



Department of Health

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Executive Deputy Commissioner

August 23, 2021

DAL: DHCBS 21-11
SUBJECT: State Regulatory Waivers
Relating to Home Care and Hospice
Agencies

Dear Home Care Administrator:

The COVID-19 State of Emergency in New York State ended on June 25, 2021. Therefore, Executive Orders based upon the State of Emergency, such as EO 202.5, that provide regulatory waivers to allow provider flexibility, are no longer in effect as of Friday, June 25, 2021.

This “Dear Administrator Letter” (DAL) addresses the resumption of routine services for home care and hospice agencies, and under what limited circumstances the Department of Health (Department) will continue to exercise enforcement discretion in recognition of the fact that providers need time to restart and complete activities previously suspended. However, providers should immediately initiate efforts to restart these activities and be able to demonstrate to Department surveyors that there is a plan in place for compliance as soon as practicable.

Supervision of Home Care Aides

Agencies should resume in-home and in-person supervision of home care aides. Any exercise of enforcement discretion by the Department will end upon the expiration of the federal Public Health Emergency (PHE), and as indicated above, agencies/programs must satisfactorily demonstrate to Department surveyors that they have developed policies and procedures to return to in-home and in-person supervision of home care aides as soon as practicable.

In-Home Initial Assessments and Reassessments

Effective immediately, providers should resume in-home initial assessments and reassessments within 24 hours of receipt and acceptance of a community referral or return for placement in accordance with 10 NYCRR 763.5(a). Any exercise of enforcement discretion by the Department will end upon the expiration of the federal PHE, and as indicated above, agencies/programs must satisfactorily demonstrate to Department surveyors that they have implemented policies and procedures to restart conducting initial patient visits within 24 hours as soon as practicable.

Annual Performance Evaluations

A DAL dated April 10, 2020 suspended annual performance evaluations of current employees by home care agencies and programs. Beginning immediately, providers must resume annual staff performance evaluations including the annual in-home supervisory visit as required by 10 NYCRR 766.11.

Pre-Employment Health Assessments for New Employees and Annual Health Assessments

Providers are reminded that annual health assessments for current employees were resumed in November 2020 pursuant to DAL DHCBS 20-11 and therefore must be completed in alignment with regulatory requirements under 10 NYCRR 763.13(d) (CHHAs, LTHHCPs, and AIDS home care programs), 766.11(d)(5) (LHCSAs), and 794.3(d)(7) (Hospice). Likewise, pursuant to DAL DHCBS 20-11, pre-employment health assessments for all personnel, including tuberculosis screening, documentation of immunity to measles, rubeola and influenza vaccination status have not been suspended and are required pursuant to 10 NYCRR 763.13(c); 766.11(c),(d); and 794.3(c),(d). No enforcement discretion will be extended with respect to these requirements. *No enforcement discretion will be extended with respect to these requirements.*

Providers are strongly advised to review DALs 20-14, dated December 16, 2020, "Annual TB Testing," and DAL 21-05, dated April 6, 2021, "TB Testing Clarification" for compliance with TB testing and all vaccination status.

Supervised Practical Training

On April 10, 2020, the Department issued guidance titled "Health Advisory: Interim Guidance for Home Health Aide Training Programs," which indicated that the Department would waive the requirement that 8 hours of the 16-hour supervised practical training portion of a home health aide training program be provided in a patient care setting. Going forward and until further notice from the Department, the Department will continue to allow all 16 hours of supervised practical training to be conducted in a laboratory setting under the direct supervision of an approved Nurse Instructor. As indicated in the Department's April 10, 2020 guidance, a minimum of 16 hours of classroom training is still required prior to the start of the supervised practical training, and the home health aide training program, including classroom instruction and supervised practical training, must total at least 75 hours. *The Guide to the Operation of a Home Health Aide Training Program* has been updated and can be found at https://www.health.ny.gov/professionals/home_care/hhtap_training_materials.htm and at https://www.health.ny.gov/facilities/home_care/professional.htm.

In-Service Training for Personal Care, Home Health and Hospice Aides

Personal Care Aides

Personal care aides are required to complete 3-hours of in-service education on a semiannual basis, as set forth in 18 NYCRR 505.14(e)(2)(ii). In recognition of the difficulty in meeting this requirement during the State Disaster Emergency, DAL DHCBS 21-02 stated that the Department would exercise enforcement discretion where such in-service education was due by June 30, 2021. The Department will continue to exercise enforcement discretion through December 31, 2021 with respect to in-service training.

Home Health Aides

The Centers for Medicare and Medicaid Services (CMS) postponed the deadline to complete the annual 12-hour in-service education requirement for Home Health Aides and Hospice Aides, as set forth in 42 CFR 484.76(d). New York's regulations also require 12 hours of in-service under 10 NYCRR 763.13(l) (CHHAs, LTHHCPs and AIDS home care programs); 766.11(i) (LHCSAs); and 794.3(k)(1) (Hospices).

As stated in DAL DHCBS 20-10 and DAL DHCBS 21-02, the Department will continue to exercise enforcement discretion when assessing the completion of Home Health Aide annual in-services *until the end of the first full quarter following the declaration of the end of the federal PHE*.

Hospice Aide In-Service and Annual Training

42 CFR 418.76(d) requires hospice aides to receive at least 12 hours of training on an annual basis. In April 2020, CMS waived this requirement to allow more time for Registered Nurses and Hospice Aides to provide direct patient care. Additionally, CMS modified 42 CFR 418.100(g)(3), which requires hospices to annually assess the skills and competence of all individuals furnishing care and provide in-service training and education when required. Specifically, CMS postponed this requirement until the end of the first full quarter following the declaration of the end of the federal PHE. See <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf> for further information.

As a reminder, this federal modification does not alter minimum personnel requirements set forth by 42 CFR § 418.114(a) and specific hospice staff must continue to complete training and have their competencies evaluated as indicated in the 42 CFR Part 418, to the extent such federal regulations have not been waived by CMS.

Home Care Aide Training Program Completion and Submission of Schedules

As originally articulated in the Department's April 10, 2020 DAL, the Department will continue to extend the time in which a home care aide training program must be completed to 90 days. Home Health Aide training programs should submit their anticipated schedules to the applicable regional office by October 1, 2021 and again on April 1, 2022, pursuant to a six-month schedule.

Alternative Competency Demonstration for Personal Care Aides

As originally articulated in the Department's April 10, 2020 DAL, the Department will continue to expand the Alternate Competency Demonstration look-back period from 2 years to 3 years, and the prospective employee must have 3 months experience, rather than 6 months. *The Alternative Competency Demonstration for Personal Care Aide* guidance has been updated and can be found on the Health Commerce System Documents by going to Long Term Care Groups, selecting Training and then selecting PCATP.

Questions related to the exceptions and/or practices should be addressed to covidhomecareinfo@health.ny.gov or to homecare@health.ny.gov .

Sincerely,

Carol Rodat, Director
Division of Home and Community Based Service