

## Revisions to 505.14 effective December 23, 2015

### I. Scope of the Personal Care Services Benefit

#### A. Slightly revised definition of Personal Care Services

*Personal care services* means assistance with nutritional and environmental support functions and personal care functions, as specified in 18 NYCRR §§ 505.14(a)(5)(i)(a) and 505.14(a)(5)(ii)(a). Such services must be essential to the maintenance of the patient's health and safety in his or her own home, as determined by the social services district in accordance with Section 505.14; ordered by the attending physician; based on an assessment of the patient's needs and of the appropriateness and cost-effectiveness of services specified in 18 NYCRR § 505.14(b)(3)(iv); provided by a qualified person in accordance with a plan of care; and supervised by a registered professional nurse.  
[18 NYCRR § 505.14(a)(1)]

#### B. Repeal of "some assistance" and "total assistance" definitions

#### C. Addition of "turning and positioning" as a Level II personal care function [18 NYCRR § 505.14(a)(5)(ii)(a)(7)]

#### D. New definition of "Continuous Personal Care Services" ("Split-Shift Care")

*Continuous personal care services* means the provision of uninterrupted care, by more than one personal care aide, for more than 16 hours in a calendar day for a patient who, because of the patient's medical condition, needs assistance during such calendar day with toileting, walking, transferring, turning and positioning, or feeding and needs assistance with such frequency that a live-in 24 hour personal care aide would be unlikely to obtain, on a regular basis, five hours daily of uninterrupted sleep during the aide's eight hour period of sleep.  
[18 NYCRR § 505.14(a)(2)]

#### E. New definition of "Live-in 24-Hour Personal Care Services"

*Live-in 24-hour personal care services* means the provision of care by one personal care aide for a patient who, because of the patient's medical condition, needs assistance during a calendar day with toileting, walking, transferring, turning and positioning, or feeding and whose need for assistance is sufficiently infrequent that a live-in 24-hour personal care aide would be likely to obtain, on a regular basis, five hours daily of uninterrupted sleep during the aide's eight hour period of sleep.  
[18 NYCRR § 505.14(a)(4)]

F. Personal care services, including continuous personal care services and live-in 24-hour personal care services, shall not be authorized to the extent that the patient's need for assistance can be met by the following:

(1) voluntary assistance available from informal caregivers including, but not limited to, the patient's family, friends, or other responsible adult;

(2) formal services provided or funded by an entity, agency or program other than the medical assistance program; or

(3) adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers, and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.  
[18 NYCRR § 505.14(a)(3)(iii)]

G. The social services district must first determine whether the patient, because of the patient's medical condition, would be otherwise eligible for personal care services, including continuous personal care services or live-in 24-hour personal care services. For patients who would be otherwise eligible for personal care services, the district must then determine whether, and the extent to which, the patient's need for assistance can be met by voluntary assistance from informal caregivers, by formal services, or by adaptive or specialized equipment or supplies.

[18 NYCRR § 505.14(a)(3)(iii)]

H. Live-in 24-Hour Cases that Lack Sleeping Accommodations for a Live-in Aide

When the patient's home has no sleeping accommodations for a personal care aide, continuous personal care services must be authorized for the patient; however, should the patient's circumstances change and sleeping accommodations for a personal care aide become available in the patient's home, the district must promptly review the case. If a reduction of the patient's continuous personal care services to live-in 24-hour personal care services is appropriate, the district must send the patient a timely and adequate notice of the proposed reduction.

[18 NYCRR § 505.14(b)(4)(i)(c)(1)]

II. New Nursing Assessment Requirements in Continuous Personal Care Services and Live-in 24 Hour Personal Care Services Cases

The nursing assessment in continuous (split-shift) and live-in cases shall document the following:

- (i) whether the physician's order has documented a medical condition that causes the patient to need frequent assistance during a calendar day with toileting, walking, transferring, turning and positioning, or feeding;
- (ii) the specific personal care functions with which the patient needs frequent assistance during a calendar day;
- (iii) the frequency at which the patient needs assistance with these personal care functions during a calendar day;
- (iv) whether the patient needs similar assistance with these personal care functions during the patient's waking and sleeping hours and, if not, why not; and
- (v) whether, were live-in 24-hour personal care services to be authorized, the personal care aide would be likely to obtain, on a regular basis, five hours daily of uninterrupted sleep during the aide's eight hour period of sleep.  
[18 NYCRR §§ 505.14(a)(5)(ii)(b), 505.14(b)(4)(i)(c)(2)]

III. New Social Assessment Requirement in Live-in 24-Hour Personal Care Cases

In cases involving live-in 24-hour personal care services, the social assessment shall also evaluate whether the patient's home has sleeping accommodations for a personal care aide. When the patient's home has no sleeping accommodations for a personal care aide, continuous personal care services must be authorized for the patient; however, should the patient's circumstances change and sleeping accommodations for a personal care aide become available in the patient's home, the district must promptly review the case. If a reduction of the patient's continuous personal care services to live-in 24-hour personal care services is appropriate, the district must send the patient a timely and adequate notice of the proposed reduction.  
[18 NYCRR § 505.14(b)(4)(i)(c)(1)]

IV. Slight Revision to Language Barring Task-Based Assessments in Continuous and Live-In Cases

The social services district may not authorize or reauthorize personal care services based upon a task-based assessment when the applicant or recipient of personal care services has been determined by the social services district or the State to be in need of 24-hour personal care, including continuous personal care services, live-in 24-hour personal care services or the equivalent provided by formal services or informal caregivers.  
[18 NYCRR § 505.14(b)(5)(v)(d)]

V. Slightly Revised Notice Requirements For Denials of Personal Care Services

Appropriate reasons and notice language to be used when denying personal care services include but are not limited to the following:

- (i) the client's health and safety cannot be assured with the provision of personal care services. The notice must identify the reason or reasons that the client's health and safety cannot be assured with the provision of personal care services;
  - (ii) the client's medical condition is not stable. The notice must identify the client's medical condition that is not stable;
  - (iii) the client is not self-directing and has no one to assume those responsibilities;
  - (iv) the services the client needs exceed the personal care aide's scope of practice. The notice must identify the service or services that the client needs that exceeds the personal care aide's scope of practice;
  - (v) the client refused to cooperate in the required assessment;
  - (vi) a technological development, which the notice must identify, renders certain services unnecessary or less time-consuming;
  - (vii) the client resides in a facility or participates in another program or receives other services, which the notice must identify, which are responsible for the provision of needed personal care services; and
  - (viii) the client can be more appropriately and cost-effectively served through other Medicaid programs or services, which the notice must identify.
- [18 NYCRR § 505.14(b)(5)(v)(c)(1)]

VI. Slightly Revised Notice Requirements For Reductions/Discontinuations of Personal Care Services

Appropriate reasons and notice language to be used when reducing or discontinuing personal care services include but are not limited to the following:

- (i) the client's medical or mental condition or economic or social circumstances have changed and the district determines that the personal care services provided under the last authorization or reauthorization are no longer appropriate or can be provided in fewer hours. For proposed discontinuances, this includes but is not limited to cases in which: the client's health and safety can no longer be assured with the provision of personal care services; the client's medical condition is no longer stable; the client is no longer self-directing and has no one to assume those responsibilities; or the services the client needs exceed the personal care aide's

scope of practice. The notice must identify the specific change in the client's medical or mental condition or economic or social circumstances from the last authorization or reauthorization and state why the services should be reduced or discontinued as a result of the change;

(ii) a mistake occurred in the previous personal care services authorization or reauthorization. The notice must identify the specific mistake that occurred in the previous authorization or reauthorization and state why the prior services are not needed as a result of the mistake;

(iii) the client refused to cooperate in the required reassessment;

(iv) a technological development, which the notice must identify, renders certain services unnecessary or less time-consuming;

(v) the client resides in a facility or participates in another program or receives other services, which the notice must identify, which are responsible for the provision of needed personal care services; and

(vi) the client can be more appropriately and cost-effectively served through other Medicaid programs and services, which the notice must identify.

[18 NYCRR § 505.14(b)(5)(v)(c)(2)]