

Commonwealth of Massachusetts
Division of Medical Assistance
Office of Medicaid

NOTICE OF PUBLIC HEARING

Pursuant to the authority of M.G.L. c. 6A, section 16, and M.G.L. c. 118E, and in accordance with M.G.L. c. 30A, a remote public hearing will be held on Friday, January 20, 2023, at 12:30 p.m. relative to the adoption of:

130 CMR 438.000: Continuous Skilled Nursing Agency

The proposed amendments to 130 CMR 438.000: *Continuous Skilled Nursing Agency* add a new service type called complex care assistant services, defined as health-related services delivered to complex care members who require more than two continuous hours of nursing services per day. To incorporate complex care assistant services into the regulations, the proposed amendments specifically add definitions relevant to complex care assistant services; clarify that the regulation applies to services provided by a continuous skilled nursing (CSN) agency, which include CSN services and may now include complex care assistant services; provide prior authorization requirements for complex care assistant services; provide medical necessity requirements for complex care assistant services; clarify teaching activities provided by a CSN agency nurse; describe qualifications, payment rules, and training requirements for complex care assistants; describe the supervision requirements for complex care assistants and the role of the registered nurse (RN) supervisor tasked with overseeing the delivery of complex care assistant services as authorized by the MassHealth agency or its designee; add recordkeeping and medical record documentation requirements for complex care assistant services; add complex care assistant documentation requirements to the CSN agency plan of care; and clarify that the 60-day complex care assistant supervision visit conducted by the RN is reimbursable by the MassHealth agency. Furthermore, amendments to 130 CMR 438.000 add member complaint resolution requirements that require CSN agencies to respond to member complaints within two business days, identify agency employees responsible for member complaint resolution, and document the resolution process.

The proposed regulation is planned to go into effect no sooner than July 1, 2023. There is no fiscal impact on cities and towns.

To register to testify at the hearing and to get instructions on how to join the hearing online, go to www.mass.gov/service-details/masshealth-public-hearings. To join the hearing by phone, call (646) 558-8656 and enter meeting ID 935 397 8200# when prompted.

You may also submit written testimony instead of, or in addition to, live testimony. To submit written testimony, please email your testimony to masshealthpublicnotice@mass.gov as an attached Word or PDF document or as text

within the body of the email with the name of the regulation in the subject line. All written testimony must include the sender's full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit testimony by email should mail written testimony to EOHHS, c/o D. Briggs, 100 Hancock Street, 6th Floor, Quincy, MA 02171. Written testimony will be accepted through 5:00 p.m. on Friday, January 20, 2023. The Division of Medical Assistance (the Division) specifically invites comments as to how the amendments may affect beneficiary access to care.

To review the current draft of the proposed actions, go to www.mass.gov/service-details/masshealth-public-hearings or request a copy in writing from MassHealth Publications, 100 Hancock Street, 6th Floor, Quincy, MA 02171.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at ADAAccommodations@mass.gov or by phone at (617) 847-3468 (TTY: (617) 847-3788 for people who are deaf, hard of hearing, or speech disabled). Please allow two weeks to schedule sign language interpreters.

The Division may adopt a revised version of the proposed actions taking into account relevant comments and any other practical alternatives that come to its attention.

In case of inclement weather or other emergency, hearing cancellation announcements will be posted on the MassHealth website at www.mass.gov/service-details/masshealth-public-hearings.

December 23, 2022

Amended Small Business Impact Statement
(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 130 CMR 438.000: Continuous Skilled Nursing Agency

Estimate of the Number of Small Businesses Impacted by the Regulation: 54

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? No, small businesses will not have to create, file or issue additional reports.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? Yes, small businesses will need to implement additional recordkeeping procedures to adhere to member complaint resolution requirements added to the regulation.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Will small businesses have to provide additional administrative oversight? Yes, small businesses that choose to provide complex care assistant services will have to provide additional administrative oversight to ensure compliance with the conditions of payment for complex care assistant services.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? Yes, small businesses that choose to provide complex care assistant services will have to hire additional employees to deliver them.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? No. Small businesses are not required by this regulation to hire other professionals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? No. This regulation does not require small businesses to purchase any particular product or make any capital investments.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) No. The purpose of the regulation is to provide program requirements and conditions of payment for the provision of continuous skilled nursing services and complex care assistant services provided by CSN agency providers to MassHealth members.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No regulations duplicate or conflict with this regulation.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? Yes. This regulation requires CSN agency providers to submit documentation requested by MassHealth for purposes of utilization and provider review to ensure compliance with MassHealth requirements for the provision of continuous skilled nursing services and complex care assistant services.

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? Yes. To the extent a MassHealth CSN agency seeks to provide complex care assistant services, it will be required to provide the requisite skills training to its complex care assistants.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? No. The regulation is not likely to deter or encourage the formation of small businesses in Massachusetts, as it governs MassHealth CSN agency providers and provides program requirements and conditions of payment for the provision of CSN services and complex care assistant services provided by CSN agencies to MassHealth members, and is applied uniformly among all such MassHealth providers.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? No. The regulation is not likely to deter or encourage the formation of small businesses in Massachusetts, as it governs MassHealth CSN agency providers and provides program requirements and conditions of payment for the provision of CSN services and complex care assistant services provided by CSN agencies to MassHealth members, and is applied uniformly among all such MassHealth providers.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No. This regulation requires CSN agencies to submit documentation requested by MassHealth for purposes of utilization and provider review to ensure compliance with MassHealth requirements, and the regulation is applied uniformly among all MassHealth providers of CSN and complex care assistant services.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? No. This regulation requires CSN agency providers to submit documentation requested by MassHealth for purposes of utilization and provider review to ensure compliance with MassHealth requirements, including the timelines for reporting, and the regulation is applied uniformly among all MassHealth providers of continuous skilled nursing services and complex care assistant services.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No. This regulation requires CSN agency providers to submit documentation requested by MassHealth for purposes of utilization and provider review to ensure compliance with MassHealth requirements, including the timelines for reporting, and the regulation is applied uniformly among all MassHealth providers of continuous skilled nursing services and complex care assistant services.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? No. 130 CMR 438.000 establishes uniform program requirements and conditions of payment for the provision of CSN and complex care assistant services by CSN agencies to MassHealth members. These requirements are applied uniformly to maintain consistency in the care provided by CSN agency providers to MassHealth members.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? No. This regulation does not have an adverse impact on small businesses. This regulation governs MassHealth CSN agency providers and provides program requirements and conditions of payment for

		the provision of CSN and complex care assistant services provided by CSN agencies to MassHealth members, and is applied uniformly among all such MassHealth providers.
--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------