

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Health Care Finance



DHCF Transmittal No. 12-06

Office of the Deputy Director

**TO:** Home Health Agencies Enrolled in the District of Columbia Medicaid Program

**FROM:** Linda Elam, PhD, MPH   
Deputy Director, Medicaid

**DATE:** MAR 16 2012

**SUBJECT:** New limitations and requirements for use of staffing agencies when providing Medicaid State Plan Personal Care Aide services – Effective July 2, 2012.

New regulations governing the delivery of Medicaid Personal Care Aide (PCA) services under the authority of the District of Columbia (DC) Medicaid State Plan were published in the DC Register on March 2, 2012. These regulations will go into effect on July 2, 2012.

These regulations contain a number of new requirements that Medicaid providers delivering state plan PCA services must meet. If you have not already received a copy of these regulations, you can download them from the DC Municipal Regulations and DC Register website at <http://www.dcregs.dc.gov/Gateway/ChapterHome.aspx?ChapterNumber=29-50> . I urge you to review these regulations as soon as possible and start the necessary steps to comply with all provisions of these new regulations.

This is the first of several transmittals the Department of Health Care Finance will send to you to review what you need to do to comply with certain provisions of the regulations. In addition, the Division of Long-Term Care will review these regulations at its long term care provider meetings. This first transmittal addresses new requirements pertaining to the use of staffing agencies.

The new regulations create three new requirements when staffing agencies are used to deliver State Plan PCA services. These requirements:

1. limit the proportion of PCA care that can be provided through the use of staffing agencies;
2. impose certain standards for the relationship between Medicaid PCA providers and staffing agencies; and
3. mandate that whenever a staffing agency is used to deliver PCA services, the use of the staffing agency be documented on all such claims for PCA services.

This transmittal addresses the first two of these three requirements. The third requirement pertaining to the disclosure of the use of staffing agencies on claims for reimbursement will be addressed in a separate transmittal. The first two provisions are discussed below.

***Limits on the proportion of PCA care provided by staffing agencies.***

Section 5001.1 of the new regulation states that:

*“A Provider may contract with a licensed staffing agency that will perform personal care services not to exceed a maximum of ten percent (10%) of the units of service provided in any given four (4) month period.”*

This means that each Home Health Agency (HHA) will need to review the extent to which it has been relying on staffing agencies to deliver Medicaid PCA service over its recent past. HHAs that have used staffing agency personnel to provide care for more than 10 percent of the agency’s submitted Medicaid claims will need to hire new PCAs to decrease their reliance on staffing agencies. Agencies that believe that they will not be able to provide 90 percent of their care through the use of their own employees, should contact DHCF as soon as possible, so that we can offer some of the agency’s beneficiaries the ability to choose a new provider of PCA services.

I take this opportunity to remind you that with respect to transfers of Medicaid beneficiaries from one provider to another, District of Columbia Medicaid rules already in effect require that:

“5002.9 Each Provider shall notify [DHCF] and the patient or patient's representative, in writing, no less than seven (7) calendar days prior to discharge or referral. . . .

5002.10 If the patient seeks to change providers, the Provider shall assist the patient in selecting a new provider and cannot abandon the patient until the transfer has been successfully completed.”

Beginning in July of 2012, DHCF will begin monitoring for the use of staffing agencies by examining claims submitted for State plan PCA services. HHA claims that are in excess of the ten percent threshold will be subject to recoupment of payments by DHCF. We will send instructions on how to record use of staffing agency personnel on your claims in a subsequent transmittal.

***New requirements for the relationship between Medicaid PCA providers and staffing agencies***

The new regulation replaces prior subsection 5000.6 with an entirely new section (Section 5001) that more comprehensively addresses the relationship between HHAs and any staffing agencies used to deliver PCA services. New Section 5001 is attached to this transmittal in its entirety; new provisions are underlined and bolded.

Over the next four months, Medicaid providers of State Plan PCA services will need to review and, as needed, revise all contracts with staffing agencies to ensure they contain these provisions. Medicaid HHA providers of PCA services also will need to develop policies and procedures to implement and enforce these contractual requirements.

Also over the next four months, DHCF will continue to inform you about the new requirements contained in the new regulations. We greatly value the services that you deliver, and believe these new requirements will strengthen the quality and integrity of services offered to some of the Medicaid program's most vulnerable beneficiaries. We look forward to working with you to implement these new provisions of our Medicaid program. If you have any questions about this transmittal or Medicaid long term care improvements in general, please contact Ms. Yvonne Iscandari, Program Manager for the Division of Long-Term Care, at 202-478-5818.

Thank you, again, for all you do.

## ATTACHMENT

### New DC Medicaid regulations governing the use of staffing agency contractors to deliver Medicaid state plan personal care aide services – Effective July 2, 2012.

#### 5001 STAFFING AGENCIES

5001.1 **A Provider may contract with a licensed staffing agency that will perform personal care services not to exceed a maximum of ten percent (10%) of the units of service provided in any given four (4) month period.** Agreements between the Provider and the agency providing personal care staffing services shall be in writing and include at a minimum, the following:

- (a) **The staffing agency's NPI number obtained from the National Plan and Provider Enumeration System (NPPES) and the NPI numbers of all staff supplied to the home health agency listed on all beneficiary documentation;**
- (b) A description of the services to be provided;
- (c) **Business address of each staffing agency location;**
- (d) **The procedures used for managing, supervising, and evaluating the services delivered by agency personnel;**
- (e) Procedures for **implementing** plans of care; submitting clinical and progress notes; scheduling of visits; preparing beneficiary **assessments**; and other designated reports by agency personnel;
- (f) **The procedure identified for payments for services furnished and the terms of those payments;**
- (g) The duration of the agreement, including provisions for renewal, if applicable; and
- (h) Assurances that the agency shall comply with:
  - (1) All applicable **home health Provider** policies, including the assurance that contract personnel meet the qualifications and fulfill the responsibilities of agency employees in accordance with these rules;
  - (2) All insurance and bonding requirements as set forth in section **5002** of these rules; and
  - (3) All applicable federal and District laws **and rules, including all relevant licensing requirements imposed by the District of Columbia;**

- 5001.2 **Each Home Health Provider contracting with a staffing agency for personal care services shall:**
- (a) **Ensure that the staffing agency obtains NPI numbers for the agency and all personnel performing personal care services;**
  - (b) **Provide DHCF with a copy of any and all contract(s) entered into with a staffing agency for the delivery of all personal care services on behalf of the Provider. Each of these contracts shall contain the personal care staffing agency NPI number and a list of NPI numbers for all individuals providing personal care services under the auspices of the personal care staffing agency on the date of the contract;**
  - (c) **Require that each staffing agency providing personal care services conduct a performance assessment of each personal care aide after the first three (3) months of service under the auspices of the staffing agency and annually thereafter.**
- 5001.3 **Marketing to and solicitation of Medicaid beneficiaries or their representatives by staffing agencies shall be prohibited. Those prohibited marketing and solicitation activities shall include, but not be limited to:**
- (a) **Direct advertising or marketing to Medicaid beneficiaries;**
  - (b) **Representation of the staffing agency as the Medicaid Provider of personal care services; and**
  - (c) **Offering financial or other types of inducements to individuals for the referral of Medicaid beneficiaries, their names, or other identifying information to the staffing agency.**
- 5001.4 **Ownership rights between home health Providers and staffing agencies shall be prohibited. Ownership rights may include but not be limited to:**
- (a) **A direct or indirect ownership or investment interest (including an option or non-vested interest) by the staffing agency in any home health agency. This interest may be in the form of equity, debt, or other means and includes any indirect ownership or investment interest;**
  - (b) **A direct or indirect ownership of investment interest (including an option or non-vested interest) by the home health agency in any staffing agency; or**
  - (c) **A compensation arrangement other than the contract between the home health agency and the staffing agency in performance of personal care services.**
- 5001.5 **A staffing agency providing personal care services shall be considered an agent of the Provider.**

5001.6 **All beneficiary records accumulated by a staffing agency in delivery of personal care services shall be the property of the home health Provider and maintained within the home health Provider's office.**

SOURCE: Final Rulemaking published at 50 DCR 3957 (May 23, 2003); as amended by Notice of Final Rulemaking published at 59 DCR 1760, 1762 (March 2, 2012).