Rules of
Department of Elementary and Secondary Education
Division 90—Vocational Rehabilitation
Chapter 7—Personal Care Assistance Program

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Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 90—Vocational Rehabilitation
Chapter 7—Personal Care Assistance Program

5 CSR 90-7.010 Definitions

PURPOSE: This rule establishes the standards and procedures for the provision of state-funded participant-directed personal care assistance services to eligible clients subject to legislative appropriations through eligible vendors under guidelines established by the Division of Vocational Rehabilitation.

(1) Definitions. As used in this rule, except as otherwise required for the context, the following terms shall have the meanings ascribed:

(A) After-tax income. The sum of all income from all sources to an individual including, but not limited to, salary, wages, tips, interest, dividends, annuities, pensions and disability payments, less the sum of all federal, state and local taxes on this income;

(B) Client/consumer. A physically disabled person determined by the Division of Vocational Rehabilitation (DVR) to be eligible to receive personal care assistance (PCA) services;

(C) Counselor. An employee of DVR responsible for determining eligibility for PCA services and for developing and implementing a PCA services plan (plan of care);

(D) Employment. A minimum of sixteen (16) hours per week for which an individual receives remuneration;

(E) Live independently. To reside and perform routine tasks of daily living and activities of daily living and activities in the community in a noninstitutional or unsupervised residential setting;

(F) Participant-directed. Hiring, training, supervising and directing of the personal care attendant by the physically disabled person; excluding, but not limited to, the following:

1. Any individual with a legal designation, including guardianship, conservator, power of attorney, etc., that involves the authorization of another person to act as the agent for any of the duties required by the participant-directed program;

(G) Personal care assistance services. Those services required by a physically disabled person to enable him/her to perform those routine tasks and activities of daily living necessary to enter and maintain employment or to live independently;

(H) Personal care attendant. A person who performs PCA tasks for a physically disabled person;

(I) Physically disabled. Loss of, or loss use of, all or part of the neurological, muscular or skeletal functions of the body to the extent that person requires the assistance of another person to accomplish routine tasks;

(J) Routine tasks. Routine tasks and instrumental activities of daily living include, but are not limited to, the following:

1. Bowel and bladder elimination;
2. Dressing and undressing;
3. Moving into and out of bed;
4. Preparation and consumption of food and drink;
5. Bathing and grooming;
6. Shopping/transportation;
7. Maintenance and use of prostheses, aids, equipment and other similar devices; and/or
8. Ambulation or other functions of daily living based on an independent living philosophy as specified in state law and regulation;

(K) Vendor. Any person, firm or corporation certified by DVR as eligible to provide evaluation, training and administrative services to physically disabled persons. For purposes of this rule, the term "provider" is used synonymously with the term "vendor";

(L) Unmet need. Unmet needs are those routine tasks and activities of daily living as allowable by Medicaid but not adequately met by current support systems without causing undue hardships to the client/consumer and/or caregiver;

(M) Undue hardship. An undue hardship is the result of a significantly difficult circumstance experienced by the caregiver who is currently meeting the needs of the person with a disability that creates a situation of burden, risk or harm to the caregiver or client/consumer. Undue hardship includes, but is not limited to, the following:

1. Loss of income;
2. Overall disintegration of the family;
3. Abuse and neglect;
4. Misuse of child labor;
5. Inadequacy of training; and/or
6. Physically contraindicated;

(N) Non-Medicaid eligible (NME) program. The NME program provides PCA services through state funding sources for the NME clients/consumers and serves clients/consumers with physical disabilities who are "employed or ready for employment" to maintain or seek such employment or "live independently";

(O) Medicaid state plan (MSP) program. The MSP program provides PCA services, through a combination of federal and state funding sources, for the Medicaid-eligible client/consumers with physical disabilities who are "employed or ready for employment" to maintain or seek such employment or "live independently"; and/or

(P) Cost Neutral. Overall cost of services to receiving agency should not exceed cost of services from transferring agency.

AUTHORITY: sections 161.092, RSMo Supp. 2003, 178.661 and 178.673, RSMo 2000. Original rule filed Jan. 10, 1985, effective May 13, 1985. Amended: Filed Aug. 1, 1988, effective Nov. 25, 1988. Emergency amendment filed Aug. 31, 1992, effective Sept. 10, 1992, expired Jan. 9, 1993. Amended: Filed Aug. 31, 1992, effective April 8, 1993. Amended: Filed May 31, 1994, effective Dec. 30, 1994. Amended: Filed Oct. 31, 1996, effective June 30, 1997. Amended: Filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004.*

**Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003; 178.661, RSMo 1984; and 178.673, RSMo 1984, amended 1993.*

5 CSR 90-7.100 Eligibility

PURPOSE: This rule establishes the criteria and procedures for determining an applicant eligible to receive personal care assistance program services.

(1) Subject to legislative appropriations, the Division of Vocational Rehabilitation (DVR) shall provide financial assistance for the personal care assistance (PCA) program services through eligible providers to each client/consumer selected to participate and meeting the criteria:

(A) All clients/consumers must meet the following general criteria for eligibility under the PCA program:

1. Be at least eighteen (18) years of age;
2. Able to direct their own care (participant directed);
3. Employed, ready for employment, or capable of living independently with PCA; and
4. Physically disabled;

(B) In addition to the above general criteria, persons eligible for non-Medicaid eligible (NME) PCA services shall meet the following:

1. Document need for a minimum of seven (7) or maximum of forty-two (42) hours per week of PCA. If more than forty-two (42) hours per week are required, substantial documentation may be used to support a request for additional time;

2. Demonstrate financial need based upon the client/consumer adjusted gross income level of the most recent tax records less living expenses as approved by DVR and compared to three hundred percent (300%) of the U.S. Department of Health and Human Services poverty level for Missouri and the Consumer Price Index as updated on an annual basis; and

3. Participate in an evaluation conducted by the assessment team to assess the individual's qualifications to be eligible for PCA services:

A. The initial evaluation shall be conducted in the individual's home or current place of residence at the time of application. If the individual is in the process of relocation, the assessment shall be conducted at the new residence; and

(C) In addition to the above general criteria, persons eligible for Medicaid PCA services shall meet the following:

1. Document proof of Medicaid eligibility under Title XIX of the Social Security Act pursuant to federal/state laws and regulations; and

2. Participate in an assessment with the assessment team or the Department of Health and Senior Services, Division of Senior Services (Division of Senior Services) that utilizes a level of care evaluation tool that is approved by the state Medicaid agency and assigns a point value pursuant to federal/state laws and regulations.

A. The initial assessment shall be conducted in the individual's home or current place of residence at the time of application. If the individual is in the process of relocation, the assessment shall be conducted at the new residence.

(2) Individuals eligible for Medicaid under Title XIX of the Social Security Act who do not meet the above criteria for PCA shall be referred to the Division of Senior Services or other agencies as appropriate, to determine eligibility for PCA services pursuant to state laws and regulations.

(3) The assessment team must consist of an independent living specialist, rehabilitation counselor, and a medical professional from physical therapy, occupational therapy, or a registered nurse. Other team members may include additional service providers, including Division of Senior Services personnel. When a client/consumer is currently receiving PCA services from another agency and wishes to transfer PCA services to DVR, the other agency's case manager should be consulted for planning purposes:

(A) The independent living specialist will serve as a team member, consultant on independent living, and must be qualified as follows:

1. Understand basic principles of case management;

2. Possess previous experience in an independent living program or a related field (that is, case services, peer counseling, etc.);

3. Possess the ability to communicate effectively;

4. Possess skills in training others to live independently; and

5. Participate in assessment and evaluation training provided by DVR;

(B) The medical professional will be contracted by DVR, serve as team leader, conduct the assessment, and must be qualified as follows:

1. If a physical therapist, the individual shall possess a valid and unencumbered license as a registered physical therapist, in accordance with state law and regulation, and be approved as a contractor with DVR;

2. If an occupational therapist, the individual shall possess a valid and unencumbered license as a registered occupational therapist, in accordance with state law and regulation, and be approved as a contractor with DVR; or

3. If a registered nurse, the individual shall possess a valid and unencumbered license as a registered nurse in accordance with state law and regulation, and be approved as a contractor with DVR; and

(C) The rehabilitation counselor will serve as a team member, reviews and approves all assessments.

(4) The PCA services plan (plan of care) is based on the assessment/evaluation performed by the assessment team or Division of Senior Services and determines the appropriateness and adequacy of services, ensures the services furnished are consistent with the nature and severity of the individual's disability. If a client/consumer transfers from or is shared with the Division of Senior Services, a new evaluation and PCA services plan (POC) is required but must maintain cost neutrality through the next regularly scheduled assessment date, unless undue hardship is documented. The plan of care will be available for review upon proper release by the client's/consumer's physician:

(A) The evaluation and re-evaluation shall be conducted in the client's/consumer's home or place of residence and include, but not be limited to, the following:

1. The functions of daily living;

2. The frequency and duration of the routine task or activity required to live independently; and

3. A description of met and/or unmet need;

(B) The NME plan of care shall include, but not be limited to, the following:

1. The maximum number of hours of PCA to be provided;

2. The maximum amount of financial assistance to be provided by DVR for PCA services;

3. The date of evaluation, initiation of, and re-evaluation of the PCA services; and

4. Signatures of the client/consumer, rehabilitation counselor, and provider; and

(C) The Medicaid PCA services plan of care, subject to DVR's approval, shall include, but not be limited to, the following:

1. The maximum number of hours of PCA to be provided based on a client's/consumer's unmet need;

2. The description and frequency of services provided as documented on the assessment and evaluation;

3. The type of provider who will furnish each service;

4. The starting date for PCA services;

5. The date for re-evaluation of PCA services;

6. Consent signatures by the client/consumer and assessment team members and the approval signature by DVR; and

7. If a client/consumer is receiving services or transferring from another service provider or agency, the provider is responsible for collaborating and coordinating services through the plan of care.

(5) The individual shall be notified by the provider of DVR decision within thirty (30) days of the date of application for eligibility for PCA services.

(6) PCA services are participant directed and the client/consumer shall be responsible, at a minimum, for the following:

(A) Selection, hiring, training, and supervision of the client's/consumer's PCA attendant;

(B) Preparation of biweekly time sheets, signed by both the client/consumer and PCA which shall be submitted to the provider in a timely manner;

(C) Prompt notification to DVR of any changes in need for PCA services, that affect the amount of PCA received, financial status, and/or place of residence;

(D) Prompt notification of the provider regarding any problems resulting from the quality of services rendered by the PCA attendant; and

(E) Ensure that hours submitted for reimbursement do not exceed the amounts authorized by the plan of care.

(7) The client/consumer shall be reassessed and/or re-evaluated for Medicaid eligibility, at least annually, for continued need of PCA services including financial need.

(8) A client's/consumer's PCA services may be discontinued by a provider in certain circumstances:

(A) The provider may request discontinuation of PCA services in the following situations:

1. If the provider learns of circumstances that require the closure of a client's/consumer's case, including but not limited to, death, entry into a nursing home, no longer needing service, and/or the inability to participant direct PCA service;

2. If the client/consumer has falsified records or committed fraud;

3. If the client/consumer is noncompliant with the plan of care. Noncompliance requires persistent actions by the client/consumer or family/representative which negate the services provided in the plan of care;

4. If the client/consumer or client's/consumer's family/representative threatens and/or abuses the PCA attendant and/or provider to the point where the staff's welfare is in jeopardy and corrective action has failed; and/or

5. If a provider is unable to continue to meet the maintenance needs of a client/consumer whose plan of care hours exceed availability;

(B) The provider shall confer with DVR, the client/consumer and/or their representative prior to requesting termination of PCA services in writing. This may include discussion of alternatives, including but not limited to, a transfer to another agency, institutional placement, or other appropriate care;

(C) Prior to termination of PCA services, the provider must notify DVR and client/consumer, in writing, listing the specific reasons, and requesting discontinuation of services; and

(D) The client/consumer may request under the rules promulgated by the State Board of Education, informal review and/or a hearing. The provider shall not suspend, reduce or terminate services provided to a client/consumer during this time period, unless the client/consumer or their representative requests in writing that services be suspended, reduced or terminated.

AUTHORITY: sections 161.092, RSMo Supp. 2003, 178.662, 178.666 and 178.673, RSMo 2000. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004.*

**Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003; 178.662, RSMo 1984, amended 1987, 1992; 178.666, RSMo 1984, amended 1992; and 178.673, RSMo 1984, amended 1993.*

5 CSR 90-7.200 Providers

PURPOSE: This rule establishes the criteria and procedures for certifying a provider eligible to provide personal care assistance program services and the responsibilities of the certified provider.

(1) Providers of personal care assistance (PCA) must be certified by the Division of Vocational Rehabilitation (DVR). To be certified, the provider shall meet the following criteria:

(A) Be a community-based, not-for-profit corporation pursuant to state laws and regulations, in existence for twenty-four (24) consecutive months, with the following:

1. At least fifty-one percent (51%) of the board membership must be persons with disabilities;

2. At least fifty-one percent (51%) of the staff of the corporation must be persons with disabilities;

3. Must manifest and promote an independent living philosophy in accordance with state law and regulation;

4. Demonstrate sound fiscal management through the submission of quarterly financial reports and annual audit to DVR;

5. Have available for clients/consumers, at a minimum, the following independent living services:

A. Advocacy;

B. Independent living skills training;

C. Peer counseling; and

D. Information and referral;

6. Meet or exceed program standards for approval by the Commission on Accreditation of Rehabilitation Facilities (CARF) or a certification process accepted by DVR; and

7. Demonstrate a positive impact on consumer outcomes regarding the provision of these services through the submission of quarterly service reports and an annual service report to DVR;

(B) Demonstrate to DVR that the community-based, not-for-profit corporation shall provide, either directly or through contract, the following:

1. Assessment and evaluation of the extent of a client's/consumer's need for PCA;

2. Orientation and training of clients/consumers concerning the recruitment, training and supervision of personal care attendants including but not limited to the preparation of time sheets;

3. Maintain a list of persons interested in being personal care attendants; and

4. Processing of clients/consumers and/or personal care attendants inquiries and/or problems; and

(C) The provider of PCA services to clients/consumers who are Medicaid eligible must have a valid participation agreement with Medicaid pursuant to state laws and regulations.

(2) DVR will monitor the certified PCA providers' responsibilities. In addition, DVR will administer the following fiscal services:

(A) Mail the individual payment directly to the employee;

(B) DVR shall set maximum fees to be paid for PCA services;

(C) The total monthly payment for PCA services made on behalf of client/consumer cannot exceed one hundred percent (100%) of the average statewide monthly cost for care in a nursing facility as defined in state laws and regulations (excluding intermediate care facility/mentally retarded);

(D) One (1) hour of PCA service equals four (4) units; and

(E) DVR's payment will be made on the lower of the established rate per service unit or the provider's billed charges.

(3) Certified PCA providers shall be responsible for the following:

(A) Training and orientation of clients/consumers in skills needed to recruit, employ, instruct, supervise and maintain the services of attendants including but not limited to the preparation of time sheets;

(B) Assisting clients/consumers in the general orientation of attendants as requested by clients/consumers;

(C) Maintaining a list of personal care attendants available for selection by the client/consumer. The attendants are employees of the client/consumer only for the time period subsidized with PCA funds, but are never employees of DVR or the state of Missouri. The attendants must meet the following qualifications:

1. Be at least eighteen (18) years of age;

2. Meet the physical and mental demands required to perform specific tasks required by a particular client/consumer;

3. Agree to maintain confidentiality;

4. Be emotionally mature and dependable;

5. Be able to handle emergency type situations;

6. Not be the client's spouse; and

7. Register with the Family Care Safety Registry pursuant to applicable state laws and regulations;

(D) Public information, outreach and education activities to ensure that persons with disabilities are informed of the services available and have maximum opportunity for participation:

1. PCA providers shall not solicit any person to become a client/consumer;

(E) Coordination with other PCA providers in developing the plan of care to assure comprehensive delivery of services and reduce duplication;

(F) Assuring that federal funds shall not be used to replace funds from nonfederal sources and that the provider shall continue or initiate efforts to obtain support from private sources or other public organizations;

(G) Operation of programs, services, and/or activities in such a manner as to be readily accessible to and usable by persons with disabilities;

(H) Assurance of compliance with Title VI of the Civil Rights Act of 1964, Section 504, The Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975;

(I) Maintain confidentiality of client/consumer records and eligibility information from DVR pursuant to applicable federal/state laws and regulations;

(J) Conduct assessments and re-evaluations for determining eligibility and the need for continued attendant care based on unmet need;

(K) Document that a valid written plan of care was developed by the assessment team, Department of Health and Senior Services, Division of Senior Services and/or qualified individuals for each client/consumer prior to the provision of PCA services;

(L) Perform case management activities with the consumer at least monthly, to provide ongoing monitoring of the provision of services in the plan of care and other services as needed to live independently;

(M) Ensure that the client's/consumer's case file contains at a minimum, the following:

1. Written plan of care that documents the type of services and quantity of units to be provided;

2. The client's/consumer's service time sheets contain the following information:

A. Attendant's name;

B. Client's/consumer's name;

C. Dates of service delivery;

D. Time spent;

E. Types of activities performed on each date;

F. Attendant's signature each day; and

G. Client's/consumer's verifying signature;

3. Copies of all correspondence with DVR, the client's/consumer's physician or other service providers, including but not limited to other administrative agencies;

4. Signed documentation that indicates the client/consumer has been informed of their rights concerning background checks, advanced directives, hearings and participant responsibilities:

A. Hearing rights and participant choice and responsibilities forms must comply with Medicaid and/or DVR requirements;

5. Documentation of training provided to client/consumer in the skills need to understand and perform the essential functions of an employer;

6. For clients/consumers eligible for services under Title XIX of the Social Security Act, the assessment shall be available for review upon proper release by a physician possessing a valid license pursuant to state laws and regulations;

7. Evaluations and/or assessments;

8. Annual financial documentation for the non-Medicaid eligible (NME) program to include the financial application or documentation of Medicaid eligibility for the Medicaid state plan program; and

9. Any pertinent documentation regarding the client/consumer;

(N) Perform duties necessary to coordinate accounting processing requirements, including the following but not limited to:

1. Utilize DVR approved time sheets, accumulate time sheets, certify accuracy and forward a copy to DVR for processing;

2. File original time sheet in client's/consumer's case file;

3. Maintain required client/consumer payroll information on a computer system compatible with DVR's PCA computer system;

4. Monitor utilization of hours by the client/consumer at least monthly;

5. Be responsible for any federal and/or state funds for attendant services that are deferred or ultimately disallowed arising from a failure to comply with a federal and/or state requirement; and

6. Provide as requested by DVR, the information necessary to conduct state or federal audits or both;

(O) Ensure that a copy of the plan of care, assessment, and evaluation are in the client's/consumer's home and accessible to all attendants at all times;

(P) Submit quarterly financial reports to DVR one (1) day after the end of the quarter or as soon as practicable thereafter, but no later than fifteen (15) days after the end of the quarter. Quarterly service reports will be submitted to DVR thirty (30) days after the end of the quarter. If required reports are not submitted on a timely basis, future funding will be withheld by DVR until the provider submits the required documentation;

(Q) Maintain PCA financial records separately from any other financial records and make all client/consumer and PCA financial records, documents, reports and data available to DVR; and

(R) Submit an annual audit by a properly licensed independent practitioner (certified public accountant licensed in the state of Missouri) pursuant to applicable federal/state laws and regulations, including any audit parameters as established by DVR. The audit report must be submitted to DVR within ninety (90) days after the end of the provider's fiscal year.

(4) Providers not meeting the above-stated responsibilities may have their funds and/or certification as a PCA provider suspended or terminated by DVR.

AUTHORITY: sections 161.092, RSMo Supp. 2003 and 178.662, 178.664, 178.666, 178.669 and 178.673, RSMo 2000. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004.*

**Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003; 178.662, RSMo 1984, amended 1987, 1992; 178.664, RSMo 1984, amended 1987; 178.666, RSMo 1984, amended 1992; 178.669, RSMo 1984; and 178.673, RSMo 1984, amended 1993.*

5 CSR 90-7.300 Appeals

PURPOSE: This rule establishes procedures for appeal by an applicant or client/consumer dissatisfied with a determination made regarding the provision of services by the Division of Vocational Rehabilitation.

(1) When an applicant or client/consumer is determined ineligible for services or when a dispute arises concerning the provision of services, after preparation of the personal care assistance program services plan (plan of care), the applicant or client/consumer may request under the rules promulgated by the State Board of Education, informal review and/or a hearing.

(2) When a non-Medicaid eligible (NME) applicant or client/consumer is denied financial assistance or financial assistance is set below what the client/consumer believes is

necessary, the NME applicant or client/consumer may request under the rules promulgated by the State Board of Education, informal review and/or a hearing.

(3) Division of Vocational Rehabilitation will not suspend, reduce, or terminate services provided to a client/consumer under an existing plan of care pending a decision from informal review or a hearing, unless the client/consumer or their representative requests in writing that services be suspended, reduced or terminated.

AUTHORITY: sections 161.092, 178.671 and 178.673, RSMo 2000. Original rule filed June 28, 2001, effective Jan. 30, 2002.*

**Original authority: 161.092, RSMo 1963, amended 1973; 178.671, RSMo 1984, amended 1987; and 178.673, RSMo 1984, amended 1993.*

5 CSR 90-7.310 Informal Review

PURPOSE: This rule establishes the procedures for informal review of a decision made by the Division of Vocational Rehabilitation.

(1) The applicant or client/consumer may request informal review in writing to the assistant director of personal care assistance program (PCA).

(2) The assistant director of PCA will conduct an informal review within twenty (20) working days from receipt of the applicant's or client's/consumer's request.

(3) An applicant or client/consumer client may request a hearing without informal review.

(4) If the informal review is not successful, a hearing will be conducted within forty-five (45) days from the applicant or client's/consumer's written request for informal review unless both parties agree to a specified time extension.

(5) The applicant or client/consumer will be informed of the results of their informal review in writing and the right to a hearing.

AUTHORITY: sections 161.092, 178.671 and 178.673, RSMo 2000. Original rule filed June 28, 2001, effective Jan. 30, 2002.*

**Original authority: 161.092, RSMo 1963, amended 1973; 178.671, RSMo 1984, amended 1987; and 178.673, RSMo 1984, amended 1993.*

5 CSR 90-7.320 Hearings

PURPOSE: This rule establishes the procedures for hearings for applicants or clients/consumers dissatisfied with a determination made regarding the provision of services by the Division of Vocational Rehabilitation.

(1) An applicant or client/consumer may request a hearing without informal review.

(2) An applicant or client/consumer may request a hearing in writing by contacting the assistant commissioner, Division of Vocational Rehabilitation (DVR) within ninety (90) days of denial of eligibility, denial of financial assistance, the determination of financial assistance, discontinuation, suspension or reduction of services.

(3) A hearing will be held by the assistant commissioner, or his/her designee (impartial hearing officer), within forty-five (45) days of the request unless a party requests a specified time extension.

(4) The applicant or client/consumer, or if appropriate, the individual's representative will be allowed an opportunity to present additional evidence, information and witnesses during the hearing.

(5) Copies of all correspondence, reports of contact and written decisions rendered by the impartial hearing officer shall be placed in the applicant's or client's/consumer's case file at the center for independent living.

(6) The impartial hearing officer will make a decision based upon the provisions of the approved state plan, the federal act and/or applicable regulations, and appropriate state laws and/or regulations. A written report will be submitted to the applicant or client/consumer, or if appropriate, the individual's representative, the case file and to the assistant commissioner within a timely manner.

AUTHORITY: sections 161.092, RSMo Supp. 2003 and 178.671 and 178.673, RSMo 2000. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004.*

**Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003; 178.671, RSMo 1984, amended 1987; and 178.673, RSMo 1984, amended 1993.*