CR 92-136

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to in-home health care services under the Medical Assistance program were duly approved and adopted by this Department on January 12, 1993.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 12th day of January, 1993.

SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

3-1-93

ORDER OF
THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING, AMENDING, REPEALING AND RECREATING AND CREATING RULES

To repeal HSS 107.112(3)(f); to amend HSS 101.03(31)(intro.) and (126), 105.17(3)(a)1 and 107.112(4)(f); to repeal and recreate HSS 105.16(1) and (2), 105.19, 107.11, 107.112(2)(b) and 107.12; and to create HSS 101.03(70g), (114r), (124m), (134m), (155m), (155r), (164m) and (182), 105.16(6) to (10), 105.18, 106.065 and 107.113, relating to home health, private duty nursing, respiratory care and personal care services provided to persons eligible to receive covered services under the Medical Assistance program.

Analysis Prepared by the Department of Health and Social Services

This rulemaking order makes several changes in the Department's rules for provision of in-home services to eligible recipients under the Medical Assistance (MA) program.

In regard to home health services, the Budget Adjustment Act, 1991 Wisconsin Act 269, amended s. 49.45(8), Stats., to provide the basis for the MA program to adopt Medicare principles of reimbursement for home health services provided to eligible Medical Assistance recipients. Using the Medicare definition of a home health visit, the rules for the MA program are amended by this order to substitute a two-tiered visit structure for a three-tiered structure of an initial visit of 2 hours for nursing services and 1 hour for home health aide services, subsequent visits of an hour each for up to 8 hours of care and extended visits of an hour each for 8 hours or more. Under the amended rules, the first visit in a day is called the initial visit, any later visits that day are called subsequent visits, and travel, recordkeeping and administrative activities are no longer included in visit time. A visit may be of any duration. Also under the amended rules, skilled nursing care and the therapies may be provided as home health care only for less than 8 hours a day and may only be provided to persons confined to their home unless the care is not reasonably available from another provider. Home health services must be provided in the home whereas formerly care was allowed outside the home on a case-by-case basis. Prior authorization will now be required after a recipient has received 30 visits from home health workers in a calendar year.

The rulemaking order adds or clarifies various requirements so that they correspond to Medicare/Medicaid home health agency federal regulations which became effective October 1, 1990. Also, medications administration requirements are brought into conformity with appropriate state practices.

In regard to independent nursing services, the order reorganizes this service category into 2 parts. Part-time, intermittent care provided by an independent nurse because a home health agency is unavailable to provide that care is included under home health services as required by 42 CFR 440.70(1). These skilled nursing services are provided in the home to a recipient who requires less than 8 hours of skilled care a day. Requirements for provision of home health services by an independent nurse are the same as those for a home health agency. For skilled nursing services needed for 8 or more hours a day, private duty nursing services have been established according to the requirements of 42 CFR 440.80. This care may be provided by either a home health agency certified under s. HSS 105.16 or an independent nurse in private practice certified under s. HSS 105.19 to recipients requiring more continuous skilled care than can be provided on a part-time, intermittent basis. A recipient who requires and is authorized to receive private duty nursing services

in the home may receive these services outside the home when normal life activities take the recipient outside of his or her residence. Private duty nursing service requirements correspond to those established for home health services, except that services are described in hours of care.

In regard to respiratory care services, this order implements s. 49.46(2)(b)6m, Stats., which makes respiratory care services provided to ventilator-assisted Medical Assistance (MA) recipients who live at home a covered benefit under the MA program. This type of technologically complex home care may be provided to a recipient who requires at least 6 hours of respiratory care in a day and who has been hospitalized for at least 30 consecutive days for this respiratory condition prior to being admitted to respiratory home care. Providers who may become certified under the MA program to provide these services include home health agencies certified under s. HSS 105.16(6), and independent nurses and state-certified respiratory therapists in independent practice certified under s. HSS 105.19(1)(b). Any person providing direct care to the recipient is required to possess the necessary technical skills and knowledge to treat the recipient in a home setting. All MA services, including respiratory care, provided to the recipient at home must be prior-authorized by the Department.

Finally, in regard to personal care services, several changes have been made to bring requirements into conformity with changes made to rules for the other services provided in the home.

The Department's authority to repeal, amend, repeal and recreate and create these rules is found in s. 49.45(10), Stats. The rules interpret ss. 49.45(8) and 49.46(2)(a)4d and (b)6m, Stats., as affected by 1991 Wisconsin Act 269, as follows:

SECTION 1. HSS 101.03(31)(intro.) is amended to read:

HSS 101.03(31)(intro.) "Confined to a place of residence" means a recipient's physical medical condition or functional limitation in one or more of the areas listed in s. HSS 134.13(9)(c), ~~resulting from an illness or injury~~ including self-care, understanding and use of language, learning, mobility, self-direction and capacity for independent learning, which:

SECTION 2. HSS 101.03(70g), (114r) and (124m) are created to read:

HSS 101.03(70g) "Home care provider" means a person or organization certified to provide services to a recipient under s. HSS 105.16, 105.17, 105.18, or 105.19.

(114r) "Part-time, intermittent" means skilled nursing and therapy services provided in the home for less than 8 hours in a calendar day.

(124m) "Plan of care," for purposes of ss. HSS 105.16, 105.18, 105.19, 107.11, 107.113 and 107.12, means a written plan of care for a recipient prescribed and periodically reviewed by a

physician and developed in consultation with the agency staff which covers all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. If a physician refers a patient under a plan of care that cannot be completed until after an evaluation visit, the physician is consulted to approve additions or modifications to the original plan. Orders for therapy services shall include the specific procedures and modalities to be used and the amount, frequency, and duration. Orders for therapy services may be developed in accord with the therapist or other agency personnel. Agency personnel shall participate in developing the plan of care.

SECTION 3. HSS 101.03(126) is amended to read:

HSS 101.03(126) "Practical nurse" or "LPN" means a person who is licensed as a practical nurse under ch. 441, Stats., or, if practicing in another state, is licensed as a practical nurse by that state.

SECTION 4. HSS 101.03(134m), (155m), (155r), (164m) and (182) are created to read:

HSS 101.03(134m) "Private duty nursing" means RN or LPN services provided to a recipient who requires 8 or more hours of skilled nursing care in a calendar day, as specified in s. HSS 107.12.

(155m) "Respiratory care" means the treatment of a person who receives mechanically assisted respiration.

(155r) "Respiratory therapist" or "RT" means a person who is certified under ch. Med 20.

(164m) "Skilled nursing services provided primarily in the home" means nursing services requiring the skills of a licensed professional nurse or a licensed practical nurse supervised by a

registered nurse according to the requirements of ch. N 6 and directly provided as specified by a written plan of care.

(182) "Ventilator-dependent person" means a person who requires mechanically assisted respiration.

SECTION 5. HSS 105.16(1) and (2) are repealed and recreated to read:

HSS 105.16(1) HOME HEALTH AGENCY SERVICES. For MA certification, a home health agency shall provide part-time, intermittent skilled nursing services performed by a registered nurse or licensed practical nurse and home health aide services and may provide physical therapy, occupational therapy, speech and language pathology services and medical supplies and equipment. Services may be provided only on visits to a recipient's home and that home may not be a hospital or nursing home. Home health services shall be provided in accordance with a written plan of care, which the physician shall review at least every 62 days or when the recipient's medical condition changes, whichever occurs first.

(2) HOME HEALTH AIDES. (a) Assignment and duties. Home health aides shall be assigned to specific recipients by a registered nurse. Written instructions for patient care shall be prepared by a registered nurse, a physical or occupational therapist or a speech and language pathologist, as appropriate. Duties shall include medically oriented tasks, assistance with a recipient's activities of daily living and household tasks as specified in s. HSS 107.11(2)(b) and further described in the Wisconsin medical assistance home health agency provider handbook.

(b) Supervision. A registered nurse shall make supervisory visits to the recipient's home as often as necessary, but at least every 60 days, to review, monitor and evaluate the recipient's medical condition and medical needs according to the written plan of care during the period in which agency care is being provided. The RN shall evaluate the appropriateness of the relationship between the direct care giver and the recipient, assess the extent to which goals are being met, and determine if

the current level of home health services provided to the recipient continues to be appropriate to treat the recipient's medical condition and if the services are medically necessary. The supervising RN shall discuss and review with the recipient the services received by the recipient and discuss the results of the supervisory visit with the LPN, home health aide or personal care worker. The results of each supervisory visit shall be documented in the recipient's medical record.

(c) Training. Home health aides shall be trained and tested in accordance with the requirements of s. 146.40, Stats., and ch. HSS 129. Aides shall not be assigned any tasks for which they are not trained, and training and competency in all assigned tasks shall be documented and made part of the provider's records.

SECTION 6. HSS 105.16(6) to (10) are created to read:

HSS 105.16 (6) RESPIRATORY CARE SERVICES. (a) A certified home health agency may be certified to provide respiratory care services under s. HSS 107.113 if registered nurses, licensed practical nurses and respiratory therapists employed by or under contract to the agency and providing these services are certified under ch. Med 20 and:

1. Are credentialed by the national board on respiratory care; or

2. Know how to perform services under s. HSS 107.113(1) and have the skills necessary to perform those services. Skills required to perform services listed in s. HSS 107.113(1)(e) to (f) are required on a case-by-case basis, as appropriate. In no case may a person provide respiratory care before that person has demonstrated competence in all areas under s. HSS 107.113(1)(a) to (d).

(b) A registered nurse who fulfills the requirements of this subsection shall coordinate the recipient's care.

(c) The department shall review an agency's continued compliance with this subsection.

(7) PRIVATE DUTY NURSING. A home health agency may provide private duty nursing services under s. HSS 107.12 performed by a registered nurse or licensed practical nurse.

(8) COST REPORTS. The department may, when necessary, require home health agencies to report information which is supplementary to information required on medicare cost reports.

(9) DEPARTMENT REVIEW. (a) Record review. The department may periodically review the records described in this section and s. HSS 106.02(9), subject only to restrictions of law. All records shall be made immediately available upon the request of an authorized department representative.

(b) In-home visits. As part of the review under par. (a), the department may contact recipients who have received or are receiving MA services from a home health care provider. The provider shall provide any identifying information requested by the department. The department may select the recipients for visits and may visit a recipient with the approval of the recipient or recipient's guardian. The recipient to be visited has the opportunity to have any person present whom he or she chooses, during the visit by personnel of the department or other governmental investigating agency.

(c) Investigation of complaints. The department may investigate any complaint received by it concerning the provision of MA services by a home health care provider. Following the investigation, the department may issue a preliminary final report to the home health care provider in question, except when doing so would jeopardize any other investigation by the department or other state or federal agency.

(10) REQUIREMENTS FOR PROVIDING PRIVATE DUTY NURSING OR RESPIRATORY CARE SERVICES. For certified agencies providing private duty nursing or respiratory care services or both under this subsection, the following requirements apply:

(a) Duties of the nurse. 1. The following nursing services may be performed only by a registered nurse:

a. Making the initial evaluation visit;

b. Initiating the physician's plan of care and necessary revisions;

c. Providing those services that require care of a registered nurse as defined in ch. N 6;

d. Initiating appropriate preventive and rehabilitative procedures;

e. Accepting only those delegated medical acts which the RN is competent to perform based on his or her nursing education, training or experience; and

f. Regularly reevaluating the patient's needs.

2. Nursing services not requiring a registered nurse may be provided by a licensed practical nurse under the supervision of a registered nurse. Licensed practical nurse duties include:

a. Performing nursing care delegated by an RN under s. N 6.03;

b. Assisting the patient in learning appropriate self-care techniques; and

c. Meeting the nursing needs of the recipient according to the written plan of care.

3. Both RNs and LPNs shall:

a. Arrange for or provide health care counseling within the scope of nursing practice to the recipient and recipient's family in meeting needs related to the recipient's condition;

b. Provide coordination of care for the recipient;

c. Accept only those delegated medical acts for which there are written or verbal orders and for which the nurse has appropriate training or experience;

d. Prepare written clinical notes that document the care provided within 24 hours of providing service and incorporate them into the recipient's clinical record within 7 days; and

e. Promptly inform the physician and other personnel participating in the patient's care of changes in the patient's condition and needs.

(b) Patient rights. A nurse shall provide a written statement of the rights of the recipient for whom services are provided to the recipient or guardian or any interested party prior to the provision of services. The recipient or guardian shall acknowledge receipt of the statement in writing. The

nurse shall promote and protect the exercise of these rights and keep written documentation of compliance with this subsection. Each recipient receiving care shall have the following rights:

1. To be fully informed of all rules and regulations affecting the recipient;

2. To be fully informed of services to be provided by the nurse and of related charges, including any charges for services for which the recipient may be responsible;

3. To be fully informed of one's own health condition, unless medically contraindicated, and to be afforded the opportunity to participate in the planning of services, including referral to a health care institution or other agency;

4. To refuse treatment to the extent permitted by law and to be informed of the medical consequences of that refusal;

5. To confidential treatment of personal and medical records and to approve or refuse their release to any individual, except in the case of transfer to a health care facility;

6. To be taught, and have the family or other persons living with the recipient taught, the treatment required, so that the recipient can, to the extent possible, help himself or herself, and the family or other party designated by the recipient can understand and help the recipient;

7. To have one's property treated with respect; and

8. To complain about care that was provided or not provided, and to seek resolution of the complaint without fear of recrimination.

(c) Universal precautions. A nurse shall have the necessary orientation, education and training in epidemiology, modes of transmission and prevention of HIV and other blood-borne or body fluid-borne infections and shall follow universal blood and body-fluid precautions for each recipient for whom services are provided. The nurse shall employ protective measures recommended by the federal centers for disease control (CDC), including those pertaining to medical equipment and supplies, to minimize the risk of infection from HIV and other blood-borne pathogens.

Note: A copy of the CDC recommended universal precautions may be obtained from the Bureau of Quality Compliance, Division of Health, P.O. Box 309, Madison, Wisconsin 53701.

(d) Medical record. The nurse shall maintain a medical record for each recipient. The record shall document the nature and scope of all services provided and shall be systematically organized and readily accessible to authorized department personnel. The medical record shall document the recipient's condition, problems, progress and all services rendered, and shall include:

1. Recipient identification information;

2. Appropriate hospital information, including discharge information, diagnosis, current patient status and post-discharge plan of care;

3. Recipient admission evaluation and assessment;

4. All medical orders, including the physician's written plan of care and all interim physician's orders;

5. A consolidated list of medications, including start and stop dates, dosage, route of administration and frequency. This list shall be reviewed and updated for each nursing visit, if necessary;

6. Progress notes posted as frequently as necessary to clearly and accurately document the recipient's status and services provided. In this paragraph, "progress note" means a written notation, dated and signed by a member of the health team providing covered services, that summarizes facts about care furnished and the recipient's response during a given period of time;

7. Clinical notes written the day service is provided and incorporated into the clinical record within 7 days after the visit or recipient contact. In this paragraph, "clinical note" means a notation of a contact with a recipient that is written and dated by a member of the home health team providing covered services, and that describes signs and symptoms, treatment and drugs administered and the patient's reaction, and any changes in physical or emotional condition;

8. Written summaries of the recipient's care provided by the nurse to the physician at least every 62 days; and

9. Written authorizations from the recipient or the recipient's guardian when it is necessary for the nurse to procure medical supplies or equipment needed by the recipient, unless the recipient's care is being provided by an MA-certified home health agency.

(e) Back-up and emergency procedures. 1. The recipient shall be informed of the identity of the agency-assigned alternate nurse before the alternate nurse provides services.

2. The nurse shall document a plan for recipient-specific emergency procedures in the event a life-threatening situation or fire occurs or there are severe weather warnings. This plan shall be made available to the recipient and all caregivers prior to initiation of these procedures.

3. The nurse shall take appropriate action and immediately notify the recipient's physician, guardian, if any, and any other responsible person designated in writing by the patient or guardian of any significant accident, injury or adverse change in the recipient's condition.

(f) Discharge of the recipient. A recipient shall be discharged from services provided by the nurse upon the recipient's request, upon the decision of the recipient's physician, or if the nurse documents that continuing to provide services to the recipient presents a direct threat to the nurse's health or safety and further documents the refusal of the attending physician to authorize discharge of the recipient with full knowledge and understanding of the threat to the nurse. The nurse shall recommend discharge to the physician and recipient if the recipient does not require services or requires services beyond the nurse's capability. The nurse provider shall issue a notification of discharge to the recipient or guardian, if possible at least 2 calendar weeks prior to cessation of skilled nursing services, and shall, in all circumstances, provide assistance in arranging for the continuity of all medically necessary care prior to discharge.

SECTION 7. HSS 105.17(3)(a)1 is amended to read:

HSS 105.17(3)(a)1 Be trained in the provision of personal care services. Training shall consist of a minimum of 40 classroom hours, at least 25 of which shall be devoted to personal and restorative

care, or 6 months of equivalent experience ~~acquired before July 1, 1988~~. Training shall emphasize techniques for and aspects of caring for the population served by the provider.

SECTION 8. HSS 105.19 is repealed and recreated to read:

HSS 105.19 CERTIFICATION OF NURSES IN INDEPENDENT PRACTICE. (1) QUALIFICATIONS. (a) For MA certification to perform skilled nursing services as a nurse in independent practice providing home health services under HSS 107.11(6) or private duty nursing services under s. HSS 107.12, the nurse shall be:

1. Licensed as a registered nurse pursuant to s. 441.06, Stats.;

2. Licensed as a practical nurse pursuant to s. 441.10, Stats.; or

3. A registered nurse providing supervision of a licensed practical nurse certified under this section.

(b) For MA certification to perform respiratory care services as a provider in independent practice, the provider shall be certified pursuant to ch. Med 20 and shall be a nurse described in par. (a) or a respiratory therapist. Any person providing or supervising respiratory care who is not credentialed by the national board on respiratory care shall know how to perform the services under s. HSS 107.113(1) and shall have the skills necessary to perform those services. Skills required to perform services listed in s. HSS 107.113(1)(e) to (f) are required on a case-by-case basis, as appropriate. In no case may a person provide respiratory care before that person has demonstrated competence in all areas under s. HSS 107.113(1)(a) to (d). A registered nurse who fulfills these requirements shall coordinate the recipient's care.

(2) PLAN OF CARE. Nursing services and respiratory care shall be provided in accordance with a written plan of care which the physician reviews and signs at least every 62 days or when the recipient's condition changes, whichever occurs first.

(3) SUPERVISION OF A LICENSED PRACTICAL NURSE. A registered nurse or physician designated by the LPN providing nursing or respiratory care services shall supervise the LPN as often as necessary under the requirements of s. N 6.03 and 6.04(2) and shall document the results of supervisory activities. An LPN may provide nursing or respiratory care services delegated by an RN as delegated nursing acts under ss. N6.03 and 6.04 and guidelines established by the board of nursing.

(4) DUTIES OF THE NURSE. (a) The following nursing services may be performed only by a registered nurse:

1. Making the initial evaluation visit;

2. Initiating the physician's plan of care and necessary revisions;

3. Providing those services that require care of a registered nurse as defined in ch. N 6;

4. Initiating appropriate preventive and rehabilitative procedures;

5. Accepting only those delegated medical acts which the RN is competent to perform based on his or her nursing education, training or experience; and

6. Regularly reevaluating the patient's needs.

(b) Nursing services not requiring a registered nurse may be provided by a licensed practical nurse under the supervision of a registered nurse. Licensed practical nurse duties include:

1. Performing nursing care delegated by an RN under s. N 6.03;

2. Assisting the patient in learning appropriate self-care techniques; and

3. Meeting the nursing needs of the recipient according to the written plan of care.

(c) Both RNs and LPNs shall:

1. Arrange for or provide health care counseling within the scope of nursing practice to the recipient and recipient's family in meeting needs related to the recipient's condition;

2. Provide coordination of care for the recipient, including ensuring that provision is made for all required hours of care for the recipient;

3. Accept only those delegated medical acts for which there are written or verbal orders and for which the nurse has appropriate training or experience;

4. Prepare written clinical notes that document the care provided within 24 hours of providing service and incorporate them into the recipient's clinical record within 7 days; and

5. Promptly inform the physician and other personnel participating in the patient's care of changes in the patient's condition and needs.

(5) PATIENT RIGHTS. A nurse shall provide a written statement of the rights of the recipient for whom services are provided to the recipient or guardian or any interested party prior to the provision of services. The recipient or guardian shall acknowledge receipt of the statement in writing. The nurse shall promote and protect the exercise of these rights and keep written documentation of compliance with this subsection. Each recipient receiving care shall have the following rights:

(a) To be fully informed of all rules and regulations affecting the recipient;

(b) To be fully informed of services to be provided by the nurse and of related charges, including any charges for services for which the recipient may be responsible;

(c) To be fully informed of one's own health condition, unless medically contraindicated, and to be afforded the opportunity to participate in the planning of services, including referral to a health care institution or other agency;

(d) To refuse treatment to the extent permitted by law and to be informed of the medical consequences of that refusal;

(e) To confidential treatment of personal and medical records and to approve or refuse their release to any individual, except in the case of transfer to a health care facility;

(f) To be taught, and have the family or other persons living with the recipient taught, the treatment required, so that the recipient can, to the extent possible, help himself or herself, and the family or other party designated by the recipient can understand and help the recipient;

(g) To have one's property treated with respect; and

(h) To complain about care that was provided or not provided, and to seek resolution of the complaint without fear of recrimination.

(6) UNIVERSAL PRECAUTIONS. A nurse shall have the necessary orientation, education and training in epidemiology, modes of transmission and prevention of HIV and other blood-borne or body fluid-borne infections and shall follow universal blood and body-fluid precautions for each recipient for whom services are provided. The nurse shall employ protective measures recommended by the federal centers for disease control (CDC), including those pertaining to medical equipment and supplies, to minimize the risk of infection from HIV and other blood-borne pathogens.

Note: A copy of the CDC recommended universal precautions may be obtained from the Bureau of Quality Compliance, Division of Health, P.O. Box 309, Madison, Wisconsin 53701.

(7) MEDICAL RECORD. The nurse shall maintain a medical record for each recipient. The record shall document the nature and scope of all services provided and shall be systematically organized and readily accessible to authorized department personnel. The medical record shall document the recipient's condition, problems, progress and all services rendered, and shall include:

(a) Recipient identification information;

(b) Appropriate hospital information, including discharge information, diagnosis, current patient status and post-discharge plan of care;

(c) Recipient admission evaluation and assessment;

(d) All medical orders, including the written plan of care and all interim physician's orders;

(e) A consolidated list of medications, including start and stop dates, dosage, route of administration and frequency. This list shall be reviewed and updated for each nursing visit, if necessary;

(f) Progress notes posted as frequently as necessary to clearly and accurately document the recipient's status and services provided. In this paragraph, "progress note" means a written notation,

dated and signed by a member of the health team providing covered services, that summarizes facts about care furnished and the recipient's response during a given period of time;

(g) Clinical notes written the day service is provided and incorporated into the clinical record within 7 days after the visit or recipient contact. In this paragraph, "clinical note" means a notation of a contact with a recipient that is written and dated by a member of the home health team providing covered services, and that describes signs and symptoms, treatment and drugs administered and the patient's reaction, and any changes in physical or emotional condition;

(h) Written summaries of the recipient's care provided by the nurse to the physician at least every 62 days; and

(i) Written authorizations from the recipient or the recipient's guardian when it is necessary for the nurse to procure medical supplies or equipment needed by the recipient.

(8) BACK-UP AND EMERGENCY PROCEDURES. (a) A recipient's nurse shall designate an alternate nurse to provide services to the recipient in the event the nurse is temporarily unable to provide services. The recipient shall be informed of the identity of the alternate nurse before the alternate nurse provides services.

(b) The nurse shall document a plan for recipient-specific emergency procedures in the event a life-threatening situation or fire occurs or there are severe weather warnings. This plan shall be made available to the recipient and all caregivers prior to initiation of these procedures.

(c) The nurse shall take appropriate action and immediately notify the recipient's physician, guardian, if any, and any other responsible person designated in writing by the patient or guardian of any significant accident, injury or adverse change in the recipient's condition.

(9) DISCHARGE OF THE RECIPIENT. A recipient shall be discharged from services provided by the nurse upon the recipient's request, upon the decision of the recipient's physician, or if the nurse documents that continuing to provide services to the recipient presents a direct threat to the nurse's health or safety and further documents the refusal of the attending physician to authorize

discharge of the recipient with full knowledge and understanding of the threat to the nurse. The nurse shall recommend discharge to the physician and recipient if the recipient does not require services or requires services beyond the nurse's capability. The nurse provider shall issue a notification of discharge to the recipient or guardian, if possible at least 2 calendar weeks prior to cessation of skilled nursing services, and shall, in all circumstances, provide assistance in arranging for the continuity of all medically necessary care prior to discharge.

(10) DEPARTMENT REVIEW. (a) Record review. The department may periodically review the records described in this section and s. HSS 106.02(9), subject only to restrictions of law. All records shall be made immediately available upon the request of an authorized department representative.

(b) In-home visits. As part of the review under par. (a), the department may contact recipients who have received or are receiving MA services from a nurse provider. The nurse provider shall provide any identifying information requested by the department. The department may select the recipients for visits and may visit a recipient with the approval of the recipient or recipient's guardian. The recipient to be visited shall be given the opportunity to have any person present whom he or she chooses during the visit by personnel of the department or other governmental investigating agency.

(c) Investigation of complaints. The department may investigate any complaint received by it concerning the provision of MA services by a nurse provider. Following the investigation, the department may issue a preliminary final report to the nurse provider in question, except when doing so would jeopardize any other investigation by the department or other state or federal agency.

SECTION 9. HSS 106.065 is created to read:

HSS 106.065 INVOLUNTARY TERMINATION AND ALTERNATIVE SANCTIONS FOR HOME CARE PROVIDERS. (1) TERMINATION. (a) The department may terminate a home

care provider's certification to participate in the MA program for failure to comply with the requirements of s. HSS 105.19, 107.11, 107.113 or 107.12, as applicable, or for any of the reasons described in s. HSS 106.06 after reasonable notice and opportunity for a hearing under s. HSS 106.12(4).

(b) The department shall provide at least 15 working days advance notice of termination to the provider, except at least 5 calendar days advance notice to providers is required in situations where the recipient's health and safety is in immediate jeopardy.

(c) Any provider terminated under this section shall have 30 calendar days from the date of termination of certification to make alternative care arrangements for MA recipients under the provider's care before the effective date of termination. After the 30-day period, MA payment for services provided will cease, except for payments to providers terminated in immediate jeopardy situations. In immediate jeopardy situations, as determined by the department, the department may make alternative care arrangements to preserve continuity of care and for the protection of the recipient.

(2) ALTERNATIVE SANCTIONS. (a) In the event the department finds it more appropriate to take alternative action to termination of certification under sub. (1) to ensure compliance with program requirements, it may impose one or more sanctions under par. (b) for no more than 6 months following the last day of the department's review of the provider. If, at the end of the 6 month period, the provider continues to not comply with the MA program requirement or requirements, the provider shall be terminated from MA program participation under sub. (1).

(b) The department may apply one or several of the following sanctions:

1. Suspension of payment for new admissions;
2. Suspension of payments for new admissions who require particular types of services;
3. Suspension of payments for any MA recipient requiring a particular type of service;
4. A plan of correction prescribed by the department;

5. Provider monitoring by the department;

6. Appointment of a temporary manager; or

7. Any of the sanctions described in s. HSS 106.07(4).

(c) In determining the most effective sanctions to be applied to a non-compliant provider, the department shall consider:

1. The severity and scope of noncompliance;

2. The relationship of several areas of the deficiencies or noncompliance;

3. The provider's previous compliance history, particularly as it relates to the insufficiencies under consideration;

4. Immediate or potential jeopardy to patient health and safety;

5. The direct relationship to patient care; and

6. The provider's financial condition.

(d) The department may revisit the provider during the sanction period. Termination procedures may be initiated as a result of the review conducted during the revisit if substantial noncompliance is found to persist, or if recipient safety is potentially or actually compromised.

SECTION 10. HSS 107.11 is repealed and recreated to read:

HSS 107.11 HOME HEALTH SERVICES. (1) DEFINITIONS. In this section:

(a) "Community-based residential facility" has the meaning prescribed in s. 50.01(1g), Stats.

(b) "Home health aide services" means medically oriented tasks, assistance with activities of daily living and incidental household tasks required to facilitate treatment of a recipient's medical condition or to maintain the recipient's health.

(c) "Home health visit" or "visit" means a period of time of any duration during which home health services are provided through personal contact by agency personnel of less than 8 hours a day in the recipient's place of residence for the purpose of providing a covered home health service. The

services are provided by a home health provider employed by a home health agency, by a home health provider under contract to a home health agency according to the requirements of s. HSS 133.19 or by arrangement with a home health agency. A visit begins when the home health provider enters the residence to provide a covered service and ends when the worker leaves the residence.

(d) "Home health provider" means a person who is an RN, LPN, home health aide, physical or occupational therapist, speech pathologist, certified physical therapy assistant or certified occupational therapy assistant.

(e) "Initial visit" means the first home health visit of any duration in a calendar day provided by a registered nurse, licensed practical nurse, home health aide, physical or occupational therapist or speech and language pathologist for the purpose of delivering a covered home health service to a recipient.

(f) "Subsequent visit" means each additional visit of any duration following the initial visit in a calendar day provided by an RN, LPN or home health aide for the purpose of delivering a covered home health service to a recipient.

(g) "Unlicensed caregiver" means a home health aide or personal care worker.

(2) COVERED SERVICES. Services provided by an agency certified under s. HSS 105.16 which are covered by MA are those reasonable and medically necessary services required in the home to treat the recipient's condition. Covered services are: skilled nursing services, home health aide services and medical supplies, equipment and appliances suitable for use in the recipient's home, and therapy and speech pathology services which the agency is certified to provide. These services are covered only when performed according to the requirements of s. HSS 105.16 and provided in a recipient's place of residence which is other than a hospital or nursing home. Home health skilled nursing and therapy services are covered only when provided to a recipient who, as certified in writing by the recipient's physician, is confined to a place of residence except that intermittent, medically necessary, skilled nursing or therapy services are covered if they are required by a recipient

who cannot reasonably obtain these services outside the residence or from a more appropriate provider. Home health aide services may be provided to a recipient who is not confined to the home, but services shall be performed only in the recipient's home. Services are covered only when included in the written plan of care with supervision and coordination of all nursing care for the recipient provided by a registered nurse. Home health services include:

(a) Skilled nursing services provided in a recipient's home under a plan of care which requires less than 8 hours of skilled nursing care per calendar day and specifies a level of care which the nurse is qualified to provide. These are:

1. Nursing services performed by a registered nurse, or by a licensed practical nurse under the supervision of a registered nurse, according to the written plan of care and accepted standards of medical and nursing practice, in accordance with N 6;

2. Services which, due to the recipient's medical condition, may be only safely and effectively provided by an RN or LPN;

3. Assessments performed only by a registered nurse; and

4. Teaching and training of the recipient, the recipient's family or other caregivers requiring the skills of an RN or LPN.

Note: For a further description of skilled nursing services, refer to the Wisconsin Medical Assistance Home Health Agency Provider Handbook, Part L, Division II.

(b) Home health aide services. Home health aide services are:

1. Medically oriented tasks which cannot be safely delegated by an RN as determined and documented by the RN to a personal care worker who has not received special training in performing tasks for the specific individual, and which may include, but are not limited to, medically oriented activities directly supportive of skilled nursing services provided to the recipient. These may include assistance with and administration of oral, rectal and topical medications ordinarily self-administered and supervised by an RN according to 42 CFR 483.36(d), ch. HSS 133 and ch. N 6, and assistance

with activities directly supportive of current and active skilled therapy and speech pathology services and further described in the Wisconsin medical assistance home health agency provider handbook;

2. Assistance with the recipient's activities of daily living only when provided in conjunction with a medically oriented task that cannot be safely delegated to a personal care worker as determined and documented by the delegating RN. Assistance with the recipient's activities of daily living consists of medically oriented tasks when a reasonable probability exists that the recipient's medical condition will worsen during the period when assistance is provided, as documented by the delegating RN. A recipient whose medical condition has exacerbated during care activities sometime in the past 6 months is considered to have a condition which may worsen when assistance is provided. Activities of daily living include, but are not limited to, bathing, dressing, grooming and personal hygiene activities, skin, foot and ear care, eating, elimination, ambulation, and changing bed positions; and

3. Household tasks incidental to direct care activities described in subds. 1 and 2.

Note: For further description of home health aide services, refer to the Wisconsin Medical Assistance Home Health Agency Provider Handbook, Part L, Division II.

(c) Therapy and speech pathology services. 1. These are services provided in the recipient's home which can only be safely and effectively performed by a skilled therapist or speech pathologist or by a certified therapy assistant who receives supervision by the certified therapist according to 42 CFR 484.32 for a recipient confined to his or her home.

2. Based on the assessment by the recipient's physician of the recipient's rehabilitation potential, services provided are expected to materially improve the recipient's condition within a reasonable, predictable time period, or are necessary to establish a safe and effective maintenance program for the recipient.

3. In conjunction with the written plan of care, a therapy evaluation shall be conducted prior to the provision of these services by the therapist or speech pathologist who will provide the services to the recipient.

4. The therapist or speech pathologist shall provide a summary of activities, including goals and outcomes, to the physician at least every 62 days, and upon conclusion of therapy services.

(3) PRIOR AUTHORIZATION. Prior authorization is required to review utilization of services and assess the medical necessity of continuing services for:

(a) All home health visits when the total of any combination of skilled nursing, home health aide, physical and occupational therapist and speech pathologist visits by all providers exceeds 30 visits in a calendar year, including situations when the recipient's care is shared among several certified providers;

(b) All home health aide visits when the services are provided in conjunction with private duty nursing under s. HSS 107.12 or the provision of respiratory care services under s. HSS 107.113;

(c) All medical supplies and equipment for which prior authorization is required under s. HSS 107.24;

(d) All home health aide visits when 4 or more hours of continuous care is medically necessary; and

(e) All subsequent skilled nursing visits.

(4) OTHER LIMITATIONS. (a) The written plan of care shall be developed and reviewed concurrently with and in support of other health sustaining efforts for the recipient in the home.

(b) All durable medical equipment and disposable medical supplies shall meet the requirements of s. HSS 107.24.

(c) Services provided to a recipient who is a resident of a community-based residential facility shall be rendered according to the requirements of ch. HSS 3 and shall not duplicate services that the facility has agreed to provide.

(d) 1. Except as provided in subd. 2, home health skilled nursing services provided by one or more providers are limited to less than 8 hours per day per recipient as required by the recipient's medical condition.

2. If the recipient's medical condition worsens so that 8 or more hours of direct, skilled nursing services are required in a calendar day, a maximum of 30 calendar days of skilled nursing care may continue to be reimbursed as home health services, beginning on the day 8 hours or more of skilled nursing services became necessary. To continue medically necessary services after 30 days, prior authorization for private duty nursing is required under s. HSS 107.12(2).

(e) An intake evaluation is a covered home health skilled nursing service only if, during the course of the initial visit to the recipient, the recipient is admitted into the agency's care and covered skilled nursing services are performed according to the written physician's orders during the visit.

(f) A skilled nursing ongoing assessment for a recipient is a covered service:

1. When the recipient's medical condition is stable, the recipient has not received a covered skilled nursing service, covered personal care service, or covered home visit by a physician service within the past 62 days, and a skilled assessment is required to re-evaluate the continuing appropriateness of the plan of care. In this paragraph, "medically stable" means the recipient's physical condition is non-acute, without substantial change or fluctuation at the current time.

2. When the recipient's medical condition requires skilled nursing personnel to identify and evaluate the need for possible modification of treatment;

3. When the recipient's medical condition requires skilled nursing personnel to initiate additional medical procedures until the recipient's treatment regimen stabilizes, but is not part of a longstanding pattern of care; or

4. If there is a likelihood of complications or an acute episode.

(g) Teaching and training activities are covered services only when provided to the recipient, recipient's family or other caregiver in conjunction with other covered skilled nursing care provided to the recipient.

(h) A licensed nurse shall administer medications to a minor child or to an adult who is not self-directing, as determined by the physician, to direct or administer his or her own medications, when a responsible adult is not present to direct the recipient's medication program.

(i) Services provided by an LPN which are not delegated by an RN under s. N 6.03 are not covered services.

(j) Skilled physical and occupational therapy and speech pathology services are not to include activities provided for the general welfare of the recipient or activities to provide diversion for the recipient or to motivate the recipient.

(k) Skilled nursing services may be provided for a recipient by one or more home health agencies or by an agency contracting with a nurse or nurses only if the agency or agencies meet the requirements of ch. HSS 133 and are approved by the department.

(l) RN supervision and administrative costs associated with the provision of services under this section are not separately reimbursable MA services.

(m) Home health aide service limitations are the following:

1. A home health aide may provide assistance with a recipient's medications only if the written plan of care documents the name of the delegating registered nurse and the recipient is aged 18 or more;

2. Home health aide services are primarily medically oriented tasks, as determined by the delegating RN, when the instability of the recipient's condition as documented in the medical record is such that the recipient's care cannot be safely delegated to a personal care worker under s. HSS 107.112;

3. A home health aide visit which is a covered service shall include at least one medically oriented task performed during a visit which cannot, in the judgement of the delegating RN, be safely delegated to a personal care worker; and

4. A home health aide, rather than a personal care worker, shall always provide medically oriented services for recipients who are under age 18.

(5) NON-COVERED SERVICES. The following services are not covered home health services:

(a) Services that are not medically necessary;

(b) Skilled nursing services provided for 8 or more hours per recipient per day;

(c) More than one initial visit per day by a home health skilled nurse, home health aide, physical or occupational therapist or speech and language pathologist;

(d) Private duty nursing services under s. HSS 107.12, unless the requirements of sub (4)(d)2 apply;

(e) Services requiring prior authorization that are provided without prior authorization;

(f) Supervision of the recipient when supervision is the only service provided at the time;

(g) Hospice care provided under s. HSS 107.31;

(h) Mental health and alcohol or other drug abuse services provided under s. HSS 107.13(2), (3), (3m), (4) and (6);

(i) Medications administration by a personal care worker or administration by a home health aide which has not been delegated by an RN according to the relevant provisions of s. HSS 133.

(j) Skilled nursing services contracted for by a home health agency unless the requirements of s. HSS 133.19 are met and approved by the department;

(k) Occupational therapy, physical therapy or speech pathology services requiring only the use of equipment without the skills of the therapist or speech pathologist;

(l) Skilled nursing visits:

1. Solely for the purpose of ensuring that a recipient who has a demonstrated history of non compliance over 30 days, complies with the medications program;

2. To administer or assist with medication administration of an adult recipient who is capable of safely self-administering a medication as determined and documented by the RN;

3. To inject a recipient who is capable of safely self-injecting a medication, as determined and documented by the RN;

4. To prefill syringes for self-injection when, as determined and documented by the RN, the recipient is capable of prefilling or a pharmacy is available to prefill; and

5. To set up medication for self-administration when, as determined and documented by the RN, the recipient is capable or a pharmacy is available to assist the recipient;

(m) Home health services to a recipient who is eligible for covered services under the medicare program or any other insurance held by the recipient;

(n) Services that are not medically appropriate. In this paragraph, "medically appropriate" means a service that is proven and effective treatment for the condition for which it is intended or used;

(o) Parenting;

(p) Services to other members of the recipient's household;

(q) A visit made by a skilled nurse, physical or occupational therapist or speech pathologist solely to train other home health workers;

(r) Any home health service included in the daily rate of the community-based residential facility where the recipient is residing;

(s) Services when provided to a recipient by the recipient's spouse or parent if the recipient is under age 18;

(t) Skilled nursing and therapy services provided to a recipient who is not confined to a place of residence when services are reasonably available outside the residence;

(u) Any service which is performed in a place other than the recipient's residence; and

(v) Independent nursing services under sub. (6).

(6) UNAVAILABILITY OF A HOME HEALTH AGENCY (a) Definition. In this subsection, "part-time, intermittent care" means skilled nursing services provided in a recipient's home under a plan of care which requires less than 8 hours of skilled care in a calendar day.

(b) Covered services. 1. Part-time, intermittent nursing care may be provided by an independent nurse certified under s. HSS 105.19 when an existing home health agency cannot provide the services as appropriately documented by the nurse, and the physician's prescription specifies that the recipient requires less than 8 hours of skilled nursing care per calendar day and calls for a level of care which the nurse is licensed to provide as documented to the department.

2. Services provided by an MA-certified registered nurse are those services prescribed by a physician which comprise the practice of professional nursing as described under s. 441.11(3), Stats., and s. N 6.03. Services provided by an MA-certified licensed practical nurse are those services which comprise the practice of practical nursing under s. 441.11(4), Stats., and s. N 6.04. An LPN may provide nursing services delegated by an RN as delegated nursing acts under the requirements of ss. N 6.03 and 6.04 and guidelines established by the state board of nursing.

3. A written plan of care shall be established for every recipient admitted for care and shall be signed by the physician and incorporated into the recipient's medical record. A written plan of care shall be developed by the registered nurse or therapist within 72 hours after acceptance. The written plan of care shall be developed by the registered nurse or therapist in consultation with the recipient and the recipient's physician and shall be signed by the physician within 20 working days following the recipient's admission for care. The written plan of care shall include, in addition to the medication and treatment orders:

a. Measurable time-specific goals;

b. Methods for delivering needed care, and an indication of which, if any, professional disciplines are responsible for delivering the care;

c. Provision for care coordination by an RN when more than one nurse is necessary to staff the recipient's case;

d. Identification of all other parties providing care to the recipient and the responsibilities of each party for that care; and

e. A description of functional capabilities, mental status, dietary needs and allergies.

4. The written plan of care shall be reviewed, signed and dated by the recipient's physician as often as required by the recipient's condition but at least every 62 days. The RN shall promptly notify the physician of any change in the recipient's condition that suggests a need to modify the plan of care.

5. Drugs and treatment shall be administered by the RN or LPN only as ordered by the recipient's physician or his or her designee. The nurse shall immediately record and sign oral orders and shall obtain the physician's countersignature within 10 working days.

6. Supervision of an LPN by an RN or physician shall be performed according to the requirements under ss. N 6.03 and 6.04 and the results of supervisory activities shall be documented and communicated to the LPN.

(c) Prior authorization. 1. Prior authorization requirements under sub. (3) apply to services provided by an independent nurse.

2. A request for prior authorization of part-time, intermittent care performed by an LPN shall include the name and license number of the registered nurse supervising the LPN.

(d) Other limitations. 1. Each independent RN or LPN shall document the care and services provided. Documentation required under par. (b)3 to 6 of the unavailability of a home health agency shall include names of agencies contacted, dates of contact and any other pertinent information.

2. Discharge of a recipient from nursing care under this subsection shall be made in accordance with s. HSS 105.19(9).

3. The limitations under sub. (4) apply.

4. Registered nurse supervision of an LPN is not separately reimbursable.

(e) Non-covered services. The following services are not covered services under this subsection:

1. Services listed in sub. (5);

2. Private duty nursing services under s. HSS 107.12; and

3. Any service that fails to meet the recipient's medical needs or places the recipient at risk for a negative treatment outcome.

SECTION 11. HSS 107.112(2)(b) is repealed and recreated to read:

HSS 107.112(2)(b) Prior authorization is required under par. (a) for specific services listed in s. HSS 107.11(2). Services listed in s. HSS 107.11(2)(b) are covered personal care services, regardless of the recipient's age, only when:

1. Safely delegated to a personal care worker by a registered nurse;

2. The personal care worker is trained and supervised by the provider to provide the tasks; and

3. The recipient, parent or responsible person is permitted to participate in the training and supervision of the personal care worker.

SECTION 12. HSS 107.112(3)(f) is repealed.

SECTION 13. HSS 107.112(4)(f) is amended to read:

HSS 107.112(4)(f) Services other than those listed in ~~sub~~ subs. (1)(b) and (2)(b);

SECTION 14. HSS 107.113 is created to read:

HSS 107.113 RESPIRATORY CARE FOR VENTILATOR-ASSISTED RECIPIENTS.

(1) COVERED SERVICES. Services, medical supplies and equipment necessary to provide life support for a recipient who has been hospitalized for at least 30 consecutive days for his or her respiratory condition and who is dependent on a ventilator for at least 6 hours per day shall be covered services when these services are provided to the recipient in the recipient's home. A recipient receiving these services is one who, if the services were not available in the home, would require them as an inpatient in a hospital or a skilled nursing facility, has adequate social support to be treated at home and desires to be cared for at home, and is one for whom respiratory care can safely be provided in the home. Respiratory care shall be provided as required under s. HSS 105.16 and 105.19 and according to a written plan of care under sub. (2) signed by the recipient's physician for a recipient who lives in a residence that is not a hospital or a skilled nursing facility. Respiratory care includes:

(a) Airway management, consisting of:

1. Tracheostomy care: all available types of tracheostomy tubes, stoma care, changing a tracheostomy tube, and emergency procedures for tracheostomy care including accidental extubation;

2. Tracheal suctioning technique; and

3. Airway humidification;

(b) Oxygen therapy: operation of oxygen systems and auxiliary oxygen delivery devices;

(c) Respiratory assessment, including but not limited to monitoring of breath sounds, patient color, chest excursion, secretions and vital signs;

(d) Ventilator management, as follows:

1. Operation of positive pressure ventilator by means of tracheostomy to include, but not limited to, different modes of ventilation, types of alarms and responding to alarms, troubleshooting

ventilator dysfunction, operation and assembly of ventilator circuit, that is, the delivery system, and proper cleaning and disinfection of equipment;

2. Operation of a manual resuscitator; and

3. Emergency assessment and management including cardiopulmonary resuscitation (CPR);

(e) The following modes of ventilatory support:

1. Positive pressure ventilation by means of a nasal mask or mouthpiece;

2. Continuous positive airway pressure (CPAP) by means of a tracheostomy tube or mask;

3. Negative pressure ventilation – iron lung, chest shell or pulmowrap;

4. Rocking beds;

5. Pneumobelts; and

6. Diaphragm pacing;

(f) Operation and interpretation of monitoring devices:

1. Cardio-respiratory monitoring;

2. Pulse oximetry; and

3. Capnography;

(g) Knowledge of and skills in weaning from the ventilator;

(h) Adjunctive techniques:

1. Chest physiotherapy; and

2. Aerosolized medications; and

(i) Case coordination activities performed by the registered nurse designated in the plan of care as case coordinator. These activities include coordination of health care services provided to the recipient at home and coordination of these services with any other health or social service providers serving the recipient.

(2) PLAN OF CARE. A recipient's written plan of care shall be based on the orders of a physician, a visit to the recipient's home by the registered nurse and consultation with the family and

other household members. The plan of care established by a home health agency or independent provider for a recipient to be discharged from a hospital shall consider the hospital's discharge plan for the recipient. The written plan of care shall be reviewed, signed and dated by the recipient's physician and renewed at least every 62 days and whenever the recipient's condition changes. Telephone orders shall be documented in writing and signed by the physician within 10 working days. The written physician's plan of care shall include:

(a) Physician orders for treatments provided by the necessary disciplines specifying the amount and frequency of treatment;

(b) Medications, including route, dose and frequency;

(c) Principal diagnosis, surgical procedures and other pertinent diagnosis;

(d) Nutritional requirements;

(e) Necessary durable medical equipment and disposable medical supplies;

(f) Ventilator settings and parameters;

(g) Procedures to follow in the event of accidental extubation;

(h) Identification of back-ups in the event scheduled personnel are unable to attend the case;

(i) The name of the registered nurse designated as the recipient's case coordinator;

(j) A plan for medical emergency, to include:

1. Description of back-up personnel needed;

2. Provision for reliable, 24-hour a day, 7 days a week emergency service for repair and delivery of equipment; and

3. Specification of an emergency power source; and

(k) A plan to move the recipient to safety in the event of fire, flood, tornado warning or other severe weather, or any other condition which threatens the recipient's immediate environment.

(3) PRIOR AUTHORIZATION. (a) All services covered under sub. (1) and all home health services under s. HSS 107.11 provided to a recipient receiving respiratory care shall be authorized

prior to the time the services are rendered. Prior authorization shall be renewed every 12 calendar months if the respiratory care under this section is still needed. The prior authorization request shall include the name of the registered nurse who is responsible for coordination of all care provided under the MA program for the recipient in his or her home. Independent MA-certified respiratory therapists or nurses in private practice who are not employes of or contracted to a home health agency but are certified under s. HSS 105.18 to provide respiratory care shall include in the prior authorization request the name and license number of a registered nurse who will participate, on 24-hour call, in emergency assessment and management and who will be available to the respiratory therapist for consultation and assistance.

(4) OTHER LIMITATIONS. (a) Services under this section shall not be reimbursed if the recipient is receiving respiratory care from an RN, licensed practical nurse or respiratory therapist who is providing these services as part of the rental agreement for a ventilator or other respiratory equipment.

(b) Respiratory care provided to a recipient residing in a community-based residential facility (CBRF) as defined in s. 50.01(lg), Stats., shall be in accordance with the requirements of ch. HSS 3.

(c) Durable medical equipment and disposable medical supplies shall be provided in accordance with conditions set out in s. HSS 107.24.

(d) Respiratory care services provided by a licensed practical nurse shall be provided under the supervision of a registered nurse and in accordance with standards of practice set out in s. N 6.04.

(e) Case coordination services provided by the designated case coordinator shall be documented in the clinical record, including the extent and scope of specific care coordination provided.

(f) In the event that a recipient receiving services at home who is discharged from the care of one respiratory care provider and admitted to the care of another respiratory care provider continues to receive services at home under this section, the admitting provider shall coordinate services with

the discharging provider to ensure continuity of care. The admitting provider shall establish the recipient's plan of care as required under sub.(2) and request prior authorization under sub.(3).

(g) Travel, recordkeeping and RN supervision of a licensed practical nurse are not separately reimbursable services.

(5) NON-COVERED SERVICES. The following services are not covered services:

(a) Parenting;

(b) Supervision of the recipient when supervision is the only service provided;

(c) Services provided without prior authorization;

(d) Services provided by one individual in excess of 12 continuous hours per day or 60 hours per week;

(e) Services provided in a setting other than the recipient's place of residence; and

(f) Services that are not medically appropriate.

SECTION 15. HSS 107.12 is repealed and recreated to read:

HSS 107.12 PRIVATE DUTY NURSING SERVICES. (1) COVERED SERVICES. (a) Private duty nursing is skilled nursing care available for recipients with medical conditions requiring more continuous skilled care than can be provided on a part-time, intermittent basis. Only a recipient who requires 8 or more hours of skilled nursing care and is authorized to receive these services in the home setting may make use of the approved hours outside of that setting during those hours when normal life activities take him or her outside of that setting. Private duty nursing may be provided according to the requirements under ss. HSS 105.16 and 105.19 when the written plan of care specifies the medical necessity for this type of service.

(b) Private duty nursing services provided by a certified registered nurse in independent practice are those services prescribed by a physician which comprise the practice of professional nursing as described under s. 441.11(3), Stats., and s. N 6.03. Private duty nursing services provided by a

certified licensed practical nurse are those services which comprise the practice of practical nursing under s. 441.11(4), Stats., and s. N 6.04. An LPN may provide private duty nursing services delegated by a registered nurse as delegated nursing acts under the requirements of ch. N 6 and guidelines established by the state board of nursing.

(c) Services may be provided only when prescribed by a physician and the prescription calls for a level of care which the nurse is licensed and competent to provide.

(d) 1. A written plan of care, including a functional assessment, medication and treatment orders, shall be established for every recipient admitted for care and shall be incorporated in the recipient's medical record within 72 hours after acceptance in consultation with the recipient and the recipient's physician and shall be signed by the physician within 20 working days following the recipient's admission for care. The physician's plan of care shall include, in addition to the medication and treatment orders:

a. Measurable time-specific goals;

b. Methods for delivering needed care, and an indication of which other professional disciplines, if any, are responsible for delivering the care;

c. Provision for care coordination by an RN when more than one nurse is necessary to staff the recipient's case; and

d. A description of functional capability, mental status, dietary needs and allergies.

2. The written plan of care shall be reviewed and signed by the recipient's physician as often as required by the recipient's condition, but not less often than every 62 days. The RN shall promptly notify the physician of any change in the recipient's condition that suggests a need to modify the plan of care.

(e) Drugs and treatment shall be administered by the RN or LPN only as ordered by the recipient's physician or his or her designee. The nurse shall immediately record and sign oral orders and shall obtain the physician's countersignature within 10 working days.

(f) Medically necessary actual time spent in direct care that requires the skills of a licensed nurse is a covered service.

(2) PRIOR AUTHORIZATION. (a) Prior authorization is required for all private duty nursing services.

(b) Private duty nursing for which prior authorization is requested is limited to 12 continuous hours in each 24 hour period and no more than 60 hours in a calendar week for the number of weeks care continues to be medically necessary, when provided by a single provider for all recipients combined who are receiving services from the provider. A prior authorization request for 2 consecutive 12-hour periods shall not be approved.

(c) A request for prior authorization of private duty nursing services performed by an LPN shall include the name and license number of the registered nurse or physician supervising the LPN.

(d) A request for prior authorization for care for a recipient who requires more than one private duty nurse to provide medically necessary care shall include the name and license number of the RN performing care coordination responsibilities.

(3) OTHER LIMITATIONS. (a) Discharge of a recipient from private duty nursing care shall be made in accordance with s. HSS 105.19(9).

(b) An RN supervising an LPN performing services under this section shall supervise the LPN as often as necessary under the requirements of s. N 6.03 during the period the LPN is providing services, and shall communicate the results of supervisory activities to the LPN. These activities shall be documented by the RN.

(c) Each private duty nurse shall document the nature and scope of the care and services provided to the recipient in the recipient's medical record.

(d) Services performed in two consecutive 12-hour periods under sub. (2)(b) are not reimbursable.

(e) Travel time, recordkeeping and RN supervision of an LPN are not separately reimbursable services.

(4) NON-COVERED SERVICES. The following services are not covered services:

(a) Any services not included in the physician's plan of care;

(b) Any services under s. HSS 107.11;

(c) Skilled nursing services performed by a recipient's spouse or parent if the recipient is under age 21;

(d) Services that were provided but not documented; and

(e) Any service that fails to meet the recipient's medical needs or places the recipient at risk for a negative treatment outcome.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Dated: January 12, 1993

By: _____
Gerald Whitburn
Secretary

SEAL:

Tommy G. Thompson
Governor

Gerald Whitburn
Secretary

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State of Wisconsin
Department of Health and Social Services

January 12, 1993

Mr. Bruce E. Munson
Revisor of Statutes
131 W. Wilson St.
Suite 800
Madison, WI 53703

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 101, 105, 106 and 107, administrative rules relating to in-home health care services under the Medical Assistance program.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

Sincerely,

Gerald Whitburn
Secretary

Enclosure