

Home Care Developments

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New York Department of Health Issues Important Updates to Personnel Requirements for LHCSAs

The Department of Health has just released two Dear Administrator Letters ("DALs") that will require home care agencies' immediate attention. The first DAL discusses health assessments and immunization requirements for healthcare personnel, including PCAs and HHAs working for LHCSAs. It is available [HERE](#). The second DAL discusses home care aide in-service requirements, and it is available [HERE](#). These DALs do not appear applicable to CDPAP.

Annual Health Assessments and Immunizations

The annual health assessment for personnel of CHHAs, LHCSAs, LTHHCPs, and AIDS home care programs was suspended on April 10, 2020. As of October 14, that suspension is lifted and all personnel must obtain their annual health assessments by December 31, 2020.

In-Service

The DAL was issued CHHAs, LHCSAs, LTHHCPs, AIDS home care programs and hospices to address questions 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. In view of federal waivers to the home health aide training program, the DOH will exercise "enforcement discretion when surveying providers for compliance" with the 12-hour annual in-service requirements for home health aides, CHHAs, LTHHCPs, and AIDS home care programs. However, with respect to the 3-hour semi-annual in-service education requirements for PCAs, the DOH will exercise enforcement discretion "only where such semi-annual education was due between January and June 2020." The Department will continue to exercise its discretion until the end of the "first full quarter following the declaration of the end of the State Disaster Emergency or expiration of Executive Order 202, whichever is sooner." Nonetheless, in the DAL, the DOH is urging providers to have their aides complete both annual and semi-annual in-services as soon as practicable.

The DAL continues to emphasize that:

"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."

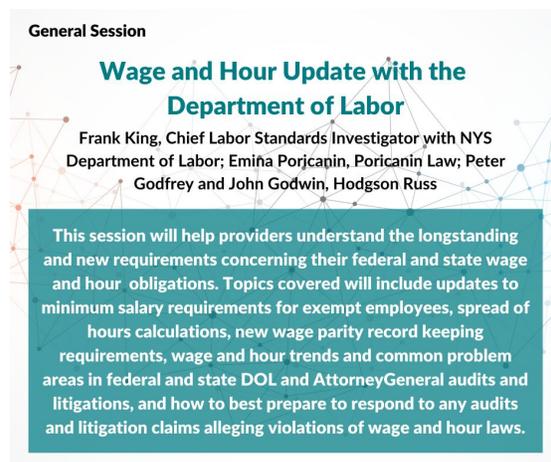
Orientation and Supervision

The DAL notes that the EO 202.5, issued on March 18, 2020 and extended by subsequent orders, 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.

The DAL further notes that 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. The DAL notes that all postponed onsite assessments must be completed by these professionals no later than 60 days after the expiration of the public health emergency.

Opening Cases via Technology

The DAL reaffirms that LHCSAs, CHHAs, LTHHCPs, and AIDS home care cases may be opened using remote technology.



General Session

Wage and Hour Update with the Department of Labor

Frank King, Chief Labor Standards Investigator with NYS Department of Labor; Emina Porjicanin, Poricanin Law; Peter Godfrey and John Godwin, Hodgson Russ

This session will help providers understand the longstanding and new requirements concerning their federal and state wage and hour obligations. Topics covered will include updates to minimum salary requirements for exempt employees, spread of hours calculations, new wage parity record keeping requirements, wage and hour trends and common problem areas in federal and state DOL and Attorney General audits and litigations, and how to best prepare to respond to any audits and litigation claims alleging violations of wage and hour laws.

Join my wage and hour colleagues and I, alongside the New York Department of Labor, for a Wage and Hour Update session at this year's annual New York Health Care Providers' Association conference. We will discuss all the legal updates and changes concerning pay rate forms, minimum wage increase, Department of Labor initiatives and enforcement activity in home care, as well as wage parity matters.



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