

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

**SESSION LAW 2013-306  
HOUSE BILL 492**

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ADJUST MEDICAID PERSONAL CARE SERVICES TO PROVIDE ADDITIONAL SAFEGUARDS FOR QUALIFIED INDIVIDUALS AND TO REPORT TO THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES, THE SENATE APPROPRIATIONS COMMITTEE ON HEALTH AND HUMAN SERVICES, AND TO THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN SERVICES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Sections 10.9F(c) and (d) of S.L. 2012-142, as amended by Section 70 of S.L. 2012-194, read as rewritten:

**"SECTION 10.9F.(c)** A Medicaid recipient who meets each of the following criteria is eligible for up to 80 hours of personal care services:

- (1) The recipient has a medical condition, disability, or cognitive impairment and demonstrates unmet needs for, at a minimum, (i) three of the five qualifying activities of daily living (ADLs) with limited hands-on assistance; (ii) two ADLs, one of which requires extensive assistance; or (iii) two ADLs, one of which requires assistance at the full dependence level.
- (2) The recipient (i) resides in a private living arrangement, a residential facility licensed by the State of North Carolina as an adult care home, or a combination home as defined in G.S. 131E-101(1a); or (ii) resides in a group home licensed under Chapter 122C or the General Statutes and under 10A NCAC 27G .5601 as a supervised living facility for two or more adults whose primary diagnosis is mental illness, a developmental disability, or substance abuse dependency, and is eligible to receive personal care services under the Medicaid State Plan.

The five qualifying ADLs are eating, dressing, bathing, toileting, and mobility. For Medicaid recipients meeting the criteria above, ~~Personal~~ personal care services shall be available for up to 80 hours per month in accordance with an assessment conducted under subsection (d) of this section and a plan of care developed by the service provider and approved by the Department of Health and Human Services, Division of Medical Assistance, or its designee.

- (3) A Medicaid recipient who meets the eligibility criteria provided in subdivisions (1) and (2) of this subsection and all of the criteria provided below is eligible for up to 50 additional hours of Medicaid Personal Care Services per month for a total of up to 130 hours per month in accordance with an assessment and a plan of care.
  - a. The recipient requires an increased level of supervision.
  - b. The recipient requires caregivers with training or experience in caring for individuals who have a degenerative disease, characterized by irreversible memory dysfunction, that attacks the brain and results in impaired memory, thinking, and behavior, including gradual memory loss, impaired judgment, disorientation, personality change, difficulty in learning, and the loss of language skills.
  - c. Regardless of setting, the recipient requires a physical environment that includes modifications and safety measures to safeguard the recipient because of the recipient's gradual memory loss, impaired



judgment, disorientation, personality change, difficulty in learning, and the loss of language skills.

- d. The recipient has a history of safety concerns related to inappropriate wandering, ingestion, aggressive behavior, and an increased incidence of falls.

Physician attestation. – A recipient must have a physician's attestation that the recipient meets each of the criteria in sub-subdivisions a. through d. of subdivision 3 of this subsection. A recipient is not required to have a new attestation if he or she is identified by the Department of Health and Human Services, Division of Medical Assistance, as having on record a physician's attestation that meets the requirements of this subdivision. A recipient is required to have a new attestation if one cannot be identified by the Division of Medical Assistance or if the one identified does not meet the requirements of this subdivision.

Independent assessment. – Based on the physician's attestation, the Medicaid recipient must receive an independent assessment conducted by a trained professional who is qualified to assess and has experience assessing individuals with the needs for additional safeguards identified by this subdivision. The independent assessment shall be conducted in accordance with subsection (d) of this section and shall determine the number of hours of personal care services needed by the individual. In response to the assessment, a plan of care shall be developed by the service provider and approved by the Department of Health and Human Services, Division of Medical Assistance, or its designee.

Personal care services shall not include nonmedical transportation; financial management; non-hands-on assistance such as cueing, prompting, guiding, coaching, or babysitting; and household chores not directly related to the qualifying ADLs.

**"SECTION 10.9F.(d)** All assessments for personal care services, continuation of service, and change of status reviews shall be performed by an independent assessment entity (IAE). The IAE shall not be an owner of a provider business or provider of personal care services of any type.

A recipient shall be assessed by the IAE after the recipient's primary or attending physician provides written authorization for referral for the service and written attestation to the medical necessity for the service. The IAE shall determine and authorize the amount of service to be provided as determined by its review and findings of each recipient's degree of functional disability and level of unmet needs for personal care services in the five qualifying ADLs."

**SECTION 2.** The Department of Health and Human Services shall reduce the rate for personal care services in order to fund the additional service hours authorized in Section 1 of this act and in order to remain within the budgeted amount of funds for personal care services.

**SECTION 3.** On or before August 15, 2013, the Department of Health and Human Services shall submit to the Centers for Medicare and Medicaid Services a Medicaid State Plan Amendment necessary to implement this act. The State Plan Amendment shall include an effective date of July 1, 2013, or as soon after July 1, 2013, as allowed by the Centers for Medicare and Medicaid Services.

**SECTION 4.(a)** On or before August 1, 2013, the Department of Health and Human Services shall make an interim report on the implementation of this act to the Joint Legislative Oversight Committee on Health and Human Services and to the Fiscal Research Division. The report shall include the following: (i) an estimate of the number of Medicaid recipients that would be eligible for Medicaid Personal Care Services under this act, (ii) an estimate of the number of PCS hours potential recipients would need broken out in increments of 10 hours between 80 and 130 hours, (iii) a copy of the draft Medicaid State Plan Amendment (SPA), (iv) an estimated time line for approval of the SPA and a projected implementation date, and (v) the rate reductions necessary to implement this act.

**SECTION 4.(b)** On or before November 1, 2013, the Department of Health and Human Services shall report on the implementation of this act to the Joint Legislative Oversight Committee on Health and Human Services.

**SECTION 5.** Section 1 of this act becomes effective upon approval by the Centers for Medicare and Medicaid Services of the Medicaid State Plan Amendment required in Section 3 of this act. The Department of Health and Human Services shall provide notice of State Plan Amendment approval by posting the effective date of the change on its Web site. The remainder of the act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10<sup>th</sup> day of July, 2013.

s/ Daniel J. Forest  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 6:17 p.m. this 18<sup>th</sup> day of July, 2013