



Department of Health

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Executive Deputy Commissioner

July 23, 2021

DAL: DHCBS 21-09

Subject: In-Service Requirements for Personal
Care Aides and Home Health Aides

Dear Administrator:

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

On October 13, 2020, the Department of Health (Department) issued Dear Administrator Letter (DAL) DHCBS 20-10, "Home Care and Hospice Guidance Pertaining to In-Service, Orientation and Supervision Requirements," in response to the COVID-19 State Disaster Emergency. In that DAL, the Department stated that it would exercise enforcement discretion when surveying providers for compliance with certain in-service requirements. On January 21, 2021 the Department issued DAL DHCBS 21-02, "In-Service Requirements for Personal Care Aides and Home Health Aides," to notify providers that the Department would continue to exercise enforcement discretion with respect to in-service training for personal care and home health aides for a certain period of time, as detailed therein.

The purpose of this communication is to advise providers that the Department will continue to exercise enforcement discretion when surveying providers for compliance with certain in-service requirements. However, such enforcement discretion will continue only for the time periods detailed herein.

Personal Care Aide In-Service Requirements

Personal Care Aides (PCAs) 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 previously stated that the Department would exercise enforcement discretion where such in-service education was due by June 30, 2021. To allow PCAs time to schedule in-service trainings and come into compliance, the Department will continue to exercise enforcement discretion until December 31, 2021 with respect to in-service training.

Home Health Aide In-Service Requirements

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 (HHAs) 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 Public Health Emergency (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 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.

Recommended Actions for Employers of Personal Care Aides and Home Health Aides

Notwithstanding these allowances, the Department strongly encourages employers to complete the annual and semi-annual in-service requirements for HHAs and PCAs as soon as is practicable and to document such training in staff personnel files. Agencies that are not currently conducting annual or semi-annual in-service training should begin planning immediately for how the agency will execute forthcoming in-services to staff at the conclusion of the PHE.

The Department also reminds employers that in-services for PCAs and HHAs can be conducted remotely or through other off-site methods such as online education. All in-service education must be done under the supervision of an RN with an opportunity for questions to be answered and must be accompanied by validation that learning occurred. Regardless of the method selected for completion of the in-service, the agency must document that the in-service was completed in each aide's personnel file.

The Department urges providers to closely monitor the Health Commerce System and the Department's website. Questions related to COVID-19 should be addressed to covidhomecareinfo@health.ny.gov or to homecare@health.ny.gov.

Sincerely,

Carol A. Rodat
Director
Division of Home and Community Based Services