

North Carolina Medicaid Special Bulletin

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Division of Medical Assistance

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July 2016

**Attention:
Personal Care Service (PCS) Providers**

State Plan Personal Care Services

(PCS) Program Updates

Effective July 1, 2016

Providers are responsible for informing their billing agency of information in this bulletin.
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Personal Care Services (PCS) Clinical Coverage Policy 3L

Clinical Coverage Policy 3L, *Personal Care Services*, has been amended with the **effective date of July 1, 2016**. The amended policy includes an additional program requirement, as well as a change in the Personal Care Services (PCS) eligibility criteria, regarding the eating activity of Daily Living (ADL) agreed upon in the settlement of federal class action lawsuit *Pettigrew v. Brajer*. The amendments also will provide clarification to other policy areas. A draft version of the PCS amended policy was available for public comment May 3, 2016 – June 7, 2016, on the DMA [Proposed Medicaid and Health Choice Policies web page](#).

The PCS program provided regional trainings during the month of May 2016 across the state. The trainings informed providers of upcoming changes to the PCS program.

Questions regarding the PCS policy may be directed to DMA Clinical Policy PCS Section at 919-855-4360 or sent by email to PCS_program_questions@dhhs.nc.gov

Program Updates Related to *Pettigrew v. Brajer*

In addition to the PCS regional trainings in May 2016, DMA conducted a webinar on Jan. 6, 2016, to provide stakeholders with program updates implemented July 1, 2016, as a result of the settlement of the *Pettigrew v. Brajer (Pashby v. Wos)* class action lawsuit originally filed in 2011.

On Friday April 1, 2016, a Fairness Hearing was held where the judge approved the settlement agreement between DMA and plaintiffs. To view the webinar and review all actions identified in the settlement, visit the [Liberty Healthcare of North Carolina website](#).

PCS Eligibility Criteria

The settlement requires DMA to assure that the PCS eligibility criteria used to authorize, reauthorize, or determine the number of PCS hours for Medicaid beneficiaries is the same regardless of residential setting. DMA will assure that the need for assistance with the eating ADL is assessed in a comparable manner. Each PCS applicant or beneficiary will be assessed for each ADL task and Instrumental Activities of Daily Living (IADL) task, if applicable, that comprise the eating ADL.

Prior to July 1, 2016, beneficiaries residing in Adult Care Homes were scored as having an unmet need for clean-up and meal preparation tasks within the eating ADL. In Adult Care Homes clean-up and basic meal preparation tasks are covered services paid for by State/County Special Assistance. **Effective July 1, 2016**, clean-up and basic meal preparation services that duplicate State/County Special Assistance (*Section M –Eating and Meal Preparation tasks 6-9* on the PCS independent assessment tool) will be scored as needs met.

Current PCS Beneficiaries will not be assessed under the amended policy until their next scheduled reassessment.

Questions relating to the PCS eligibility criteria may be addressed to DMA at 919-855-4360 or by email to PCS_Program_Questions@dhhs.nc.gov.

Reconsideration Request for Initial Authorization for PCS

Effective July 1, 2016, the PCS clinical coverage policy was amended to include the Reconsideration Request for **initial** authorization for PCS. The Reconsideration process will allow beneficiaries over 21 years of age who were approved for less than 80 hours on their initial assessment to be reconsidered for additional hours if they do not agree with the initial level of service determined.

Beneficiaries seeking reconsideration must wait 30 calendar days from the date of their approval notice to submit the Reconsideration Form and required supporting documentation to Liberty Healthcare of North Carolina. **Reconsideration Requests must be received no earlier than 31 calendar days and no later than 60 calendar days from the date of the initial approval notification.**

Requests submitted for hours in excess of the initial approval cannot be based on a Change of Status of the beneficiary's medical condition or a change in their caregiver availability or environmental condition that affects that beneficiary's ability to self-perform.

For more information on the Reconsideration Request process, visit the [DMA PCS Reconsideration web page](https://dma.ncdhhs.gov/reconsideration-request-initial-authorization-pcs) <https://dma.ncdhhs.gov/reconsideration-request-initial-authorization-pcs> and the [Liberty Healthcare website](#) for access to the Request for Reconsideration of PCS Authorization form (DMA 3114) and instructions on how to submit the request.

Reinstatement and Reassessment of Qualifying Individuals

Upon full implementation of actions identified in the *Pettigrew v. Brajer* settlement, DMA will identify, reinstate at the same number of hours prior to termination, and reassess agreed upon individuals for whom PCS was denied or terminated under Clinical Policy 3L **prior to the policy amendment effective July 1, 2016**. Exceptions are if the individual currently is ineligible for Medicaid, or is receiving nursing home or home and community-based waiver services.

DMA will reinstate or reassess all persons:

- 1) Who DMA determined to be ineligible for PCS for whom no third person was present during the PCS assessment or reassessment **if** there is any indication that the beneficiary had a cognitive impairment or a mental health diagnosis; **and**,
- 2) Were denied or terminated from PCS because of the receipt of hospice services.

Beneficiaries who are eligible for reinstatement or reassessment will be notified by Liberty Healthcare of North Carolina via mail with instructions on how to begin the process.

- Beneficiaries who were **previously terminated** from PCS will be reinstated at the hours prior to termination, but will receive a reassessment within six months under the PCS clinical coverage policy effective July 1, 2016.
- Beneficiaries who were **previously denied** PCS will be reassessed under the PCS clinical coverage policy July 1, 2016.

Questions regarding the *Pettigrew v. Brajer* Settlement Agreement, the PCS clinical coverage policy, or provider regional trainings may be directed to:

- DMA PCS unit by email at PCS_Program_Questions@dhhs.nc.gov.
- DMA PCS unit by phone at 919-855-4360
- Liberty Healthcare of North Carolina by email at nc-IAsupport@libertyhealth.com
- Liberty Healthcare of North Carolina by phone at 1-855-740-1400

Beneficiaries Right to Due Process

Medicaid beneficiaries have the legal right to due process because Medicaid is an entitlement program. Beneficiaries who have received a denial, reduction, termination, or suspension of services must receive written notice of the adverse decision and have the opportunity for a fair hearing.

If the Medicaid beneficiary decides to appeal Medicaid's decision to deny, terminate, reduce, or suspend the services requested by the provider, the beneficiary or their personal representative must sign and date the appeal request form and send it to the Office of Administrative Hearings (OAH) by mail or facsimile (fax) within 30 days of the date the notice was mailed. The mailing address, telephone, and fax numbers for OAH are located on the appeal request form.

Providers may **not** file appeals on the behalf of the beneficiary unless they list the provider as the representative on the appeal request form.

The OAH may be contacted to validate that the appeal request has been received and the date it was received. It is not necessary to file duplicate appeal requests for the same service, same amount and frequency of service, same time period or same date of decision.

Providing Services during the Appeal Process for a Continuing Service Request That is Reduced, Terminated, or Suspended

Services may be provided during the pendency of the appeal under maintenance of service (MOS) when the request is for a continuing service. MOS will be provided as described below as long as the beneficiary remains Medicaid eligible, unless they give up this right.

- If the beneficiary appeals within **10 days of the date the notice was mailed**, payment authorization for services will continue without a break in service. Authorization for payment must be at the level required to be authorized on the day immediately preceding the adverse determination or the level requested by the provider, whichever is less.

- If the beneficiary appeals **more than 10 calendar days but within 30 calendar days** of the date the notice is mailed, authorization for payment must be reinstated, retroactive to the date the completed appeal request form is received by the OAH. Authorization for payment must be at the level required to be authorized on the day immediately preceding the adverse determination or the level requested by the provider, whichever is less.

- MOS will **not** be authorized if:
 - the beneficiary appeals more than 30 days after the date the notice was mailed, regardless of whether OAH accepts the appeal, or,
 - the beneficiary's provider submitted a **continuing** request for service after the current authorization for services expired. Medicaid will treat this request as an initial rather than a reauthorization or continuing request.

NOTE: MOS ends upon the issuance resolution of the appeal at OAH.

Additional details regarding the Medicaid beneficiary's right to Due Process may be found in the 2011 Special Medicaid Bulletin at <https://ncdma.s3.amazonaws.com/s3fs-public/documents/files/DueProcessRights050311.pdf>

Living Arrangement Codes for PCS Beneficiaries

DMA has been informed that Living Arrangement Codes for beneficiaries residing in a primary private residence and those in adult care home settings may not be updating in the NCTracks system properly. Living Arrangement code **50-SNF**, which is the code for residents who reside in skilled nursing facilities, is showing under eligibility detail for beneficiaries who may or may not have lived in the skilled nursing setting. DMA is researching this issue.

Living arrangement codes that are not adequate for receipt of PCS will result in the delay of processing PCS assessments and reassessments. Providers and beneficiaries who are expecting assessments and have not been contacted by Liberty to schedule should call Liberty Healthcare of North Carolina at 1-855-740-1400 or 919-322-5944.

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