



Department of Health

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October 13, 2020

DAL: DHCBS 20-10

**Subject: Home Care and Hospice Guidance
Pertaining to In-Service, Orientation, and
Supervision Requirements**

Dear Administrator:

This guidance is intended for Certified Home Health Agencies (CHHAs), Licensed Home Care Services Agencies (LHCSAs), Long-Term Home Health Care Programs (LTHHCPs), AIDS home care programs and Hospices.

In response to the COVID-19 crisis, questions have been raised by providers regarding in-service requirements for aides and use of remote technology relating to nursing orientation and supervision of home care aides for new and existing patients. This guidance serves to clarify the Department of Health's (Department's) expectations in these areas.

Home Care Aide In-Service Requirements:

As corresponding federal requirements have been waived by the Centers for Medicaid and Medicare Services (CMS) for Home Health Aide Training Programs through the [federal](#) regulatory waiver process, the Department will exercise enforcement discretion when surveying providers for compliance with the following in-service requirements:

- The 12-hour annual in-service education requirement for home health aides (HHAs), as set forth in 10 NYCRR §§ 763.13(l) (CHHAs, LTHHCPs, and AIDS home care programs), 766.11(i) (LHCSAs), and 794.3(k)(1) (Hospice);
- The 3-hour semi-annual in-service education requirement for personal care aides (PCAs), as set forth in 18 NYCRR § 505.14(e)(2)(ii), *only where such semi-annual education was due between January and June 2020.*

Given the ongoing New York State Disaster Emergency, as declared under Executive Order (EO) 202, the Department will continue to exercise such enforcement discretion until the end of the first full quarter following the declaration of the end of the State Disaster Emergency or expiration Executive Order 202, whichever is sooner.

Notwithstanding the foregoing, the Department nevertheless urges the completion of both annual and semi-annual in-services for HHAs and PCAs as soon as practicable.

In-services can be conducted remotely or through other off-site methods. Online in-services may be used as a means of in-service completion provided it is under the supervision of an RN, includes an opportunity for questions and answers, and there is an evaluation that validates that learning took place. The online in-service training must also be pertinent to the aide's job responsibilities. The agency should document remote in-service training in the agency's personnel files and this documentation must be made available upon request for surveillance purposes.

Orientation and Supervision:

EO 202.5, issued on March 18, 2020 and extended by subsequent orders (most recently through November 3, 2020 by EO 202.60) permits CHHAs, LHCSAs, LTHHCPs, AIDS home care programs, and Hospices serving individuals affected by the disaster emergency to conduct in-home supervision of HHAs and PCAs as soon as practicable after the initial service visit, or to permit in-person and in-home supervision to be conducted through indirect means, including by telephone or video communication.

Similarly, CMS has waived the requirements at 42 CFR § 418.76(h)(2) for Hospice and 42 CFR § 484.80(h)(1)(iii) for Home Health Agencies, which require a registered nurse, or in the case of a Home Health Agency, a registered nurse or other appropriate skilled professional (physical therapist, occupational therapist, speech language pathologist), to make an annual onsite supervisory visit (direct observation) for each aide that provides services on behalf of the agency. All postponed onsite assessments must be completed by these professionals no later than 60 days after the expiration of the public health emergency. The CMS waiver was made retroactive to March 1, 2020.

Use of Technology:

All CHHA, LTHHCP, AIDS home care and LCHSA home care cases may be opened using remote technology per EO 202.1 issued on March 12, 2020 and as extended by subsequent orders (most recently through November 3, 2020 by EO 202.60). Specifically, the EO temporarily modifies Public Health Law § 2999-cc to allow additional telehealth provider categories and modalities, permit other types of practitioners to deliver services within their scope of practice, and authorize the use of certain technologies for the delivery of health care services to established patients.

Agency administrators are advised to closely monitor the Health Commerce System and the Department's website for additional guidance. The Department commends each of you for your continued efforts to provide quality services in your communities and appreciates your diligence in assuring the health and safety of home care workers and consumers.

If you have any COVID-19 related questions, please send them to:
covidhomecareinfo@health.ny.gov.

Sincerely,

Carol Rodat, Director
Division of Home and Community Based Services