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May 23, 2016

David J. Collins
Executive Secretary
Public Service Commission
Of Maryland
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202

Re.: **Petition of the Office of People's Counsel for Further
Rulemaking - RM52**

Dear Mr. Collins:

Enclosed for filing, please find the original and seventeen (17) copies of the Petition of the Office of People's Counsel for Further Rulemaking in the above-referenced proceeding.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

/electronic signature/

Molly G. Knoll
Assistant People's Counsel

MGK/eom
Enclosure

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

REVISIONS TO COMAR 20.31.03 -	*											
RESTRICTIONS FOR SERIOUS ILLNESS	*									RM52		
AND LIFE-SUPPORT EQUIPMENT	*											
* * * * *	*											*

**Petition of the Office of People’s Counsel for Further
Rulemaking - RM52**

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May 23, 2016

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COMAR 20.31.03.¹ At the rulemaking session held in Rulemaking Docket No. 52 (“RM52”) on May 7, 2015 the Commission voted to adopt revisions to designate a “Certified Nurse Practitioner” (“CPN”) as a qualified medical professional, but did not vote to approve “Physician’s Assistant” at that time. The CPN revisions became effective on June 8, 2015.²

However, at the rulemaking session, Chairman Hughes directed Staff to “submit proposed regulations that would add ‘Physician’s Assistant’ (“PA”) to the list of medical professionals permitted to certify to an electric or gas utility that the utility’s customer has a serious illness, or is in need of life support equipment and is therefore exempt from termination of utility service.”³ Staff has not yet done so. The Maryland Office of People’s Counsel (“OPC”) therefore petitions the Commission for further Rulemaking to consider the inclusion of “Physician’s Assistant” as a category of medical professional qualified to provide the relevant medical certifications to the utilities. OPC has attached to this Petition proposed revisions to COMAR 20.31.01 and 20.31.03 to reflect this addition to qualified medical professionals (Attachment B).

Discussion

Physician assistants are highly skilled medical professionals qualified to make the certification required by COMAR 20.31.03.01.

COMAR 20.31.03.01 is designed to prevent seriously ill people and those using life-support equipment from being injured or adversely affected when a utility shuts off gas or electric service to their home. Upon receipt of a written medical certification regarding a customer or occupant’s serious illness or need for life-support equipment, a utility must

¹ ML# 159708 (Oct. 23, 2014); ML# 160882 (Dec. 1, 2014); ML# 167943 (May 5, 2015).

² See 42:11 Md. R. 727.

³ Minutes of COMAR Rulemaking Session 99 May 7, 2015 at 1, attached as Attachment A. to this Petition.

temporarily postpone a scheduled service termination and attempt to negotiate an alternative payment arrangement with the customer under COMAR 20.31.01.08. A medical certification under COMAR 20.31.03.01 initially postpones the termination date for only thirty days, but can be renewed by periodically sending additional certifications to the utility.

In RM 52 the Commission expanded the class of medical professionals eligible to submit a written certification under COMAR 20.31.03.01 to include nurse practitioners. However, the Commission stopped short of expanding the regulation to include PAs, an expansion which would provide a larger pool of medical professionals qualified to assist eligible customers.

Each year, more and more people receive medical treatment through HMOs, health care clinics, or other facilities that are frequently staffed by health care professionals who are not licensed physicians.⁴ The professionals staffing these facilities include nurse practitioners, other advance practice nurses, and physician's assistants.⁵ In a study released last year, the United States Department of Health and Human Services (DHHS) found that demand for primary care services is growing much more rapidly than the supply of licensed physicians.⁶ This gap is projected to result in a nationwide shortage of

⁴ See Maryland Health Care Commission's Task Force on Health Care Access and Reimbursement, Final Report & Recommendations, at 11-13 (Dec. 2008); see also Andrea K. Walker, *Maryland to increase primary care health force by 25 percent*, Baltimore Sun (Nov. 8, 2011) ("Nontraditional paths to primary care work would also be explored, including further training opportunities for nurses and physician assistants. These positions will be counted on more under health care reform to perform the duties of traditional primary care physicians.").

⁵ See Kelly Brewington, *Picking Up the Slack in Primary Medicine*, Baltimore Sun (Aug. 9, 2009).

⁶ U.S. DHHS, Health Resources and Services Administration, National Center for Health Workforce Analysis, *Projecting the Supply and Demand for Primary Care Practitioners Through 2020*, pp. 1-3 (Nov. 2013) accessible at:

<http://bhpr.hrsa.gov/healthworkforce/supplydemand/usworkforce/primarycare/projectingprimarycare.pdf>

approximately 20,400 full-time-equivalent primary care physicians by 2020.⁷ DHHS further projects that this will lead to ever-increasing numbers of patients being served by primary care NPs and primary care PAs.⁸

NPs and PAs increasingly function as primary care providers for many of the State's residents, particularly in areas (or among populations) with underserved medical needs.⁹ Many areas of the State have underserved medical needs.¹⁰ The Health Resources and Services Administration (HRSA) is a unit of the U.S. Dept. of Health & Human Services, and each year HRSA calculates "medically underserved areas" and "medically underserved populations" for each county in each state.¹¹ HRSA reports show that Maryland currently has 396 medically underserved areas or populations located in both urban as well as rural areas.¹²

The Commission has recognized the important role of Certified Nurse Practitioners in addressing the medical needs of many Maryland residents when it added CNPs to the medical professionals authorized to sign medical certifications for the utilities. During the rulemaking session, Chairman Hughes clearly indicated an interest in expanding the authorized medical professionals to PAs. This makes sense. As OPC stated in its October

⁷ *Id.* at 2. This shortfall is driven by two factors: 1) 19% of which is associated with the reduction in financial barriers for accessing medical care as a result of expanded health insurance coverage under the Patient Protection and Affordable Care Act of 2010; and 2) the remaining 81% is associated with an aging population living longer lives.

⁸ *Id.* at 1-2.

⁹ See Linda Aiken & Claire Fagin, *We need more nurses for better medicine*, Baltimore Sun (Mar. 12, 1993).

¹⁰ See *Comments of OHEP Local Agency, Garrett County Community Action*, filed July 29, 2014 (ML# 157015) (noting that rural Garrett County has more NPs than licensed physicians, and that NPs frequently manage the offices located in outlying areas in Garrett County.); see also Stephanie Desmon, *Doctors in short supply in rural Maryland*, Baltimore Sun (Mar. 1, 2009) accessible at http://www.baltimoresun.com/services/newspaper/bal-id.rural01mar01_0.6828671.story.

¹¹ Accessible at: <http://hpsafind.hrsa.gov/HPSASearch.aspx>.

¹² See *id.* See also <http://www.npamonline.org/?4> ("More than 20 percent of nurse practitioners practice in rural settings with populations less than 25,000. Of the 62 percent who work in cities with populations more than 50,000, more than 39 percent work in inner-city areas.")

23, 2014 Comments,¹³ virtually all of the reasons for supporting the inclusion of CNPs as medical professional qualified to competently make a medical certification under COMAR 20.31.03.01 are true of PAs as well. PAs must have a post-graduate level of education,¹⁴ and a licensed PA is authorized “to practice medicine with physician supervision.”¹⁵ PAs are thus empowered, while under a physician’s supervision, to provide “patient services” that include:

- (1) (i) Taking complete, detailed, and accurate patient histories; and
(ii) Reviewing patient records to develop comprehensive medical status reports;
- (2) Performing physical examinations and recording all pertinent patient data;
- (3) Interpreting and evaluating patient data as authorized by the primary or alternate supervising physician for the purpose of determining management and treatment of patients;
- (4) Initiating requests for or performing diagnostic procedures as indicated by pertinent data and as authorized by the supervising physician;
- (5) Providing instructions and guidance regarding medical care matters to patients;
- (6) Assisting the primary or alternate supervising physician in the delivery of services to patients who require medical care in the home and in health care institutions, including:
 - (i) Recording patient progress notes;
 - (ii) Issuing diagnostic orders; and
 - (iii) Transcribing or executing specific orders at the direction of the primary or alternate supervising physician; and
- (7) Exercising prescriptive authority under a delegation agreement and in accordance with § 15-302.2 of this subtitle.

¹³ “Comments of OPC in Support of Staff’s Proposal to Revise COMAR 20.31.03.01 and Request for Formal Rulemaking – RM 52” filed on October 23, 2014.

¹⁴ Md. Code Ann., Health Occ. §§ 15-303(a) (4), (c).

¹⁵ See Md. Code Ann., Health Occ. § 15-101(o) “Physician assistant” means an individual who is licensed under this title to practice medicine with physician supervision. See also § 15-101(p) “Practice as a physician assistant” means the performance of medical acts that are: (1) Delegated by a supervising physician to a physician assistant; (2) Within the supervising physician's scope of practice; and (3) Appropriate to the physician assistant's education, training, and experience.

Md. Code Ann., Health Occ. § 15-301(c). PAs also have, while under a physician's supervision, "[p]rescriptive authority" to:

- (a) Prescribe and administer:
 - (i) Controlled dangerous substances;
 - (ii) Prescription drugs; and
 - (iii) Medical devices.
- (b) Give verbal, written, or electronic orders for medications; and
- (c) Dispense starter dosages or drug samples.

COMAR 10.32.03.02B (24).

Like CNPs, PAs are statutorily authorized to execute birth and death certificates,¹⁶ witness advance directives,¹⁷ and to issue "emergency medical services 'do not resuscitate orders.'"¹⁸ PAs are also able to certify the existence of a qualifying disability to the Motor Vehicle Administration under Md. Code Ann., Transp. Art. § 13-616(b) (West 2014). Similarly, PAs can certify to the clerk of a circuit court that an individual between the ages of 15 and 17 is pregnant or has given birth, and thus eligible to marry under §§ 2-301(a) (2) and (b) (2) of the Family Law Article.

Just as with CNPs, PAs must have "good moral character,"¹⁹ and are subject to a range of disciplinary sanctions for professional misconduct, including suspension, fines, and license revocation.²⁰ Finally, a utility can quickly and easily verify whether someone is

¹⁶ Md. Code Ann., Health General Art. § 4-208(a) (2) (birth certificates). Md. Code Ann., Health General Art. § 4-212(b) (death certificates).

¹⁷ Md. Code Ann., Health General Art. § 5-602.

¹⁸ Md. Code Ann., Health General Art. § 5-601(i).

¹⁹ Md. Code Ann., Health Occ. § 15-303(a) (1); COMAR 10.32.03.04A (4).

²⁰ Md. Code Ann., Health Occ. § 15-314; COMAR 10.32.03.11 and .17. *See also* COMAR 10.32.03.18 ("Sanctioning Guidelines for Physician Assistants.").

a licensed PA by searching on the website of the appropriate regulatory agency, in the same way that they can conduct a search for licensed CNPs.²¹

In February 2015, the Maryland Academy of Physician Assistants (“MAPA”) filed comments in support of COMAR revisions that would allow PAs to sign a medical certification under COMAR 20.31.03.²² Among other things, MAPA’s comments note that Maryland already authorizes PAs “to execute, witness, issue, authenticate, or certify forms of similar importance to the medical certification at issue in this regulatory proposal, including birth and death certificates, advance directives, the existence of a qualifying disability to the Motor Vehicle Administration, and “emergency medical services ‘do not resuscitate orders.’”²³

Conclusion

The goals of COMAR 20.31.03.01 are best served when all eligible customers have access to qualified medical professionals allowing the customer to avail themselves of its protections. PAs are fully qualified to make such certifications and an increasing number of Maryland residents are receiving primary medical care from a PA rather than a licensed physician or Certified Nurse Practitioner. OPC therefore requests that the Commission initiate a further rulemaking to consider whether utilities should be required to accept medical certifications signed by PAs under COMAR 20.31.03.01. OPC offers the attached proposed revisions to COMAR 20.31.01.02 and 20.31.03.01, attached as Attachment B, for consideration in the rulemaking.

²¹ The license-status of NPs can be checked online at the Maryland Board of Nursing’s website: http://www.mbon.org/main.php?v=norm&p=0&c=lic_lookup.html; while a PA’s status can be checked at the Maryland Board of Physician’s website: <https://www.mbp.state.md.us/bpqapp/>.

²² See Comments of the Maryland Academy of Physician Assistants, ML# 164229 (Feb. 18, 2015).

²³ *Id.* at 2 (citations omitted).

COMAR Rulemaking Session 99 May 7, 2015

COMMISSIONERS PRESENT:

W. Kevin Hughes, Chairman
Harold D. Williams, Commission
Lawrence Brenner, Commissioner
Kelly Speakes-Backman, Commissioner
Anne E. Hoskins, Commissioner

TECHNICAL STAFF PRESENT:

Leslie Romine, Staff Counsel

RM52 – 20.31.01 and .03

COMAR NAME – Terminations of Service

Subject: Final Adoption of Proposed Regulations

Stakeholders Present:

Mark MacDougall, Esq., Southern Maryland Electric Cooperative, Inc.
Kimberly A. Curry, Esq., Baltimore Gas and Electric Company
Jeffrey Trout, Esq., The Potomac Edison Company
Jacob Ouslander, Esq., Office of People’s Counsel
Theresa Neumann, Nurse Practitioner Association of Maryland

Discussion: Technical Staff presented final regulations for revisions to COMAR 20.31.01.02 and COMAR 20.31.03.01 which adds “nurse practitioners” to the list of medical professionals permitted to certify to an electric or gas utility that the utility’s customer has a serious illness, or is in need of life support equipment and is therefore exempt from termination of utility service for an initial period of 30 days, and beyond that time, as described in the existing regulation. Discussions were held with various stakeholders.

Motion: Chairman Hughes moved to finally adopt the following proposed regulations as published in Maryland Register on February 20, 2015:

Revise COMAR 20.31.01.02 (Definitions)

Revise COMAR 20.31.03.01 (Restrictions on Terminations)

Chairman Hughes also directed Staff to submit proposed regulations that would add “Physician’s Assistants” to the list of medical professionals permitted to certify to an electric or gas utility that the utility’s customer has a serious illness, or is in need of life support equipment and is therefore exempt from termination of utility service.

The motion was seconded and passed unanimously.

David J. Collins
Executive Secretary

Title 20

PUBLIC SERVICE COMMISSION

Subtitle 31 TERMINATIONS OF SERVICE

Chapter 01 General Regulations

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-307,
Annotated Code of Maryland

20.31.01.02

.02 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Certified nurse practitioner" means an individual certified by the State Board of Nursing under COMAR 10.27.07.
- (2) "Commission" means the Public Service Commission of Maryland.
- (3) "Customer" means a person receiving service from a utility, in whose name the account is maintained, for use in the premises.
- (4) "Disputed bill" means a bill which is the subject of a bona fide controversy between a customer and the utility regarding any billing error, including, but not limited to, matters such as errors in computation, failure of the bill to reflect a payment or other credit, and billing for service which the customer alleges was not used or was used by another person.
- (5) "Dwelling unit" means a room or rooms suitable for occupancy as a residence containing sanitary or kitchen facilities.
- (6) "Elderly" means an individual 65 years old or older.
- (7) "Equipment" means any device or apparatus, including piping, electrical wires, and meters, which is used by a utility to provide service to a customer or used by a customer to receive service from a utility.
- (8) "EUSP" means Electric Universal Service Program established under Public Utilities Article, §7-512.1, Annotated Code of Maryland.
- (9) "Extreme weather period" means a period of 72 hours beginning at 6 a.m. on any given day comprised of three consecutive 24-hour segments during any one of which the temperature, as forecast, is not expected to exceed 32 degrees Fahrenheit or is expected to be 95 degrees Fahrenheit or above during the segments. Determination of the possible existence of an extreme weather period must be repeated every 24 hours at 6 a.m.
- (10) "Handicapped" means an individual who:

(a) Has any physical disability or mental impairment which substantially limits one or more of the individual's life activities; and

(b) Is:

(i) Receiving disability insurance payments from a government agency that requires certification of the disability, or

(ii) Certified as being physically disabled by a licensed physician or mentally impaired by a licensed psychiatrist or registered psychologist.

(11) "LICENSED PHYSICIAN ASSISTANT" MEANS AN INDIVIDUAL WHO IS LICENSED UNDER TITLE 15 OF THE HEALTH OCCUPATIONS ARTICLE TO PRACTICE MEDICINE UNDER THE SUPERVISION OF A LICENSED PHYSICIAN.

(12) "Life-support equipment" means any electric or gas energy-using device certified by a licensed physician, LICENSED PHYSICIAN ASSISTANT, or certified nurse practitioner as being essential to prevent, or to provide relief from, a serious illness or to sustain the life of the customer or an occupant of the premises.

(13) "Master-metered building" means a building with a dwelling unit or units, the owner or landlord of which buys electricity or gas from the utility and provides it to the tenant or tenants in the building either as a part of the rent or as a separate charge under the authority of Public Utilities Article, §7-303, Annotated Code of Maryland.

(14) "Occupant" means any individual who permanently resides in the premises.

(15) "Person" has the meaning stated in Public Utilities Article, §1-101, Annotated Code of Maryland.

(16) "Premises" means a building, or portion of a building, that is receiving service from a utility for use in a dwelling unit or units.

(17) "Serious illness" means an illness certifiable by a licensed physician, LICENSED PHYSICIAN ASSISTANT, or certified nurse practitioner to be such that termination of service during the period of time covered by the certificate would be especially dangerous to the health of the person certified to be seriously ill.

(18) "Service" means providing electricity or gas, or both, to a premises.

(19) "Termination" means to discontinue electric, gas, or electric and gas service to a premises by a utility.

(20) "Third person" means an individual, organization, or government agency designated by the customer to receive notices of termination.

(21) "USPP" means Utility Service Protection Program, established under COMAR 20.31.05.

(22) "Utility" has the same meaning as the terms "electric company" and "gas company" as defined by Public Utilities Article, §1-101, Annotated Code of Maryland, and includes a combination electric and gas company.

Title 20

PUBLIC SERVICE COMMISSION

Subtitle 31 TERMINATIONS OF SERVICE

Chapter 03 Restrictions on Termination

Authority: Public Utilities Article, §§ 2-113, 2-121, 5-101, and 7-307,
Annotated Code of Maryland

20.31.03.01

.01 Restrictions for Serious Illness and Life-Support Equipment.

A. Electric or gas service, or both, may not be terminated for an initial period of up to 30 days beyond the scheduled date of service termination when the termination will aggravate an existing serious illness or prevent the use of life-support equipment of any occupant of the premises, subject to the provisions of this regulation.

B. Certification Requirement.

(1) A serious illness or the need for life-support equipment shall be certified to the utility by:

(a) A licensed physician; ~~or~~

(b) A certified nurse practitioner; OR

(C) A LICENSED PHYSICIAN ASSISTANT.

(2) When a utility uses a form for the physician ~~or a~~ certified nurse practitioner, OR LICENSED PHYSICIAN ASSISTANT to certify a serious illness or the need for life support equipment under this regulation, it shall use the form provided by the Commission.

(3) A utility shall accept a certification from a licensed physician ~~or a~~ certified nurse practitioner, OR A LICENSED PHYSICIAN ASSISTANT of a serious illness or need for life support equipment under this regulation.

(4) Except when a form is used under §B(2) of this regulation, the physician ~~or~~ certified nurse practitioner, OR LICENSED PHYSICIAN ASSISTANT certification required under §B(1) of this regulation shall be in writing and include:

(a) The name and address of the seriously ill person;

(b) A statement that the seriously ill person or person in need of life support equipment is the customer or an occupant of the premises;

(c) The name, address, telephone number, physician, ~~or~~ certified nurse practitioner, OR LICENSED PHYSICIAN ASSISTANT license number, and signature of the certifying physician, ~~or~~ certified nurse practitioner, OR LICENSED PHYSICIAN ASSISTANT; and

(d) A statement that termination will aggravate a serious illness or prevent the use of life-support equipment.

(5) A utility shall accept the physician, ~~or~~ certified nurse practitioner, OR LICENSED PHYSICIAN ASSISTANT certification under this regulation either in paper form or by facsimile or as a scanned original attached to an email from the certifying physician's, ~~or~~ certified nurse practitioner's, OR LICENSED PHYSICIAN ASSISTANT'S office.

C. The certifying physician, the certified nurse practitioner, THE LICENSED PHYSICIAN ASSISTANT, or the customer may initially telephone the utility of the intent to obtain certification. The required certificate is to be forwarded to the utility not later than the day before the scheduled date for termination of service.

D. The customer shall promptly, within 30 days of submitting a certification under this regulation, enter into an agreement with the utility for the payment of the unpaid bills and current amounts due for service in accordance with COMAR 20.31.01.08.

E. Certification may be renewed by the customer, a licensed physician, ~~or a~~ certified nurse practitioner, OR LICENSED PHYSICIAN ASSISTANT by providing another certificate to the utility, including updated information specified in §B(4) of this regulation. Renewal of a certification may not relieve the customer of responsibility to enter into or to maintain an existing payment agreement, as provided in §D of this regulation.

F. Sufficiency of Certification.

(1) If the utility questions the adequacy or integrity of the certification provided:

(a) The utility may refuse to honor the certification provided under §B(1) of this regulation only for the following reasons:

(i) The certification form is not completed;

(ii) The certification form is not signed by a licensed physician, ~~or~~ certified nurse practitioner, OR LICENSED PHYSICIAN ASSISTANT; or

(iii) The certification form appears to have been altered; or

(b) The utility may petition the Commission to determine the adequacy of the certification provided under §B of this regulation for any other reason.

(2) If the utility files a petition under §F(1)(b) of this regulation, the utility may not terminate service until:

(a) The Commission determines the adequacy of the certification; or

(b) The certification has expired and has not been renewed.

G. A utility may terminate electric or gas service to the premises of a customer under this regulation only if the utility:

(1) Between the date the notice of termination is mailed to the customer and the date on or after which service is to be terminated, at a minimum, attempts to make personal contact with the customer on two separate occasions, each of which shall occur on a separate date;

(2) Attempts to make personal contact with the customer by either:

(a) Telephoning the customer during business hours, or, if no one is home, during the evening after 6 p.m.; or

(b) Visiting the premises and leaving a copy of the notice of termination with the customer or a responsible person 18 years old or older at the premises, or, if no one is at home, leaving a copy of the notice at the premises; and

(3) Documents each attempt to make personal contact under this section.

H. If personal contact is made, the utility shall inform the customer of possible sources of financial assistance and the availability of alternate payment plans or other payment arrangements offered by the utility.