intermediary;
 - (d) working with the fiscal intermediary to resolve member and PCA complaints;
 - (e) sharing information with the fiscal intermediary, as needed, about the status of a member's prior authorization decision, including, but not limited to, the member's name, address, and date of birth;
 - (f) providing the fiscal intermediary with the name, address, and phone number of the member's surrogate or administrative proxy, if any, and any changes in the surrogate or administrative proxy information; and
 - (g) responding to the fiscal intermediary's request for skills training for a member or surrogate who is having difficulty managing the PCA program, including, but not limited to, a member or surrogate who repeatedly submits activity forms in excess of the PCA hours per week authorized by the MassHealth agency pursuant to 130 CMR 422.416(E), the scheduling and provision of PCA services resulting in overtime hours in excess of those authorized by 130 CMR 422.418(A), or noncompliance with the use of EVV pursuant to 130 CMR 422.420(A)(3) and 422.420(A)(5)(c);
- (18) reporting suspicion of fraud to the MassHealth agency in the format specified by the MassHealth agency and cooperating with any subsequent investigation;
- (19) assisting the member and the MassHealth agency in coordinating for, or providing education about, the use of EVV as required by the MassHealth agency; and
- (20) notifying the MassHealth agency if, in the opinion of the PCM agency, the member's surrogate or administrative proxy is not managing PCA tasks for the member in accordance with 130 CMR 422.000.

(B) The Fiscal Intermediary. The fiscal intermediary must ensure that each member it serves has a current prior authorization for PCA services from the MassHealth agency. The fiscal intermediary must fulfill its responsibilities in accordance with its contract with EOHHS, including, but not limited to

- (1) obtaining the signed MassHealth consumer agreement from each member that describes the roles and responsibilities of both the member and the fiscal intermediary;
- (2) establishing a member services unit with staff trained to answer member telephone calls about activity forms, tax forms, and the functions of the fiscal intermediary. When member concerns cannot be resolved by telephone, the member can be referred to a PCM agency for functional skills instruction (*see also* 130 CMR 422.419(A)(17)(g) and 422.421(B)(2)).

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- (3) operating a toll-free telephone service during business hours (from 9:00 A.M. to 5:00 P.M., Monday through Friday, holidays excluded);
- (4) operating a toll-free answering or voice messaging service during nonbusiness hours;
- (5) in conjunction with the PCM agency, establishing systems to resolve member and PCA complaints in a timely fashion;
- (6) sharing information about a member's prior authorization with the PCM agency, including notifying the PCM agency when a member is repeatedly submitting activity forms in excess of the PCA hours per week authorized by the MassHealth agency;
- (7) establishing cooperative working relationships with PCM agencies;
- (8) developing, using, distributing, and collecting standardized PCA activity forms and schedules to document the use of PCA services and to meet the requirements for reimbursement, including through the development, implementation, and operation of EVV;
- (9) reviewing PCA activity forms to ensure accuracy;
- (10) processing all claims for PCA services;
- (11) developing and distributing to members an employment package that includes a user-friendly personnel form, all required employer and employee federal and state tax forms, other employment-related forms, and instructions in their use;
- (12) issuing direct deposit payments, or other payments as appropriate, to PCAs equal to the PCA wage component of the PCA rate, with appropriate taxes withheld and other applicable required withholdings; and
- (13) reporting suspicion of fraud to the MassHealth agency in the format requested by the MassHealth agency and cooperating with any subsequent investigation.

(C) The PCA. The PCA must provide PCA services pursuant to 130 CMR 422.000 and in accordance with the following:

- (1) provide assistance with ADLs and IADLs as described in 130 CMR 422.410 and the service agreement established pursuant to 130 CMR 422.423;
- (2) not provide any noncovered services as described in 130 CMR 422.412 as part of the PCA program;
- (3) adhere to the following weekly hour limit when working for one or more members: PCAs are limited to working no more than 50 hours per week for one or more members unless the additional hours worked are overtime hours authorized pursuant to 130 CMR 422.418(A);
- (4) in accordance with 130 CMR 450.238: *Sanctions: General*, the MassHealth agency may impose sanctions including, but not limited to, termination or suspension of the PCA's participation in MassHealth, for a PCA's failure to comply with MassHealth regulations including, but not limited to, repeated failure to work within the weekly hour limit or authorized overtime hours in accordance with 130 CMR 422.419(C)(3), and failure to use EVV in accordance with 130 CMR 422.419(C)(5), including falsely filing EVV exemptions;
- (5) use EVV, and attend related trainings, as required by the MassHealth agency;
- (6) provide PCA services at a maximum of 66 hours per week; and
- (7) supply any information required by the MassHealth agency or the fiscal intermediary pertaining to the administration of PCA services, such as contact information including, but not limited to, email.

422.420: PCA Program: Member Responsibilities

- (A) As a condition of receiving MassHealth PCA services, the member must

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- (1) complete and sign the standard consumer agreement supplied by the fiscal intermediary and supply any information required by the MassHealth agency or the fiscal intermediary pertaining to management of the program, such as contact information including but not limited to email;
- (2) complete and sign all employment forms required by the fiscal intermediary;
- (3) complete and sign activity forms and submit them to the fiscal intermediary in the form and format as required by the MassHealth agency, including through the use of EVV, and in accordance with the instructions provided and timeframe specified by the fiscal intermediary or the MassHealth agency;
- (4) ensure that information submitted on the activity forms for each pay period correctly identifies who provided the PCA services, and the correct hours and dates that the PCA services were provided;
- (5) employ and schedule for PCA services in the following manner:
 - (a) employ PCAs for no more than the number of PCA hours authorized by the MassHealth agency in accordance with 130 CMR 422.416(E), and only to provide physical assistance with ADLs and IADLs as described in the PCA evaluation submitted by the PCM agency and authorized by the MassHealth agency;
 - (b) not schedule an individual PCA to work in excess of the weekly hour limit, unless authorized to schedule a PCA to work additional overtime hours pursuant to 130 CMR 422.418(A);
 - (c) schedule PCAs and coordinate with PCAs to use EVV as required by the MassHealth agency and pursuant to 130 CMR 422.419(C)(5);
 - (d) not schedule an individual PCA to provide PCA services more than the equivalent number of hours identified at 130 CMR 422.419(C)(6);
- (6) hire, terminate, schedule, and train PCAs;
- (7) employ PCAs who meet the requirements of 130 CMR 422.404(A)(1);
- (8) inform PCAs of PCA program requirements, including the requirement to use EVV as required by the MassHealth agency and pursuant to 130 CMR 422.419(C)(5), and the requirement to have PCA payments direct-deposited into the PCA's bank account;
- (9) cooperate with the MassHealth agency and the PCM agency in scheduling of and participating during assessments, evaluations, and reevaluations;
- (10) notify the fiscal intermediary of the date of hire and the date of termination of the member's PCAs and of a PCA's change of address, phone number, and email address;
- (11) notify the MassHealth agency, PCM agency, and the fiscal intermediary of the member's change of address and contact information, including telephone number and email, if any;
- (12) notify the PCM agency when there is a change in the member's medical condition or living situation that may require an adjustment in the number of PCA hours per week authorized by the MassHealth agency;
- (13) contact the PCM agency to request authorization to schedule an individual PCA to work in excess of the weekly hour limit according to conditions described in 130 CMR 422.418(A)(2)(c);
- (14) contact the PCM agency to request payment for juror service for a PCA in accordance with 130 CMR 422.418(B);
- (15) contact the PCM agency to request authorization to schedule an individual PCA to work

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in excess of the weekly hour limit according to conditions described in 130 CMR 422.418(A)(2)(a) and (b);

(16) work with the PCM agency to establish and maintain a current list of available PCAs, who can be contacted when an unforeseen event occurs that prevents the member's regularly scheduled PCA from providing PCA services;

(17) work with the fiscal intermediary and the PCM agency to resolve any issues or complaints;

(18) review and sign the evaluation or reevaluation prepared by the PCM agency in accordance with 130 CMR 422.422(C) and (D);

(19) comply with all applicable state and federal labor laws, including, but not limited to, federal and state child labor laws;

(20) comply with all applicable MassHealth regulations;

(21) participate in functional skills training as required by the MassHealth agency, including, but not limited to, participating in in-person comprehensive functional skills training on at least a quarterly basis during the first year of approved PCA services and at least annually thereafter, and other functional skills training as applicable in accordance with 130 CMR 422.421(B);

(22) if assessed by the PCM agency to require a surrogate or administrative proxy in accordance with 130 CMR 422.422(A)(1)(b), locate and appoint a surrogate or administrative proxy to assist the member in performing the PCA management tasks or related administrative functions that the member is unable or unwilling to perform as described in the service agreement in accordance with 130 CMR 422.423(A)(1) and (2). In appointing a surrogate or administrative proxy, the member must select a surrogate or administrative proxy who is not the member's PCA, another member currently receiving PCA services who also requires a surrogate or administrative proxy, or an employee or contractor of the member's PCM agency or fiscal intermediary, and who must live in proximity to the member and be readily available to perform the tasks described in the service agreement. The member must require any surrogate or administrative proxy to supply necessary contact or other information as required, such as phone number and email. A member may not appoint both a surrogate and an administrative proxy;

(23) cooperate with the MassHealth agency, the PCM agency, and the fiscal intermediary for the implementation and use of EVV; and

(24) submit true and accurate attestation requests for EVV exemptions.

(B) The MassHealth agency reserves the right to

(1) terminate PCA services if a member fails to comply with any of the requirements listed in 130 CMR 422.420(A);

(2) terminate PCA services if a member's surrogate becomes unavailable, or the MassHealth agency requires the member to replace the current surrogate, and another surrogate cannot be identified within 30 days of the PCM agency's notification to the member and the MassHealth agency in accordance with 130 CMR 422.422(B);

(3) require a member who is receiving PCA services to obtain a surrogate or administrative proxy to continue to receive PCA services if the PCM agency or the MassHealth agency determines, based on an assessment conducted in accordance with 130 CMR 422.422(A), that the member is not able to manage the PCA program independently. The MassHealth agency will terminate PCA services if the member does not obtain a surrogate or administrative

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proxy within 30 days of the date of the PCM agency's assessment, and the PCM agency will refer the member to an appropriate service provider;

(4) require a member to replace the surrogate or administrative proxy if the surrogate or administrative proxy is not performing PCA tasks on behalf of the member in accordance with MassHealth regulations and after intervention from a skills trainer pursuant to 130 CMR 422.419(A)(17)(g); and

(5) recover costs of overtime from the member for any activity time scheduled by a member and performed by an individual PCA that is in excess of the weekly hour limit without an authorization from the MassHealth agency for the member pursuant to 130 CMR 422.418(A).

422.421: PCA Program: Personal Care Management Agency Intake and Orientation and Functional Skills Training

(A) Intake and Orientation. Intake and orientation functions are provided to members about whom an inquiry is made to the PCM agency for PCA services and do not yet have a prior authorization for PCA services. The PCM agency must ensure that each member who seeks PCA services receives sufficient in-person intake orientation to the PCA program to ensure that the member, or surrogate or administrative proxy, if any, understands the rules, policies, and procedures of the PCA program. The PCM agency must provide intake and orientation to the member that include, but are not limited to

(1) responding, either by telephone or in person, to an initial request for PCA services within three business days of the inquiry submitted to the PCM agency for PCA services;

(2) completing an in-person determination of the member's initial eligibility for the PCA program within 10 business days of the initial inquiry about a member to the PCM agency for PCA services in accordance with 130 CMR 422.403 and the PCM agency contract;

(3) ensuring that the member is eligible for MassHealth and meets the eligibility criteria for PCA services as described in 130 CMR 422.403(C)(1) through (4);

(4) obtaining a PCP Summary Form that details the member's medical conditions and care needs;

(5) providing in-person intake and orientation to each member who is determined initially eligible for the PCA program, but has not yet been granted a prior authorization for PCA services that includes, at minimum

(a) a description of the member's rights and responsibilities when using the PCA program, including the member's responsibilities defined under 130 CMR 422.420(A);

(b) the rules, regulations, and policies governing the PCA program, including, but not limited to, the member's responsibility to use PCA services as authorized by the MassHealth agency pursuant to 130 CMR 422.416(E);

(c) the roles and responsibilities of the PCM agency and the fiscal intermediary;

(d) the appropriate use of activity forms; and

(e) instruction in the skills and tasks necessary to manage PCA services;

(6) informing the member of the member's responsibility for enrolling with the fiscal intermediary before employing PCAs and assist the member with this process; and

(7) notifying the fiscal intermediary of the name, MassHealth ID number, address, email address, and telephone number of the member, and the name, address, email address, and phone number of the surrogate, if any, who is responsible for submitting, reviewing, and signing the activity forms.

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(B) Functional Skills Training. PCM agencies must provide members who have a prior authorization for PCA services, and surrogates and administrative proxies as applicable, with the functional skills training needed to successfully manage the PCA program and maximize the member's ability to self-direct care. The frequency and type of functional skills training that a member and the surrogate or administrative proxy, if any, receive must be documented in the member's service agreement.

(1) The PCM agency must provide functional skills training that includes, but is not limited to, the following.

(a) PCA Training. The PCM agency must instruct the member and the surrogate, if any, in the functions and scheduling of PCAs in relation to the member's need;

(b) PCA Management. The PCM agency must instruct the member and the surrogate if any, in

1. hiring, recruiting, training, and supervising PCAs, including advertising for PCAs and interviewing techniques;
2. methods for evaluating PCA competence and effectiveness and requesting assistance in dealing with training or other issues as necessary;
3. developing and maintaining a list of PCAs who can be used when an unforeseen event occurs that prevents the member's regularly scheduled PCA from providing services;
4. appropriate utilization of PCA services in accordance with 130 CMR 422.416(E);
5. appropriate utilization of PCA overtime in accordance with 130 CMR 422.418(A); and
6. appropriate utilization of EVV as required by the MassHealth agency in accordance with 130 CMR 422.420(A)(3), 422.420(A)(5)(c), 422.420(A)(8), and 422.420(A)(23).

(c) Personal Health Care Maintenance. The PCM agency must instruct the member and the surrogate, if any, about the respective roles of the member, PCAs, and others who assist the member in meeting personal healthcare needs and the respective abilities of each to

1. identify, understand, and describe medical conditions, problems, and susceptibilities; and
2. identify, understand, and describe routines and treatments including medication schedules and dosages, nutritional planning, bowel and bladder routine, and range-of-motion routine.

(d) Emergency Management. The PCM agency must instruct the member and surrogate, if any, to develop and review procedures to

1. describe how and when to use a physician and a local hospital emergency room;
2. identify and respond to the signs of an emergency;
3. understand the appropriate treatment, equipment, or action for dealing with an emergency;
4. maintain a list of emergency telephone numbers and procedures for use by the member, surrogate (if necessary), and PCAs; and
5. assist the member in identifying and maintaining a current list of backup PCAs that are available to provide PCA services in an emergency.

(e) Skills Training Related to the Fiscal Intermediary. The PCM agency must instruct the member and the surrogate or administrative proxy, if any, in

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1. the role of the fiscal intermediary;
 2. the appropriate and accurate use of activity forms in the form and format as required by the MassHealth agency, including through the use of EVV; and
 3. the appropriate and accurate use of the forms contained in the fiscal intermediary's employment package (*see* 130 CMR 422.419(B)(11)) on a face-to-face basis, when the fiscal intermediary is unable to provide sufficient explanation by telephone.
- (2) To ensure timely and thorough functional skills training, the PCM agency must
- (a) respond within three business days to all requests from members, surrogates, and administrative proxies for functional skills training, including in-person, issue-focused functional skills training sessions and issue-focused telephonic functional skills training sessions in accordance with the PCM agency contract;
 - (b) provide in-person, issue-focused functional skills training when the member, surrogate, or administrative proxy requests an in-person visit with the skills trainer;
 - (c) provide in-person comprehensive functional skills training at least quarterly to all members during the first year of approved PCA services and at least annually thereafter and in accordance with the PCM agency contract;
 - (d) provide in-person, issue-focused functional skills training to members within three business days of the request of EOHHS or the fiscal intermediary to resolve issues related to activity forms, utilization, completion of paperwork needed for payroll, and other PCA management issues and in accordance with the PCM agency contract.

422.422: PCA Program: Personal Care Management Agency Operating Procedures

(A) Assessment. For each member determined initially eligible for PCA services in accordance with 130 CMR 422.421(A)(2), the PCM agency must conduct a written assessment of the member's capacity to manage PCA services independently and, if applicable, a written assessment of the ability of the surrogate or administrator proxy to manage PCA services on the member's behalf. If a member has a court-appointed legal guardian or is a minor child, a surrogate is required and the agency is not required to conduct an assessment of the member, but is required to conduct an assessment of the surrogate. The PCM agency must document the assessments in the application for PCA services and in the member's record. The assessments must be in a form and format required by the MassHealth agency. The process for assessment of the member must include the member and may include participation of family members or other member representatives. The PCM agency must

- (1) based on an in-person visit with the member, conduct a written assessment of the member's ability to manage PCA services and to function as an employer of PCAs. The assessment must be conducted before submitting an initial request for prior authorization for PCA services to the MassHealth agency, at least annually thereafter, and whenever necessary due to a change in circumstances that may affect a member's ability to manage PCA services independently or function as an employer of PCAs. The result of an assessment of the member is that the member either
 - (a) is able to perform independently all tasks required to manage the PCA program (the PCM agency will conduct a PCA evaluation and submit the request for prior authorization to the MassHealth agency); or

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- (b) requires the assistance of a surrogate or administrative proxy to perform some or all of the PCA management tasks that the member is unable or unwilling to perform. (A surrogate or administrative proxy must be identified before the PCM agency submits a prior authorization request to the MassHealth agency);
- (2) if the member requires the assistance of a surrogate or administrative proxy, based on an in-person visit with the surrogate or administrative proxy, conduct a written assessment of the ability of the surrogate or administrative proxy to manage PCA services on behalf of the member. The assessment must be conducted before submitting an initial request for prior authorization for PCA services to the MassHealth agency and whenever necessary due to a change in circumstances that may affect the ability of the surrogate or administrative proxy to manage PCA services on the member's behalf. The result of an assessment of a surrogate or administrative proxy is that the surrogate or administrative proxy is either
 - (a) able to perform the tasks designated to the surrogate or administrative proxy to manage the PCA program on behalf of the member; or
 - (b) unable to perform the tasks designated to the surrogate or administrative proxy to manage the PCA program on behalf of the member;
- (3) complete an assessment of the member at the time of the member's reevaluation, which must occur at least annually and whenever necessary due to a change in circumstances that may affect a member's ability to manage PCA services independently or function as an employer of PCAs;
- (4) complete an assessment of any new surrogate or administrative proxy;
- (5) review the assessment of the member and modify it, as appropriate, when
 - (a) the member's medical, cognitive, or emotional condition changes in a way that affects the member's ability to manage PCA services independently;
 - (b) the member exhibits a pattern of overutilization of authorized PCA services, an inappropriate use of PCA services, or potential fraud, and does not discontinue such behavior after intervention from a skills trainer; or
 - (c) the member, the fiscal intermediary, or the MassHealth agency requests review of an assessment;
- (6) review the assessment of the surrogate or administrative proxy and modify it, as appropriate, when
 - (a) there is a change in circumstances that may affect the ability of the surrogate or administrative proxy to manage PCA services on behalf of the member; or
 - (b) the member, the surrogate or administrative proxy, the fiscal intermediary, or the MassHealth agency requests review of an assessment;
- (7) review the assessment of the member with the member and obtain the signature of the member. If the member does not agree with the assessment, provide a process for resolving the disagreement; and
- (8) notify the MassHealth agency and the fiscal intermediary in writing of any change in the member's assessment findings.

(B) Surrogates and Administrative Proxies.

- (1) If the PCM agency's assessment described in 130 CMR 422.422(A) determines that the member requires the assistance of a surrogate or administrative proxy, the member must appoint a surrogate or administrative proxy who meets the criteria described in 130 CMR 422.402, who is not the member's PCA or an employee or contractor of the member's PCM

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agency or fiscal intermediary, and who can help the member manage the PCA program in accordance with MassHealth regulations and the member's service agreement. The PCM agency must assist the member or legal guardian in locating a surrogate or administrative proxy. The PCM agency will document the name, address, telephone number, email address, and relationship to the member on the MassHealth evaluation and submit it to the MassHealth agency, along with the prior authorization request for PCA services.

(2) If the member does not locate or appoint a surrogate or administrative proxy, the PCM agency must refer the member to an appropriate service provider, and must not submit a PA request for PCA services to the MassHealth agency.

(3) If a member's surrogate or administrative proxy becomes unavailable at any time during the prior authorization period, or the MassHealth agency requires the member to replace the surrogate or administrative proxy pursuant to 130 CMR 422.420(B)(3), the PCM agency must immediately notify the member of the need to locate another surrogate or administrative proxy within 30 days.

(a) If another surrogate or administrative proxy cannot be identified within 30 days, the PCM agency must notify the MassHealth agency in writing and refer the member to an appropriate service provider.

(b) The MassHealth agency may terminate a member's PCA services in accordance with 130 CMR 422.420(B) when a surrogate or administrative proxy cannot be identified.

(4) If a member's capacity to independently manage PCA services changes during the prior authorization period, the PCM agency will conduct an assessment in accordance with 130 CMR 422.422(A).

(a) If the assessment determines that the member requires a surrogate or administrative proxy, the member will appoint a surrogate or administrative proxy and the PCM agency will notify the MassHealth agency and the fiscal intermediary in writing of the name, address, phone number, email address, and relationship to the member.

(b) If the PCM agency's assessment determines that the member needs a surrogate or administrative proxy but one cannot be identified within 30 days of the assessment, the PCM agency must notify the MassHealth agency and the member in writing, including a copy of the assessment, and refer the member to an appropriate service provider.

(c) If a surrogate or administrative proxy cannot be identified, the MassHealth agency may terminate the member's PCA services in accordance with 130 CMR 422.420(B).

(5) The PCM agency must provide the MassHealth agency and the fiscal intermediary with the name, address, email address, and phone number of the member's surrogate or administrative proxy, and report any changes in surrogate information.

(C) Evaluation to Initiate PCA Services.

(1) An evaluation team consisting of a registered nurse, or licensed practical nurse under the supervision of a registered nurse, and an occupational therapist must conduct an initial evaluation, only for members who meet the criteria described in 130 CMR 422.403(A), (B), and (C)(1) through (3). The evaluation must accurately represent the member's need for physical assistance with ADLs and IADLs. The evaluation team must consider the member's physical and cognitive condition and resulting functional limitations to determine the member's ability to benefit from PCA services, and parental responsibility for a child younger than 18 years of age as indicated by the child's developmental milestones, as detailed in the operating standards.

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(2) The evaluation must take place in the member's presence and in the member's actual or proposed place of residence in the community, or in the following locations, if these situations apply:

- (a) at the transitional living program site where the member lives if the member has completed functional skills training, but is unable to find housing; or
 - (b) at a hospital or institution if the member has been hospitalized or institutionalized for an extended period, unless the MassHealth agency exercises its option of conducting the initial evaluation in accordance with 130 CMR 422.416(D).
- (3) All evaluations must be completed on the MassHealth evaluation form by the registered nurse, or a licensed practical nurse under the supervision of a registered nurse, or the occupational therapist who conducted the evaluation.
- (a) The completed evaluation must be reviewed, approved, and signed by the member, the member's legal guardian and the member's surrogate or administrative proxy, if appropriate.
 - (b) The completed evaluation must be sent to the MassHealth agency, with the documentation described in 130 CMR 422.416(A).
- (4) The MassHealth agency may defer or deny requests for prior authorization for PCA services when
- (a) the applicant does not meet the eligibility criteria defined in 130 CMR 422.403;
 - (b) the standard MassHealth personal care application and evaluation forms are not submitted or are incomplete;
 - (c) the evaluation provides insufficient information to determine if PCA services are medically necessary;
 - (d) the member or the surrogate or administrative proxy has not signed the evaluation;
 - (e) the surrogate or administrative proxy information is not provided in the format requested by the MassHealth agency, or the PCM agency has determined that a surrogate or administrative proxy is required but one is not identified in the evaluation; or
 - (f) the services being requested in the evaluation are not covered under the MassHealth PCA program. (See 130 CMR 422.410 through 422.412.)

(D) Reevaluation. Reevaluations must be conducted by a registered nurse or a licensed practical nurse or an occupational therapist under the supervision of a registered nurse, and must include a review of the service agreement and the assessment by qualified PCM agency staff. Requirements cited in 130 CMR 422.422(C)(2) through (4) also apply to reevaluations.

- (1) Except as described in 130 CMR 422.422(D)(2), reevaluations must be conducted annually, or more frequently when a significant change in the member's physical condition or living situation has occurred. The reevaluation must accurately represent the member's need for physical assistance with ADLs and IADLs, and must consider the member's physical and cognitive condition and resulting functional limitations to determine ability to benefit from PCA services, and parental responsibility for a child younger than 18 years of age as indicated by the child's developmental milestones, as detailed in the operating standards.
- (2) The MassHealth agency may, at its discretion, grant prior authorization beyond the usual one year period for services requested in a reevaluation in cases where the member
 - (a) is 22 years of age or older;

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(b) had no significant change in medical condition, functional status, or living situation within the previous year that may increase or decrease the member's need for PCA services, and no significant change is anticipated; and

(c) is not requesting an increase in the number of PCA hours provided per week.

(E) Authorization. The MassHealth agency, at its sole discretion, may elect to conduct the PCA evaluation for purposes of authorizing PCA services in accordance with 130 CMR 422.416(D).

422.423: PCA Program: Service Agreement

(A) Before the initiation of PCA services, the PCM agency, in conjunction with the member and the member's surrogate or administrative proxy, if any, must develop a written service agreement that is unique to the member and in a form and format required by the MassHealth agency. The service agreement must be established in person with the member. The service agreement must include, at a minimum

- (1) a detailed description of the responsibilities of the PCA, the fiscal intermediary, the member, the surrogate or administrative proxy, if any, and the PCM agency;
- (2) if a surrogate or administrative proxy is required, the identity of the surrogate or administrative proxy and a detailed description of the surrogate or administrative proxy's responsibilities, including the PCA management tasks the surrogate or administrative proxy will perform or assist the member to perform, and the frequency of the surrogate or administrative proxy's visits to the member. The surrogate's responsibilities may include some or all of the responsibilities for PCA management that will be performed on the member's behalf, whereas the responsibilities for the administrative proxy may include only certain administrative functions related to PCA management as specified by the MassHealth agency and specified in the member's service agreement. The surrogate or administrative proxy must perform these tasks in the best interest of the member, and in accordance with 130 CMR 422.000. The service agreement will ensure the member's maximum participation in the management of the PCA tasks;
- (3) if a surrogate or administrative proxy is not required, the service agreement must clearly state that the member has the sole responsibility of managing the PCA services;
- (4) the current and updated list of PCAs available when an unforeseen event occurs that prevents the member's regularly scheduled PCA from providing services, developed in accordance with 130 CMR 422.420(A)(16), and which is sufficient to address the member's needs and contains the PCA's contact information and available schedule;
- (5) the type and frequency of functional skills training that the PCM agency has provided to the member, and the surrogate or administrative proxy, if any, to manage PCA services effectively or address issues related to PCA management; and
- (6) whether the member is authorized to schedule an individual PCA to work in excess of the weekly hour limit, as described in 130 CMR 422.418(A).

(B) Before implementing or modifying the service agreement, the PCM agency must provide to the member and surrogate or administrative proxy, if any,

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- (1) a copy of the plan;
- (2) an explanation, if necessary, of the terms of the plan;
- (3) an opportunity to object to any terms of the plan; and
- (4) a process to resolve any objections or disagreements as soon as possible, including an opportunity to meet with all interested persons.

(C) A review of the service agreement must include a review of the needs and circumstances of the member, the services provided by the PCA, and, if appropriate, the surrogate or administrative proxy's role related to management of PCA services on behalf of the member.

(1) The PCM agency will complete a service agreement with the member and surrogate or administrative proxy, if any, before the initiation of PCA services and at least annually thereafter, and as needed due to a change of circumstances that may affect a member's ability to manage PCA services independently or function as an employer of PCAs.

(2) The PCM agency will review the service agreement with the member, and surrogate or administrative proxy, if any, at least quarterly in the first year of prior authorization for PCA services and at least annually thereafter, and when one of the following conditions exists, and modify, as appropriate:

- (a) the member or surrogate is not managing PCA services effectively, as evidenced by consistent overutilization of PCA hours, scheduling overtime requiring authorization absent such authorization by the MassHealth agency, inappropriate submission of activity forms, difficulty in retaining PCAs, suspicion of fraud, or other indication that the member or surrogate or administrative proxy is not able to manage PCA services;
- (b) the member identifies a new surrogate or administrative proxy, and in accordance with the PCM agency contract; or
- (c) the member, the MassHealth agency, or the surrogate or administrative proxy requests a review.

(D) All service agreements must be signed by the parties involved.

(E) The PCM agency is responsible for monitoring the overall implementation of the service agreement.

(130 CMR 422.424 through 422.430 Reserved)

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422.431: Transitional Living Program: Prior Authorization

A provider of transitional living services must obtain prior authorization from the MassHealth agency as a prerequisite to payment for transitional living services. 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. All requests for prior authorization for transitional living services must be submitted on MassHealth forms in accordance with the billing instructions in Subchapter 5 of the *Personal Care Manual*. A completed assessment, evaluation, and service agreement prepared in accordance with 130 CMR 422.438 and 422.439 that are signed by both the member and the program's director must be submitted to the MassHealth agency with a request for prior authorization.

422.432: Transitional Living Program: Notice of Approval or Denial for Transitional Living Services

(A) Notice of Approval. If the MassHealth agency approves a prior authorization request for transitional living services, the MassHealth agency will send written notice to the member and the transitional living provider about the frequency, duration, and intensity of care authorized, as well as the effective date of the authorization.

(B) Notice of Denial and Right of Appeal.

(1) If the MassHealth agency denies a prior authorization request for transitional services, the MassHealth agency notifies both the member and the transitional living provider. The notice states the reason for the denial and informs the member of the right to appeal and of the appeal procedure.

(2) If the MassHealth agency denies a PA request for transitional living services, a member may appeal by requesting a fair hearing from the MassHealth agency. The request for a fair hearing must be made in writing to the MassHealth Board of Hearings in accordance with the timelines in 130 CMR 610.015(B): *Time Limitation on the Right of Appeal*. Requests for continuation of services during an appeal must be made in accordance with 130 CMR 610.036: *Continuation of Benefits Pending Appeal*. The MassHealth Board of Hearings conducts fair hearings in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

422.433: Transitional Living Program: Scope of Services

A transitional living provider must, at a minimum, provide the following services in accordance with each member's needs as documented in the member's service agreement:

(A) transitional living services, as described in 130 CMR 422.431 through 422.441; and

(B) transportation to healthcare facilities when public transportation is unavailable.

422.434: Transitional Living Program: Administrative Day Rate

If a member has completed the program of transitional living services but cannot secure an appropriate living arrangement, the MassHealth agency will pay an administrative day rate covering the program's overhead expenses and the member's personal care services. The

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MassHealth agency will pay this rate contingent upon documentation provided by the transitional living provider in the form and frequency determined by the MassHealth agency.

422.435: Transitional Living Program: Leaves of Absence

(A) Medical Absence. If a member in a transitional living program is hospitalized, the MassHealth agency will pay the transitional living provider for a maximum of 13 days per member per episode of hospitalization.

(B) Nonmedical Leave of Absence. If a member leaves the transitional living program for personal reasons, the MassHealth agency will pay the transitional living provider for a cumulative maximum of 10 days of nonmedical leave of absence during the member's stay in the transitional living program.

422.436: Transitional Living Program: Staffing Requirements

The transitional living provider must have the following staff at each transitional living program site.

(A) A program director who must be on site for at least 20 hours per week;

(B) A registered nurse who must be on site at least 15 hours per week, and who must supervise functional skills training in matters of personal healthcare (*see* 130 CMR 422.437(C)) and PCA services provided at the transitional living site;

(C) An occupational therapist who will assist in the provision of functional skills training and in meeting the functional needs of program participants;

(D) Skills instructors or peer counselors to provide functional skills training;

(E) A part-time driver who has a current, valid driver's license and is qualified to use adapted, accessible vehicles; and

(F) Additional staff as necessary to meet individual health and health-related needs as detailed in the service plan.

422.437: Transitional Living Program: Functional Skills Training

The need for and benefit from functional skills training is to be determined as part of the assessment described in 130 CMR 422.438(A). At a minimum, each service agreement must contain provisions and a schedule for functional skills training in the four areas in 130 CMR 422.437(A) through (D).

(A) PCA Training. PCA training must instruct the member and the member's surrogate, if any, in the functions and scheduling of PCAs in relation to the member's needs.

(B) PCA Management. The member and the member's surrogate, if any, will be instructed in

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- (1) hiring of PCAs, including identification of local resources, advertising for PCAs, and interviewing techniques;
 - (2) use of activity forms and schedules in documenting the use of PCAs and meeting the requirements for reimbursement;
 - (3) methods for evaluating PCA competence and effectiveness and requesting assistance in dealing with training or other issues as necessary; and
 - (4) firing and replacing PCAs, including maintenance of a backup system as necessary.
- (C) Personal Health Care Maintenance. The transitional living provider must instruct the member and the member's surrogate, if any, in the respective roles of the member, the PCAs, and others who assist the member in meeting personal healthcare needs and the respective abilities of each to
- (1) identify, understand, and describe medical conditions, problems, and susceptibilities; and
 - (2) identify, understand, and describe routines and treatments, including medication schedules and dosages, nutritional planning, bowel and bladder routine, and exercise/range-of-motion routine.
- (D) Emergency Management. The transitional living provider must instruct the member and the member's surrogate, if any, to develop and review procedures to
- (1) describe how and when to use a physician and a local hospital emergency room;
 - (2) identify and respond to the signs of an emergency;
 - (3) understand the appropriate treatment, equipment, or action for dealing with an emergency; and
 - (4) maintain a list of emergency telephone numbers and procedures for use by the member, the member's surrogate, if necessary, and PCAs.

422.438: Transitional Living Program: Operating Procedures

- (A) Assessment. The assessment identifies the member's needs and functional capabilities, including the ability to manage PCA services independently. For a member who cannot manage PCA services independently, the assessment must identify a surrogate or administrative proxy. If a surrogate or administrative proxy is not available, the agency must refer the member to an appropriate service provider. The assessment process must include the member and may include participation of family members and advocates. The product of an assessment is either an evaluation or a referral to an appropriate service provider.
- (B) Evaluation.
- (1) An evaluation team consisting of a registered nurse and an occupational therapist must conduct an initial evaluation under the supervision of a registered nurse. The evaluation team must consider the member's physical and cognitive condition to determine the member's ability to benefit from PCA services. All evaluations are subject to the approval of the member's physician.
 - (2) The evaluation must take place in the member's actual or proposed place of residence in the community, or in the following locations, if these situations apply:
 - (a) at the transitional living program site where the member lives if the member has completed functional skills training, but is unable to find housing; or

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(b) at a hospital or institution if the member has been hospitalized or institutionalized for an extended period.

(C) Reevaluations. At least annually, and when necessary in the event of a significant change in the member's physical condition or living situation, the registered nurse or licensed practical nurse must conduct a reevaluation, including a review of the PCA services plan. For plans designating a surrogate or administrative proxy, *see* 130 CMR 422.439(B). The reevaluation must conform to the requirements in 130 CMR 422.438(B). If appropriate, the occupational therapist must be involved.

(D) Processing Services. The transitional living provider must process MassHealth agency payments for PCA services. The MassHealth agency pays the agency, which transmits the funds to the member or the surrogate, who pays the PCA.

(1) The organization's administrator and the member both must sign an agreement on a form designated by the MassHealth agency. This agreement states the member's and the agency's legal responsibilities in the transitional living program.

(2) Each pay period, not to exceed a month, the transitional living provider must collect activity forms from each member, signed by both the member and the PCA. The organization may claim payment from the MassHealth agency only for services actually provided by the PCA as documented by the activity forms, plus the processing fee.

(3) Within four working days after receiving payment from the MassHealth agency for PCA services, the transitional living provider must pay the member or the surrogate the amount owed to the PCA for these services.

(4) The agency must maintain a separate account exclusively for PCA payments. All such payments must be maintained in such account until disbursed to the member or surrogate.

(E) Nursing Supervision. The transitional living provider must provide nursing supervision of transitional living services as authorized in the service agreement and at least annually as part of an evaluation or reevaluation.

422.439: Transitional Living Program: Service Agreement

(A) (1) Before the initiation of PCA services, the transitional living provider, with the participation of the member and the surrogate (if any), must develop a written individual service agreement, which must describe in detail the responsibilities of the PCA, the member, the member's surrogate or administrative proxy, if any, and the transitional living provider.

(2) On the basis of an assessment as provided in 130 CMR 422.438(A), the transitional living provider, with the participation of the member to the fullest extent possible, must determine whether a surrogate is needed to manage the personal care services. If no surrogate or administrative proxy is needed, the service agreement must clearly state that the member has sole responsibility to manage PCA services.

(3) If a surrogate or administrative proxy is needed, the service agreement must name the surrogate or administrative proxy, and pursuant to and as described in the service agreement, the member must be involved in managing PCA services to the maximum extent possible. The service agreement's description of the surrogate or administrative proxy's responsibilities must include the frequency of the surrogate or administrative proxy's visits

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with the member. The transitional living provider is responsible for monitoring the overall implementation of the service agreement.

(4) Before implementing or modifying the service agreement, the transitional living provider must provide to the member or surrogate

- (a) a copy of the service agreement;
- (b) an explanation, if necessary, of the terms of the agreement;
- (c) an opportunity to object to any terms of the agreement; and
- (d) a process to resolve any objections as soon as possible, including an opportunity to meet with all interested persons.

(B) Where the service agreement identifies the need for a surrogate or administrative proxy, the organization, with the participation of the member and the surrogate, must review the service agreement and its implementation. Review of the agreement must include a review of the needs and circumstances of the member, the services provided by the PCA, and the surrogate's management of PCA services. If necessary, the plan will be modified

- (1) at least every three months;
- (2) when there is a change in the surrogate or administrative proxy;
- (3) when other significant changes in circumstances necessitate it; and
- (4) whenever requested by the member or the surrogate or administrative proxy.

422.440: Transitional Living Program: Physical Site

Each transitional living program site must be inspected and approved by the MassHealth agency before its use in providing the program. Each site must, at a minimum, meet the following standards.

- (A) The site must be accessible to and suitable for persons with multiple physical disabilities.
- (B) The site must comply with the laws and regulations of 521 CMR: *Architectural Access Board*.
- (C) There must be documentation of a site inspection and approval by the Massachusetts Department of Public Safety, local fire department, and building inspector, and compliance with all applicable federal, state, and local statutes, laws, and ordinances.
- (D) Members' quarters must be near to and easily accessible from staff and attendant quarters.
- (E) The site must have an accessible, appropriate telephone or emergency call device located in each bedroom.

422.441: Transitional Living Program: Emergency Procedures

- (A) Each member must know how to contact program staff and attendants in case of an emergency.
- (B) An emergency evacuation plan must be in effect, practiced by all members, and provide for evacuation of members who cannot exit unassisted.

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(130 CMR 422.442 through 422.445 Reserved)

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422.446: Recordkeeping Requirements

Providers of any service covered under 130 CMR 422.000 must maintain, for at least four years after the date of service, records for each member that include at least the following:

- (A) the member's name, social security number (SSN), address, telephone number, case number, member identification number (RID), gender, date of birth, marital status, and next of kin;
- (B) the name, address, and telephone number of the surrogate, where applicable;
- (C) the date of the member's first contact with the PCM agency;
- (D) a copy of the MassHealth agency written authorization regarding the frequency, duration, and intensity of care to be provided;
- (E) the name and address of the member's primary physician or medical clinic; and
- (F) any other records required by the provider's contract with the MassHealth agency.

422.447: Billing Responsibility

Except for PCAs, providers of any service covered under 130 CMR 422.000 are responsible for billing the MassHealth agency in accordance with the *Personal Care Manual* Subchapter 5.

422.448: Rates of Payment

The MassHealth agency pays for PCA services at the rates determined in accordance with 101 CMR 309.03: *General Rate Provisions* and for transitional living program services at the rates determined in accordance with 114.5 CMR 4.00: *Rates for Certain Social, Rehabilitation, and Health Care Services*.

REGULATORY AUTHORITY

130 CMR 422.000: M.G.L. c. 118E, §§ 7 and 12.