# CHAPTER 63

# LONG-TERM CARE SERVICES

**Authority**

N.J.S.A. 30:4D-6a(4)(a)b(14); 30:4D-7, 7a, b and c; 30:4D-12; Section 1919 of the Social Security Act; 42 U.S.C. 1396r.

**Source and Effective Date**

R.1994 d.624, effective November 23, 1994.
See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 63, Long-term Care Services, expires on November 23, 1999.

**Chapter Historical Note**

Chapter 63, originally Skilled Nursing Home Services Manual, was adopted as R.1971 d.163, effective September 22, 1971. See: 3 N.J.R. 206(b). Chapter 63 was repealed and a new Chapter 63, Long-Term Care Services Manual, was adopted as R.1979 d.126, effective March 29, 1979. See: 10 N.J.R. 190(b), 11 N.J.R. 248(b). Pursuant to Executive Order No. 66(1978), Subchapter 1, General Provisions, was readopted as R.1984 d.123, effective March 21, 1984, and Subchapter 3, Cost Study, Rate Review Guidelines and Reporting System for Long-Term Care Facilities was readopted as R.1984 d.573, effective November 29, 1984. See: 16 N.J.R. 204(a), 16 N.J.R. 896(a); 16 N.J.R. 2484(a), 16 N.J.R. 3437(a). Pursuant to Executive Order No. 66(1978), Chapter 63 was readopted as R.1989 d.622, effective November 29, 1989. See: 21 N.J.R. 2752(a), 21 N.J.R. 3918(a).

Pursuant to Executive Order No. 66(1978), Chapter 63 was readopted as R.1994 d.624. See: Source and Effective Date. As a part of R.1994 d.624, Subchapters 1, 2, 2A and 4, and Appendix I were repealed and new Subchapters 1 and 2, and Appendices A through Q were adopted; Subchapter 5 was recodified as Subchapter 4; effective January 3, 1995. See: 26 N.J.R. 3614(a), 27 N.J.R. 156(a). See, also, section annotations.

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## SUBCHAPTER 1. GENERAL PROVISIONS

### 10:63-1.1 Scope

This chapter addresses the provision of quality, cost-prudent health care services available to New Jersey Medic-

aid eligible children and adults in a nursing facility (NF) and addresses the provision of and reimbursement for services required to meet the individual's medical, nursing, rehabilitative and psychosocial needs to attain and maintain the highest practicable mental and physical functional status. Although the scope of the Long–Term Care Services chapter encompasses other long-term care facilities such as governmental psychiatric hospitals, inpatient psychiatric services/programs for the under 21 (residential treatment centers) and intermediate care facilities/mentally retarded (ICF/MRs), the following subchapters specifically address nursing facility services. However, the Fiscal Agent Billing Supplement applies to all the above cited long-term care facilities.

**Case Notes**

Radioactive application of regulation valid. In re: Medicaid Long Term Care Services Bulletin 84–2, 212 N.J.Super. 48, 513 A.2d 967 (App.Div.1986), certification denied 526 A.2d 125, 107 N.J. 31.

Denial of request for reclassification from low to medium salary region assignment not inequitable. Rosewood Manor, Inc. v. Division of Medical Assistance and Health Services, 93 N.J.A.R.2d (DMA) 20.

### 10:63–1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Advance directive" means a written instruction relating to the provision of health care when the individual is incapacitated, such as a living will or durable power of attorney for health care.

"Air fluidized therapy bed" means a device employing the circulation of filtered air through ceramic spherules (small, round ceramic objects).

"Case management" means a process by which the Division of Medical Assistance and Health Services Medical Social Care Specialist monitors the provision of nursing facility care to assure timely and appropriate provider responses to changes in care needs and delivery of coordinated services.

"Case mix" means a system of staffing and reimbursement for nursing services based on variation in patient acuity and care needs that influences the type and amount of service needed.

"Clinical audits" means a method of utilization control under the enforcement authority of Section 1902(a)(30)(A) of the Social Security Act, in accordance with 42 CFR 456.1(b)(1), to monitor the utilization of and payment for nursing facility care and services reimbursable under the Medicaid State Plan.

"Comprehensive assessment" means a process conducted by each member of the interdisciplinary team which, for each resident, identifies problems; determines care needs; and in conjunction with the resident and his or her significant other or legal representative, results in an interdisciplinary plan of care.

"Consultant pharmacist" means a pharmacist licensed by the New Jersey State Board of Pharmacy who meets the qualifications in N.J.A.C. 10:51–3.3.

"Conventional nursing facility"—see nursing facility.

"Department of Health" (DOH) means the New Jersey State Department of Health.

"Division of Developmental Disabilities (DDD)" means the Division of Developmental Disabilities within the New Jersey State Department of Human Services.

"Division of Mental Health and Hospitals (DMH & H)" means the Division of Mental Health and Hospitals within the New Jersey State Department of Human Services.

"Health Services Delivery Plan (HSDP)" means an initial plan of care prepared by the Regional Staff Nurse during the Pre–Admission Screening (PAS) assessment process which reflects the individual's current or potential health problems and required care needs.

"Interdisciplinary care plan" means the care plan developed by the interdisciplinary team which includes measurable objectives and time tables to meet the resident's medical, nursing, dietary and psychosocial needs that are identified through the comprehensive assessment process.

"Interdisciplinary team" means a team consisting of a physician and a registered professional nurse and may also include other health professions relative to the provision of needed services. The interdisciplinary team performs comprehensive assessments and develops the interdisciplinary care plan.

"Low airloss therapy bed" means a bed frame that is equipped with air sacs which are grouped into zones corresponding to various body areas. The air sacs are inflated by a constant flow of air, some of which is directed through the air sacs to the patient surface.

"Medicaid occupancy level" means the average number of Medicaid recipients and recipients of public assistance under P.L.1947, c. 156, as amended (C44.8–107 et seq.) residing in a NF divided by the total number of licensed beds in the facility during the billing month.

"Medical director" means a physician licensed under New Jersey State law who is responsible for the direction and coordination of medical care in a nursing facility.

"Medical evaluation team (MET)" means a team of Medicaid professionals consisting of a physician consultant, a regional staff nurse (RSN), a regional pharmaceutical consultant, a Medical Social Care Specialist I (MSCS I) and a Medical Social Care Specialist II (MSCS II) who are assigned to the Medicaid District Office (MDO). A MET has the responsibility to review medical, nursing, and social information as well as any other supporting data in order to evaluate the need for long-term care, determine the level of care needed, the feasibility of alternate care, the quality of care given and the outcome of service. Members of the MET may review each recipient or potential recipient as individual team members or may perform the review as a multidisciplinary team.

"Medical social care specialist (MSCS)" means a social worker employed by the Division of Medical Assistance and Health Services who performs case management as required by N.J.A.C. 10:63.

"Medical staff" means one or more licensed physicians who act as the attending physician(s) to Medicaid recipients in a nursing facility.

"Minimum data set (MDS)" means a minimum set of screening and assessment elements, including common definitions and coding categories, needed to comprehensively assess an individual nursing facility resident. The items in the MDS standardize communication about resident problems and conditions within facilities, between facilities, and between facilities and outside agencies.

"Nursing facility (NF)" means an institution (or distinct part of an institution) certified by the New Jersey State Department of Health for participation in Title XIX Medicaid and primarily engaged in providing health-related care and services on a 24–hour basis to Medicaid recipients (children and adults) who, due to medical disorders, developmental disabilities and/or related cognitive and behavioral impairments, exhibit the need for medical, nursing, rehabilitative, and psychosocial management above the level of room and board. However, the nursing facility is not primarily for care and treatment of mental diseases which require continuous 24–hour supervision by qualified mental health professionals or the provision of parenting needs related to growth and development.

"Occupational therapist" means a person who is registered by the American Occupational Therapy Association, 1383 Piccard Drive, P.O. Box 1725, Rockville, MD 20849–1725, or is a graduate of a program in occupational therapy approved by the Council of Medical Education of the American Medical Association, 515 N. State St., Chicago, IL 60610, and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association.

"Physical therapist" means a person who is a graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association, 515 N. State St., Chicago, IL 60610, and the American Physical Therapy Association, 1111 N. Fairfax St., Alexandria, VA 22314 or its equivalent; and if practicing in the State of New Jersey, is licensed by the State of New Jersey, or if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable, and also meets all applicable Federal requirements.

"Physician's services" means those services provided within the scope of medical practice as defined by the laws of New Jersey and those services which are performed by or under the direct personal supervision of the physician.

1. "Physician" means a doctor of medicine or osteopathy licensed to practice medicine and surgery by the New Jersey State Board of Medical Examiners.

2. "Direct personal supervision" means services which are rendered in the physician's presence.

"Pre-admission screening (PAS)" means that process by which all Medicaid eligible recipients seeking admission to a Medicaid certified NF and individuals who may become Medicaid eligible within six months following admission to a Medicaid certified NF receive a comprehensive needs assessment by the Regional Staff Nurse to determine their long-term care needs and the most appropriate setting for those needs to be met, pursuant to N.J.S.A. 30:4D–17.10. (P.L.1988, c. 97).

"Pre-admission screening and annual resident review (PASARR)" means that process by which all individuals with mental illness (MI) or mental retardation (MR) are screened prior to admission to a NF and annually thereafter in order to determine the individual's appropriateness for NF services, and whether the individual requires specialized services for his or her condition.

"Prior authorization" means approval granted by the Division of Medical Assistance and Health Services through the appropriate Medicaid District Office (MDO) for payment for NF or before other Medicaid covered services are rendered to a Medicaid recipient, in accordance with this chapter.

"Regional staff nurse (RSN)" means a registered professional nurse employed by the Division of Medical Assistance and Health Services who performs health needs assessments as required by this chapter.

"Rehabilitative and/or restorative nursing care" means nursing care provided by a registered professional nurse, or under the direction of a registered professional nurse, qualified by experience in rehabilitative or restorative nursing care.

"Rehabilitative services" means physical therapy, occupational therapy, speech-language pathology services, and the use of such supplies and equipment as are necessary in the provision of such services.

"Resident" means a Medicaid eligible or potentially eligible recipient residing in an NF.

"Respiratory care practitioner" means an individual credentialed by the State Board of Respiratory Care, to practice respiratory care under the direction or supervision of a physician pursuant to State of New Jersey P.L.1971, c. 60; P.L.1974, c. 46; and P.L.1978, c. 73, amended August 1991.

"Section Q" means the resident classification portion of the standardized resident assessment (SRA) instrument which identifies an individual NF resident's nursing service requirements based on the standards at N.J.A.C. 10:63–2.2(a).

"Skilled nursing facility (SNF)" means a free-standing institution or an identifiable part of an institution which meets all the State and Federal requirements for participation in the Medicare Program as a skilled nursing facility.

"Social services" means those services provided to meet the emotional and social needs of the Medicaid recipient and significant other or guardian at the time of admission, during treatment and care in the facility, and at the time of discharge.

"Special care nursing facility (SCNF)" means a NF or separate and distinct unit within a Medicaid certified conventional NF which has been approved by the Division of Medical Assistance and Health Services to provide care to New Jersey Medicaid recipients who require specialized health care services beyond the scope of conventional nursing facility services as defined in N.J.A.C. 10:63–2, Nursing Facility Services.

"Specialized services for mental illness (MI)" mean those services offered, in accordance with 42 CFR 483.120, when an individual is experiencing an acute episode of serious mental illness and psychiatric hospitalization is recommended, based on a Psychiatric Evaluation. Specialized Services entail implementation of a continuous, aggressive, and individualized treatment plan by an interdisciplinary team of qualified and trained mental health personnel. During a period of 24–hour supervision for the individual, specific therapies and activities are prescribed, with the following objectives: to diagnose and reduce behavioral symptoms; to improve independent functioning; and as early as possible, to permit functioning at a level where less than specialized services are appropriate. Specialized services go beyond the range of services which a NF is required to provide.

"Specialized services for mental retardation (MR)" mean those services offered, in accordance with 42 CFR 483.120, when an individual is determined to have skill deficits or other specialized training needs that necessitate the availability of trained MR personnel, 24 hours per day, to teach the individual functional skills. Specialized services are those services needed to address such skill deficits or specialized training needs. Specialized services may be provided in an intermediate care facility for the mentally retarded (ICF/MR) or in a community-based setting which meets ICF/MR standards. Specialized services go beyond the range of services which a NF is required to provide.

"Speech-language pathologist" means a person who has a certificate of clinical competence from the American Speech and Hearing Association; meets all applicable Federal regulations; has completed the equivalent educational requirements and work experience necessary for the certificate, or has completed the academic program and is acquiring supervised work experience to qualify for the certificate, and, if practicing in the State of New Jersey is licensed by the State of New Jersey; or if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable.

"Standardized Resident Assessment (SRA)" means an instrument developed by the State to report minimum data set requirements, including resident assessment protocols and additional State mandated data, which results in a comprehensive, standardized assessment of a NF resident's functional capabilities and service requirements.

"Track of care" means the designation of the setting and scope of Medicaid services determined by the PAS process conducted by the RSN following assessment of the Medicaid eligible or potentially eligible Medicaid recipient, as follows:

1. "Track I" means long-term NF care.
2. "Track II" means short-term NF care.
3. "Track III" means long-term care services in a community setting.

"Waiting list" means the standardized listing, maintained in chronological order by the NF, of the names of all individuals seeking admission to a Medicaid participating NF who have completed a written application.

**Case Notes**

County hospital which did not participate in pre-adoption rulemaking proceedings is not entitled to an agency or court hearing to explore reasons underlying regulations prescribing methodology for fixing rates paid for Medicaid patient care at long-term care facility; regulations not arbitrary or unreasonable. Bergen Pines County Hospital v. New Jersey Dept. of Human Services, 96 N.J. 456, 476 A.2d 784 (1984).

Conditions of blindness and profound retardation established appropriateness of residential long-term pediatric care placement. N.C. v. Division of Medical Assistance, 95 N.J.A.R.2d (DMA) 34.

Presumption of reasonableness of agency's rate methodology not rebutted by sufficient evidence; burden of proof improperly shifted to agency at hearing (Director's Final Decision). Morris View Nursing Home v. Div. of Medical Assistance and Health Services, 8 N.J.A.R. 561 (1983), affirmed per curiam Dkt. No. A–973–83 (App.Div.1985).

Rate reimbursement system challenged by facility utilizing minimum staffing report prepared for other purposes by the Department of Health; Division of Medical Assistance and Health Services not bound by Department of Health determinations; denial of increased rate reimbursement not unreasonable agency action. In re: Preakness Hospital, 8 N.J.A.R. 389 (1983).

### 10:63–1.3 Program participation

(a) A NF shall comply with the following requirements in order to participate in the New Jersey Medicaid program. An in-State NF shall: