Comments of the Home Care Alliance of Massachusetts on the
Notice of Proposed Amendment of Regulations 130 CMR 403.000
(Home Health Agency Services)

May 15, 2017

On behalf of the home health agencies across the state that are guided by 130 CMR 403.000, the Home Care Alliance of Massachusetts appreciates the opportunity to offer comments on the proposed amendments to the regulations regarding home health agency services.

The Home Care Alliance has welcomed the opportunity to work with MassHealth on this update, which will - among other changes - provide guidance on the federal face to face requirement and shape the implementation of the new medication administration visit (MAV).

As we have expressed in meetings and correspondence relative to the drafting of these regulations, many agencies are concerned that the guidelines regarding what is a full (or intermittent) skilled nursing visit and what is a MAV visit needs to be very clear. We must work via the regulations and in subsequent medical necessity guidance to agencies and to reviewers to ensure that in certain clients - such as those on psychotropic medications with high risk side effects or for clients where response to treatment and follow-up consultation with a physician is a common occurrence - are correctly defined as intermittent skilled nursing.

In many of our comments, we have offered suggestions to move the regulations further in this direction. These comments include:

- Our strong support for changing the definition of a MAV to remove reference to “intramuscular and subcutaneous injections.” It is the general consensus of our members that these types of visits always should rise to the level of full skilled nursing visit.

- A request to clarify the criteria around a MAV definition to acknowledge that patients may be approved for MAV when there is a patient history of failed compliance with medication administration leading to exacerbation of illness.

- Our suggestion to clarify the intersection of intermittent skilled and MAV visits with the PA process.
• A change to the new MAV conditions of payment to reflect our strong conviction that in moving toward two different types of nursing visits, MassHealth must acknowledge in this new regulatory language that while every plan of care must include teaching on medication management, it is not appropriate or possible to require that teaching be done and documented as a condition of payment for a MAV. Teaching medication management, involves assessment of a patient’s cognitive status, ability to take direction, to repeat back and demonstrate understanding of directions. This is to be done during the regular intermittent skilled nursing visits. The MAV is an administration of medication and the response only.

As you can see, we have not limited our comments just to the new language in these regulations. Given the opportunity to clean up and clarify some of the other language which we feel needs to better reflect the language and practice of home health. For example: throughout we have asked that references to the “physician’s plan of care” be changed to the “member’s plan of care”. The plan of care is written in collaboration with the physician, home care clinician and patient, not solely by the physician.

Below are the section by section, specific language changes.

403.402 Definitions

Continuous Skilled Nursing (CSN) Services – change to-- a nurse visit of more than two continuous hours of nursing services for a Complex Care Member

Rationale: visits to non- Complex Care Members for services such as infusion, can be longer than two hours but are not billed as CSN

Medical Record - Change “nursing progress note” to “discipline specific progress note”

Medication Administration Visit - As referenced above, below is our revised definition with changes highlighted.

A nursing visit for the purpose of administration of medications when the member is unable to perform the task due to impaired physical, cognitive, behavioral, and/or emotional issues, no able caregiver is present, or the member has a history of failed medication compliance resulting in a documented exacerbation of the member’s condition, and the task including the route of administration of medication requires a licensed nurse to provide the service. A medication administration visit may include administration of medications by oral or other routes, but does not include medication administration via parenteral routes; such as: intravenous, intramuscular or subcutaneous administration. This visit must include the assessment of the member’s response to medication. The medication administration visit does not include any other application of the nursing process. During a home visit once a member’s condition changes or requires observation and or assessment that results in physician contact; this visit would not be defined as a MAV but rather a Skilled Nursing Visit.
Rationale: Intermittent Nursing Service as per 403.415 Nursing Services (B)Clinical Criteria (2) nursing services are based on complexity alone------ (2) Some services are nursing services on the basis of complexity alone (for example, intravenous and intramuscular injections, or insertion of catheters). However, in some cases, a service that is ordinarily considered unskilled may be considered a nursing service because of the patient's condition. This situation occurs when only a registered nurse or licensed practical nurse can safely and effectively provide the service.

Subunit Office
Recommendation: Delete this reference entirely

Rationale: The Centers of Medicare and Medicaid (CMS) recently release updated Conditions of Participation for home health agencies and in the update no longer recognizes the “subunit office”

403.407 Services Provided Under Contract

Recommendation: In section A (1) delete the last word in the sentence “and” change to “or”

Rationale: we believe that the intent is that these conditions for subcontracting are mutually exclusive.

403.414 Complex-Community Care Management

Recommendation: In Section (B) Home Health Agency – Case Management Activities Change “physician’s plan of care” to “member’s plan of care” or just “plan of care.” as that is the most appropriate term for the care plan. In this same paragraph on line 403.420 the word “physician” should be added to read: in consultation with the physician, clinical manager, the member and the primary care giver…”

403.415 Nursing Services

Recommendation: (5) Medical Necessity of service change to read: medical necessity of services is based on the condition of the member at the time the services are ordered and the ongoing condition of the member throughout the course of home care

Recommendation (7) Medication Administration Visit-
This is already defined in 403.402 in detail, change here to the following: A nursing visit for the purpose of administration of medications when the member is unable to perform the task due to impaired physical, cognitive, behavioral, and/or emotional issues, no able caregiver is present, or the member has a history of failed medication compliance resulting in a documented exacerbation of the member’s condition and the task including the route of administration of medication requires a licensed nurse to provide the service.
**403.416: Home Health Aide Services**

Recommendation: Section A(2) - change “physician plan of care” to “plan of care”
The frequency and duration of the home health aide services must be ordered by the physician and must be included in the plan of care for the member
Rationale: see above

Recommendation: Section A (5) Change “nurse” to “Registered nurse”
Rationale: The home health aide must be supervised by a “Registered nurse,” LPNs are not allowed to supervise a home health aide.

Recommend: In this same section add “contracted” to the sentence and delete “as the home health aide” to read:
Registered Nurse or therapist for skilled nursing services or therapy services, respectively, employed or contracted by the same home health agency that developed the plan of care.

Rationale: this change is needed in the event that the home health agency contracts for, rather than directly employs, the registered nurse or therapist. The nurse or therapist may not be employed by the same agency as the home health aide.

Recommend: In Section D Incidental Services- remove the word “shopping” to read:
....the home health aide may also perform some incidental services that do not meet the definition of a home health aide service (for example, light cleaning, preparing a meal, or removing trash)

Rationale: Shopping is not an incidental service performed by a home health aide. Shopping is performed by a “homemaker” as defined in section 403.402

**403.419 Provider Responsibilities**

Section A Policies and Procedures.
Rationale: Home health agencies have most of the policies and procedures listed in each section, however, some of the items listed would not be a policy or procedure but rather an agency’s guidelines, protocols, or processes. Examples of this might be:
(b) staff and staffing requirements;
(c) backup staff in the event coverage is required due to illness, vacation, or other reasons;

Recommendation: In Section (A) change to: Each home health agency must develop, maintain, review, and update comprehensive policies and procedures, guidelines and/or protocols governing the delivery of home health services which at a minimum must contain the following:
Recommendations: Change in section 1 and 2

1. **administrative policies and procedures, guidelines, protocols, process**
2. **clinical policies and procedures, guidelines, protocols, process**

Also In section A (1) Eliminate **member missing or lost**; this is a facility based requirement not home health

Recommendation: Section A(2) Eliminate **First Aide**
Rationale: this is a facility based requirement not home health

**Section B Teaching Activities:**
Recommendation: After the first sentence add **“or document the member/caregivers inability to be taught or barriers to learning”**.

Rationale: Some patients have severe emotional or cognitive issues, for example a patient with middle/late stage Alzheimer’s Disease is unable to be taught the treatment regimen.

This recommendation derives from CMS guidance on repetitive teaching in the Benefit Policy Manual for Home Health Chapter 7 Section 40.1.2.3: **“Where it becomes apparent after a reasonable period of time that the patient, family, or caregiver will not or is not able to be trained, then further teaching and training would cease to be reasonable and necessary.”**

**Section ( C ) Record Keeping-**

Recommendations:

1. **Administrative Records**: Eliminate the word “including” at the end of first paragraph, not needed already stated in third line above; and
2. (1) (a) Change “staff” to “employees”,
3. (1)(c) Eliminate **staffing levels**. This is a facility based requirement, not home health
4. (3) (b) (4) add at the end of the statement "If different than #3 above"
5. (3)(b) (7) **Member Records-** combine section (a) and (b) to read: Full date of service and time visit began and ended.
6. (3)(b) (7) (c ) Remove the word “medication administration” " any treatment or service and the members response”
Rationale- medication administration is already detailed in Record keeping section (C ) (3) (b)
7. (3) (b) (8) Change “time” to “timing” and add “as ordered” after the time of administration to read: **A current medication-administration list or other documentation that documents the timing of administration as ordered...**
Rationale: Home health orders are not often written to include the exact time of a medication as a facility/hospital would document the time. The medication administration is documentation in the visit note which has beginning and ending time of the home visit.
8. (3) (b) (11) Add "as Applicable" after medical record release form
Rationale—Home Health does not give medical release form to all patients; it is only as requested.

**403.420- Plan of Care Requirements**

Recommendation: In the Title, eliminate the word "physician" in Plan of Care Requirements

Rationale: as stated above, it is the member’s Plan of Care that is developed with the coordination of physician, the home care clinician and the patient.

(E) Face-to-face Encounter Requirement

Recommendation: Eliminate "for initial orders" in section 1 to read: A face-to-face encounter between the member and an authorized practitioner is required for home health services.

Rationale: Face to Face Encounter may not have occurred at the time of initial order, as it reads in the regulation this contradicts section 403.420 (A) (1)--30 days after the start of home health services.

**403.422 Transfer and Discharge Planning**

Recommendation: Section (A) (1) Add another reason for discharge as outlined in the COPs: The HHA determines, under a policy set by the HHA for the purpose of addressing discharge for cause that meets the requirements of paragraphs (d)(5)(i) through (d)(5)(iii) of this section, that the patient’s (or other persons in the patient’s home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the HHA to operate effectively is seriously impaired.

**403.423 Condition of Payment**

Recommendation: Section G: Skilled Nursing Visits for Members Receiving Home Health Services After 30 Calendar Days-

(1) Add "Observation Stay" to hospital for at least one overnight. Observation stay or admission to a hospital at least one overnight,

Recommendation: Section H: Medication Administration Visit
Delete the words "must include teaching on medication management to maximize independence."

Rationale: While every plan of care must include teaching on medication management, it is not appropriate or possible to require that teaching be done on an MAV. Teaching medication management requires assessment of a patient’s cognitive status, ability to take direction, to repeat back and demonstrate understanding of directions. This is to be done during the regular intermittent skilled nursing visits. The MAV is an administration of medication and the response only.