



# Client Alert

## August 19, 2025

### Dear Administrator Letter for Licensure Amendment Requests

On August 8, 2025, the New York State Department of Health (the "Department") released [Dear Administrator Letter](#) ("DAL") DHCBS 25-03, which provides the Department's updated policy and procedure for Licensed Home Care Services Agency ("LHCSA") administrative approval of licensure amendment requests. All administrative licensure amendments require Department approval, and some require notice to the appropriate Regional Office at the address listed in Attachment B of the DAL. This DAL supersedes DAL 22-02 and provides a new submission process and email address for all administrative licensure requests.

We make note of the following differences in the administrative licensure amendment requests:

Written and signed administrative licensure requests must now be submitted to [Amend@health.ny.gov](mailto:Amend@health.ny.gov) with a completed Attachment A: LHCSA Administrative Licensure Amendment Request Checklist (attached to the DAL), and all supporting documents listed in the checklist in connection with the specific amendment request.

The Department has implemented a needs analysis related to expansion requests and will only consider an expansion request to add a county where there are fewer than five (5) LHCSAs actively serving patients in the requested county. "Actively serving patients" means the LHCSA has a plan of care in place for at least one (1) patient who is receiving services in their home.

Our office has contacted the Department for further clarification on the application of the needs analysis. Preliminarily, we believe that the needs analysis will apply to all new expansion requests as well as expansion requests that have already been submitted to the Department and are still under review.

We will keep you updated as we continue to communicate with the Department regarding the retroactive application of the new needs request to pending expansion requests.

## Updated Health Commerce System Requirements

On August 7, 2025, the Department released [Dear Administrator Letter](#) ("DAL") DAL DHCBS 25-10, which provides updated Health Commerce System ("HCS") requirements.

The HCS is the primary mechanism the Department uses to communicate with Licensed Home Care Services Agencies ("LHCSAs"), Certified Home Health Agencies ("CHHAs"), Long Term Home Health Care Programs ("LTHHCPs"), and Hospice providers in New York State during emergencies and normal operational issues. Pursuant to New York State regulations, LHCSAs (under 10 NYCRR 766.9(o)), CHHAs/LTHHCPs (under 10 NYCRR 763.11(f)), and Hospices (10 NYCRR 794.1(n)) must establish and maintain HCS accounts for each agency it operates and ensure that sufficient and knowledgeable staff are available to maintain and keep their accounts current. The Department actively monitors compliance with these regulations and may take action where a provider is found to be in noncompliance.

To ensure compliance with this DAL and State regulations, providers are expected to establish and maintain policies and procedures that relate to its HCS system, which should be reviewed at least annually. The policies and procedures should cover the following:

1. The HCS account should be accessed daily (at least once every 24 hours) and more frequently during an emergency to check for provider updates and announcements, alerts and other important Department communications.
2. The agency's HCS communications directory must be kept current and updated, reflecting changes in general information and staff role changes as soon as they occur. This information should be reviewed at least monthly.
3. Current contact information must be entered for:
  - a. An emergency contact (reachable 24/7); and
  - b. Office of the administrator.
4. One or more appropriate staff members with an active HCS account must be assigned to each of the following roles:
  - a. Administrator;
  - b. Operator;
  - c. Director, Home Care Patient Services or Patient Services;
  - d. Emergency Response Coordinator; and
  - e. HPN Coordinator.
5. For agencies that employ home health aides or personal care aides, one or more appropriate staff members with an active HCS account must be assigned to each of the following roles:
  - a. Criminal history record check authorized person
  - b. Home Care Registry ("HCR") agency updater;
  - c. HCR agency viewer.
6. For agencies that operate a home health aide training program, one or more appropriate staff members with an active HCS account must be assigned to each of the HCR roles:
  - a. HCR agency updater;

- b. HCR agency viewer;
- c. HCR certification form printer;
- d. Home care training program certificate printer;
- e. Home care training program updater; and
- f. Home care training program viewer.

Contact our office for assistance drafting or revising your HCS policies and procedures.

### **Indictment Unsealed in Medicaid Marketing Fraud Scheme**

The United States Attorney's Office for the Eastern District of New York has unsealed a [Superseding Indictment](#) from March 2025 charging 13 defendants with conspiracy, health care fraud, paying/receiving health care kickbacks, and money laundering related to a \$68 million scheme of fraudulently inducing and referring Medicaid beneficiaries for Social Adult Day Care ("SADC") and Consumer Directed Personal Assistance Program ("CDPAP") services. The defendants include the owners of two SADC centers (Happy Family Social Adult Day Care, Inc., and Family Social Adult Day Care, Inc.), a Fiscal Intermediary ("FI") (Responsible Care Staffing, Inc.), marketers, and Medicaid beneficiaries.

The indictment alleges that the defendants engaged in a scheme whereby the owners of the SADC centers paid kickbacks and bribes in the form of cash to marketers to refer Medicaid recipients to enroll with Happy Family, Family Social, and Responsible Care. Marketers attended medical evaluations with the Medicaid recipients and pretended to be the Medicaid recipients' family member or caregiver so that the Managed Long Term Care ("MLTC") plans approved the Medicaid recipients for services. At least two of the charged defendants have already pleaded guilty.

Once approved, the SADC and FI billed the MLTC for SADC and CDPAP services that were medically unnecessary, never actually provided and/or were induced by the payment and receipt of illegal kickbacks and bribes. The beneficiaries often never visited the service provider itself, and in some cases, were outside the United States on the purported dates of service. The case is currently pending in the United States District Court, Eastern District of New York.

Agencies are strongly encouraged to scrutinize compensation agreements with referral sources to ensure they are fully compliant with applicable laws. Agreements should be structured so they cannot be viewed as unlawful inducements intended to drive Medicaid-covered services. We encourage you to contact our office to review any marketing or recruitment agreements you may have in place.

### **Personal Care Services Eligibility Changes Go Into Effect September 1, 2025**

The Department has [announced](#) the implementation of minimum needs requirements for individuals seeking Personal Care Services ("PCS"), Consumer Directed Personal Assistance Services ("CDPAS"), and [Managed Long Term Care](#) ("MLTC") enrollment, as outlined in Social Services Law § 365-a, Social Services Law § 365-f, 18 NY Codes, Rule and Regulations §§ 505.14 and 505.28, and Public Health Law § 4403-f.

Effective September 1, 2025, any individual initially seeking PCS/CDPAS and/or

MLTC enrollment through the assessment process must also be assessed to meet the following minimum needs criteria to be eligible for PCS/CDPAS and/or MLTC enrollment:

- Needing at least limited assistance with physical maneuvering with more than two Activities of Daily Living ("ADL"); or
- Individuals with a diagnosis by a physician of dementia or Alzheimer's as needing at least supervision with more than one ADL.

The minimum needs requirements do not apply to Program of All-Inclusive Care for the Elderly ("PACE") enrollments. Notwithstanding the foregoing, individuals with PACE will be granted "Plan Legacy" (individuals enrolled in MLTC, including PACE, before September 1, 2025) and "Service Legacy" (individuals receiving or authorized for PCS or CDPAS before September 1, 2025) following the same process as other MLTC plans. This allows individuals enrolled in PACE prior to the needs requirements to transfer within MLTC lines of business.

This new requirement does not apply to individuals who are receiving PCS/CDPAS and/or are continuously enrolled in an MLTC plan as of September 1, 2025. These individuals will continue to be eligible under the previous criteria requirements for MLTC enrollment.

Individuals enrolling into a MLTC Partial Capitation or Medicaid Advantage Plus plan on or after September 1, 2025 must meet the minimum needs requirements at initial and subsequent assessments in addition to the need for Community-Based Long-Term Services and Supports for more than 120 days.

Contact our office with any questions.

### **Revised Nursing Home Transition and Diversion Waiver Audit Protocols**

On July 18, 2025, the Office of the Medicaid Inspector General ("OMIG") released [revised audit protocols](#) for the Nursing Home Transition and Diversion ("NHTD") Medicaid waiver program for the service dates of January 1, 2013, through June 2, 2025.

Audit protocols help Medicaid providers assess their compliance with federal and state Medicaid laws, but serve only as guidance—not as enforceable rules. They do not replace the need to comply with statutory or regulatory requirements, which take precedent in a conflict with the protocols. The protocols are used during OMIG audits and are applied to a specific provider type or category of service to evaluate compliance and assess the appropriateness of Medicaid spending, based on existing policy and discretion. OMIG reviews and considers relevant documentation maintained by the provider, and may take enforcement action against fraud or abuse or recover improper payments. OMIG can revise the protocols as needed to address non-compliance or changes in law or policy.

We make note of several changes to the audit protocol language related to the corresponding audit criteria:

#### **Service Documentation Does Not Meet Required Standards:**

- For services provided on 7/1/2018 and after, a full-time Service Coordinator ("SC") may not exceed a case load of 25 participants. SCs providing services to NHTD waiver participants on less than a full-time

basis must limit their caseload proportionately. If the SC exceeds the limit of participants, the claim will be disallowed.

**Missing Nursing Supervision Visit:**

- In addition to the initial home visit conducted by a registered nurse on the day and time the home and community support services staff begins providing services to the participant, the registered nurse must conduct an additional visit no less than annually thereafter.

**Nursing Home Transition and Diversion Waiver Service Training Not Completed:**

- All waiver service providers must complete basic orientation and service specific training within 30 days of hire and prior to unsupervised contact with a participant. If a provider has unsupervised contact with a participant prior to the completion of training, the claim will be disallowed.

**Service Performed by Unqualified Service Coordinator:**

- SCs hired after January 1, 2020, must meet with the regional resource development center within one (1) month of hire for training and the agency must maintain a certificate of training completion in their employee record. If the agency does not submit documentation for the meeting, the claim will be disallowed.

Contact our office for assistance navigating an OMIG audit.

**Department of Labor Proposes Rule to Reinstate Minimum Wage and Overtime Exemptions for Home Care Workers**

On July 2, 2025, the Department of Labor's Wage and Hour Division (the "DOL") published a [Notice of Proposed Rulemaking](#) ("NPRM") proposing to reinstate the Fair Labor Standards Act's ("FLSA") minimum wage and overtime exemption for home care workers employed by third-party home care agencies. The proposed rule's comment period closes on September 2, 2025.

The FLSA applies to workers whom the FLSA defines as "employees." In 1974, Congress amended the FLSA to extend coverage to all "domestic service" employees, including those employed by private households or small companies previously not covered by the FLSA. At the same time, Congress created exemptions for certain categories of domestic service employees, including:

1. An exemption from the FLSA's minimum wage and overtime pay requirements for employees who provide "companionship services for individuals who ... are unable to care for themselves." 29 U.S.C. 213(a)(15); and
2. An exemption from the overtime pay requirement (but not the minimum wage requirement) for "any employee who is employed in domestic service in a household and who resides in such household." 29 U.S.C. 213(b)(21).

In 1975, the DOL issued [regulations](#) at 29 C.F.R. 552 to define the scope of this "companionship exemption." On October 1, 2013, the regulations were revised to significantly narrow the scope of the FLSA's exemptions for companions and live-in domestic service workers by precluding third party



employers (like home care agencies) from claiming either exemption, and narrowing the definition of exempt “companionship services” that exempt companion workers could perform to no more than twenty (20%) percent of the total hours worked per person and per workweek.

The DOL's new proposed rule seeks to reinstate the companionship services and live-in exemptions to the 1975 standards and the ability of third-party employers to classify caregivers as exempt from the FLSA under the companionship and live-in domestic service exemptions.

### New Enforcement of FLSA Wage Requirements for Home Care Workers

On July 25, 2025, the DOL published [Field Assistance Bulletin](#) (“FAB”) 2025-4, Home Care Enforcement Guidance. The FAB provides enforcement guidance to Wage and Hour Division (“WHD”) field staff until the effective date of any final rule the DOL issues following the notice-and-comment rulemaking process related to the [Notice of Proposed Rulemaking](#) (“NPRM”) issued by the DOL on July 2, 2025, pursuant to which the Department proposes to rescind Application of the Fair Labor Standards Act to Domestic Service, published on October 1, 2013 (the “2013 Final Rule”).

Pursuant to the FAB:

- WHD field staff will not apply the 2013 Final Rule when determining whether a home care worker is subject to the FLSA’s wage requirements
- WHD investigators will immediately discontinue enforcement of the 2013 Final Rule, including open cases that predate this FAB.
- WHD investigators will not take any enforcement action against third party employers claiming the 13(a)(15) (An exemption from the FLSA’s minimum wage and overtime pay requirements for employees who provide “companionship services for individuals who ... are unable to care for themselves”) or 13(b)(21) (An exemption from the overtime pay requirement (but not the minimum wage requirement) for “any employee who is employed in domestic service in a household and who resides in such household”) FLSA exemptions.
- WHD investigators will not consider any limits on the time home care workers spend providing “care” when determining whether a home care worker is providing companionship services. Such care may include duties related to activities of daily living, such as dressing, grooming, feeding, bathing, toileting, and transferring; and instrumental activities of daily living, such as meal preparation, light housework, managing finances, assistance with taking medications, and arranging medical care.

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