



CHAPTER 517 PERSONAL CARE SERVICES

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### POLICY METADATA

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### BACKGROUND

This chapter sets forth the West Virginia (WV) Department of Health and Human Resources (DHHR) Bureau for Medical Services (BMS) requirements for payment of Personal Care (PC) services provided to eligible West Virginia Medicaid members.

All forms for this program can be found at:  
<http://www.dhhr.wv.gov/bms/Programs/PCS/Pages/Policy-and-Forms.aspx>

### PROGRAM DESCRIPTION

Personal Care (PC) services are available to assist an eligible member to perform activities of daily living (ADLs) and instrumental activities of daily living (IADLs) in the member's home, place of employment or community. To be medically eligible for PC services, Medicaid members must have three deficits according to the most current Pre-Admission Screening (PAS) signed by a physician, physician assistant, or nurse practitioner, and require hands-on assistance/supervision/cueing in ADLs/IADLs. Services must be provided by a qualified PC provider(s). Specialized Family Care Providers (SFCPs) must maintain a fully certified home in accordance with the Bureau of Children and Families Specialized Family Care Policy at all times. Members can receive a maximum of 210 hours of service per month based on assessed needs. Services may not solely involve ancillary tasks such as housekeeping or assistance with chores. There are no age restrictions for members eligible for PC services. However, PC services do not replace the age appropriate care that any child would need.

All PC services covered in this chapter are subject to a determination of medical necessity defined as follows in the managed care position paper published in 1999 by the State of WV:

Services and Supplies that are:

1. appropriate and medically necessary for the symptoms, diagnosis or treatment of an illness;
2. provided for the diagnosis or direct care of an illness;
3. within the standards of good practice;
4. not primarily for the convenience of the plan member or provider; and
5. the most appropriate level of care that can be safely provided.

Medical Necessity must be demonstrated throughout the provision of services. For these types of services, the following five factors will be included as part of this determination.

- Diagnosis (as determined by a physician)



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- Level of functioning
- Evidence of clinical stability
- Available support system
- Service is the appropriate level of care

PC services are medically necessary activities or tasks which are implemented according to a Nursing Plan of Care (POC) developed and supervised by a Registered Nurse (RN). These services enable members to meet their physical needs and allow them to remain in their home and community. Services must be:

- Determined to be medically eligible;
- Necessary to the long-term maintenance of the member's health and safety;
- Provided pursuant to a Nursing POC developed and monitored by an RN;
- Rendered by an individual who has met the basic training requirements described in this manual; and
- Prior authorized by BMS' Utilization Management Contractor (UMC).

PC services are 1:1 services. This means that no single Direct Care Worker can bill for more than one member during a single 15 minute period. Direct Care Worker, including SFCPs are limited to billing no more than 16 hours per day regardless of the number of members they are caring for or placed in their home.

### PROVIDER PARTICIPATION REQUIREMENTS

#### 517.1 BUREAU FOR MEDICAL SERVICES (BMS) CONTRACTUAL RELATIONSHIPS

BMS contracts with an Operating Agency (OA). The OA acts as an agent of BMS and administers the operation of the Personal Care program. The OA conducts education for PC providers, members receiving PC services, advocacy groups and others as requested.

The OA, in collaboration with BMS, will provide answers to policy questions which will serve as policy clarifications. These policy clarifications will be posted on the BMS website located at: <http://www.dhhr.wv.gov/bms/Programs/PCS/Pages/Provider-Question-and-Answers.aspx>.

BMS contracts with a Utilization Management Contractor (UMC) that reviews requests for initial medical eligibility as well as annual requests to continue PC services. The UMC provides a framework and a process for authorizing PC services.

The UMC provides authorization for services that are based on the member's assessed needs and forwards authorization information to the claims payer.

BMS contracts with PC providers for the provision of services for members receiving PC services. All PC providers must be certified by the OA and enrolled as a Medicaid Provider.

Please refer to the Personal Care Program website for OA and UMC contact information. <http://www.dhhr.wv.gov/bms/Programs/PCS/Pages/default.aspx>.

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### 517.2 PROVIDER AGENCY CERTIFICATION

In order to provide PC services under West Virginia Medicaid, a provider agency must have a Certificate of Need (CON) from the WV Health Care Authority. Exempt from this provision are Senior Centers, WV licensed Comprehensive Behavioral Health Care Centers, and SFCPs.

After receiving a CON from the WV Health Care Authority, PC provider applicants (excluding SFCPs) must submit a Certification Application to the OA.

An agency may provide both PC services and Title 19 Waiver Services provided they maintain:

- A. A separate certification from the OA and a NPI or API number for billing purposes;
- B. Separate member and personnel files must be maintained for PC services and Waiver services.

A copy of all Specialized Family Care Provider certifications must be sent to the OA when initially certified by the Bureau for Children and Families' contracted agency and annually thereafter.

In addition, the provider agency must submit to the OA and maintain the following:

- A. A valid Certificate of Need (CON);
- B. A business license issued by the State of West Virginia;
- C. A federal tax identification number (FEIN);
- D. A competency based curriculum for required training areas for Direct Care Worker ([Section 517.3.1.1 Direct Care Worker Initial Training Requirements](#) and [Section 517.3.1.2 Direct Care Worker Annual Training Requirements](#));
- E. An organizational chart;
- F. A list of the Board of Directors (if applicable);
- G. A list of all provider staff, which includes their qualifications ([Section 517.3 Staff Qualifications and Training Requirements](#), and [Section 517.2.2 Criminal Background Checks](#)) and all of their subparts);
- H. County or a list of counties served;
- I. A Quality Management Plan for the agency;
- J. A physical office that meets the criteria outlined in [Section 517.2.3 Office Criteria](#);
- K. Written policies and procedures for processing complaints and grievances, from staff or members receiving PC services, that:
  - a. Addresses the process for submitting a complaint;
  - b. Provides steps for remediation of the complaint including who will be involved in the process;
  - c. Provides steps which include the process for notifying the member/staff of the findings and recommendations;
  - d. Provides steps for advancing the complaint if the member/staff does not feel the complaint has been resolved; and
  - e. Ensures that a member receiving PC services or agency staff are not discharged, discriminated, or retaliated against in any way if they have been a complainant, on whose behalf a complaint has been submitted or who has participated in an investigation process that involves a PC provider.



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- L. Written policies and procedures for the use of personally and agency owned electronic devices which includes, but is not limited to:
  - a. Prohibits using personally identifiable information in texts and subject lines of emails;
  - b. Prohibits the use of personally identifiable information in the body of emails unless the email is sent securely through a HIPAA compliant connection;
  - c. Prohibits personally identifiable information from being posted on social media sites;
  - d. Prohibits using public Wi-Fi connections;
  - e. Informs agency employees that during the course of an investigation all information on their personal cell phone is legally discoverable; and
  - f. Requires all electronic devices be encrypted.
- M. Written policies and procedures for member transfers;
- N. Written policies and procedures for the discontinuation of member services;
- O. Office space that allows for member confidentiality;
- P. An Agency Emergency Plan (for members and for office operations).
  - a. Office Emergency Back-Up Plan ensuring office staffing and facilities are in place during emergencies such as floods, fires, etc. However, the new temporary facilities must meet all requirements. The Provider must notify the OA within 48 hours. Providers must inform members receiving PC services of their Emergency Back-Up Plan.
- Q. Written policies and procedures to avoid conflict of interest (if agency is providing both PC services and Waiver services) which must include at a minimum:
  - a. Education of RNs on general Conflict of Interest/Professional Ethics with verification;
  - b. Annual signed Conflict of Interest Statements for all RNs and the agency director;
  - c. Process for investigating reports on conflict of interest complaints;
  - d. Process for reporting to BMS; and
  - e. Process for complaints to professional licensing boards for ethics violations.
- R. Policies and procedures for members with limited English proficiency and/or accessible format needs that are culturally and linguistically appropriate to ensure meaningful access to services.
- S. Computers(s) for staff with HIPAA secure emails accounts, UMC web portal access, internet access, and current (within last five years) software for spreadsheets.
- T. Qualified workforce.
- U. Discharge policy that ensures a member is not discharged unless a viable discharge/transfer plan is in place that effectively transfers all services that the member needs to another provider(s) and is agreed upon by the member and/or their legal representative (if applicable) and the receiving provider(s).
- V. Documentation of services delivered meets regulatory and professional standards before the claim is submitted.
- W. Participation in all mandatory training sessions sponsored by the OA or UMC.

Provider Agencies will be reviewed by the OA within six months of initially providing services and annually thereafter. (Refer to [Section 517.2.5 Provider Reviews](#)).

More information regarding provider participation requirements in Medicaid services can be found in [Chapter 300, Provider Participation Requirements](#). Please note, providers will be held accountable for information contained in all Medicaid Common Chapters.

Providers are encouraged to contact the OA for training needs and technical assistance at any time.

The hourly wage of agency staff employed by a PC provider is determined solely by the agency that employs the staff person. Agency providers must at all times comply with all local, state, and federal

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wage and hour employment laws and regulations, including, but not limited to, the West Virginia Wage and Hour Act, Fair Labor Standards Act (FLSA) and Internal Revenue Service (IRS) laws and regulations. PC providers are solely responsible for making their own determination as to whether an individual performing work for the agency is an employee or independent contractor under applicable state and federal laws and regulations. Provider agencies should not interpret this as an opportunity to misclassify workers as independent contractors. Provider agencies are solely responsible for any liability resulting from misclassification of workers. BMS reserves the right to dis-enroll any PC provider which is found to have misclassified employees by the U.S. Department of Labor, IRS, or any other applicable state or federal agency. All agency staff hired by a PC provider must meet the requirements listed in the applicable [Section 517.3 Staff Qualifications and Training Requirements and its subparts](#).

### Conflicts of Interest

Conflicts of interest are prohibited. A conflict of interest is when the RN representing the member has competing interests due to affiliation with a provider agency, combined with some other action. "Affiliated" means has either an employment, contractual or other relationship with a provider agency such that the RN receives financial gain or potential financial gain or job security when the provider agency receives business serving PC clients.

The RN representing the member and being affiliated with a provider agency is not by itself a conflict. However, if an RN affiliated with a provider agency takes action on behalf of the member they represent to obtain services for the member from the company(s) with which the RN is affiliated, by steering or influencing them towards receiving services from the company(s) with which the RN is affiliated, then a conflict of interest occurs. RNs must always ensure any affiliation with a provider agency does not influence their actions with regard to seeking services for the member they represent. Failure to abide by this Conflict of Interest policy will result in the loss of PC provider certification for the provider involved in the conflict of interest for a period of one calendar year and all members being currently served by the suspended provider will be transferred to other PC agencies. Additionally, any RN who takes improper action described above will be referred to their professional licensing board for a potential violation of ethics and must not bill RN services for the month this activity occurred. This is considered influencing a PC member's "Right to Choose (transfer)." BMS notes that whether any action is taken would be within the sole discretion of the particular licensing board and depend upon its specific ethical rules. Reports of failure to abide by this Conflict of Interest policy will be investigated by the OA and the results of this investigation will be reported to BMS for review and possible action.

### 517.2.1 Specialized Family Care Providers (SFCPs)

Specialized Family Care Providers (SFCPs) are certified annually by the West Virginia Bureau of Children and Families (BCF) and must maintain their certification at all times in order to provide PC services. SFCPs must follow the policies in this manual unless otherwise noted in specific sections of the manual. SFCPs must document services as they are provided in 15 minute units on the day in which they occur. Services provided must meet the definition of PC and do not replace Specialized Family Care duties agreed upon with BCF.

PC services provided by informal supports in Specialized Family Care Settings are not billable. If the member receiving PC Services is out of the home for respite or any other reason, i.e. in the hospital, the SFCP with whom the individual/s lives may not bill during that time. If the SFCP cannot provide all services on the POC for individuals living in their home, they may get the additional services from a PC provider. If the SFCP travels out of state with the member, services cannot be billed. The only exception

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is for those who live in a West Virginia county bordering another state. In those instances, the provider may bill up to 30 miles beyond the state border.

### 517.2.2 Criminal Background Checks

#### 517.2.2.1 Pre-Screening

All direct access personnel will be prescreened for negative findings by way of an internet search of registries and licensure databases through the WV DHHR designated website: [WV Clearance for Access: Registry & Employment Screening \(WV CARES\)](#).

“Direct access personnel” is defined as an individual who has direct access by virtue of ownership, employment, engagement, or agreement with a covered provider or covered contractor. Direct access personnel does not include volunteers or students performing irregular or supervised functions, or contractors performing repairs, deliveries, installations or similar services for the covered provider.

If the applicant has a negative finding on any required registry or licensure database, the applicant will be notified, in writing, of such finding. Any applicant with a negative finding on any required registry or licensure database is not eligible to be employed.

Negative findings that would disqualify an applicant in the WV CARES Rule:

1. State or federal health and social services program-related crimes;
2. Patient abuse or neglect;
3. Health care fraud;
4. Felony drug crimes;
5. Crimes against care-dependent or vulnerable individuals;
6. Felony crimes against the person; and
7. Felony crimes against property.
8. Sexual Offenses
9. Crimes against chastity, morality and decency; and
10. Crimes against public justice.

#### 517.2.2.2 Fingerprinting

If the applicant does not have a negative finding in the prescreening process, and the entity or independent health contractor, if applicable, is considering the applicant for employment, the applicant must submit to fingerprinting for a state and federal criminal history record information check and may be employed as a provisional employee not to exceed 60 days subject to the provisions of this policy.

Applicants considered for hire must be notified by the hiring entity that their fingerprints will be retained by the State Police Criminal Identification Bureau and the Federal Bureau of Investigation to allow for updates of criminal history record information according to applicable standards, rules, regulations, or laws.

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### **517.2.2.3 Employment Fitness Determination**

After an applicant's fingerprints have been compared with the state and federal criminal history record information, the State Police shall notify WV CARES of the results for the purpose of making an employment fitness determination.

If the review of the criminal history record information reveals the applicant does not have a disqualifying offense, the applicant will receive a fitness determination of "eligible" and may be employed.

If the review of the criminal history record information reveals a conviction of a disqualifying offense, the applicant will receive a fitness determination of "not eligible" and may not be employed, unless a variance has been requested or granted.

The hiring entity will receive written notice of the employment fitness determination. Although fitness determination is provided, no criminal history record information will be disseminated to the applicant or hiring entity.

A copy of the applicant's fitness determination must be maintained in the applicant's personnel file.

### **517.2.2.4 Provisional Employees**

Provisional basis employment for no more than 60 days may occur when:

1. An applicant does not have a negative finding on a required registry or licensure database and the employment fitness determination is pending the criminal history record information; or
2. An applicant has requested a variance of the employment fitness determination and a decision is pending.

All provisional employees shall receive direct on-site supervision by the hiring entity until an eligible fitness determination is received.

The provisional employee, pending the employment fitness determination, must affirm, in a signed statement, that he or she has not committed a disqualifying offense, and acknowledge that a disqualifying offense shall constitute good cause for termination. Provisional employees who have requested a variance shall not be required to sign such a statement.

### **517.2.2.5 Variance**

The applicant, or the hiring entity on the applicant's behalf, may file a written request for a variance of the fitness determination with WV CARES within 30 days of notification of an ineligible fitness determination. A variance may be granted if mitigating circumstances surrounding the negative finding or disqualifying offense is provided, and it is determined that the individual will not pose a danger or threat to residents or their property.

Mitigating circumstances may include:

1. The passage of time;
2. Extenuating circumstances such as the applicant's age at the time of conviction, substance abuse, or mental health issues;

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3. A demonstration of rehabilitation such as character references, employment history, education, and training; and
4. The relevancy of the particular disqualifying information with respect to the type of employment sought.

The applicant and the hiring entity will receive written notification of the variance decision within 60 days of receipt of the request.

### **517.2.2.6 Appeals**

If the applicant believes that his or her criminal history record information within the State of West Virginia is incorrect or incomplete, he or she may challenge the accuracy of such information by writing to the State Police for a personal review.

If the applicant believes that his or her criminal history record information from outside the State of West Virginia is incorrect or incomplete, he or she may appeal the accuracy of such information by contacting the Federal Bureau of Investigation for instructions.

If the purported discrepancies are at the charge or final disposition level, the applicant must address this with the court or arresting agency that submitted the record to the State Police.

The applicant shall not be employed during the appeal process.

### **517.2.2.7 Responsibility of the Hiring Entity**

Monthly registry rechecks – The WV CARES system will provide monthly rechecks of all current employees against the required registries. The hiring entity will receive notification of any potential negative findings. The hiring entity is required to research each finding to determine whether or not the potential match is a negative finding for the employee. The hiring entity must maintain documentation establishing no negative findings for current employees. NOTE: This includes the Office of Inspector General List of Excluded Individuals and Entities (OIG LEIE) check.

### **517.2.2.8 Record Retention**

Documents related to the background checks for all direct access personnel must be maintained by the hiring entity for the duration of their employment. These documents include:

1. Documents establishing that an applicant has no negative findings on registries and licensure databases.
2. The employee's eligible employment fitness determination;
3. Any variance granted by the Secretary, if applicable; and
4. For provisional employees, the hiring entity shall maintain documentation that establishes that the individual meets the qualifications for provisional employment.

Failure of the hiring entity to maintain state and federal background check documentation that all direct access personnel are eligible to work, or employing an applicant or engaging an independent contractor who is ineligible to work may subject the hiring entity to civil money penalties.

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### 517.2.2.9 Change in Employment

If an individual applies for employment at another long term care provider, the applicant is not required to submit to fingerprinting and a criminal background check if:

1. The individual previously submitted to fingerprinting and a full state and federal criminal background check as required by this policy;
2. The prior criminal background check confirmed that the individual did not have a disqualifying offense;
3. The individual received prior approval from the DHHR Secretary to work for or with the health care facility or independent health contractor, if applicable; and
4. No new criminal activity that constitutes a disqualifying offense has been reported.

The WV CARES system retains all fitness determinations made for individuals.

### 517.2.3 Office Criteria

PC providers must designate and staff at least one physical office location within West Virginia. A post office box or commercial mailbox will not suffice. Each designated office must meet the following criteria:

- 1) Be located in West Virginia and have designated counties approved by the OA.
- 2) PC providers requesting to make changes in the approved counties they serve **must** make the request in writing to the OA. The OA will make a determination on the request and inform the provider in writing. No changes in counties served can be made unless approved by the OA.
- 3) Be readily identifiable to the public through signage that includes hours of operation.
- 4) Meet Americans With Disabilities Act (ADA) requirements for physical accessibility. (Refer to [28 CFR 36](#), as amended). These include but are not limited to:
  - a. Maintains an unobstructed pedestrian passage in the hallways, offices, lobbies, bathrooms, entrance, and exits.
  - b. The entrance and exit has accessible handicapped curbs, sidewalks and/or ramps
  - c. The restrooms have grab bars for convenience.
  - d. A telephone is accessible.
  - e. Drinking fountains and water are made available as needed.
- 5) Maintain a primary telephone that is listed under the name and local address of the business. (Note: Exclusive use of a pager, answering service, a telephone line shared with another business/individual, facsimile machine, cell phone, or answering machine does not constitute a primary business telephone.)
- 6) Maintain an agency secure Health Insurance Portability and Accountability Act (HIPAA) compliant e-mail address for communication with others inside your agency, (unless communicating through a secure agency network), BMS and the OA for all staff.
- 7) Have access to a computer, fax, scanner, and internet.
- 8) Utilize any database system, software, etc., compatible with/approved and/or mandated by BMS.
- 9) Be open to the public at least 40 hours per week. Observation of state and federal holidays is at the provider's discretion.
- 10) Ensure all personally identifiable information is secure if the agency provides electronic devices to their staff.

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- 11) Contain space for securely maintaining program and personnel records. (Refer to [Chapter 100, General Administration and Information](#), and [Chapter 300, Provider Participation Requirements](#), for more information on maintenance of records).
- 12) Maintain a method to be contacted 24-hours per day/ 7 days a week with a response required within 12 hours or less.
- 13) Notify the OA within one business day of any agency relocation due to emergencies such as flood or fire. Any relocation lasting for over 30 days requires a site review by the OA.
- 14) All electronic and stamped signatures must meet the following basic authentication requirements:
  - a. Unique to the person using it
  - b. Capable of verification
  - c. Under the sole control of the person using it, and
  - d. Linked to the data in such a manner that if the data is changed, the signature is invalidated.

### 517.2.4 Initial/Continuing Certification of Provider Agencies

Following the receipt of a completed Certification Application, the OA will contact the Applicant to provide technical assistance to ensure understanding of requirements. The OA will schedule an onsite review to verify that the potential provider meets the certification requirements outlined above in the [Section 517.2, Provider Agency Certification and its subparts](#). The OA will notify the BMS fiscal agent, upon satisfactory completion of the initial onsite review. The BMS fiscal agent will provide the applicant with an enrollment packet which includes the BMS Provider Agreement. The applicant must return the Provider Agreement, signed by an authorized representative, to the BMS fiscal agent. A letter informing the agency they may begin providing and billing for PC services will be sent to the agency and to the OA. PC services cannot be provided from an office location that has not been certified by the OA.

When a provider is physically going to move their agency to a new location or open a satellite office, they must notify the OA 45 days **prior** to the move. The OA will schedule an on-site review of the new location to verify the site meets certification requirements. The provider must submit a new Certification Application to the OA which includes information regarding the new location.

In addition, all providers of PC services are subject to and bound by WV Medicaid rules and regulations found in [Chapter 100, General Administration and Information](#) of the BMS Provider Manual.

Once certified and enrolled as a WV Medicaid provider, PC providers must continue to meet the requirements listed in this chapter as well as the following:

- A. Employ adequate, qualified, and appropriately trained personnel who meet minimum standards for providers of the Personal Care program.
- B. Provide services based on each member's individual assessed needs, including their needs on evenings and weekends.
- C. Maintain records that fully document and support the services provided.
- D. Furnish information to BMS, or its designee, as requested. (Refer to [Chapter 100, General Administration and Information](#), and [Chapter 300, Provider Participation Requirements](#), for more information on maintenance of records).
- E. Maintain a current list of members receiving PC services.

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- F. Comply with the West Virginia Incident Management System (WVIMS) (Refer to [Section 517.5, Incident Management and its subparts](#)) and maintain an administrative file of Incident Reports.

### 517.2.5 Provider Reviews

The primary means of monitoring the quality of PC services is through provider reviews conducted by the OA as determined by BMS on a defined cycle.

The OA performs annual on-site reviews and desk documentation reviews as requested by BMS to monitor program compliance. The OA also performs annual Continuing Certification reviews for agency and staff compliance. Targeted on-site PC reviews and/or desk reviews may be conducted in follow up to Incident Management Reports, complaint data, Plans of Corrections, etc.

#### Agency Continuing Certification Reviews

All providers including the Specialized Family Care Program are required to submit designated evidence to the OA every 12 months to document continuing compliance with all agency and staff certification requirements. This evidence must be attested to by an appropriate official of the provider agency (e.g., Executive Director or Board Chair). If appropriate documentation is not received by the OA either prior to or on the established date, a pay hold will be placed on the provider's claims and the provider will be prohibited from accepting new members until documentation is received. A provisional certification will be issued; however, an on-site visit will be waived if required documentation is received within 30 days. If after 60 days documentation is not received, steps will be taken to execute an emergency transfer of all members receiving PC services. If the provider wants to resume/continue service provision, they must submit all required documentation and an on-site continuing certification review will be conducted by the OA staff.

The OA will review all submitted certification documentation and provide a report to BMS. BMS will request reimbursement for paid claims that occurred where employee certification requirements were not met. If a lapse occurs for any checks within the WV CARES, BMS will request reimbursement for paid claims, should any disqualifying offenses during the lapse be found. The provider must remove employees who do not meet requirements from provision of services until certification standards are met and required documentation is approved by the OA. If the documentation is not received within 30 days of the request, BMS will:

- Place a payment hold on all future claims until the provider can prove they meet all certification requirements;
- Remove the provider from all selection forms; and
- Terminate the provider's participation as a PC provider if all issues are not resolved within 60 calendar days of the date of the report.

**NOTE:** Continuing Certification Review Reports are not subject to document/desk reviews. All information entered into the OA web portal is entered by the provider, attested to by the provider to be complete and accurate and becomes final once submitted.

A random ten percent sample of employee records, from each Continuing Certification Review Report will be generated annually for an onsite validation review.

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### Program Reviews

Program reviews include a statewide representative sample of records of those receiving PC services. The OA will review program records using the BMS approved Monitoring Tools. (These tools are available on the Personal Care program website located at: <http://www.dhhr.wv.gov/bms/Programs/PCS/Pages/default.aspx>). A proportionate random sample will also be implemented to ensure that at least two records from each provider site are reviewed.

Upon completion of the review, the OA conducts a face-to-face exit summation with the agency director or their designee. Following the exit summation, the OA will make available to the provider a draft report and draft Plan of Correction to be completed by the PC provider. If potential disallowances are identified, the PC provider will have 30 days from receipt of the draft report to send comments and additional documentation back to the OA. After the 30 day comment period has ended, BMS will review the draft report and any comments submitted by the PC provider and issue a final report to the PC provider's director. A cover letter to the PC provider's director will outline the following options to effectuate repayment:

1. Payment to BMS within 60 days after BMS notifies the provider of the overpayment; or
2. Placement of a lien by BMS against future payments for Medicaid reimbursements so that recovery is effectuated within 60 days after notification of the overpayment; or
3. A recovery schedule of up to a 12 month period, through monthly payments.

If the PC provider disagrees with the final report, the PC provider may request a document/desk review within thirty days of receipt of the final report pursuant to the procedures in [Chapter 100, General Administration and Information](#) of the BMS Provider Manual. The PC provider must still complete the written repayment arrangement within thirty days of receipt of the Final Report, but scheduled repayments will not begin until after the document/desk review decision. BMS may place a lien on future payments if a written repayment form is not submitted within 30 days of receipt of the final report. The request for a document/desk review must be in writing, signed and set forth in detail to the items in contention. Please note, the items of contention must have been noted on the draft report and addressed by the provider before requesting a document/desk review of the contended items. Requesting a document/desk review means that the provider and the OA could not reach an agreement on the contested items on the draft report, therefore a third party is asked to intervene.

The letter must be addressed to:

Commissioner  
Bureau for Medical Services  
350 Capital St, Room 251  
Charleston, WV 25301-3706

### Plan of Correction

In addition to the draft report sent to the PC providers, the OA will also send a draft Plan of Correction (POC). The PC providers are required to complete the POC and submit it to the OA for approval within thirty calendar days of receipt of the draft report from the OA. BMS may place a hold on claims if an approved POC is not received by the OA within the specified time frame, unless the provider requests and has been granted an extension. Requests for extensions must be in writing detailing the reason for the request. The POC must include:

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1. How the deficient practice cited in the review will be corrected. What system will be put into place to prevent recurrences of the deficient practice;
2. How the provider will monitor to assure future compliance and who will be responsible for the monitoring;
3. The date the Plan of Correction will be completed; and
4. Any provider-specific training requests related to the deficiencies.

The OA will review the POC submitted and either approve it or return it to the provider for a revision. Revisions must be returned within fourteen calendar days or BMS will place a hold on claims.

For information relating to additional audits that may be conducted for services contained in this chapter please see [Chapter 800, Program Integrity](#) of the BMS Provider Manual that identifies other State/Federal auditing bodies and related procedures.

Please note: It is common that certified PC providers contract the service provision to other entities (i.e. contracted providers). It should be noted that the certified PC provider is responsible for all criteria described in this policy as well as all applicable Medicaid policies. Also note that all BMS, OA and UMC correspondence will be to the Certified PC agency. BMS, the OA and the UMC are under no obligation to correspond with contracted PC entities.

### 517.2.6 Training and Technical Assistance

The OA develops and conducts training for PC providers and other interested parties as necessary to improve systemic and provider-specific quality of care and regulatory compliance. Training is available through both face-to-face and web-based venues.

### 517.2.7 Self-Audit

PC providers have an ethical and legal duty to ensure the integrity of their partnership with the Medicaid program. This duty includes an obligation to examine and resolve instances of noncompliance with program requirements through self-assessment and voluntary disclosures of improper use of State and Federal resources. A self-audit must be conducted when:

- a. The provider becomes aware there was a noncompliance issue, and/or
- b. A self-audit is assigned by BMS.

PC providers must use the approved format for submitting [self-audits](#) to the Office of Program Integrity (OPI). Failure to submit self-audits may jeopardize the future status of the PC provider as a West Virginia Medicaid provider. PC providers are required to send all completed forms in an electronic format to the OPI along with the original Excel spreadsheet and repayment forms.

For more information on self-audits and sanctions refer to [Chapter 800, Program Integrity](#).

### 517.2.8 Record Requirements

Providers must fully complete all required Personal Care forms and follow the instructions for the published forms. Forms and instructions can be found on the Personal Care Program website at: <http://www.dhhr.wv.gov/bms/Programs/PCS/Pages/Policy-and-Forms.aspx>



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Certified PC providers must meet the following record requirements:

### Program Records:

- A. The provider must keep a file on each member they serve.
- B. Files must contain all original and required documentation for services provided to the member by the provider responsible for development of the document including the POC, Pre-Admission Screening (PAS), the completed Nursing Assessment, Contact Notes, Direct Care Worker Worksheets, etc.
- C. All original required documentation must be maintained onsite by the provider for at least five years from the date of service or for an additional three years after audits, with any and all exceptions having been declared resolved by BMS, in the member's services file subject to review by authorized BMS personnel or contracted agents. In the event of a dispute concerning a service provided, documentation must be maintained until the end of the dispute or five years whichever is greater.
- D. The provider must upload the following to the UMC web portal within seven business days of completion:
  - a. POC, and
  - b. RN Assessment,

### Personnel Records:

- A. Original or legible copies of personnel documentation including training records, licensure, confidentiality agreements, signed conflict of interest statements, etc. must be maintained on file by the certified provider.
- B. Minimum credentials for the RN must be verified upon hire and thereafter based upon applicable professional license requirements for each year of employment.
- C. All documentation on each staff member must be kept by the Medicaid provider in the designated office that represents the county where services were provided.

Certified PC providers must agree to abide by all applicable federal and state laws, policy manuals, and other documents that govern the Personal Care program. Providers must also agree to make themselves, Board Members (if applicable), their staff, and any and all records pertaining to services available for any audit, desk review, or other service evaluation that ensures compliance with billing regulations and program goals

Providers must ensure that all required documentation is maintained at the agency as required by state and federal regulations and is accessible for state and federal audits.

### 517.3 STAFF QUALIFICATIONS AND TRAINING REQUIREMENTS

All staff must be trained to provide PC services in a culturally and linguistically appropriate manner.

Prior to using an internet provider for training purposes, PC providers must submit the name, web address, and course name(s) to the OA for review. The OA will respond in writing whether this internet training meets the training criteria.

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### 517.3.1 Direct Care Worker Qualifications

A Direct Care Worker is an individual paid to provide the day-to-day care to members receiving PC services.

Medicaid prohibits persons legally responsible for members from providing PC services for purposes of reimbursement. Legally responsible persons include: a spouse or a parent of a minor child. Court appointed legal guardians are also prohibited from providing PC services for purposes of reimbursement. A Medical Power of Attorney (MPOA), Power of Attorney (POA), Health Care Surrogate or any other legal representative may provide services if employed by a PC agency.

A Direct Care Worker must be at least 18 years of age and have the ability to perform the tasks required for the member receiving PC services. In addition, they must have completed the following competency based initial training before providing service and annually thereafter as required.

All documented evidence of Direct Care Worker qualifications such as licenses, transcripts, certificates, fingerprint-based background checks, signed confidentiality statements and references shall be maintained on file by the provider. SFCP training records will be maintained by BCF's contractor for that program. The provider must have an internal review process to ensure that the Direct Care Worker providing PC services meets the minimum qualifications as required by policy.

#### 517.3.1.1 Direct Care Worker Initial Training Requirements

- A. Cardiopulmonary Resuscitation (CPR) training – a certified trainer from the American Heart Association, American Red Cross, American Health and Safety Institute, or American CPR. Additional CPR courses may be approved by the OA. Please refer to the <http://www.wvseniorservices.gov/LinkClick.aspx?fileticket=LWvofiQVtU0%3d&tabid=78>  
All CPR courses must include a skills based demonstration.
- B. First Aid – must be provided by the provider agency nurse, a certified trainer, or an approved qualified internet provider. Please refer to the <http://www.wvseniorservices.gov/LinkClick.aspx?fileticket=LWvofiQVtU0%3d&tabid=78>
- C. Universal Precautions Training.
- D. Training on assisting members with ADLs/IADLs – must be provided by the provider agency RN.
- E. \*Abuse/Neglect/Exploitation identification training.
- F. \*HIPAA training
- G. Direct Care Ethics – training on ethics such as promoting physical and emotional well-being, respect, integrity and responsibility, justice, fairness and equity that must be provided by the provider agency nurse or a documented specialist in this content area, or a qualified internet training provider.
- H. Member Health and Welfare – training must include emergency plan response, fall prevention, home safety and risk management and training specific to the member's special needs and must be provided by the provider agency nurse.

SFCPs providing PC services must have a home that meets the definition of a certified Specialized Family Care Home as established by the Bureau for Children and Families (BCF) and must be certified by BCF, or its contractor, initially and annually thereafter. All training documentation necessary to be a certified Specialized Family Care Home must be up-to-date in accordance with the [Bureau for Children](#)



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[and Families' Specialized Family Care policy manual.](#) BCF is responsible for ensuring that SFCPs are trained in all areas above.

\* Providers may use training modules provided by the OA for these mandatory trainings or develop their own with the same components that must be approved by the OA.

### 517.3.1.2 Direct Care Worker Annual Training Requirements

CPR; First Aid; OSHA; Abuse, Neglect, and Exploitation; and HIPAA training must be kept current.

- A. CPR is current as defined by the terms of the certifying agency.
- B. First Aid, if provided by the American Heart Association, American Red Cross, or other qualified provider, current is defined by the terms of that entity. If provided by the provider agency nurse certified CPR instructor, must be renewed every 12 months or less. Training will be considered current in the month it initially occurred. (Example: if First Aid training was conducted May 10, 2014, it will be valid through May 31, 2015.)
- C. Universal Precautions Training; Abuse, Neglect and Exploitation; and HIPAA training must be renewed every 12 months or less. Training will be determined current in the month it initially occurred. (See example above.)

In addition, four hours of training focused on enhancing direct care service delivery knowledge and skills must be provided annually. Member specific on-the-job training can be counted toward this requirement.

### 517.3.2 Registered Nurse Qualifications

An RN must be employed by a certified PC provider and have a current West Virginia RN license. Licensure documentation must be maintained in the employee's file. Documentation that shows the RN was licensed for the employee's entire employment period must be present. (For example – if an employee has been with the provider for three years – documentation of licensure must be present for all three years.) All documented evidence of staff qualifications such as licenses, transcripts, certificates, signed confidentiality agreements (Refer to [Chapter 100, General Administration and Information](#)) and references shall be maintained on file by the provider. The provider shall have an internal review process to ensure that employees providing PC services meet the minimum qualifications.

#### 517.3.2.1 Registered Nurse Training Requirements

- Must maintain professional license training requirements.
- \*Abuse/Neglect/Exploitation identification training.
- \*Person-centered planning training.

\* Providers may use training modules provided by the OA for these mandatory trainings or develop their own with the same components that must be approved by the OA.

## 517.4 TRAINING DOCUMENTATION

Documentation of training conducted by the provider agency nurse or a documented specialist in the content area must include the training topic, date, beginning time of the training, ending time of the training, location of the training and the signature of the instructor and the trainee. Training

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documentation for internet based training must include the person's name, the name of the internet training provider and either a certificate or other documentation proving successful completion of the training. A card from the American Heart Association, the American Red Cross or other OA approved training entity is acceptable documentation for CPR and First Aid training. All documented evidence of training for each direct care worker must be kept on file by the PC provider and be available, upon request, for review by BMS or the OA. Providers must use the approved Personal Care form to document training. It can be found at: <http://www.dhhr.wv.gov/bms/Programs/PCS/Pages/Policy-and-Forms.aspx>. The documented evidence of training requirements for SFCPs must be kept on file by the Bureau for Children and Families or its contractor and be available, upon request, for review by BMS or the OA.

### 517.5 INCIDENT MANAGEMENT

PC providers shall have policies and procedures for thoroughly reviewing, investigating, and tracking all incidents involving the risk or potential risk to the health and safety of the members they serve.

Investigations must be conducted by an RN who is licensed or registered in the State of WV. All incident details must be objectively and factually documented (what, when, where, how). All inconsistencies must be explored. The PC provider must ensure the safety of all involved (the member receiving PC services and/or the staff) during the investigation. And, all required entities must be notified as applicable (Adult or Child Protective Services, law enforcement, Medicaid Fraud Control Unit, etc.)

The provider is responsible for taking appropriate action on both an individual and systemic basis in order to identify potential harms, or to prevent further harm, to the health and safety of all members served.

Anyone providing PC services who suspects an allegation of abuse, neglect, or exploitation concerning a PC member must report the incident to [West Virginia Centralized Intake for Abuse and Neglect](#) immediately by calling 1-800-352-6513, seven days a week, 24 hours a day. If this initial referral is for adult protective services it must then be followed by a written report, submitted to the local Department of Health and Human Resources in the county where the alleged victim resides, within 48 hours following the verbal referral. At this time a written report is not a requirement for child protective services. A Protective Services Worker MAY be assigned to investigate the alleged abuse, neglect and/or exploitation. You may also report suspected sexual assault and/or sexual abuse, serious physical abuse or exploitation to your local law enforcement agency by calling 911. Any incident attributable to the failure of PC provider staff to perform his/her responsibilities that compromises the health or safety of the member receiving PC services is considered to be neglect and must be reported to Adult or Child Protective Services, as applicable. Incidents shall be classified by the provider as one of the following:

#### **Critical Incidents**

Critical incidents are occurrences with a high likelihood of producing real or potential harm to the health and welfare of the member receiving PC services or incidents which have caused harm or injury. It could also include any type of suspected criminal activity. For the purpose of this system, critical incidents do not result from abuse/neglect/exploitation. These incidents may include, but are not limited to, the following:

- A. Attempted suicide, or suicidal threats or gestures.



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- B. Suspected and/or observed criminal activity by the member receiving PC services, member's families, health care providers, concerned citizens, and public agencies that compromise the health or safety of the member.
- C. An unusual event such as a fall or injury of unknown origin requiring medical intervention or first aid if abuse and neglect is not suspected.
- D. A significant interruption of a major utility, such as electricity or heat in the member's residence that compromises the health or safety of the member.
- E. Environmental/structural problems with the member's home, including inadequate sanitation or structural damage that compromises the health or safety of the member.
- F. Fire in the home resulting in relocation or property loss that compromises the health or safety of the member.
- G. Unsafe physical environment in which the Direct Care Worker and/or other agency staff are threatened or abused, and the staff's welfare is in jeopardy.
- H. Disruption of the delivery of PC services, due to involvement with law enforcement authorities by the member receiving PC services and/or others residing in the member's home that compromises the health or safety of the member.
- I. Medication errors by a member or his/her family caregiver that compromises the health or safety of the member, such as medication taken that was not prescribed or ordered for the member, and failure to follow directions for prescribed medication, including inappropriate dosages, missed doses, or doses administered at the wrong time.
- J. Disruption of planned services for any reason that compromises the health or safety of the member receiving PC services, including failure of member's emergency backup plan.
- K. Any other incident judged to be significant and potentially having a serious negative impact on the member receiving PC services.
- L. Any incident attributable to the failure of PC provider staff to perform his/her responsibilities that compromises the member's health or safety is considered to be neglect and must be reported to Adult or Child Protective Services through the [West Virginia Centralized Intake for Abuse and Neglect](#) or by calling 1-800-352-6513.

### Simple Incidents

Simple incidents are any unusual events occurring to a member receiving PC services that cannot be characterized as a critical incident and do not meet the level of abuse or neglect. Examples of simple incidents include, but are not limited to, the following:

- A. Fall or other incident that does not require minor first aid or medical intervention.
- B. Minor injuries of unknown origin with no detectable pattern.
- C. Dietary errors with minimal or no negative outcome.

### 517.5.1 Incident Management Documentation and Investigation Procedures

Until such time that the [West Virginia Incident Management System \(WV IMS\)](#) is available to PC providers, the Incident Report form must be completed within incident reporting timeframes ([Section 517.5 Incident Management](#)) for each member incident that occurs. Completed incident reports must be placed in an agency administrative file and must be available for review by the OA.

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The Provider Agency Director or designated RN will immediately review each incident report. All Critical Incidents of abuse, neglect and/or exploitation must be investigated by a RN. All incidents involving abuse, neglect and/or exploitation must be reported to Adult or Child Protective Services through [West Virginia Centralized Intake for Abuse and Neglect](#), within mandated time frames. An Incident Report documenting the outcomes of the investigation must be completed and submitted to the OA within 14 calendar days of learning of the incident.

When the WV IMS is available for PC providers, the Incident Report must be entered into the WV IMS within one business day of learning of the incident and the follow up must be entered within 14 calendar days of learning of the incident. Each Incident Report must be printed, reviewed and signed by the Agency Director or designee and placed in an administrative file.

Providers are to report monthly if there are no incidents in the WV IMS. Until such time that the WV IMS is available, the provider must complete the No Monthly Incidents form and place in the certified PC agency administrative file.

The WV IMS does not supersede the reporting of incidents to Adult or Child Protective Services through the West Virginia Centralized Intake for Abuse and Neglect. At any time during the course of an investigation, should an allegation or concern of abuse, neglect and/or exploitation arise, the provider shall immediately notify Adult or Child Protective Services through [West Virginia Centralized Intake for Abuse and Neglect](#) or by calling 1-800-352-6513.

The provider is responsible for investigating all incidents, including those reported to Adult or Child Protective Services. If requested by Adult or Child Protective Services, a provider shall delay its own investigation and document such request and report to the OA or when available in the online WV IMS.

The criteria utilized for a thorough investigation include:

- Report was fully documented to include the date of the incident, date the agency learned of the incident, facts of the incident, type of incident, initial determination of the incident, and verification that an approved professional conducted the investigation.
- Documentation that all parties were interviewed and incident facts were evaluated.
- Documentation the member was interviewed.
- Determination of the cause of the incident.
- Identification of preventive measures.
- Documentation of any action taken as the result of the incident (worker training, personnel action, removal of staff, changes in the POC) and
- Change in needs were addressed on the POC.

Unanticipated/unexplained deaths must be reported in the WV IMS (when available until such time make incident reports to the OA) within one business day of learning of the incident. This would include deaths that occur in the member's home that are not anticipated, unexplained and not medically or age related. Example: Direct Care Worker arrives at the member's home and finds the member deceased with no known reason. For incident type, choose "critical" incident category, then choose "unanticipated deaths" in the WV IMS system.

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### 517.5.2 Incident Management Tracking and Reporting

Providers must review and analyze incident reports to identify health and safety trends. Identified health and safety concerns and remediation strategies must be incorporated into the agency Quality Management Plan. The Quality Management Plan must be made available to the OA monitoring staff at the time of the provider monitoring review or upon request.

### 517.6 DOCUMENTATION AND RECORD RETENTION REQUIREMENTS

#### General Requirements for Certified PC Providers

- PC provider agencies must comply with the documentation and maintenance of records requirements described in [Chapter 100, General Administration and Information](#), [Chapter 300, Provider Participation Requirements](#), and [Chapter 800, Program Integrity](#) of the BMS Provider Manual found at the BMS Web Site: <http://www.dhhr.wv.gov/bms/Pages/Manuals.aspx>
- PC provider agencies must comply with all other documentation requirements of this chapter.
- All required documentation must be maintained onsite by the certified PC provider for at least five years from the date of service or an additional three years after audits, with any and all exceptions having been declared resolved by BMS, in the member's services file subject to review by authorized BMS personnel or contracted agents. In the event of a dispute concerning a service provided, documentation must be maintained until the end of the dispute or five years whichever is greater.
- All required documentation and records must be available upon request by BMS or federal monitors, or contracted agents for auditing and/or medical review purposes.
- Failure to maintain all required documentation and in the manner required by BMS, may result in the disallowance and recovery by BMS of any amounts paid to the provider for which the required documentation is not maintained and not provided to BMS upon request.

#### Specific Requirements for Certified PC Providers

PC provider agencies must maintain a specific record for all services received for each PC member, but not limited to:

- All Personal Care program forms as applicable to the policy requirement or service code requirement.
- Agencies may only use forms developed and published by BMS (refer to [Chapter 300, Provider Participation Requirements](#), for a description of general requirements for Medicaid record retention and documentation). This can be found on the BMS web site <http://www.dhhr.wv.gov/bms/Pages/Manuals.aspx>
- All providers of PC services must maintain records to substantiate that services billed by the PC provider agency were provided on the dates listed and were for the actual amount of time and number of units claimed.
- All services provided must meet the criteria for documentation as indicated in the policy manual such as date, actual time of service and number of units claimed.
- Day to day documentation for services by a provider agency is to be maintained by the provider agency that provides and bills for said service. Monitoring and review of services as related to the POC or monthly summary (visit) are to be maintained in the provider record.

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- Required on-site documentation may be maintained in an electronic format as long as the documentation is accessible to individuals who may need to access it.
- Electronic health record and electronic signature requirements described in [Chapter 100, General Administration and Information](#) of the BMS Provider Manual.

### 517.7 PROGRAM ELIGIBILITY

Applicants for the Personal Care Program must meet all of the following criteria to be eligible for the program:

- A. Be a resident of West Virginia. The individual may be discharged or transferred from a nursing home or other institution in any county of the state, or in another state, as long as his/her residence is in West Virginia. It is the responsibility of the agency submitting the PC request to verify residency.
- B. Be approved as medically eligible as described in this section and its subparts.
- C. Meet Medicaid financial eligibility criteria for the program as determined by the county DHHR office.

#### 517.7.1 Medical Eligibility Determination

The [Pre-Admission Screening](#) is used to certify an individual's medical eligibility for PC service and to determine the level of service required. To be medically eligible a member must demonstrate three deficits, based on the presence and level of severity of functional deficits, possibly accompanied by certain medical conditions. Points are assigned to each level of functional deficit and specified medical conditions. A service level is then assigned based on accumulated points.

The PAS may be completed by either an RN or a physician, physician assistant or nurse practitioner; however, it must be signed and dated by a physician, physician assistant or nurse practitioner. The PAS is valid for 60 days after the date of the physician's, physician assistant's or nurse practitioner's signature. If services have not begun within that 60 day period a new PAS must be conducted. A [Physician Certification Form](#) is needed if the PAS was completed by an RN. This form and the PAS must be uploaded in the UMC's web portal.

Following the physician's, physician assistant's or nurse practitioner's signature, the RN must sign and date the PAS and submit it to the Utilization Management Contractor (UMC) via the web portal who will determine medical eligibility ([Section 517.7.5 Results of PAS Evaluation A. Approval](#)). The effective date of medical eligibility is the first of the month in which the PAS was completed. This date becomes the Anchor Date. If found ineligible, the UMC will follow procedures outlined in [Section 517.7.5 Results of PAS Evaluation B. Denial](#). The PAS must be completed annually prior to the member's anchor date to certify continuing medical eligibility for services.

#### 517.7.2 Medical Criteria

An individual must have three deficits as described on the PAS Form to qualify medically for the Personal Care Program. These deficits are derived from a combination of the following assessment elements on the PAS.



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Section	Observed Level	
#26	Functional abilities of individual in the home	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher (must be incontinent)
f.	Continence, Bladder	Level 3 or higher (must be incontinent)
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transferring	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	Wheeling	Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home.)

An individual may also qualify for PC services if he/she has two functional deficits identified as listed above (items refer to PAS) and any one or more of the following conditions indicated on the PAS:

Section	Observed Level
#24	Decubitus; Stage 3 or 4
#25	In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) Independently and b) With Supervision are not considered deficits.
#27	Individual has skilled needs in one or more of these areas: (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.
#28	Individual is not capable of administering his/her own medications.

### 517.7.3 Service Level Criteria

There are two Service Levels for PC services. Points will be determined as follows based on the following sections of the PAS:

Section	Description of Points
#24	Decubitus - 1 point
#25	1 point for b., c., or d.
#26	Functional Abilities: Level 1 - 0 points Level 2 - 1 point for each item a through i. Level 3 - 2 points for each item a through m, i (walking) must be at Level 3 or Level 4 in order to get points for j (wheeling) Level 4 – 1 point for a, 1 point for e, 1 point for f, 2 points for g through m



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Section	Description of Points
#27	Professional and Technical Care Needs - 1 point for continuous oxygen.
#28	Medication Administration - 1 point for b. or c.

Total number of possible points is 30.

### 517.7.4 Service Level Limits

The service limit for **T1019** Personal Care (Direct Care) Level 1 Services is up to 60 hours per calendar month. In the event that the PAS reflects 14 or more points as described in [Section 517.7.3 Service Level Criteria](#), and the member assessments fully document the need, the PC Agency may access/provide up to 210 hours at Service Level 2.

Service Level	Points Required	Range of Hours Per Month
1	0 – 13	0 - 60
2	14-30	61-210

The actual number of hours available for a member eligible for PC is determined by the [Personal Care Standards](#) and POC. The maximum number of hours in the range is not guaranteed. Though a member's PAS may indicate a Level 2 is approved, the PC provider is responsible to adhere to the Personal Care Standards. Only those services necessary and appropriate per assessments, the POC and per the Personal Care Standards may be provided/billed.

### 517.7.5 Results of PAS Evaluation

#### A. APPROVAL

All requests for PC services must be submitted to the UMC via the web portal and include:

- The PAS with the dated physician's, physician's assistant or nurse practitioner's signature and the dated provider agency's RN signature;
- The Physician Certification Form (if applicable);

All requests will be reviewed by the UMC RN to confirm the presence of the three required deficits in ADL's. Based upon the PAS, the UMC will determine whether the member will receive Level 1 or Level 2 services. The UMC will notify the provider agency through the web portal within two days of receipt of the request, their decision and if approved provide a prior authorization number.

Once authorization is received from the UMC, the PC provider must complete the member's PC Assessment and PC POC, based on identified needs and member preferences, and initiate direct care services within 10 calendar days. At the time the provider receives the PAS from the physician, the RN must start to document actions on the [RN Initial Contact Form](#).

#### B. DENIAL

The provider agency must submit the Personal Care PAS to the Utilization Management Contractor (UMC). If the UMC determines the applicant/member does not meet medical eligibility criteria for PC services, the UMC will provide the applicant/member with a denial letter within five business days of the decision date. The letter will include: why he/she does not meet medical eligibility, a copy of the PAS, the

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applicable Personal Care policy manual section(s), notice of free legal services, and a Request for Hearing Form to be completed if the applicant/member wishes to contest the decision, and specific timeframes for filing an appeal.

A pre-hearing conference may be requested by the applicant/member, or their legal representative (if applicable) any time prior to the Medicaid Fair Hearing and the OA will schedule. At the pre-hearing conference, the applicant/member, and/or their legal representative (if applicable), the OA, and BMS will review the information submitted for the medical eligibility determination and the basis for the termination. If the applicant/member and BMS come to an agreement during the pre-hearing conference, the OA will withdraw the applicant's/member's hearing request from the Board of Review. All parties will be notified by the OA in writing that the issue(s) have been resolved and the hearing request has been withdrawn.

If the applicant's/member's medical eligibility is denied and the applicant/member is subsequently found medically eligible after the fair hearing process, services cannot start earlier than the date of the hearing decision.

### POLICY

#### 517.8 COVERED SERVICES

The following information describes the PC services and activities which are reimbursable by Medicaid. These apply to all PC providers unless otherwise noted. For individuals who will receive PC services as well as a Medicaid Waiver service, please see [Section 517.15 Provision of Dual Services](#) and its subparts.

##### 517.8.1 Initial Member Assessment/Re-Evaluation

<b>Procedure Code:</b>	T1001
<b>Service Unit:</b>	Event
<b>Limit:</b>	One per 300 days
<b>Prior Authorization:</b>	No

**Required Documentation:** An initial or annual PAS signed and dated by a physician, physician assistant or nurse practitioner and the agency RN, a PC Assessment, and a PC POC. All activities must be conducted by the provider agency RN.

- A. Review and submit the signed and dated PAS.
- B. Conduct the initial and annual person-centered face-to-face PC Assessment, (for dual services this must be done in conjunction with the ADW RN assessment).
- C. Develop the initial and annual PC POC using [PC Standards](#). The POC must be developed with the member and their legal representative (if applicable) and must address the member's assessed needs and preferences using a person-centered approach.

##### 517.8.2 Ongoing RN Assessment and Care Planning

<b>Procedure Code:</b>	T1002
<b>Service Unit:</b>	15 minutes
<b>Limit:</b>	Six units per month
<b>Prior Authorization:</b>	No



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**Required Documentation:** A six month PC Assessment (except members receiving dual services), a six month PC POC using [PC Standards](#), the [PC RN Member Home Visit form](#) and the PC Monthly Report.

- A. A person-centered face-to-face PC Assessment must be conducted every six months. Additional PC Assessments may be conducted if the member's condition indicates a need. The PC Assessment must be signed and dated by the RN and the member (or legal representative if applicable).
- B. The POC must consider any informal supports (i.e. family, friends or community supports) that are available to address the member's needs identified on the PAS and the PC Assessment. The POC must be modified as necessary to address changes in the member's condition.
- C. Environmental maintenance (examples: housekeeping, washing dishes, laundry, etc.) may not exceed one-third (1/3) of the time spent providing PC services.
- D. The RN must monitor and assess the quality and appropriateness of the direct care service and assure that it is provided according to the POC by signing and dating the logs.
- E. The RN must review, sign, and date the PC POC once it is completed by the member (or legal representative if applicable), and the Direct Care Worker, certifying all activities were performed as needed and met the member's preferences. This activity is limited to one unit per month per member. One-on-one training of the Direct Care Worker by the RN is reimbursable if the purpose of the one-on-one training is to instruct the Direct Care Worker in a specific care technique for the member. The RN must document the reason and the specific training provide on the [PC RN Home Visit Form](#).
- F. Submit the PC Monthly Report to the OA by the sixth business day of the month.

Although the goal is to provide services to a member who cannot perform activities of daily living, when assessing and doing care planning, the RN assures that this goal is balanced with the goal of promoting independence and encouraging the highest possible level of function for the individual.

### 517.8.3 Personal Care (PC) Services (Direct Care Services)

<b>Procedure Code:</b>	T1019
<b>Service Unit:</b>	15 Minutes
<b>Service Limit:</b>	210 hours per month or 840 units
<b>Prior Authorization:</b>	Yes
<b>Ratio:</b>	1:1

**Required Documentation:** POC signed and dated by Direct Care Worker, provider agency RN and member (or legal representative if applicable) with a schedule outlining the dates/times when the member will receive PC services.

The functions of the PC Direct Care Worker include providing direct care services as defined by the POC, recording services and time spent with the member, and communicating to the RN any member changes.

PC Direct Care Worker duties and responsibilities as described in the POC may include:

- A. Assist member with ADLs/IADLs in the home or community.
- B. Assist member with environmental tasks necessary to maintain the member in the home.



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- C. Assist member with completion of errands that are essential for the member to remain in the home (IADLs) — Examples: grocery shopping, medical appointments, Laundromat, and trips to the pharmacy. The member may accompany the Direct Care Worker on these errands.
- D. If ADLs or IADLs tasks are provided in the community, the amount may not exceed 20 hours per month.
- E. Assist members in obtaining or retaining competitive employment of at least 40 hours a month by providing PC services in locations for obtaining employment such as employment agencies, human resource offices, accommodation preparation appointments, job interview sites, and work sites.
- F. Report significant changes in member's condition to the RN.
- G. Report any incidents to the RN. (Examples: member falls (whether a Direct Care Worker was present or not), bruises (whether Direct Care Worker knows origin or not), etc.).
- H. Report any environmental hazards to the RN. (Examples: no heat, no water, pest infestation or home structural damage).
- I. Prompt for self-administration of medications.
- J. Maintain records as instructed by the RN.
- K. Perform other duties as assigned by the RN within program guidelines.
- L. Accurately complete PC POC and other records as instructed by the RN.

PC Direct Care Worker cannot perform any service that is considered to be a professional skilled service or any service that is not on the member's POC. Functions/tasks that cannot be performed include, but are not limited to, the following:

- A. Care or change of sterile dressings.
- B. Colostomy irrigation.
- C. Gastric lavage or gavage.
- D. Care of tracheostomy tube.
- E. Suctioning.
- F. Vaginal irrigation.
- G. Administer injections, including insulin.
- H. Administer any medications, prescribed or over-the-counter.
- I. Perform catheterizations, apply external (condom type) catheter.
- J. Tube feedings of any kind.
- K. Make medical judgments or give advice on medical or nursing questions.
- L. Application of heat.

Please note. There may be instances whereby a SFCP performs what would be considered skilled nursing tasks for the individuals living in their homes. However, these tasks should not be placed on the Medicaid PC POC, nor can they be billed to Medicaid. If these are provided by the SFCP then it is considered natural supports.

### 517.9 PRIOR AUTHORIZATIONS

Prior authorization requirements governing the provision of all West Virginia Medicaid services apply pursuant to [Chapter 300, Provider Participation Requirements](#) of the Provider Manual.

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In order to receive payment from BMS, a provider must comply with all prior authorization requirements. BMS in its sole discretion determines what information is necessary in order to approve a prior authorization request. Prior authorization does not guarantee payment.

### 517.10 BILLING PROCEDURES

Claims must not be processed for less than a full unit of service. Consequently, in filing claims for Medicaid reimbursement the amount of time documented in minutes must be totaled and divided by the minutes in a unit of service to arrive at the number of units billed. After arriving at the number of billable units, billing must take place on the last date in the service range. Billing cannot be rounded more than once within a calendar month. **The billing period cannot overlap calendar months.**

Medicaid is the payer of last resort. Claims will not be honored for services (inclusive of service code definitions) provided outside of the scope of this policy manual or outside of the scope of federal regulations.

### 517.11 PAYMENTS AND PAYMENT LIMITATIONS

PC providers must comply with the payment and billing procedures and requirements described in [Chapter 600, Reimbursement Methodologies](#) of the BMS Provider Manual.

No PC services may be charged while an individual is inpatient in a nursing home, hospital, rehabilitation facility or other inpatient medical facility, except for direct care services. Direct Care services may be provided on the day of admission and day of discharge. PC services cannot be billed when a PC member is temporarily or semi-permanently staying out of state, i.e., vacation or visiting family

### 517.12 SERVICE LIMITATIONS AND SERVICE EXCLUSIONS

Services governing the provision of all West Virginia Medicaid services apply pursuant to [Chapter 300, Provider Participation Requirements](#), of the BMS Provider Manual and applicable sections of this Chapter. Reimbursement for services is made pursuant to [Chapter 600, Reimbursement Methodologies](#); however, the following limitations also apply to the requirements for payment of services that are appropriate, and necessary for the PC services described in this chapter.

PC services are made available with the following limitations:

1. The member receiving PC services must live in West Virginia and be available for planned services;
2. All PC regulations and policies must be followed in the provision of the services. This includes the requirement that all PC providers be licensed in the State of West Virginia and enrolled in the West Virginia Medicaid Program;
3. The services provided must conform with the stated goals and objectives on the member's POC.

Reimbursement for PC services cannot be made for:

1. Services provided outside a valid POC;
2. Services provided when medical and/or financial eligibility has not been established;
3. Services provided when there is no POC;

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4. Services provided without supporting documentation;
5. Services provided by unqualified staff;
6. Services provided outside the scope of the service definition;
7. Services provided by another Medicaid/Medicare program or through the Veterans Administration (VA) (no duplication of services); and
8. Services that exceed service limits.

### 517.13 LOCATION OF SERVICES

PC Services may be delivered in the member's home, place of employment or in the local, public community. PC hours provided in the community may not exceed 20 hours per month. Hours can be used to assist the member with completion of essential errands and medical appointments.

PC Services may be provided to assist eligible individuals to obtain and retain competitive employment of at least 40 hours per month. Services are designed to assist a member with a disability to perform daily activities on and off the job; these would include activities that the member would typically perform if he/she did not have a disability. Locations for obtaining employment may include employment agencies, human resource offices, accommodation preparation appointments, and job interview sites.

PC services **cannot** be provided in a hospital, nursing facility, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) site, Intellectual and Developmental Disabilities (IDD) Waiver group homes with four or more members, IDD Waiver Intensively Supported Setting (ISS) homes, or any other settings in which personal assistance and/or nursing services are provided. PC services cannot be billed when a PC member is temporarily or semi-permanently staying out of state, i.e., vacation or visiting family. This exclusion does not include IDD Waiver, Aged and Disabled Waiver (ADW) or Traumatic Brain Injury Waiver (TBIW) member's natural homes or Specialized Family Care Homes.

#### 517.13.1 Assisted Living Residences and Group Residential Facilities

Generally, PC services may not be provided in assisted living residences or in group residential facilities. However, there may be instances where the provision of PC services in these types of facilities would be allowed. Before providing services in assisted living residences and/or group residential facilities the following criteria must be met:

- A. Medicaid PC services shall not duplicate or replace those services which a provider is required by law or regulation to provide. By definition, assisted living residences and group residential facilities must provide a certain level of PC services; therefore these services cannot be replaced or duplicated. This includes private pay facilities.
- B. If a Medicaid member who resides in an assisted living residence or a group residential facility requests PC services the following documentation must be submitted to the OA:
  - 1) A detailed itemization of all services the facility must provide according to state regulations or contract;
  - 2) A detailed itemization of all services the PC provider will be undertaking for the member and why the additional services are necessary.

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### 517.14 SERVICES AND/OR COSTS NOT ELIGIBLE FOR REIMBURSEMENT

The following services and/or costs are not eligible for reimbursement:

- A. Room and Board Services including the provision of food, shelter, maintenance and supplies.
- B. PC services which have not been certified by a physician, physician assistant, or nurse practitioner on a PAS or are not in the approved POC.
- C. Hours which have not received prior authorization.
- D. Supervision and other activities that are considered normal child care that is appropriate for a child of a similar age.
- E. Respite service.

### 517.15 PROVISION OF DUAL SERVICES

Individuals who are receiving Aged and Disabled Waiver (ADW) services, Intellectual/ Developmental Disabilities Waiver (IDDW) services or Traumatic Brain Injury Waiver (TBIW) services may also receive PC Services; if they have unmet direct support needs and meet PC criteria.

#### 517.15.1 Dual Service Provision for Members Receiving ADW Services

Approval of the provision of both ADW and PC services to the same member will be considered if the following criteria are met:

- A. A member receiving ADW services must be receiving services at the maximum Service Level D.
- B. The PC RN must use the PAS used to determine ADW eligibility. However, it must be reviewed to assure the information is current and reflective of the member's needs. If not, the PC RN should contact the OA.
- C. For members who receive services from an ADW provider agency, the ADW Person- Centered Assessment and the ADW Personal Attendant Log (PAL) must be used in order to determine the member's need for PC services. For members who receive ADW services through Personal Options, the Personal Options Assessment and Service Plan must be used to determine a member's need for PC services. A PC RN Assessment is not required.
- D. For members who receive ADW services through an ADW provider agency, the coordination of the dual service request is the responsibility of the Case Manager. This includes coordinating the planning meeting which includes the ADW Personal Attendant RN, the PC RN and the member (or legal representative if applicable).
- E. For members who receive ADW services through Personal Options the initiation of the dual service request is the responsibility of the Resource Consultant, unless the member has a Case Manager. If so, the Case Manager is responsible. Coordination of the dual services is the responsibility of the PC RN. This includes coordinating the planning meeting with the member receiving ADW services (or legal representative if applicable), the Resource Consultant, and the PC RN.
- F. The PC RN is responsible for development of the PC Nursing POC and for submitting the prior authorization to the UMC. There must be a PC Nursing POC and a Service Plan. Both plans must be coordinated between the two agencies providing direct services to ensure that services are not duplicated. PC and ADW Personal Attendant services cannot be provided during the same hours on the same day. A service planning meeting between the Resource Consultant, the



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PC RN and the Case Manager, if applicable, must be held with the member in the member's residence and documented on the "Request for Dual Service Provision form.

- G. The Resource Consultant, the ADW Case Manager and the PC agency are responsible for assuring that the two programs are being administered according to the member's needs, the POC and the PAL. A combined ADW and PC schedule must be included in the PC Nursing POC and the ADW POC. The schedule must outline when all direct support services (PC and Waiver) are expected to be delivered and must be attached to the ADW POC and PCPOC. At no time can a duplication of services occur.

### 517.15.2 Dual Service Provision for Members Receiving IDDW Services

Approval of the provision of both IDDW and PC Services to the same member will be considered if the following criteria are met:

- A. An IDDW member must be utilizing the maximum number of Direct Care Service hours in the Waiver program available based on the member's age and type of residence prior to applying for PC. See the IDDW manual ([Chapter 513](#)) for the definition of which services are considered to be Direct Care Services. Individuals in a 24-hour staffed setting are not eligible for PC. The Service Coordinator must initiate the dual request by completing the I/DD portion of the WV Personal Care Dual Services – I/DD Waiver worksheet. The form must be forwarded to the PC provider for completion and submission to the UMC.
- B. A PAS must be completed as outlined in [Section 517.7 Program Eligibility and all of its subparts](#) to determine medical eligibility for PC services. There must be a PC Nursing POC and an I/DDW Service Plan. Both plans must be coordinated between the two agencies providing direct services to ensure that services are not duplicated. PC and I/DDW Direct Care services cannot be provided during the same hours on the same day. A service planning meeting between the Resource Consultant, the PC RN and the Case Manager must be held with the member (or legal representative if applicable) in the member's residence and documented on the "Request for Dual Service Provision" form.
- C. A PC POC must be developed between the agencies providing direct care services to ensure that services are not duplicated. PC and IDDW services cannot be provided during the same hours on the same day. A service planning meeting between the IDDW Service Coordinator and the PC RN must be held with the member (or legal representative if applicable) in the member's residence and documented on the Request for Dual Service Provision form.
- D. The IDDW Service Coordinator is responsible for coordination of the dual service request. This includes coordinating the planning meeting which must include the IDDW Service Coordinator, the PC RN, the member (or legal representative if applicable). The Service Coordinator must attach the POC to the Individual Program Plan (IPP) and upload the plan into the member's file in the UMC's I/DDW web portal.
- E. The PC RN is responsible for completing or arranging for the PAS, developing the PC POC and submitting the request for prior authorization to the UMC via the UMC's Personal Care web portal.
- F. The IDDW Service Coordinator and the PC agency are responsible for assuring that the two programs are being administered according to the member's needs and the respective plans of care. A combined IDDW and PC schedule must be included in the PC POC and the IDDW IPP. At no time can a duplication of services between the two programs occur.
- G. The PC provider must use the IDDW Extraordinary Care Assessment as a tool to determine appropriate PC services when PC services are provided by a legally responsible adult.

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- H. The Service Coordinator must provide a copy of the IDDW member's IPP and Extraordinary Care Assessment (when applicable) to the PC RN.

### 517.15.3 Dual Service Provision for Members Receiving TBIW Services

Approval of the provision of both Traumatic Brain Injury Waiver services and PC Services to the same member will be considered if the following criteria are met:

- A. A TBIW member must have maximized their budget prior to applying for PC and have direct care needs that cannot be met by the Waiver.
- B. The RN must use the current PAS completed by the TBI Waiver Utilization Management Contractor (UMC) to determine medical eligibility for the TBIW services. However, it must be reviewed to assure the information is current and reflective of the member's needs. If not, the PC RN should contact the UMC. When determining the need for PC services the PAS and the TBI Member Assessment and TBIW Service Plan must be used. PC services must be reflected on the member's TBIW Service Plan and schedule.
- C. For members who are receiving TBIW service through a TBI provider agency, the coordination of the dual service request is the responsibility of the Case Manager. This includes coordinating the planning meeting with the PC RN, the Case Manager and the member and/or legal representative (if applicable).
- D. For members who are receiving TBIW services through Personal Options, the initiation of dual service request is the responsibility of the Case Manager. Coordination of the dual services is the responsibility of the Case Manager. This includes coordinating the planning meeting with the TBIW member (or legal representative if applicable), the Resource Consultant and the PC RN.
- E. The PC RN is responsible for the development of the PC Nursing POC and submitting the request for prior authorization to the UMC in the UMC's Personal Care web portal.
- F. There must be a PC Nursing POC and a TBIW Service Plan. Both plans must be coordinated between the two agencies providing direct services to ensure that services are not duplicated. PC and TBIW Personal Attendant services cannot be provided during the same hours on the same day. A service planning meeting between the Resource Consultant, the PC RN and the Case Manager must be held with the member (or legal representative if applicable) in the member's residence and documented on the "Request for Dual Service Provision" form.
- G. The TBIW Case Manager and the PC agency are responsible for assuring that the two programs are being administered according to the member's needs. A combined TBIW and PC schedule outlining when all direct support services (PC and Waiver) are expected to be delivered must be included in the TBIW Service Plan and PC POC. At no time can a duplication of services between the two programs occur.

### 517.16 MEMBER RIGHTS AND RESPONSIBILITIES

At a minimum, PC agencies must communicate in writing to members:

Their right to:

- A. Transfer to a different provider agency.
- B. Address dissatisfaction with services through the provider agency's grievance procedure.
- C. Access the West Virginia DHHR Fair Hearing process.

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- D. Freedom from retribution when expressing dissatisfaction with services or appealing service decisions.
- E. Considerate and respectful care from their provider(s).
- F. Freedom from abuse, neglect and exploitation.
- G. Take part in decisions about their services.
- H. Confidentiality regarding PC services.
- I. Access to all of their files maintained by providers.

And their responsibility to:

- J. Notify the PC provider within 24 hours prior to the day services are to be provided if services are not needed.
- K. Notify providers promptly of changes in Medicaid coverage.
- L. Comply with the POC.
- M. Cooperate with all scheduled in-home visits.
- N. Notify the PC provider of a change in residence or an admission to a hospital, nursing home or other facility.
- O. Notify the PC provider of any change in medical status or direct care need.
- P. Maintain a safe home environment for the PC provider to provide services.
- Q. Verify services were provided by initialing and signing the POC.
- R. Communicate any problems with services to the PC provider.
- S. Report any suspected fraud to the provider agency or the Medicaid Fraud Unit at (304)558-1858.
- T. Report any incidents of abuse, neglect and/or exploitation to the PC provider and the [West Virginia Centralized Intake for Abuse and Neglect](#) at 1-800-352-6513.
- U. Report any suspected illegal activity to the local police department or appropriate authority.
- V. Notify the provider of any changes in their legal representation and/or guardianship and provide copies of the appropriate documentation.
- W. Not ask Direct Care Worker to provide services that are excluded by policy or not on their POC.

### 517.17 TRANSFER TO A DIFFERENT AGENCY

A PC member may request a transfer to another provider agency at any time. The OA will assist with transfers if needed.

Transferring Provider Agency Responsibilities:

- Ensure the current PAS, the Member Assessment (PC or ADW, or TBIW), PC POC, Individual Program Plan, ICAP (when applicable) and Service Plan (when applicable) is uploaded in the UMC's web portal. In addition, the transferring provider agency should share other documents as needed.
- Maintain all original documents for monitoring purposes.
- Continue to provide services to the member until the transfer process is completed.

Receiving Provider Agency Responsibilities:

- Develop the PC POC within seven business days.

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Note: The existing PC POC from the transferring agency must continue to be implemented until such time that the receiving agency can develop and implement a new PC POC to prevent a gap in services.

### 517.18 EMERGENCY TRANSFER OPTIONS

A request to transfer that is considered an emergency, such as when a member receiving PC services suffers abuse, neglect, or harm, or a health and safety risk, including inability to provide services, will be reviewed by the OA, and the OA will take appropriate action. The PC agency that the member is transferring from must submit supporting documentation via the UMC's web portal notifying the OA that it has been uploaded, that explains why the member is in emergency status. The OA will expedite the request as necessary, coordinating with the member and agencies involved.

### 517.19 DISCONTINUATION OF SERVICES

The following require a Request for Discontinuation of Services Form be submitted and approved by the OA:

- A. Unsafe Environment – an unsafe environment is one in which the Direct Care Worker and/or other agency staff are threatened or abused and the staff's welfare is in jeopardy. The provider must follow the steps in the [PC Procedural Guidelines](#) for non-compliance and unsafe closures. This may include, but is not limited to, the following circumstances:
  - 1) The member or other household members repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and/or threaten a Direct Care Worker or other agency staff with guns, knives, or other potentially dangerous weapons, including menacing animals.
  - 2) The member or other household members display an abusive use of alcohol and/or drugs or engages in the manufacture, buying and/or selling of illegal substances
  - 3) The physical environment is either hazardous or unsafe.
- B. The member is persistently non-compliant with the PC Nursing POC creating a risk to their health and safety.
- C. Member no longer desires services (must include a signed statement from the member (or legal representative if applicable) indicating he or she no longer desires services).

If the closure is due to an unsafe environment the PC provider will contact the OA for assistance. The provider must notify Adult or Child Protective Services if an unsafe situation warrants such notification by calling the [West Virginia Centralized Intake for Abuse and Neglect](#) at 1-800-352-6513.

The Request for Discontinuation of Services Form must be submitted to the OA. The OA will review all requests for a discontinuation of services. If it is an appropriate request, and the OA approves the discontinuation, the OA will send notification of discontinuation of services to the member (or legal representative if applicable). Fair hearing rights will also be provided unless the member (or legal representative if applicable) no longer desires services. The effective date for the discontinuation of services is 13 calendar days after the date of the OA notification letter, if the member (or legal representative if applicable) does not request a hearing. If it is an unsafe environment, services may be discontinued immediately and a report must be made by the PC RN to Adult or Child Protective Services through the [West Virginia Centralized Intake for Abuse and Neglect](#) or by calling 1-800-352-6513. In all cases the member receiving services must be provided their right to a fair hearing by the

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OA. However, due to the nature of unsafe environment closure the member is not eligible for the option to continue existing PC services during the fair hearing process.

All discontinuation of services (closures) must be reported on the PC Monthly Report to the OA.

The following do not require a Request for Discontinuation of Services Form but must be reported on the PC Monthly Report:

- A. Death
- B. Moved Out of State
- C. Medically Ineligible
- D. Financially Ineligible

### 517.20 MEMBER GRIEVANCE PROCESS

Members who are dissatisfied with the services they receive from a provider agency have a right to file a grievance about the provision of services. All PC providers will have a written member grievance procedure. Providers will provide members grievance procedure information and grievance forms at the time of application and annual medical eligibility re-evaluation. These forms will also be provided upon request by the member in addition to the time of application and the annual re-evaluation.

There are two levels of grievance review:

**A. Level One: Personal Care Provider**

A Personal Care Provider has 10 business days from the date it receives a Member Grievance Form to hold a meeting, in person or by telephone with the member or the member's legal representative (if applicable). The meeting will be conducted by the provider agency director or designee. The provider has five days from the date of the meeting to respond in writing to the grievance.

If the member is dissatisfied with the agency decision, he/she may request that the grievance be submitted to the OA for a Level Two review and decision.

**B. Level Two: Operating Agency**

If a Personal Care provider is not able to address the grievance in a manner satisfactory to the member, the member may request a Level Two review. The OA will, within 10 business days of the receipt of the Member Grievance Form, contact the member (or legal representative if applicable) and the Personal Care provider to review the Level One decision, and issue a Level Two decision. Level Two decisions are based on Medicaid policy and/or health and safety issues.

### 517.21 VOLUNTARY AGENCY CLOSURE

A provider may terminate participation in the Personal Care Program with 30 calendar day's written notification of voluntary termination. The written termination notification must be submitted to the BMS claims agent and to the OA. The provider must provide the OA with a complete list of all members currently receiving PC services that will need to be transferred.

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The OA will provide selection forms to everyone being served by the agency along with a cover letter explaining the reason a new selection must be made.

If at all possible, a joint visit with the member will be made by both the agency ceasing participation and the new one selected in order to explain the transfer process. Services must continue to be provided until all transfers are completed by the OA. If a joint visit is not possible, both providers must document how contact was made with the member to explain the transfer process.

The agency terminating participation must ensure that the transfer of the member is accomplished as safely, orderly and expeditiously as possible. All program records must be made available to BMS upon closing.

The agency must submit their final continuing certification for any part of the year they provided services prior to closing.

### 517.22 INVOLUNTARY AGENCY CLOSURE

BMS may terminate a provider from participation in the Personal Care Program for violation of the rules, regulations, or for the conviction of any crime related to health care delivery. If the provider is a corporation, its owners, officers, or employees who have violated said rules and/or regulations or have been convicted of a crime related to health care delivery, may likewise be excluded from further participation in the Personal Care Program. After notice of intention to suspend or terminate enrollment under his/her authority, the provider may request a document/desk review. Refer to [Chapter 100, General Administration and Information](#) and [Chapter 800, Program Integrity](#) for more information on this procedure.

Prior to closure, the provider will be required to provide the OA with a complete list of all members currently receiving PC services that will need to be transferred. The OA will provide selection forms to each of the members on the agency's list, along with a cover letter explaining the reason a new selection must be made. The OA will ensure that the transfer of all members is accomplished as safely, orderly and expeditiously as possible.

The agency must submit their final continuing certification for any part of the year they provided services prior to closing.

All program records must be made available to BMS upon closing.

### 517.23 ADDITIONAL SANCTIONS

If BMS or the OA receives information that indicates a provider is unable to serve new members due to staffing issues, member health and safety risk, etc. or has a demonstrated inability to meet recertification requirements, BMS may remove the agency from the provider information list on the OA website until the issues are addressed to the satisfaction of BMS.

Health and safety deficiencies deemed critical may include other sanctions including involuntary agency closure.

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### 517.24 HOW TO OBTAIN INFORMATION

Please refer to the WV BMS Personal Care Program website for Program contact information at:  
<http://www.dhhr.wv.gov/bms/Programs/PCS/Pages/default.aspx>

All forms for this program can be found at:  
<http://www.dhhr.wv.gov/bms/Programs/PCS/Pages/Policy-and-Forms.aspx>

### GLOSSARY

Definitions in [Chapter 200, Definitions and Acronyms](#) apply to all West Virginia Medicaid services, including those covered by this chapter. Definitions in this glossary are specific to this chapter.

**Abuse:** The infliction or threat to inflict bodily injury on or the imprisonment of any child or incapacitated adult.

**Activities of Daily Living (ADLs):** Activities that a person ordinarily performs during the course of a day, such as mobility, personal hygiene, bathing, dressing, eating, and skills required for community living.

**Anchor Date:** The annual date by which the member's eligibility for continuing Personal Care services must be recertified. The Anchor Date will be the first of the month in which the member's Pre-Admission Screening (PAS) was completed and approved by the UMC for medical eligibility.

**Assisted Living Residence:** Any living facility, residence or place of accommodation, however named, available for four or more residents which is advertised, offered, maintained or operated by the ownership or management, whether for payment or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care as defined in the [State Code §16-5D-1](#).

**Behavioral Health Center:** Any inpatient, residential or outpatient facility for the care and treatment of persons with mental illness, intellectual/developmental disabilities or addiction which is operated, or licensed to operate, by the Department of Health and Human Resources.

**Certificate of Need (CON):** A regulatory program originally enacted in 1977 under which reviews are conducted to determine the need for certain medical services, the financial feasibility, and whether the service(s) is consistent with the WV State Health Plan. For more information on the CON process please see the [West Virginia Healthcare Authority](#) web page.

**Community Integration:** The full participation of all people in community life.

**Competency Based Curriculum:** A training program which is designed to give participants the skills they need to perform certain tasks and/or activities. The curriculum should have goals, objectives and an evaluation system to demonstrate competency in training areas.

**Cueing:** Giving a signal or reminder to do something.

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**Days:** Calendar days unless otherwise specified.

**Direct Access:** Physical contact with a resident or beneficiary or access to the resident or member's property, personally identifiable information, or financial information.

**Direct Care Worker:** The individuals who provide the day-to-day care to Personal Care members.

**Dual Services:** When a Medicaid member is approved for and receiving both Medicaid Waiver services and Personal Care services.

**Emergency Plan:** A written plan which details who is responsible for what activities in the event of an emergency, whether it is a natural, medical or man-made emergency.

**Environmental Maintenance:** Activities such as light house cleaning, making and changing the member's bed, dishwashing, and member's laundry.

**Financial Exploitation:** Illegal or improper use of a member's financial resources. Obvious examples of financial exploitation include cashing a person's checks without authorization; forging a person's signature; or misusing or stealing a person's money or possessions. Another example is deceiving a person into signing any contract, will, or other document.

**Group Residential Facility:** A facility which is owned, leased, or operated by a behavioral health service provider and in which residential services and supervision for members who are developmentally or behaviorally disabled are provided.

**Home and Community Based Services (HCBS):** Services which enable Medicaid members to remain in the community setting rather than being admitted to a Long Term Care Facility (LTCF).

**Informal Supports:** Family, friends, neighbors or anyone who provides a service to a Medicaid member but is not reimbursed.

**Instrumental Activities of Daily Living (IADLs):** Skills necessary to live independently, such as the ability to shop for groceries, handle finances, perform housekeeping tasks, prepare meals, and take medications.

**Legal Guardian/Guardian:** A person appointed by the court who is responsible for the personal affairs of a protected person. [[WV Code §44A-1-4\(5\)](#)]

**Legal Representative:** One who stands in the place of and represents the interest of another, i.e. Power of Attorney, Medical Power of Attorney, Medical Surrogate.

**Legally Responsible Person:** A spouse or a parent of a minor child (under the age of 18) that is legally responsible to provide supports that they are ordinarily obligated to provide.

**Minor Child:** A child under the age of 18.

**Neglect:** "The failure to provide the necessities of life to an incapacitated adult or child" or "the unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an

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incapacitated adult or child” ([WV State Code §9-6-1](#)). Neglect would include the lack of or inadequate medical care by the service provider and inadequate supervision resulting in injury or harm to the incapacitated member. Neglect also includes, but is not limited to: a pattern of failure to establish or carry out a member’s individualized program plan or treatment plan that results in negative outcome or places the member in serious jeopardy; a pattern of failure to provide adequate nutrition, clothing, or health care; failure to provide a safe environment resulting in negative outcome; and/or failure to maintain sufficient, appropriately trained staff resulting in negative outcome or serious jeopardy. This may also include medication errors and dietary errors resulting in a need for treatment for the member.

**Operating Agency (OA):** The agency contracted by the Bureau for Medical Services, to manage the Personal Care Program. The Operating Agency is responsible for approving providers who have a valid Certificate of Need, assisting with member transfers when requested, monitoring and reviewing Personal Care agencies and conducting member case reviews.

**Person-Centered Planning:** A process-oriented approach which focuses on the person and his/her needs by putting him/her in charge of defining the direction for his/her life, not on the systems that may or may not be available.

**Quality Management Plan:** A written document which defines the acceptable level of quality, and describes how the provider will ensure this level of quality in its deliverables and work processes.

**Remediation:** Act of correcting an error or a fault.

**Representative Sample:** A small quantity of a targeted group such as customers, data, people, products, whose characteristics represent (as accurately as possible) the entire batch, lot, population, or universe.

**Residential Care Community:** Any group of 17 or more residential apartments, however named, which are part of a larger independent living community and which are advertised, offered, maintained or operated by an owner or manager, regardless of payment for the expressed or implied purpose of providing residential accommodations, personal assistance and supervision on a monthly basis to 17 or more persons who are or may be dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care who are capable of self-preservation and are not bedfast.

**Scope of Services:** The range of services deemed appropriate and necessary for an individual member. Such services may include but are not limited to prevention, intervention, outreach, information and referral, detoxification, inpatient or outpatient services, extended care, transitional living facilities, etc.

**Self-Preservation:** Protection of oneself from harm or destruction.

**Sexual Abuse:** Any act towards an incapacitated adult or child which an individual engages in, attempts to engage in, or knowingly procures another person to engage in such act, notwithstanding the fact that the incapacitated individual may have suffered no apparent physical injury as a result of such conduct:

1. Sexual intercourse/intrusion/contact; and
2. Any conduct whereby an individual displays his/her sex organs to an incapacitated adult or child for the purpose of gratifying the sexual desire of that individual, of the person making such



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display, or of the incapacitated adult, or child, or for the purpose of affronting or alarming the incapacitated adult or child.

Additionally, any act which constitutes an act of sexual abuse pursuant to the criminal code of West Virginia.

**Sexual Exploitation:** When an individual, whether for financial gain or not, persuades, induces, entices, or coerces an incapacitated adult or child to display his/her sex organs for the sexual gratification of that individual or third person, or to display his/her sex organs under circumstances in which that individual knows such display is likely to be observed by others who would be affronted or alarmed.

**Specialized Family Care Provider (SFCP):** An individual who operates a foster care home which has received certification through the WVDHHR Specialized Family Care Program. Both the home and the individual providing services must be certified by a Specialized Family Care Family Based Care Specialist.

**Utilization Management Contractor (UMC):** The UMC is authorized to grant prior authorization for services provided to members enrolled in the West Virginia Medicaid Personal Care program. The UMC utilizes nationally recognized medical appropriateness criteria established and approved by BMS for medical necessity reviews.

### REFERENCES

West Virginia State Plan references Personal Care services at sections [3.1-A\(24\)\(f\)](#), [3.1-B\(24\)\(f\)](#), [supplement 2 to appendices 3.1-A and 3.1-B\(24\)\(f\)](#) and reimbursement at [4.19-B\(24\)\(f\)](#).

### CHANGE LOG

REPLACE	TITLE	CHANGE DATE	EFFECTIVE DATE
Entire Chapter	Personal Care Services		TBD