

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: March 3, 2022

The proposed policy changes are Permanent Rules. The proposed policy changes were presented at the January 4, 2022 Tribal Consultation. The proposed rule changes will be presented at a Public Hearing on March 8, 2022. Additionally, this proposal is scheduled to be presented to the Medical Advisory Committee on March 10, 2022 and the OHCA Board of Directors on March 16, 2022.

REFERENCE: APA WF 21-37

SUMMARY: Private Duty Nursing (PDN) Revisions — The proposed revisions will update how assessments for PDN services are conducted; clarify who can sign the PDN treatment plan; update grammatical and formatting errors; and reorganize policy for better clarity and understanding.

LEGAL AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 42 C.F.R. Section 440.80

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement
APA WF # 21-37

A. Brief description of the purpose of the rule:

The proposed revisions will update how assessments for PDN services are conducted; clarify who can sign the PDN treatment plan; update grammatical and formatting errors; and reorganize policy for better clarity and understanding. These revisions are necessary to align the PDN policy with current business practices.

B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

SoonerCare members who utilize PDN services and PDN provider agencies will be most affected by this proposed rule change.

C. A description of the classes of persons who will benefit from the proposed rule:

SoonerCare members who utilize PDN services and PDN provider agencies will both benefit from the proposed rule change as it will clarify PDN services, how services are authorized, and who can sign the treatment plans.

- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no economic impact and there are no fee changes associated with the rule change for the above classes of persons or any political subdivision.

- E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

The proposed rule changes could create a budget savings for the agency. By allowing the OHCA care management nurses to conduct PDN assessments virtually, the nurses' time will be spent on other priorities for our members instead of traveling to conduct the assessments.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The proposed rule will not have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The proposed rule will not have an adverse effect on small businesses as provided by the Oklahoma Small Business Regulatory Flexibility Act.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The agency has taken measures to determine that there is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the proposed rule.

- I. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule should have no effect on the public health, safety, and environment.

- J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:

The agency does not anticipate any detrimental effect on the public health, safety, or environment if the proposed rule changes are not implemented.

- K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared: November 15, 2021

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE**

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 62. PRIVATE DUTY NURSING

317:30-5-555. Private Duty Nursing (PDN)

PDN is medically necessary care provided on a regular basis by a licensed practical nurse or registered nurse. PDN is the level of care that would routinely be provided by the nursing staff of a hospital or skilled nursing facility. PDN services are provided:

- (1) In the member's primary residence, unless it is medically necessary for a nurse to accompany the individual in the community.

(A) The individual's place of residence is wherever the individual lives, whether the residence is the individual's own dwelling, a relative's home, or other type of living arrangement. The place of residence cannot include a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities (ICF/IID).

(B) The place of service in the community cannot include the residence or business location of the provider of PDN services unless the provider of PDN is a live-in caregiver.

- (2) To assist during transportation to routine, Medicaid-compensable health care appointments and/or to the nearest appropriate emergency room, ~~but only when SoonerRide is unavailable, and a lack of PDN services during transportation would require transportation by ambulance pursuant to Oklahoma Administrative Code (OAC) 317:30-5-336.~~

(A) The private duty nurse may not drive the vehicle during transportation.

(B) PDN services are not available for non-routine extended home absences unrelated to medically necessary treatment or medical care. [Refer to Oklahoma Administrative Code 317:30-5-558(4) and (13)].

317:30-5-557. Coverage by category

(a) **Adults.** SoonerCare does not cover adults ~~(Age 21 or over)~~ twenty-one (21) years of age and over for private duty nursing (PDN) with the exception of subsection (c).

(b) **Children.** SoonerCare does cover children ~~(Under the age of 21)~~ under twenty-one (21) years of age if:

(1) ~~the~~ The child member is eligible for SoonerCare; and

(2) ~~the~~ The Oklahoma Health Care Authority (OHCA), in its discretion, deems the services medically necessary. Medical necessity is determined in accordance with ~~OAC~~ Oklahoma Administrative Code (OAC) 317:30-5-560.1.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the SoonerCare allowable for comparable services.

(d) 1915(c) home and community-based services (HCBS) waivers. If private duty nursing services are provided, they will be defined within each waiver and must be prior authorized.

317:30-5-558. Private duty nursing (PDN) coverage limitations

The following provisions apply to all PDN services and provide coverage limitations:

(1) All services must be prior authorized to receive payment from the Oklahoma Health Care Authority (OHCA). Prior authorization means authorization in advance of services provided in accordance with Oklahoma Administrative Code (OAC) 317:30-3-31 and 317:30-5-560.1;

(2) A treatment plan must be completed by ~~the home health agency~~ an eligible PDN provider before requesting prior authorization and must be updated at least annually and signed by the physician [medical doctor (MD), or doctor of osteopathy, (DO)], a physician assistant (PA), or advanced practice registered nurse (APRN)];

~~(3) A telephonic interview and/or personal visit by an OHCA care management nurse is required prior to the authorization for services.~~ An assessment by an OHCA care management nurse is required prior to the authorization for services. The assessment will be conducted by the OHCA through one (1) of the following:

(A) Telephone;

(B) Virtually; or

(C) Face-to-face;

(4) Care in excess of the designated hours per day granted in the prior authorization is not SoonerCare compensable. Prior-authorized but unused service hours cannot be "banked," "saved," or otherwise "accumulated" for use at a future date or time. If such hours or services are provided, they are not SoonerCare compensable.

(5) Any medically necessary PDN care provided outside of the home must be counted in and cannot exceed the number of hours requested on the treatment plan and approved by OHCA.

(6) PDN services do not include office time or administrative time in providing the service. The time billed is for direct nursing services only.

(7) Staff must be engaged in purposeful activity that directly benefits the member receiving services. Staff must be physically able and mentally alert to carry out the duties of the job. At no time will OHCA compensate an organization for nursing staff time when sleeping.

(8) OHCA will not approve PDN services if all health and safety issues cannot be met in the setting in which services are provided.

(9) A provider must not misrepresent or omit facts in a treatment plan.

(10) It is outside the scope of coverage to deliver care in a manner outside of the treatment plan or to deliver units over the authorized units of care.

(11) PDN is not authorized in excess of sixteen (16) hours per day. There may be approval for additional hours for a period not to exceed thirty (30) days, if:

(A) The member has an acute episode that would otherwise require hospitalization or immediately following a hospital stay; or

(B) The primary caregiver is temporarily and involuntarily unable to provide care.

(C) The OHCA has discretion and the final authority to approve or deny any additional PDN hours and will take into consideration that the additional hours are not to be a substitute for institutionalized care.

(12) Family and/or caregivers and/or guardians (hereinafter, "caregivers") are required to provide some of the nursing care to the member without compensation. PDN services shall

not be provided solely to allow the member's caregiver to work or go to school, nor solely to allow respite for the caregiver.

(13) PDN services will not be approved for overnight trips away from the member's primary residence that are unrelated to medically necessary treatment or medical care.

(A) For a member to receive Medicaid-reimbursable PDN services on an overnight trip that is related to medically necessary treatment or medical care, all provisions of this Part must be met. If said trip occurs out of state, OAC 317:30-3-89 through 317:30-3-92 must also be met.

(B) In instances in which the member's family is temporarily absent due to vacations, any additional PDN hours must be paid for by the family, or provided by other trained family members without SoonerCare reimbursement.

(14) PDN services will not be approved when services are reimbursed or reimbursable by other insurance, other governmental programs, or Medicaid program services that the member receives or is eligible to receive. For example, if a member receives Medicaid-reimbursable PDN services pursuant to an Individualized Education Program (IEP) in a public school, then those PDN school hours will be counted in the member's daily allotment of PDN services.

317:30-5-559. How services are authorized~~How Private Duty Nursing (PDN) services are authorized~~

~~An eligible provider may have private duty nursing services authorized by following all the following steps:~~

- ~~(1) create a treatment plan for the patient as expressed in OAC 317:30-5-560;~~
- ~~(2) submit the prior authorization request with the appropriate OHCA required forms, the treatment plan, and request the telephonic interview and/or personal visit by an OHCA Care Management Nurse; and~~
- ~~(3) have an OHCA physician determine medical necessity of the service including scoring the member's needs on the Private Duty Nursing Acuity Grid.~~

~~PDN services may be initiated after completion of the following steps:~~

- ~~(1) A treatment plan for the patient has been created by an eligible PDN provider per Oklahoma Administrative Code (OAC) 317:30-5-560;~~
- ~~(2) A prior authorization request is submitted with the appropriate Oklahoma Health Care Authority (OHCA) required data elements and the treatment plan;~~
- ~~(3) An assessment (telephonic, virtual, or face-to-face) has been conducted by an OHCA care management nurse, per OAC 317:30-5-558 (3); and~~
- ~~(4) An OHCA physician has determined the medical necessity of the service, including but not limited to, scoring the member's needs on the OHCA PDN assessment.~~

317:30-5-560. Treatment Plan~~plan~~

(a) An eligible organization must create a treatment plan for the member as part of the authorization process for private duty nursing (PDN) services. The initial treatment plan must be signed by the member's attending physician [medical doctor (MD), or doctor of osteopathy, (DO)], a physician assistant (PA), or advanced practice registered nurse (APRN).

(b) The treatment plan must include all of the following ~~medical and social data so that an OHCA physician can appropriately determine medical necessity including use of the Private Duty Nursing Acuity Grid:~~

- ~~(1) diagnosis~~Diagnosis;
- ~~(2) prognosis~~Prognosis;
- ~~(3) anticipated~~Anticipated length of treatment;

- (4) ~~number~~ Number of hours of private duty nursing ~~PDN requested hours requested~~ per day;
- (5) ~~assessment~~ Assessment needs and frequency (e.g., vital signs, glucose checks, neuro checks, respiratory);
- (6) ~~medication~~ Medication method of administration and frequency;
- (7) ~~age-appropriate~~ Age-appropriate feeding requirements (diet, method and frequency);
- (8) ~~respiratory~~ Respiratory needs;
- (9) ~~mobility~~ Mobility requirements including need for turning and positioning, and the potential for skin breakdown;
- (10) ~~developmental~~ Developmental deficits;
- (11) ~~casting~~ Casting, orthotics, therapies;
- (12) ~~age-appropriate~~ Age-appropriate elimination needs;
- (13) ~~seizure~~ Seizure activity and precautions;
- (14) ~~age-appropriate~~ Age-appropriate sleep patterns;
- (15) ~~disorientation~~ Disorientation and/or combative issues;
- (16) ~~age-appropriate~~ Age-appropriate wound care and/or personal care;
- (17) ~~communication~~ Communication issues;
- (18) ~~social~~ Social support needs;
- (19) ~~name~~ Name, skill level, and availability of all caregivers; and
- (20) ~~other~~ Other pertinent nursing needs such as dialysis, isolation.

317:30-5-560.1. Prior authorization requirements

- (a) Authorizations are provided for a maximum period of six (6) months.
- (b) Authorizations require:
 - (1) ~~a~~ An treatment plan for the member;
 - (2) ~~a telephonic interview and/or personal visit by an OHCA Care Management Nurse~~ An assessment (telephonic, virtual, or face-to-face) has been conducted by an Oklahoma Health Care Authority (OHCA) care management nurse, per Oklahoma Administrative Code (OAC) 317:30-5-558 (2); and
 - (3) ~~an~~ An OHCA physician to determine medical necessity including use of the ~~Private Duty Nursing Acuity Grid~~ OHCA Private Duty Nursing (PDN) assessment.
- (c) The number of hours authorized may differ from the hours requested on the treatment plan based on the review by an OHCA physician.
- (d) If the member's condition necessitates a change in the treatment plan, the provider must request a new prior authorization.
- (e) Changes in the treatment plan may necessitate another ~~telephonic interview and/or personal visit by the OHCA Care Management staff~~ assessment (telephonic, virtual, or face-to-face) by an OHCA care management nurse.

317:30-5-560.2. Record documentation

~~The treatment plan must be updated and signed by the attending physician at least annually. Copies of the attending physician's orders and, at a minimum, the last 30 days of medical records for the actual care provided must be maintained in the home. Medical records must include the beginning and ending time of the care and must be signed by the person providing care. The nurse's credentials must also be included. All provisions of the treatment plan, such as vital signs, medication administration, glucose/neuro checks, vital signs, respiratory assessments, and all applicable treatments must be documented in the record. All records must meet the requirements set forth in OAC 317:30-3-15.~~

(a) The treatment plan must be updated and signed by the attending physician [medical doctor (MD), or doctor of osteopathy, (DO)], a physician assistant (PA), or advanced practice registered nurse (APRN) at least annually.

(b) Copies of the attending physician's orders and, at a minimum, the last thirty (30) days of medical records for the actual care provided must be maintained and include the following:

(1) The beginning and ending time of the care and must be signed by the person providing care;

(2) The nurse's credentials;

(3) All provisions of the treatment plan, such as vital signs, medication administration, glucose/neuro checks, vital signs, respiratory assessments, and all applicable treatments must be documented; and

(4) Meet the record retention requirements set forth in Oklahoma Administrative Code (OAC) 317:30-3-15.

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