

9505.0335 PERSONAL CARE SERVICES.

Subpart 1. **Definitions.** For purposes of this part, the following terms have the meanings given them.

A. "Capable of directing his or her own care" refers to a recipient's functional impairment status as determined by the recipient's ability to communicate:

- (1) orientation to person, place, and time;
- (2) an understanding of the recipient's plan of care, including medications and medication schedule;
- (3) needs; and
- (4) an understanding of safety issues, including how to access emergency assistance.

B. "Independent living" or "live independently" refers to the situation of a recipient living in his or her own residence and having the opportunity to control basic decisions about the person's own life to the fullest extent possible. For purposes of this definition and this part, "residence" does not include a long-term care facility or an inpatient hospital.

C. "Personal care assistant" means a person who meets, through training or experience, one of the training requirements in subpart 3, is an employee of or is under contract to a personal care provider, and provides a personal care service.

D. "Personal care provider" means an agency that has a contract with the department to provide personal care services.

E. "Personal care service" means a health service as listed in subparts 8 and 9 ordered by a physician and provided by a personal care assistant to a recipient to maintain the recipient in his or her residence. The two types of personal care service are private personal care service and shared personal care service.

F. "Plan of personal care services" means a written plan of care specific to personal care services.

G. "Private personal care service" means personal care service that is not a shared personal care service.

H. "Qualified recipient" means a recipient who needs personal care services to live independently in the community, is in a stable medical condition, and does not have acute care needs that require inpatient hospitalization or cannot be met in the recipient's residence by a nursing service as defined by Minnesota Statutes, section 148.171, subdivision 15.

I. "Responsible party" means an individual residing with a qualified recipient who is capable of providing the support care necessary to assist a qualified recipient to live independently, is at least 18 years old, and is not a personal care assistant.

J. "Shared personal care service" means personal care services provided by a personal care assistant to more than one qualified recipient residing in the same residential complex. The services of the assistant are shared by the qualified recipients and are provided on a 24 hour basis.

Subp. 2. **Covered services.** To be eligible for medical assistance payment, a personal care service that begins or is increased on or after January 1, 1988, must be given to a recipient who meets the criteria in items A to D. The service must be under the supervision of a registered nurse as in subpart 4, according to a plan of personal care services. The criteria are as follows.

A. The recipient meets the criteria specified in part 9505.0295, subpart 3.

B. The recipient is a qualified recipient.

C. The recipient is capable of directing his or her own care, or a responsible party lives in the residence of the qualified recipient.

D. The recipient has a plan of personal care services developed by the supervising registered nurse together with the recipient that specifies the personal care services required.

Subp. 3. **Training requirements.** A personal care assistant must show successful completion of a training requirement in items A to E:

A. a nursing assistant training program or its equivalent for which competency as a nursing assistant is determined according to a test administered by the State Board of Technical Colleges;

B. a homemaker home health aide preservice training program using a curriculum recommended by the Minnesota Department of Health;

C. an accredited educational program for registered nurses or licensed practical nurses;

D. a training program that provides the assistant with skills required to perform personal care assistant services specified in subpart 8, items A to N; or

E. determination by the personal care provider that the assistant has, through training or experience, the skills required to perform the personal care services specified in subpart 8, items A to N.

Subp. 4. **Supervision of personal care services.** A personal care service to a qualified recipient must be under the supervision of a registered nurse who shall have the duties described in items A to I.

A. Ensure that the personal care assistant is capable of providing the required personal care services through direct observation of the assistant's work or through consultation with the qualified recipient.

B. Ensure that the personal care assistant is knowledgeable about the plan of personal care services before the personal care assistant performs personal care services.

C. Ensure that the personal care assistant is knowledgeable about essential observations of the recipient's health, and about any conditions that should be immediately brought to the attention of either the nurse or the attending physician.

D. Evaluate the personal care services of a recipient through direct observation of the personal care assistant's work or through consultation with the qualified recipient. Evaluation shall be made:

(1) within 14 days after the placement of a personal care assistant with the qualified recipient;

(2) at least once every 30 days during the first 90 days after the qualified recipient first receives personal care services according to the plan of personal care service; and

(3) at least once every 120 days following the period of evaluations in subitem (2). The nurse shall record in writing the results of the evaluation and actions taken to correct any deficiencies in the work of the personal care assistant.

E. Review, together with the recipient, and revise, as necessary, the plan of personal care services at least once every 120 days after a plan of personal care services is developed.

F. Ensure that the personal care assistant and recipient are knowledgeable about a change in the plan of personal care services.

G. Ensure that records are kept, showing the services provided to the recipient by the personal care assistant and the time spent providing the services.

H. Determine that a qualified recipient is capable of directing his or her own care or resides with a responsible party.

I. Determine with a physician that a recipient is a qualified recipient.

Subp. 5. **Personal care provider; eligibility.** The department may contract with an agency to provide personal care services to qualified recipients. To be eligible to contract

with the department as a personal care provider, an agency must meet the criteria in items A to L:

- A. possess the capacity to enter into a legally binding contract;
- B. possess demonstrated ability to fulfill the responsibilities in this subpart and subpart 6;
- C. demonstrate the cost-effectiveness of its proposal for the provision of personal care services;
- D. comply with part 9505.0210;
- E. demonstrate a knowledge of, sensitivity to, and experience with the special needs, including communication needs and independent living needs, of the condition of the recipient;
- F. ensure that personal care services are provided in a manner consistent with the recipient's ability to live independently;
- G. provide a quality assurance mechanism;
- H. demonstrate the financial ability to produce a cash flow sufficient to cover operating expenses for 30 days;
- I. disclose fully the names of persons with an ownership or control interest of five percent or more in the contracting agency;
- J. demonstrate an accounting or financial system that complies with generally accepted accounting principles;
- K. demonstrate a system of personnel management; and
- L. if offering personal care services to a ventilator dependent recipient, demonstrate the ability to train and to supervise the personal care assistant and the recipient in ventilator operation and maintenance.

Subp. 6. **Personal care provider responsibilities.** The personal care provider shall:

- A. employ or contract with services staff to provide personal care services and to train services staff as necessary;
- B. supervise the personal care services as in subpart 4;
- C. employ or contract with a personal care assistant that a qualified recipient brings to the personal care provider as the recipient's choice of assistant and who meets the employment qualifications of the provider. However, a personal care provider who must comply with the requirements of a governmental personnel administration system is exempt from this item;

D. bill the medical assistance program for a personal care service by the personal care assistant and a visit by the registered nurse supervising the personal care assistant;

E. establish a grievance mechanism to resolve consumer complaints about personal care services, including the personal care provider's decision whether to employ or subcontract the qualified recipient's choice of a personal care assistant;

F. keep records as required in parts 9505.2160 to 9505.2195;

G. perform functions and provide services specified in the personal care provider's contract under subpart 5;

H. comply with applicable rules and statutes; and

I. perform other functions as necessary to carry out the responsibilities in items A to H.

Subp. 7. **Personal care provider; employment prohibition.** A personal care provider shall not employ or subcontract with a person to provide personal care service for a qualified recipient if the person:

A. refuses to provide full disclosure of criminal history records as specified in subpart 12;

B. has been convicted of a crime that directly relates to the occupation of providing personal care services to a qualified recipient;

C. has jeopardized the health or welfare of a vulnerable adult through physical abuse, sexual abuse, or neglect as defined in Minnesota Statutes, section 626.557; or

D. is misusing or is dependent on mood altering chemicals including alcohol to the extent that the personal care provider knows or has reason to believe that the use of chemicals has a negative effect on the person's ability to provide personal care services or the use of chemicals is apparent during the hours the person is providing personal care services.

Subp. 8. **Payment limitation; general.** Except as in subpart 9, personal care services eligible for medical assistance payment are limited to items A to N:

A. bowel and bladder care;

B. skin care, including prophylactic routine and palliative measures documented in the plan of care that are done to maintain the health of the skin. Examples are exposure to air, use of nondurable medical equipment, application of lotions, powders, ointments, and treatments such as heat lamp and foot soaks;

C. range of motion exercises;

D. respiratory assistance;

- E. transfers;
- F. bathing, grooming, and hairwashing necessary for personal hygiene;
- G. turning and positioning;
- H. assistance with furnishing medication that is ordinarily self administered;
- I. application and maintenance of prosthetics and orthotics;
- J. cleaning equipment;
- K. dressing or undressing;
- L. assistance with food, nutrition, and diet activities;
- M. accompanying a recipient to obtain medical diagnosis or treatment and to attend other activities such as church and school if the personal care assistant is needed to provide personal care services while the recipient is absent from his or her residence; and
- N. performing other services essential to the effective performance of the duties in items A to M.

Subp. 9. **Shared personal care services.** The shared personal care services in items A to D are eligible for medical assistance payment:

- A. personal care services in subpart 8;
- B. services provided for the recipient's personal health and safety;
- C. monitoring and control of a recipient's personal funds as required in the plan of care; and
- D. helping the recipient to complete daily living skills such as personal and oral hygiene and medication schedules.

Subp. 10. **Excluded services.** The services in items A to G are not covered under medical assistance as personal care services:

- A. a health service provided by and billed by a provider who is not a personal care provider;
- B. a homemaking and social service except as provided in subpart 8, item N, or subpart 9;
- C. personal care service that is not in the plan of personal care services;
- D. personal care service that is not supervised by a registered nurse;
- E. personal care service that is provided by a person who is the recipient's legal guardian or related to the recipient as spouse, parent, or child whether by blood, marriage, or adoption;

- F. sterile procedures except for routine, intermittent catheterization; and
- G. giving of injections of fluids into veins, muscles, or skin.

Subp. 11. **Maximum payment.** The maximum medical assistance payment for personal care services to a recipient shall be subject to the payment limitations established for home health services in part 9505.0295, subpart 3.

Subp. 12. **Preemployment check of criminal history.** Before employing a person as a personal care assistant of a qualified recipient, the personal care provider shall require from the applicant full disclosure of conviction and criminal history records pertaining to any crime related to the provision of health services or to the occupation of a personal care assistant.

Subp. 13. **Overutilization of personal care services.** A personal care provider who is found to be providing personal care services that are not medically necessary shall be prohibited from participating in the medical assistance program. The determination of whether excess services are provided shall be made by a screening team or according to parts 9505.2160 to 9505.2245. The termination of the personal care provider shall be consistent with the contract between the provider and the department.

Statutory Authority: *MS s 256B.04*

History: *12 SR 624; L 1990 c 375 s 3; L 1999 c 172 s 18*

Published Electronically: *October 16, 2013*