

Chapter HSS 105

PROVIDER CERTIFICATION

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Note: Chapter HSS 105 as it existed on February 28, 1986 was repealed and a new chapter HSS 105 was created effective March 1, 1986.

HSS 105.01 Introduction. (1) **PURPOSE.** This chapter identifies the terms and conditions under which providers of health care services are certified for participation in the medical assistance program (MA).

(2) **DEFINITIONS.** In this chapter:

(a) "Group billing provider" means an entity which provides or arranges for the provision of medical services by more than one certified provider.

(b) "Provider assistant" means a provider such as a physical therapist assistant whose services must be provided under the supervision of a certified or licensed professional provider, and who, while required to be certified, is not eligible for direct reimbursement from MA.

(3) **GENERAL CONDITIONS FOR PARTICIPATION.** In order to be certified by the department to provide specified services for a reasonable period of time as specified by the department, a provider shall:

(a) Affirm in writing that, with respect to each service for which certification is sought, the provider and each person employed by the provider for the purpose of providing the service holds all licenses or similar entitlements as specified in chs. HSS 101 to 108 and required by federal or state statute, regulation or rule for the provision of the service;

(b) Affirm in writing that neither the provider, nor any person in whom the provider has a controlling interest, nor any person having a controlling interest in the provider, has, since the inception of the medicare, medicaid, or title 20 services program, been convicted of a crime related to, or been terminated from, a federal-assisted or state-assisted medical program;

(c) Disclose in writing to the department all instances in which the provider, any person in whom the provider has a controlling interest, or any person having a controlling interest in the provider has been sanctioned by a federal-assisted or state-assisted medical program, since the inception of medicare, medicaid or the title 20 services program;

(d) Furnish the following information to the department, in writing:

1. The names and addresses of all vendors of drugs, medical supplies or transportation, or other providers in which it has a controlling interest or ownership;

2. The names and addresses of all persons who have a controlling interest in the provider; and

3. Whether any of the persons named in compliance with subd. 1 or 2, is related to another as spouse, parent, child or sibling;

(e) Execute a provider agreement with the department; and

(f) 1. Accept and consent to the use, based on a methodology determined by the investigating or auditing agency, of statistical sampling and extrapolation as the means to determine amounts owed by the provider to MA as the result of an investigation or audit conducted by the department, the department of justice medicaid fraud control unit, the federal department of health and human services, the federal bureau of investigation, or an authorized agent of any of these.

2. The sampling and extrapolation methodologies, if any, used in the investigation or audit shall be generally consistent, as applicable, with the guidelines on audit sampling issued by the statistical sampling subcommittee of the American institute of certified public accountants. Extrapolation, when performed, shall apply to the same period of time upon which the sampling is derived.

3. The department and the other investigative agencies shall retain the right to use alternative means to determine, consistent with applicable and generally accepted auditing practices, amounts owed as the result of an investigation or audit.

4. Nothing in this paragraph shall be construed to limit the right of a provider to appeal a department recovery action brought under s. HSS 108.02 (9).

(4) **PROVIDERS REQUIRED TO BE CERTIFIED.** The following types of providers are required to be certified by the department in order to participate in the MA program:

(a) Institutional providers;

(b) Non-institutional providers;

(c) Provider assistants;

(d) Group billing providers; and

(e) Providers performing professional services for hospital inpatients under s. HSS 107.08 (4) (d). Hospitals which provide the setting for the performance of professional services to its inpatients shall ensure that the providers of those services are appropriately certified under this chapter.

(5) **PERSONS NOT REQUIRED TO BE INDIVIDUALLY CERTIFIED.** The following persons are not required to be individually certified by the department in order to participate in the MA program:

(a) Technicians or support staff for a provider, including:

1. Dental hygienists;

2. Medical record librarians or technicians;

3. Hospital and nursing home administrators, clinic managers, and administrative and billing staff;

4. Nursing aides, assistants and orderlies;

5. Home health aides;

6. Dieticians;

7. Laboratory technologists;

8. X-ray technicians;

9. Patient activities coordinators;

10. Volunteers; and

11. All other persons whose cost of service is built into the charge submitted by the provider, including housekeeping and maintenance staff; and

(b) Except for providers required to be separately certified under sub. (4) (b) to (e), providers employed by or under contract to certified institutional providers, including but not limited to physicians, therapists, nurses and provider assistants. These providers shall meet certification standards applicable to their respective provider type.

(6) NOTIFICATION OF CERTIFICATION DECISION. Within 60 days after receipt by the department or its fiscal agent of a complete application for certification, including evidence of licensure or medicare certification, or both, if required, the department shall either approve the application and issue the certification or deny the application. If the application for certification is denied, the department shall give the applicant reasons, in writing, for the denial.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; r. (2) (b) and (c), (5) (a) 6., renum. (2) (d) and (5) (a) 7. to 12. to be (2) (b) and (5) (a) 6. to 11., Register, February, 1988, No. 386, eff. 3-1-88; am. (4) (c) and (d) and (5) (b), cr. (4) (e), Register, September, 1991, No. 429, eff. 10-1-91; emerg. am. (3) (d) 3. and (e), cr. (3) (f), eff. 7-1-92; am. (3) (d) 3. and (e), cr. (3) (f), Register, February, 1993, No. 446, eff. 3-1-93.

HSS 105.02 Requirements for maintaining certification. Providers shall comply with the requirements in this section in order to maintain MA certification.

(1) CHANGE IN PROVIDER STATUS. Providers shall report to the department in writing any change in licensure, certification, group affiliation, corporate name or ownership by the time of the effective date of the change. The department may require the provider to complete a new provider application and a new provider agreement when a change in status occurs. A provider shall immediately notify the department of any change of address but the department may not require the completion of a new provider application or a new provider agreement for a change of address.

(2) CHANGE IN OWNERSHIP. (a) *Non-nursing home provider.* In the event of a change in the ownership of a certified provider, except a nursing home, the provider agreement shall automatically terminate, except that the provider shall continue to maintain records required by subs. (4), (6) and (7) unless an alternative method of providing for maintenance of these records has been established in writing and approved by the department.

(b) *Nursing home provider.* In the event of a change in the ownership of a nursing home, the provider agreement shall automatically be assigned to the new owner.

(3) RESPONSE TO INQUIRIES. A provider shall respond as directed to inquiries by the department regarding the validity of information in the provider file maintained by the department or its fiscal agent.

(4) MAINTENANCE OF RECORDS. Providers shall prepare and maintain whatever records are necessary to fully disclose the nature and extent of services provided by the provider under the program. Records to be maintained are those enumerated in subs. (6) and (7). All records shall be retained by providers for a period of not less than 5 years from the date of payment by the department for the services rendered, unless otherwise

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stated in chs. HSS 101 to 108. In the event a provider's participation in the program is terminated for any reason, all MA-related records shall remain subject to the conditions enumerated in this subsection and sub. (2).

(5) **PARTICIPATION IN SURVEYS.** Nursing home and hospital providers shall participate in surveys conducted for research and MA policy purposes by the department or its designated contractors. Participation involves accurate completion of the survey questionnaire and return of the completed survey form to the department or to the designated contractor within the specified time period.

(6) **RECORDS TO BE MAINTAINED BY ALL PROVIDERS.** All providers shall maintain the following records:

(a) Contracts or agreements with persons or organizations for the furnishing of items or services, payment for which may be made in whole or in part, directly or indirectly, by MA;

(b) MA billings and records of services or supplies which are the subject of the billings, that are necessary to fully disclose the nature and extent of the services or supplies; and

(c) Any and all prescriptions necessary to disclose the nature and extent of services provided and billed under the program.

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(c) The department may grant an exemption based on but not limited to:

1. Availability of a swing-bed hospital operating within a 30 mile radius of the nursing home; or
2. Availability of an adequate number of medicare-certified beds in a facility within a 30 mile radius of the nursing home.

(d) A skilled nursing facility located within a county determined to have an inadequate number of medicare-certified beds and which has less than 100 beds may apply to the department for partial exemption from the requirements of this section. An SNF which applies for partial exemption shall recommend to the department the number of medicare-certified beds that the SNF should have to meet the requirements of this section based on the facility's analysis of the demand for medicare-certified beds in the community. The department shall review all recommendations and issue a determination to each SNF requesting a partial exemption.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; renum. (1), (2), (3) (a) and (b) to be (2), (3), (4) (a) and (b) and am. (2) and (4) (b), cr. (1), (4) (c) and (d), Register, February, 1988, No. 386, eff. 7-1-88.

HSS 105.10 Certification of SNFs and ICFs with deficiencies. If the department finds a facility deficient in meeting the standards specified in s. HSS 105.08, 105.09, 105.11 or 105.12, the department may nonetheless certify the facility for MA under the conditions specified in s. HSS 132.21 and 42 CFR 442, Subpart C.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

HSS 105.11 Certification of intermediate care facilities. For MA certification, intermediate care facilities shall be licensed pursuant to s. 50.03, Stats., and ch. HSS 132.

Note: For covered nursing home services, see s. HSS 107.09.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

HSS 105.12 Certification of ICFs for mentally retarded persons or persons with related conditions. For MA certification, institutions for mentally retarded persons or persons with related conditions shall be licensed pursuant to s. 50.03, Stats., and ch. HSS 134.

Note: For covered ICF/MR services, see HSS 107.09.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; correction made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1991, No. 432, eff. 1-1-92.

HSS 105.15 Certification of pharmacies. For MA certification, pharmacies shall meet the requirements for registration and practice under ch. 450, Stats, and chs. Phar 1 to 14.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. Register, December, 1991, No. 432, eff. 1-1-92.

HSS 105.16 Certification of home health agencies. For MA certification, a home health agency shall be certified to participate in medicare as a home health agency, be licensed pursuant to ch. HSS 133 and meet the requirements of this section as follows:

(1) **HOME HEALTH AGENCY SERVICES.** For MA certification, a home health agency shall provide part-time, intermittent skilled nursing ser-

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vices 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 the 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.

(3) **PHYSICAL THERAPISTS.** Physical therapists may be employed by the home health agency or by an agency under contract to the home health agency, or may be independent providers under the contract to the home health agency.

(4) **OCCUPATIONAL THERAPISTS.** Occupational therapists may be employed by the home health agency or by an agency under contract to the home health agency, or may be independent providers under contract to the home health agency.

(5) **SPEECH AND LANGUAGE PATHOLOGISTS.** Speech and language pathologists may be employed by the home health agency or by an agency under contract to the home health agency, or may be independent providers under contract to the home health agency.

(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 Register, February, 1993, No. 446

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 section, 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.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (intro.), (1) and (2), r. and recr. (3), cr. (4) and (5), Register, April, 1988, No. 388, eff. 7-1-88; emerg. r. and recr. (1) and (2), cr. (6), eff. 7-1-92; r. and recr. (1) and (2), cr. (6) to (10), Register, February, 1993, No. 446, eff. 3-1-93.

HSS 105.17 Certification of personal care providers. (1) REQUIREMENTS. For MA certification, a personal care provider shall be a home health agency licensed under s. 141.15, Stats., and ch. HSS 133, a county department established under s. 46.215, 46.22 or 46.23, Stats., a county department established under s. 51.42 or 51.437, Stats., which has the lead responsibility in the county for administering the community options program under s. 46.27, Stats., or an independent living center as defined in s. 46.96 (1) (a), Stats. A certified provider shall:

(a) Possess the capacity to enter into a legally binding contract;

(b) Present a proposal to the department to provide personal care services that:

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1. Documents cost-effective provision of services;
2. Documents a quality assurance mechanism and quality assurance activities;
3. Demonstrates that employes possess knowledge of and training and experience with special needs, including independent living needs, of the recipient group or groups receiving services;
 - (c) Document adequate resources to maintain a cash flow sufficient to cover operating expenses for 60 days;
 - (d) Document a financial accounting system that complies with generally accepted accounting principles;
 - (e) Maintain the records identified in sub. (4);
 - (f) Document a system of personnel management if more than one personal care worker is employed;
 - (g) Maintain the following records for each recipient:
 1. The nursing assessment, physician prescription, plan of care, personal care worker's assignment and record of all assignments, and record of registered nurse supervisory visits;
 2. The record of all visits by the personal care worker, including observations and assigned activities completed and not completed; and
 3. A copy of written agreements between the personal care provider and RN supervisor, if applicable;
 - (h) Employ or contract with personal care workers to provide personal care services;
 - (i) Employ trained workers as described under sub. (3), or train or arrange and pay for training of employed or subcontracted personal care workers as necessary;
 - (j) Employ or contract with at least one registered nurse;
 - (k) Supervise the provision of personal care services;
 - (l) Ensure that qualifications and requirements of the registered nurse supervisor and personal care worker under subs. (2) and (3) are met or are being met;
 - (m) Bill the medical assistance program for personal care services, for registered nurse supervisory visits and for disposable medical supplies;
 - (n) Give full consideration to a recipient's preferences for service arrangements and choice of personal care workers;
 - (o) Document a grievance mechanism to resolve recipients' complaints about personal care services, including a personal care provider's decision not to hire a recipient's choice of a personal care worker;
 - (p) Perform all functions and provide all services specified in a written personal care provider contract between the personal care provider and personal care workers under contract, and maintain a copy of that contract on file. Document performance of personal care workers under con-

tract by maintaining time sheets of personal care workers which will document the types and duration of services provided, by funding source;

(q) Provide a written plan of operation describing the entire process from referral through delivery of services and follow-up;

(r) Provide the personal care worker with the basic materials and equipment needed to deliver personal care services;

(s) Cooperate with other health and social service agencies in the area and with interested community referral groups to avoid duplication of services and to provide coordination of personal care services to recipients; and

(t) Evaluate each personal care worker's work performance on a periodic basis.

(2) **QUALIFICATIONS AND DUTIES OF THE REGISTERED NURSE SUPERVISOR.** (a) *Qualifications.* An RN supervisor under contract with or employed by a personal care provider shall have the following qualifications:

1. Be licensed in Wisconsin pursuant to s. 441.06, Stats.;

2. Be a public health nurse or be currently or previously employed by a home health agency, an independent living center or a hospital rehabilitation unit; and

3. Provide documentation of experience in providing personal care services in the home.

(b) *Duties.* The RN supervisor shall perform the following duties:

1. Evaluate the need for service and make referrals to other services as appropriate;

2. Secure written orders from the recipient's physician. These orders are to be renewed once every 3 months unless the physician specifies that orders covering a period of time up to one year are appropriate, or when the recipient's needs change, whichever occurs first;

3. Develop a plan of care for the recipient, giving full consideration to the recipient's preferences for service arrangements and choice of personal care workers, interpret the plan to the personal care worker, include a copy of the plan in the recipient's health record, and review the plan at least every 60 days and update it as necessary;

4. Develop appropriate time and service reporting mechanisms for personal care workers and instruct the workers on their use;

5. Give the worker written instructions about the services to be performed and demonstrate to the worker how to perform the services; and

6. Evaluate the competency of the worker to perform the services.

(3) **QUALIFICATIONS AND DUTIES OF PERSONAL CARE WORKERS.** (a) *Qualifications.* Personal care workers shall have the following qualifications:

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, February, 1993, No. 446

rience. Training shall emphasize techniques for and aspects of caring for the population served by the provider;

2. Provide documentation of required training to the personal care provider for the provider's records;

3. Be a person who is not a legally responsible relative of the recipient under s. 49.90 (1), Stats.; and

4. Be a person who has not been convicted of a crime which directly relates to the occupation of providing personal care or other health care services.

(b) *Duties.* Personal care workers shall perform the following duties:

1. Perform tasks assigned by the RN supervisor;

2. Report in writing to the RN supervisor on each assignment;

3. Report any changes in the recipient's condition to the RN supervisor; and

4. Confer as required with the RN supervisor regarding the recipient's progress.

(4) **ANNUAL REVIEW OF PERSONAL CARE PROVIDERS.** The department's bureau of quality compliance shall conduct an annual on-site review of each personal care provider. Records to be reviewed include:

(a) Written personnel policies;

(b) Written job descriptions;

(c) A written plan of operations indicating the entire process from making referrals through delivery of services and follow-up;

(d) A written statement defining the scope of personal care services provided, including the population being served, service needs and service priorities;

(e) A written record of personal care workers' 40 hours of training;

(f) Workers' time sheets;

(g) Health care records of recipients;

(h) Contracts with workers and other agencies; and

(i) Records of supervisory visits.

History: Cr. Register, April, 1988, No. 388, eff. 7-1-88; emerg. am. (1) (intro.), eff. 7-1-88; am. (1) (intro.), Register, December, 1988, No. 396, eff. 1-1-89; am. (3) (a) 1., Register, February, 1993, No. 446, eff. 3-1-93.

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 s. 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

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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 ss. 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. N 6.03 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 all 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 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.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; r. and recr. Register, January, 1991, No. 421, eff. 2-1-91; emerg. r. and recr., eff. 7-1-92; r. and recr. Register, February, 1993, No. 446, eff., 3-1-93.

HSS 105.20 Certification of nurse practitioners. (1) **QUALIFICATIONS.** For MA certification, a nurse practitioner shall be licensed as a registered nurse pursuant to s. 441.06, Stats., and fulfill one of the following requirements:

(a) If practicing as a pediatric nurse practitioner, be currently certified by the American nurses' association or by the national board of pediatric nurse practitioners and associates;

(b) If practicing as any family nurse practitioner, be currently certified by the American nurses' association; or

(c) If practicing as any other primary care nurse practitioner or as a clinical nurse specialist, be currently certified by the American nurses'

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association, the national certification board of pediatric nurse practitioners and associates, or the nurses' association of the American college of obstetricians and gynecologists' certification corporation, or have a master's degree in nursing from a school accredited by a program designed to prepare a registered nurse for advanced clinical nurse practice.

(2) **PROTOCOLS.** A written protocol covering a service or delegated medical act that may be provided and procedures that are to be followed for provision of services by nurse practitioners shall be developed and maintained by the nurse practitioner and the delegating licensed physician according to the requirements of s. N 6.03 (2) and the guidelines set forth by the board of nursing. This protocol shall include, but is not limited to, explicit agreements regarding those delegated medical acts which the nurse practitioner or clinical nurse specialist is delegated by the physician to provide. A protocol shall also include arrangements for communication of the physician's directions, consultation with the physician, assistance with medical emergencies, patient referrals and other provisions relating to medical procedures and treatment.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; r. and recr. Register, January, 1991, No. 421, eff. 2-1-91.

HSS 105.201 Certification of nurse-midwives. For MA certification, a nurse midwife shall be certified as a registered nurse under s. HSS 105.19 (1) and shall be certified as a nurse midwife under ch. N 4.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91.

HSS 105.21 Certification of hospital IMDS. (1) REQUIREMENTS. For MA certification, a hospital which is an institution for mental disease (IMD) shall:

(a) Meet the requirements of s. HSS 105.07, and;

1. Maintain clinical records on all patients, including records sufficient to permit determination of the degree and intensity of treatment furnished to MA recipients, as specified in 42 CFR 482.61; and

2. Maintain adequate numbers of qualified professional and supportive staff to evaluate patients, formulate written, individualized comprehensive treatment plans, provide active treatment measures and engage in discharge planning, as specified in 42 CFR 482.62;

(b) Have a utilization review plan that meets the requirements of 42 CFR 405.1035, 405.1037 and 405.1038;

(c) If participating in the PRO review program, meet the requirements of that program and any other requirements established under the state contract with the PROs;

(d) If providing outpatient psychotherapy, comply with s. HSS 105.22;

(e) If providing outpatient alcohol and other drug abuse services, comply with s. HSS 105.23; and

(f) If providing day treatment services, comply with s. HSS 105.24.

(2) **WAIVERS AND VARIANCES.** The department shall consider applications for waivers or variances of the requirements in sub. (1) if the requirements and procedures stated in s. HSS 106.11 are followed.

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Note: For covered mental health services, see s. HSS 107.13.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; correction in (1) (a) made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1990, No. 414.

HSS 105.22 Certification of psychotherapy providers. (1) TYPES OF PSYCHOTHERAPY PROVIDERS. For MA certification, a psychotherapy provider shall be one of the following:

(a) A physician meeting the requirements of s. HSS 105.05 (1) who has completed a residency in psychiatry. Proof of residency shall be provided to the department. Proof of residency shall either be board-certification from the American board of psychiatry and neurology or a letter from the hospital in which the residency was completed;

(b) A psychologist licensed under ch. 455, Stats., who is listed or eligible to be listed in the national register of health service providers in psychology;

(c) A board-operated outpatient facility or hospital outpatient mental health facility certified under ss. HSS 61.91 to 61.98; or

(d) Another outpatient facility certified under ss. HSS 61.91 to 61.98.

(2) **STAFFING OF OUTPATIENT FACILITIES.** (a) To provide psychotherapy reimbursable by MA, personnel employed by an outpatient facility deemed a provider under sub. (1) (d) shall be individually certified and shall work under the supervision of a physician or psychologist who meets the requirements of sub. (1) (a) or (b). Persons employed by a board-operated or hospital outpatient mental health facility need not be individually certified as providers but may provide psychotherapy services upon the department's issuance of certification to the facility by which they are employed. In this case, the facility shall maintain a list of the names of persons employed by the facility who are performing psychotherapy services for which reimbursement may be claimed under MA. This listing shall document the credentials possessed by the named persons which would qualify them for certification under the standards specified in this subsection and shall include the dates that the named persons began employment.

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