

**ASSISTIVE TECHNOLOGY FOR NURSING FACILITY RESIDENTS:
A BRIEF OVERVIEW OF THE LAW
Prepared by the Disability Rights Network of Pennsylvania**

INTRODUCTION

This publication provides a general overview of Medical Assistance (Medicaid) laws regarding a state-licensed nursing facility's responsibility to provide assistive technology for its residents. For more detail, you may wish to review the CMS State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities, which can be found under Manuals on the Regulations and Guidance page at www.cms.gov. In addition, the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 may also require the nursing facility and/or the state to provide assistive technology. Discussion of the ADA and Rehabilitation Act is beyond the scope of this publication, however.

WHAT IS ASSISTIVE TECHNOLOGY?

An assistive technology device is “any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities,” according to the Assistive Technology Act of 2004. Assistive technology devices include durable medical equipment (DME). Examples of assistive technology devices are manual wheelchairs, motorized wheelchairs, augmentative communication devices (speech generating devices), and pressure relief mattresses. An assistive technology service is “any service that directly assists an individual with a disability in the selection, acquisition, or use of an

assistive technology device,” according to the Assistive Technology Act of 2004. Examples of assistive technology services are an assistive technology evaluation, adaptations, training, and repair or maintenance of a device.

WHAT ARE THE OBLIGATIONS OF THE NURSING FACILITY TO IDENTIFY AND PROVIDE NEEDED ASSISTIVE TECHNOLOGY?

Under the Medical Assistance (Medicaid) law, “[a] nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.” 42 U.S.C. § 1396r(b)(1)(A). Assistive technology is crucial to maintaining and enhancing quality of life.

The nursing facility must identify the individual’s assistive technology needs through the assessment process. The nursing facility must conduct a comprehensive, accurate, standardized assessment of each resident’s functional capacity, which “describes the resident’s capability to perform daily life functions and significant impairments in functional capacity” and “includes the identification of medical problems.” 42 U.S.C. § 1396r(b)(3)(A). The assessment must take place promptly upon admission, promptly when there is a significant change in physical or mental condition, and at least every 12 months. 42 U.S.C. § 1396r(b)(3)(C)(i); 42 C.F.R. § 483.20(b)(2). The facility must examine the resident no less frequently than every 3 months and revise the assessment to ensure continuing accuracy. 42 U.S.C. § 1396r(b)(3)(C)(ii); 42 C.F.R. § 483.20(c).

The comprehensive assessment involves the individual resident and appropriate participation of licensed and non-licensed health professionals, not just a registered professional nurse. 42 U.S.C. § 1396r(b)(3)(B)(i); 42 C.F.R. § 483.20(b). The assessment must examine: customary routine, cognitive patterns, communication, vision, mood and behavior patterns, psychosocial well-being, physical functioning and structural problems, continence, disease diagnoses and health conditions, dental and nutritional status, skin condition, activity pursuit, medications, special treatments and procedures, discharge potential, and documentation of the individual's participation in the assessment. 42 C.F.R. § 483.20(b). Therefore, a comprehensive assessment should identify all areas of need where assistive technology would be necessary and appropriate. The resident or his or her legal representative has the right to access the written assessment along with all other records. 42 C.F.R. § 483.10(b)(2)(i).

A plan of care must be developed, including needed assistive technology.

Based on the comprehensive assessment, an interdisciplinary team, including the individual, must develop a comprehensive care plan that describes the individual's medical, nursing, mental, and psychosocial needs and how those needs will be met through measurable objectives and timetables; the care plan must be reviewed and revised by the interdisciplinary team after each assessment throughout the year. 42 U.S.C. § 1396r(b)(2); 42 C.F.R. § 483.20(d); 42 C.F.R. § 483.20(k)(1); also 28 Pa. Code § 211.11.

The written plan of care must describe “[t]he services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being.” 42 C.F.R. § 483.20(k)(1)(i); also 42 C.F.R. § 483.25. The nursing facility “must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with [the] written plan of care.” 42 U.S.C. § 1396r(b)(2). The nursing facility must maintain the “maximum physical, mental, and psychosocial function” of each resident. 55 Pa. Code § 1181.83(b)(7). Therefore, a comprehensive care plan should specify necessary and appropriate assistive technology devices and services.

The resident has the right to be involved in care planning. The resident, his or her family, or his or her legal representative has the right to participate in writing the plan of care as well as all revisions to the plan of care. 42 U.S.C. § 1396r(b)(2)(B) and (C); 42 C.F.R. § 483.20(k)(2)(ii); 28 Pa. Code § 211.11(e). The resident also has the right to participate in planning care and treatment or changes in care or treatment. 42 U.S.C. § 1396r(c)(1)(A)(i); 42 C.F.R. § 483.10(d)(3). The resident can use the care planning process to advocate for necessary and appropriate assistive technology devices and services.

In accordance with the assessment and plan of care, nursing facility services must maximize the individual’s well-being, which includes appropriate assistive technology. Among other services, “a nursing facility

must provide (or arrange for the provision of) nursing and related services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident” and “medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.” 42 U.S.C. § 1396r(b)(4)(A)(i) and (ii); 42 C.F.R. § 483.25; also 28 Pa. Code § 211.16(a). Specialized rehabilitative services include, but are not limited to, physical therapy, speech-language pathology, occupational therapy, and mental health rehabilitative services for mental illness and mental retardation. 42 C.F.R. § 483.45(a). Services provided to meet the resident’s health needs must be available and adequate. 55 Pa. Code § 1181.83(b)(1). The nursing facility must meet the “total medical and psychosocial needs of residents” and, among other services, encourage, train, and assist each resident in self-care and group activities. 28 Pa. Code § 211.10(a) and (d). All services must meet professional quality standards and be provided by qualified persons in accordance with the plan of care. 42 U.S.C. § 1396r(b)(4)(B); 42 C.F.R. §483.20(k)(3); 42 C.F.R. § 483.45(b).

The nursing facility must help maintain or improve activities of daily living, which can require assistive technology. In accordance with the comprehensive assessment as described above, the nursing facility must ensure that each resident is given appropriate treatment and services to maintain or improve, and prevent diminishment of, abilities in activities of daily living,

including the ability to bathe, dress, groom, transfer, ambulate, toilet, eat, and use speech, language, or other functional communication systems. 42 C.F.R. § 483.25(a).

Some specific regulatory provisions regarding assistive technology are as follows:

Residents must be given appropriate treatment and assistive devices to maintain hearing and vision. The nursing facility must, if necessary, assist the resident by making appointments and arranging transportation to these hearing and vision appointments. 42 C.F.R. § 483.25(b).

The facility must provide “special eating equipment and utensils for residents who need them.” 42 C.F.R. § 483.35(g).

The facility must provide sufficient equipment in dining, health services, recreation, and program areas so that staff can provide needed services as identified in each resident’s plan of care. 42 C.F.R. § 483.70(c)(1).

The facility must provide each resident with a “separate bed of proper size and height for the convenience of the resident,” “[f]unctional furniture appropriate to the resident’s needs,” and accessible shelves. 42 C.F.R. § 483.70(d)(2).

The nursing facility must provide each resident “adequate supervision and assistance devices to prevent accidents.” 42 C.F.R. § 483.25(h)(2).

Assistive technology must be provided to enable full participation. The resident has the right to make choices about his or her health care, activities, schedule, and life in the nursing facility; the resident also has the right to interact with members of the community both inside and outside of the facility. 42 C.F.R. § 483.15(b). The resident has the right to participate in social, religious, and community activities. 42 U.S.C. § 1396r(c)(1)(A)(viii). These rights to self-determination and participation should not be limited by a lack of appropriate assistive technology.

The nursing facility must provide reasonable accommodation of needs, which can require assistive technology. The resident has the right to reasonable accommodation of his or her individual needs and preferences in residing in the facility and in receiving services. 42 U.S.C. § 1396r(c)(1)(A)(v); 42 C.F.R. § 483.15(e). Reasonable accommodation can require the provision of appropriate assistive technology.

WHO PAYS FOR ASSISTIVE TECHNOLOGY IN A NURSING FACILITY?

The resident does not have to pay for necessary assistive technology.

Either the nursing facility or the state must pay for necessary assistive technology, as follows.

The nursing facility must provide medically-necessary assistive technology to its residents through the Medical Assistance (Medicaid) per diem rate.

The Department of Public Welfare pays a per diem rate to the nursing facility for each resident on Medical Assistance (Medicaid). The per diem rate is a “comprehensive rate of payment to a nursing facility for covered services for a resident day.” 55 Pa. Code § 1187.2. The nursing facility must use this per diem rate to provide all needed services to the resident, including the cost of buying or renting necessary durable medical equipment (DME) for a resident. 55 Pa. Code § 1187.152(a). Among other services, these services include:

- Social services and other services required to meet certification standards
- Medical and surgical supplies and the use of equipment and facilities
- Reusable items such as bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment
- Nonemergency transportation
- Other special medical services of a rehabilitative, restorative, or maintenance nature, designed to restore or maintain the resident’s physical and social capacities
- Physical, occupational, and speech therapy
- Dining supplies
- Repair, maintenance, and service of equipment

55 Pa. Code § 1187.2; 55 Pa. Code § 1187.51(c) and (e).

The nursing facility may not charge the resident for items and services that are included in the Medical Assistance (Medicaid) payment to the nursing facility. 42 C.F.R. § 483.10(c)(8). The nursing facility must provide to residents eligible for Medical Assistance (Medicaid) a written list of the items and services that are covered under nursing facility services for which the resident may not be charged. 42 U.S.C. § 1396r(c)(1)(B)(iii); 42 C.F.R. § 483.10(b)(5)(i)(A).

An Exceptional Durable Medical Equipment (DME) grant can pay for more expensive assistive technology. The nursing facility can apply to the Department of Public Welfare for an additional Medical Assistance payment for medically necessary Exceptional Durable Medical Equipment (DME). 55 Pa. Code § 1187.152(b). Exceptional Durable Medical Equipment (DME) is DME that costs \$5000 or more and is either “specially adapted” (“uniquely constructed or substantially adapted or modified in accordance with the written orders of a physician for the particular use of one resident”) or is one of the following: air fluidized bed, powered air flotation bed (low air loss therapy), augmentative communication device, or ventilator and related supplies. 55 Pa. Code § 1187.2; Pennsylvania Bulletin 38 Pa.B. 3941. The nursing facility must set up a program to maintain, repair, protect, preserve, and insure the Exceptional Durable Medical Equipment (DME). 55 Pa. Code § 1187.154(h)(6). The nursing facility must provide medically necessary durable medical equipment (DME) even if the Department of Public Welfare determines that the DME does not meet the definition of Exceptional DME. 55 Pa. Code § 1187.158(b)(2)(i). For more

information, please refer to the Disability Rights Network of Pennsylvania's publication called "How to Get Assistive Technology in a Nursing Facility." This publication also discusses assistive technology ownership issues.

If the individual has a discharge date and is still in the nursing facility, fee-for-service Medical Assistance (Medicaid) (ACCESS) is the payment source for medically necessary assistive technology. The assistive technology provider can bill fee-for-service Medical Assistance (Medicaid) directly even before the individual moves to the community so long as the individual has a discharge date. This process helps the individual in getting all needed assistive technology for the community.

WHAT IF I NEED HELP?

If you need more information or need help, please contact the intake unit of the Disability Rights Network of Pennsylvania (DRN) at 800-692-7443 (voice) or 877-375-7139 (TDD). Our email address is: intake@drnpa.org.

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