

Title of Rule: Revision to the Medical Assistance Act Concerning Private Duty Nursing Benefits, Section 8.540.2  
Rule Number: MSB 22-07-26-A  
BSMD /Cassandra Keller / 5181

## STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

This rule sets forth the authority for the Private Duty Nursing benefit under the Health First Colorado State Plan. Private Duty Nursing provides nursing services for beneficiaries who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility. In order to meet the urgent care needs of our members, the Department must create an exception process to meet the potentially unmet needs of our members. Current regulation states that adult members may not receive more than 16 hours per day of Private Duty Nursing. By revising the regulations to allow for an exception process to the limit, members will have access to medically necessary nursing services they require.

2. An emergency rule-making is imperatively necessary

to comply with state or federal law or federal regulation and/or  
 for the preservation of public health, safety and welfare.

Explain:

This rule is imperative; it is necessary to provide an exception to the 16-hour limit because of newly identified member needs and expansion of community access.

3. Federal authority for the Rule, if any:

42 C.F.R. § 440.80

4. State Authority for the Rule:

Section § 25.5-5-303. (2022)

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2022)

Initial Review  
Proposed Effective Date

**08/12/22**

Final Adoption  
Emergency Adoption

**08/12/22**  
**DOCUMENT #09**

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## **REGULATORY ANALYSIS**

5. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The proposed rule will have an impact on members who utilize Private Duty Nursing (PDN). Adult members who have extraordinary medical needs that require more than 16 hours per day of PDN and receive approval to exceed the limit will benefit from this change.

6. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Members will have access to obtain all medically necessary skilled nursing care through the private duty nursing benefit, rather than having to supplement private duty nursing hours with additional skilled nursing hours provided through other benefits, and may obtain all skilled nursing services through a single provider.

7. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Department expects the increase in PDN expenditure to be offset by a reduction of (\$2,282,695) in Home- and Community-Based Services (HCBS) expenditure, leading to a net increase of \$1,574,085 per state fiscal year. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Without revising these regulations, the Department does not have the authority to develop an exception to the unit limit.

8. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less intrusive or costly methods to achieve this purpose. This change must be done with a change to the regulations.

9. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

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The Department estimates the rule change will increase PDN expenditure by \$3,856,780 per year. The regulations outline a hard cap of 16-hours that cannot be exceeded. Rule must be revised in order to allow for exception to this limit.

1 **8.540 PRIVATE DUTY NURSING SERVICES**

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5 **8.540.2 BENEFITS**

6 8.540.2.A. Beginning November 1, 2021, providers must submit a prior authorization request for all  
7 new PDN services. For members currently receiving PDN services initiated prior to November 1,  
8 2021, providers must submit a prior authorization request in accordance with the schedule  
9 provided in Section 8.540.7.G.

10 8.540.2.B. A pediatric client may be approved for up to 24 hours per day of PDN services if the client  
11 meets the URC medical necessity criteria. PDN for pediatric clients is limited to the hours  
12 determined medically necessary by the URC pursuant to Section 8.540.4.A, as applicable.

13 1. The URC shall determine the number of appropriate pediatric PDN hours by considering  
14 age, stability, need for frequent suctioning and the ability to manage the tracheostomy.

15 2. The URC shall consult with the Home Health Agency and the attending physician or  
16 primary care physician, to provide medical case management with the goal of resolving  
17 the problem that precipitated the need for extended PDN care of more than 16 hours.

18 3. The URC shall consider combinations of technologies and co-morbidities when making  
19 medical criteria determinations.

20 8.540.2.C. Twenty-four hour care may be approved for pediatric clients during periods when the  
21 family caregiver is unavailable due to illness, injury or absence periodically for up to 21 days in a  
22 calendar year.

23 8.540.2.D. Adult clients may be approved for up to 16 hours of PDN per day. The Department may  
24 approve authorize a higher amount through the Department's utilization management  
25 process additional hours, up to 23 hours per day when determined medically necessary, a  
26 safety safety.

27 8.540.2.E. A client who is eligible and authorized to receive PDN services in the home may receive  
28 care outside the home during those hours when the client's activities of daily living take him or her  
29 away from the home. The total hours authorized shall not exceed the hours that would have been  
30 authorized if the client received all care in the home.

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