

Nirav R. Shah, M.D., M.P.H.
Commissioner

NEW YORK
state department of
HEALTH

Sue Kelly
Executive Deputy Commissioner

February 14, 2014

DAL: HCBS 14-03
Subject: Home Health Services in
Managed Care Plans
****Clarification****

Dear Administrator:

The purpose of this letter is to provide clarification on the information included in DAL HCBS 14-01 (Home Health Services in Managed Care Plans) that was issued on January 24, 2014.

The attached document, prepared by the Division of Home and Community Based Services and the Division of Long Term Care, includes responses to several provider questions related to home health services in managed care settings.

We anticipate issuing another DAL in the near future to provide responses to questions that we received which require more detailed analysis.

For questions or clarification on the information in this DAL, please contact the Department of Health at mltcquestions@health.state.ny.us.

Sincerely,



Rebecca Fuller Gray
Director
Division of Home & Community Based
Services

Attachments

- (1) Questions and Answers Related to DAL 14-01
- (2) Home Health Aide Scope of Tasks
- (3) Level 1 and II Personal Care Aide Scope of Functions and Tasks

Questions and Answers Related to DAL 14-01 Home Health Services in Managed Care Plans

1. What are the home health services benefits that this guidance affects?

- a. The guidance affects home health services as defined in 42 CFR § 440.70(b) to include the following:
 - i. Nursing service, as defined in the State Nurse Practice Act, that is provided on a part time or intermittent basis by a home health agency;
 - ii. Home health aide service provided by a home health agency; and
 - iii. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency.

Assessments:

2. Who can perform the UAS-NY (Uniform Assessment System-New York) for eligibility determinations for long term care services?

Registered professional nurses who have been trained to perform the UAS-NY assessment must be used.

3. Can nurses employed by Licensed Home Care Services Agencies perform the UAS-NY assessment since completion of the assessment is a nursing service?

Yes. Although completion of the UAS-NY assessment is a nursing service as defined by the NYS Nurse Practice Act, this nursing service is not being provided “on a part-time or intermittent basis” within the meaning of 42 CFR § 440.70(b)(1). Licensed home care services agencies may thus perform the UAS-NY assessments.

Personal Care Services:

4. Do personal care services have to be provided by a certified home health agency as a result of this guidance?

No. Personal care services have never been required to be provided only by a certified home health agency, and this guidance does not change that. Personal care services are authorized by the managed long term care plan after an assessment is completed and a plan of care is developed for the individual. Personal care services may be provided by licensed home care services agencies.

5. If I use a certified home health aide to provide only personal care services rather than an individual who is certified only as a personal care aide, must I use a certified home health agency to provide these services?

No. A home health aide employed by a LHCSA can provide personal care services to an individual who needs only that level of care. Although an individual may be certified as a home health aide, the individual may provide personal care services to an individual who needs only personal care services. The type of services that are provided to an individual is based on the individual’s assessed need. An individual who is trained as a home health aide has the requisite training to provide personal care services. Please refer to the Scope of Tasks in Addendums I and II of this document.

6. How often does a home health aide who is providing only personal care services to an individual enrolled in a managed care plan have to be supervised?

Supervision requirements are based on the type of services that are being provided. For personal care services, an individual must be supervised based on the MLTC requirements. For purposes of compliance with Title 10 NYCRR Part 766, an individual must have an annual evaluation.

7. Can licensed home care services agencies contract with managed long term care plans directly for the provision of personal care services?

Yes. The capability of a LHCSA to contract with MLTCPs to provide personal care services has not changed as a result of this guidance.

8. Must I use a home health aide instead of a personal care aide when an enrollee is receiving skilled nursing or therapies?

If the plan of care has incorporated the skills required by a home health aide, a home health aide must provide those skilled services. However, not all cases receiving skilled nursing or therapies require the services of a home health aide. The appropriate level of aide assignment depends on the plan of care and the tasks associated with implementing the plan of care. For a comprehensive listing of tasks associated with a personal care aide versus a home health aide, please refer to the Scope of Tasks in Addendums I and II of this document.

Private Duty Nursing

9. Can nurses employed by licensed home care services agencies be used to provide private duty nursing services?

Yes. Nurses who are employed by LHCSAs can be used to provide private duty nursing services. Private duty nursing is not a home health benefit as defined in 42 CFR §440.70 (b) because the nursing services are provided on more than a part-time or intermittent basis. A different federal regulation, 42 CFR § 440.80, applies to private duty nursing services.

Supervision

10. Can an entity that does not meet the Federal CoPs provide nursing supervision?

The entity not meeting the CoPs may provide nursing supervision to an individual in receipt of personal care services through a LHCSA. If home health aide services are being provided as part of a CHHA plan of care, the provision of the nursing supervision must be provided by the CHHA. Personnel requirements found in Title 10 763.13 and 766.11 continue to apply.

Contracts

11. What is the timeframe for allowing contract modifications to comply with the requirement?

Providers and plans should work together to modify contracts as necessary.