

# Client Alert

## August 24, 2021

### Department of Health Issues DAL: DHCBS 21-11 Regarding the Resumption of Routine Services

On August 23, 2021, the Department of Health issued DAL: DHCBS 21-11 regarding the resumption of routine services for home care and hospice agencies. In this letter, the Department of Health advises that it will continue to exercise enforcement discretion in recognition of the fact that providers need time to restart and complete activities previously suspended. Providers are also advised to immediately initiate efforts to restart these activities and be able to demonstrate to Department surveyors that there is a plan in place for compliance as soon as practicable.

#### **Supervision of Home Care Aides**

Agencies should resume in-home and in-person supervision of home care aides. Any exercise of enforcement discretion by the Department will end upon the expiration of the federal Public Health Emergency (PHE), (currently set to expire October 20, 2021). Agencies must satisfactorily demonstrate that they have developed policies and procedures to return to in-home and in-person supervision of home care aides as soon as practicable.

#### **In-Home Initial Assessments and Reassessments**

Effective immediately, providers should resume in-home initial assessments and reassessments within 24 hours. Any exercise of enforcement discretion by the Department will end upon the expiration of the federal PHE, (currently set to expire October 20, 2021). Agencies must satisfactorily demonstrate to Department surveyors that they have implemented policies and procedures to restart conducting initial patient visits within 24 hours as soon as practicable.

#### **Annual Performance Evaluations**

Beginning immediately, providers must resume annual staff performance evaluations including the annual in-home supervisory visit.

#### **Annual Health Assessments**

Annual health assessments for current employees were required to resume in November 2020. No enforcement discretion will be extended with respect to these requirements

#### **Pre-Employment Health Assessments for New Employees**

Pre-employment health assessments for all personnel, including tuberculosis screening, documentation of immunity to measles, rubella and influenza vaccination status have not been suspended. No enforcement discretion will be extended with respect to these requirements.

### **Supervised Practical Training**

Home Health Aide Training Programs - the Department will continue to allow all 16 hours of supervised practical training to be conducted in a laboratory setting under the direct supervision of an approved Nurse Instructor. A minimum of 16 hours of classroom training is still required prior to the start of the supervised practical training, and the home health aide training program, must total at least 75 hours.

### **In-Service Training**

#### **Personal Care Aides**

Must complete 3-hours of in-service education on a semiannual basis, The Department will continue to exercise enforcement discretion through December 31, 2021 with respect to in-service training.

#### **Home Health Aides**

Must complete 12-hours of in-service on an annual basis. The Department will continue to exercise enforcement discretion of Home Health Aide annual in-services until the end of the first full quarter following the declaration of the end of the federal PHE (currently set to expire October 20, 2021)

### **Home Care Aide Training Program Completion and Submission of Schedules**

The Department will continue to extend the time in which a home care aide training program must be completed to 90 days. Home Health Aide training programs should submit their anticipated schedules to the applicable regional office by October 1, 2021, and again on April 1, 2022, pursuant to a six-month schedule.

### **Alternative Competency Demonstration for Personal Care Aides**

The Department will continue to expand the Alternate Competency Demonstration look-back period from 2 years to 3 years, and the prospective employee must have 3 months experience, rather than 6 months.

## **Public Health and Planning Council Emergency Rule to Require COVID-19 Vaccinations for Home Care and Hospice**

Previously, (August 16, 2021), Governor Cuomo announced that healthcare workers in New York State, are required to obtain a COVID-19 vaccination by September 27, 2021. This requirement included hospitals and long term care facilities (nursing homes, adult care and other congregate care settings). The order defined covered personnel as "all persons employed or affiliated with a covered entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose, patients, residents, or personnel working for such entity to the disease." This order did not include home health care workers.

The August 26, 2021, meeting agenda of the Public Health and Planning Council (PHHC) Special Codes, Regulations and Legislation Committee includes the consideration of an Emergency Rule that would mandate vaccines for "personnel" of

Certified Home Health Agencies, (CHHAs), Long Term Home Health Care Programs, Licensed Home Care Service Agencies (LHCSAs) and Limited LHCSAs, hospices and adult care facilities. If adopted, the regulation would mandate the vaccination of covered personnel by October 7, 2021 (with limited medical and religious exemptions).

Under the Emergency Rule, which can be found [here](#), covered entities will be required to continuously require personnel to be fully vaccinated against COVID-19. Current personnel must receive their first dose by October 7, 2021. Covered entities are required to document proof of the vaccine in the employee's personnel records or other appropriate records in accordance with applicable privacy laws.

Medical exemptions to the vaccine requirement are allowed if any licensed physician or certified nurse practitioner certifies that immunization with the COVID-19 vaccine is detrimental to the health of the member of a covered entity's personnel based upon a pre-existing health condition.

Covered entities will be able to grant a religious exemption for COVID-19 vaccination for personnel if such person holds a genuine and sincere religious belief contrary to the practice of immunization.

Covered entities must review and make determinations on requests for medical and religious exemptions, which must also be documented in personnel or other appropriate records, as well as any reasonable accommodations to protect the well-being of the patients, residents, and personnel in such facilities.

Upon the request of the state Department of Health, covered entities must report and submit documentation for the following:

- the number and percentage of personnel that have been vaccinated against COVID-19;
- the number and percentage of personnel for which medical exemptions have been granted;
- the number and percentage of personnel for which religious exemptions have been granted; and
- the total number of covered personnel.

We will monitor the development and provide updates as they become available. Providers should consider how they will secure proof of vaccination and address any exemption requests. Coordinators should be trained on how to respond to questions from caregivers.

Please give us a call with any questions regarding this mandate, or vaccine policies and procedures generally.

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