

Client Alert

June 18, 2025

New York Senate to Hold Hearing on CDPAP SFI Transition

On July 9, 2025, Senator Gustavo Rivera and Senator James Skoufis will be holding a public hearing on NY State's transition to the single fiscal intermediary (SFI), Public Partnerships, LLC (PPL) in the consumer directed personal assistance program. The hearing will take place at 250 Broadway, New York, NY 10007.

The goal of the hearing will be to evaluate:

- The procurement process - How PPL was selected to become the SFI, and whether they were awarded the contract fairly.
- The transition to the SFI, and what did and did not work during the transition process.
- The impact on personal assistants and consumers since the transition began.
- How to ensure consumers continue to receive services.
- How to ensure better operation of the SFI going forward.

Invitations will be sent out shortly to persons/entities, including PPL, from which the Senators seek to gather testimony.

Cultural Competency Training

The New York State Department of Health (DOH) has begun conducting surveys to ensure compliance with the new cultural competency training requirements instituted in January, 2025.

As a reminder, DOH issued two Dear Administrator Letters (DAL) [DAL # HCBS 24-04](#), /[DRS #25-02](#) – which outline the new cultural training requirements. These apply to New York Personal Care Aide Training Programs (PCATP), Home Health Aide Training Programs (HHATP) and Certified Nurse Aide Training Programs (CNA).

These training requirements are aimed at equipping caregivers with knowledge and tools that can be used when working with individuals with diverse sexual orientations and gender identities or expressions. The new

training is required for certification or recertification, as applicable, of home health aides (HHAs), personal care aides (PCAs), and certified nurse aides (CNAs).

To ensure compliance, the DAL requires, at a minimum, that:

- HHAs, PCAs, and CNAs must take the training at certification and recertification.
- HHAs, PCAs, and CNAs must take the training every two (2) years if they are staff of a nursing home or an adult care facility, including an assisted living residence.
- Existing HHAs, PCAs, and CNAs must take the training within 6 months of 01/17/2025-
- All new training program applications must demonstrate applicants capacity to provide the required training within their standard curriculum. Existing training programs are not required to submit new class schedules to DOH.

The training is available online through DOH's [Learning Management System](#) or training programs may incorporate the training content into their own curriculum. [DAL # HCBS 24-04](#) includes a checklist of the required components of the training. Programs are responsible for demonstrating acceptable compliance upon request from DOH.

Contact our office for assistance with updating your cultural competency training or drafting supporting policies and procedures. Take action before DOH requests proof of your compliance!

Amended Mental Injury Workers Compensation Law Goes Into Effect

Effective June 4, 2025, the Workers' Compensation Law was amended to significantly expand benefits by allowing claims by employees for certain mental injuries resulting from work-related stress.

To satisfy the requirements for this type of Workers' Compensation claim, the employee must demonstrate that the mental disorder (post-traumatic stress disorder, acute stress disorder or major depressive disorder) arose out of "extraordinary work-related stress" attributable to a "distinct work-related event or events directly related to their employment" and occurred during the performance of the employee's job duties. These amendments do not apply to a claim for mental injury due to a work-related physical injury.

The law does not define "extraordinary work-related stress" and will be determined by the Workers' Compensation Board on a case-by-case basis. It is important to note that the amended law will apply to all pending claims as of June 4, 2025, regardless of the date of injury.

The new law has raised several key questions, particularly regarding the calculation of benefits for mental injuries. Additionally, there is uncertainty about how the law will affect emotional distress claims in discrimination cases, as workers' compensation remains the exclusive remedy for workplace-related injuries.

Employers should (1) check with their workers' compensation insurance carriers to make sure they have coverage; (2) ensure that human resources departments are aware of the new law; (3) ensure that HR conduct an

assessment of potential situations which could cause work-related mental health injuries and (4) consider offering mental health benefits to employees, which may help reduce the potential for an employee to make a claim (and may help mitigate potential damages)

Department of Health Changes to Weekly Herd Data Reporting

The New York State Department of Health (DOH) has issued a new Dear Administrator Letter (DAL), [DAL DHCBS 25-09](#), announcing changes to the data collected and the reporting cycle for the Licensed Home Care Service Agency (LHCSA) weekly Health Emergency Response Data System, (HERDS) survey.

Effective June 17, 2025, LHCSA providers will have three (3) days to complete and submit the survey to comply with the existing reporting requirement. The reporting cycle will begin on Tuesdays at 8:00 a.m. and will close on Thursdays at 2:00 p.m. Additionally, a new two-part question has been added to collect the provider's patient census by county per the LHCSA's license. These changes will remain in effect until further notice.

To assist providers, DOH has provided access to a recorded session available on the Health Commerce System.

Department of Health Clarifies Expectations for Dually Certified Home Health Aides

The New York State Department of Health (DOH) has issued a new [Dear Administrator Letter](#) to remind providers of the expectations for home care aides that are dually certified as Home Health Aides (HHA) and Personal Care Aides (PCA). The DAL describes the requirements for aides to maintain their HHA and PCA certificates:

- For HHA certificates acquired before 2009, the certificates are valid if the aide has completed an approved training program or is employed by a qualifying agency within the last 24 consecutive months, and the aide is listed in the Home Care Registry.
- If an HHA's certificate has lapsed, they may only renew their certificate by participating in an approved HHA training program. The aide may be eligible to take the competency evaluation program in lieu of the standardized training. If the aide does not successfully demonstrate competency, they must undergo the full training curriculum to be recertified as an HHA.
- If the aide is dually certified and listed in the HCR, but their HHA certification has lapsed, the aide may work under their PCA certificate provided that their employment is within the scope of practice of a PCA. If an aide chooses not to renew their HHA certificate and works solely as a PCA, the aide will be required to meet the PCA in-service requirement.
- PCA certificates do not lapse for aides who completed the PCA certification before and after 2009 and who are listed in the HCR.
- If the aide acquired their HHA or PCA certificate prior to 2009, and they are not listed in the HCR, the agency must direct the aide to attend an approved training program.
- All HHAs and PCAs trained after 2009 must complete an approved HHA or

PCA training program and have their training program and employment data entered into the HCR by the training program or employer.

Department of Health Releases Revisions to MOLST Form

On June 2, 2025, the New York State Department of Health (DOH) released [DAL DHCBS 25-08](#), informing providers of revisions that were made to the Medical Orders for Life-Sustaining Treatment (MOLST) Form ([DOH-5003](#)). The MOLST form is one way of documenting a patient's treatment preferences concerning life sustaining treatment and serves as a tool to support and educate caregivers. However, under State law (Public Health Law Article 29-CCC, Nonhospital Orders Not to Resuscitate), the MOLST form is the only authorized form in New York State for documenting both nonhospital Do Not Resuscitate and nonhospital Do Not Intubate orders. In addition, the form is beneficial to patients and providers as it provides specific medical orders and is recognized and used in a variety of health care settings. All health care professionals, including EMS providers, are required to follow these medical orders. The Health Insurance Portability and Accountability Act permits disclosure of the MOLST to other health care professionals.

Although all existing MOLST forms that have already been completed remain valid, providers are strongly encouraged to replace their current MOLST form with the most up-to-date version. The electronic MOLST (eMOLST) will be updated to match the revised paper form. No changes have been made to the Nonhospital Order Not to Resuscitate ([DOH-3474](#)).

The [updated DOH page](#) includes step-by-step instructions and checklists for completing the MOLST Form and FAQs.

Independent Contractor Misclassification Enforcement

The U.S. Department of Labor (the Department) Wage and Hour Division (WHD) has issued a new [Field Assistance Bulletin](#) (FAB) to provide guidance to WHD field staff regarding the analysis to apply when determining employee or independent contractor status for purposes of enforcing the Fair Labor Standards Act (FLSA).

The FLSA only applies to those workers whom the FLSA defines as "employees." The Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 89 Fed. Reg. 1638 (the 2024 Rule) outlined the framework for determining employee or independent contractor status under the FLSA. However, due to challenges to the 2024 Rule, **WHD will no longer apply the 2024 Rule's analysis when determining employee versus independent contractor status in FLSA investigations.** WHD will instead enforce the FLSA in accordance with [Fact Sheet #13 \(July 2008\)*](#), and as further informed by [Opinion Letter FLSA2019-6](#). Fact Sheet #13 utilizes the Economic Reality test in determining employee or independent contractor status under the FLSA. When determining Economic Reality, WHD considers six factors. WHD weighs these factors in order to determine worker status. The factors are:

1. The extent to which the services rendered are an integral part of the principal's business
2. The permanency of the relationship.
3. The amount of the alleged contractor's investment in facilities and equipment

4. The nature and degree of control by the principal
5. The alleged contractor's opportunities for profit and loss
6. The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor
7. The degree of independent business organization and operation

Under New York law, there is no single factor, group of factors, or test that conclusively defines an employer-employee relationship. Rather, NY Courts evaluate all factors to determine the degree of supervision, direction and control exercised over the services or the means used to achieve the results. NY Courts have used the FSLA's Economic Reality test, the NY Common Law test, and the Fair Play Act (specific to the construction industry). In New York, an employer-employee relationship may exist where the employer:

- Chooses when, where, and how they perform services
- Provides facilities, equipment, tools, and supplies
- Directly supervises the services
- Sets the hours of work
- Requires exclusive services (cannot provide services to competitors).
- Sets the rate of pay
- Requires attendance at meetings and/or training sessions
- Asks for oral or written reports
- Reserves the right to review and approve the work product
- Evaluates job performance
- Requires prior permission for absences
- Has the right to hire and fire

Conversely, independent contractors generally: bear the risk of profit or loss; provide tools, equipment, and other resources necessary for their work; carry insurance; control the performance of services; set their rates and schedule; and/or are free to refuse work and offer services to competitors.

Contact our office with any questions regarding classification of workers.

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