



July 31, 2024

Ann Dalton
Chief of Medicaid Policy, Medicaid Policy, Quality & Operations
Agency for Health Care Administration (AHCA)
2727 Mahan Drive
Tallahassee, FL 32308

Submitted electronically to MedicaidRuleComments@ahca.myflorida.com

Dear Ms. Dalton,

On behalf of the Home Care Association of Florida (HCAF), the statewide trade association representing Florida's home health care provider community, I am writing to provide feedback and express concerns regarding the proposed amendment to Rule 59G-4.261, Florida Administrative Code (F.A.C.). We appreciate the opportunity to contribute to the rulemaking process and submit the following comments based on input from Medicaid home health agencies (HHAs) that may participate in the program.

General Issues

1. *Background Check Costs:* We recommend providing clear guidance on whether the costs associated with background checks are the responsibility of HHAs or prospective family caregivers. Explicit guidelines will ensure clear expectations for all parties.
2. *Monitoring Procedures:* We request detailed information on AHCA's monitoring procedures, including audits, inspections, and oversight mechanisms. Clear instructions on how deficiencies will be addressed, including resolution timelines and potential consequences, are crucial.
3. *Patient Safety:* We seek guidance on managing safety concerns when an HHA or managed care organization (MCO) determines that a trained family caregiver is not providing safe care. We recommend that AHCA establish clear guidelines for evaluating and addressing these issues. The guidelines should include procedures for HHAs and MCOs to assess safety, implement corrective actions, and ensure continuity of care while maintaining safety standards. Additionally, although HHAs are protected from civil liability when terminating non-compliant family home health aides, a system should be established to notify MCOs and Medicaid of such terminations. This will prevent caregivers from transitioning between HHAs or MCOs without addressing the underlying safety concerns.
4. *Employee Benefits:* Clarification is needed on whether HHAs are required to provide employee benefits for family caregivers. Understanding this requirement is essential for compliance and addressing caregiver compensation and support.
5. *Authorization Periods:* The draft rule requires HHAs to obtain authorization at least every 180 days, or more frequently if there is a change in the recipient's condition. However, some MCOs are authorizing services for only 60 days, even without changes in the recipient's condition or care needs. This practice creates unnecessary administrative burdens for providers. We recommend that AHCA reinforce the 180-day authorization period to ensure consistency and reduce administrative tasks, aligning with the rule's intent.
6. *Eligibility Age:* Please specify the age at which a recipient would no longer be eligible for Medicaid services under the Private Duty Nursing and Family Home Health Aide Services Coverage Policy once the rule is finalized.
7. *Foster Parent Participation:* We seek clarification on whether foster parents will be permitted to participate as employees through HHAs as private duty nurses or family home health aides.

Family Home Health Aide Services

1. We have received reports that some HHAs are prematurely informing families about the start of the family home health aide program despite the rule not being finalized except for the training rules effective July 23, 2024. We urge AHCA to clearly communicate the start date of the program through a bulletin or guidance. Additionally, we recommend reminding HHAs of Medicaid regulations regarding solicitation and direct contact with families served by other HHAs to prevent aggressive and unethical recruitment practices.
2. To support program viability, we urge AHCA to provide financial incentives or support for training programs. We also request assistance in establishing and identifying approved training programs, as well as disseminating information about them. This support is essential for maintaining high care standards.
3. We need clarity on whether a family home health aide's training certification is specific to each HHA. Specifically, if a family caregiver moves to a new HHA, is the training from their previous HHA still valid? If not, requiring re-training at each new HHA could help maintain consistent standards and mitigate risks to recipients, ensuring they receive care from qualified and safe caregivers.
4. Will HHAs need to obtain separate plans of care signed by a physician for private duty nursing (PDN) services and family home health aide services? Clarification on this requirement is necessary to ensure compliance with documentation standards.
5. Are family home health aides authorized to perform assessments, or does this task remain with nursing staff? Clear guidance will aid in proper documentation and compliance.
6. What procedures should HHAs follow to verify relationships between family caregivers and recipients, and what safeguards are in place to prevent misuse of the "related provider" designation?
7. Will HHAs be guaranteed an authorization of 40 hours per week for family home health aides, or will HHAs have discretion in allocating these hours? Understanding this policy is crucial for ensuring appropriate care and effective distribution of service hours.
8. Can HHAs issue authorizations for "supplemental" care by family caregivers, such as up to 40 hours per week or eight hours per day when a nurse is not available? Specifically, if a HHA is staffing a case close to 100% with nurses, can the authorization for the family home health aide be issued as a PRN authorization to provide backup coverage?
9. If a recipient requires 24/7 skilled nursing care and HHA clinicians work 12-hour shifts, can a family home health aide cover gaps if a nurse calls out? We need clarification on whether family home health aides can provide care in these situations to ensure no disruption in 24/7 care for high-acuity needs.
10. The current rule permits up to eight hours of family home health aide service per day, which may result in gaps between shifts. To ensure continuous care, we recommend revising the rule to specify a weekly total of allowable service hours rather than daily limits. This adjustment would provide greater scheduling flexibility and help maintain uninterrupted care for recipients.
11. We seek guidance on the priority of nursing services versus family home health aide services when both are available through an HHA. Specifically, we are concerned that parents might opt for family home health aides to maximize their compensation, even when skilled nursing services are available. We recommend clarifying the circumstances under which nursing services should take precedence.
12. Guidance is needed to clearly define the roles and responsibilities of family caregivers acting as informal caregivers versus those performing duties as paid family home health aides. It is crucial to distinguish between tasks performed as a parent and those performed as a paid caregiver, such as administering over-the-counter medications or interventions not on the care plan, or transporting a family member receiving paid services. This distinction is vital for managing liability and ensuring compliance, as ambiguity between these roles can create risks, particularly if an adverse event occurs. Additional clarity will help prevent confusion and ensure adherence to regulations.

Private Duty Nursing Services

1. Can multiple related providers, legal guardians, or caretaker relatives, each holding a valid registered nurse (RN) or licensed practical nurse (LPN) license, provide up to 40 hours per week of PDN services to a single recipient?

2. Once the *Private Duty Nursing and Family Home Health Aide Services Coverage Policy* is finalized, when will the revised PDN policy take effect, and when can licensed family members begin providing PDN hours under the new policy?

Thank you for considering our comments and concerns. We are fully committed to the successful implementation of this program, which is essential for the well-being of medically fragile children and their families. To support this goal, we respectfully offer our expertise and assistance in any capacity needed to finalize the rule. We are eager to collaborate with AHCA on this critical initiative. Should you require further information or wish to discuss our feedback in more detail, please do not hesitate to contact me at (850) 222-8967 or dbellville@homecarefla.org.

Sincerely,

A handwritten signature in cursive script that reads "Denise Bellville".

Denise Bellville, RN, BS, COS-C
Executive Director