



Department of Health

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Commissioner

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Executive Deputy Commissioner

March 28, 2018

DAL: DAL 18-04
SUBJECT: Q&A Regarding the Provision of
Nursing Services in an ALP

Dear Administrator:

This letter serves to provide clarification to questions received by the New York State Department of Health regarding the provision of nursing services in an Assisted Living Program (ALP). Please review the attached Q&As and the Dear Administrator Letter dated June 7, 2012 which highlights changes to the ALP under New York's State Medicaid program.

If you have questions, please contact the Division of ACF/Assisted Living Surveillance at (518) 408-1133 for further clarification.

Sincerely

Valerie A. Deetz, Director
Division of ACF and Assisted Living Surveillance

Attachments

cc: D. Sheppard
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Questions and Answers Regarding the Provision of Nursing Services in an ALP:

1. Q: When can nursing services be performed within in ALP?

A: Nursing services can be provided in an ALP at any time. However, per 18 NYCRR 494.3, if an ALP is not certified as a Certified Home Health Agency (CHHA) or Long-term Home Health Care Program (LTHHCP), the ALP must contract with a CHHA or LTHHCP for the provision of nursing and therapy services. Any ALP that is not certified as a CHHA or LTHHCP must establish a contract with such an entity for the provision of nursing services. Nursing services are permitted to be performed by a Registered Professional Nurse (RN), or a Licensed Practical Nurse (LPN), under the supervision of a RN, licensed to provide nursing services in New York State and who are under the guidance and direction of a physician, as per requirements in the New York State Education Law at Article 139 §6902. The nursing services to be rendered have to be deemed necessary based on an assessment carried out by the ALP, either directly or through a CHHA or LTHHCP, are part of or incorporated into the resident's plan of care, ordered by a physician, and are not continual in nature. A LPN cannot conduct assessments, as doing so would be outside of the LPN's scope of practice. A nurse furnishing services in the case of an emergency is permitted in any setting, as per section 6902 of the New York State Education Law.

2. Q: Can an ALP directly hire a nurse to provide services to its residents?

A: This depends on the composition of the ALP. Per State law, only an ALP that is certified as a CHHA or LTHHCP can hire a nurse under the guidance and orders of a physician to provide services to its residents. Any ALP that does not have a CHHA or LTHHCP certification must contract with such an entity to provide nursing services. A nurse directly hired by the Adult Care Facility, who is not employed by the CHHA or LTHHCP cannot provide nursing services in such setting. The LHCSA RN can conduct initial assessments and reassessments for determining ALP eligibility. This modification was distributed to the provider community in a Dear Administrator Letter dated June 7, 2012. (See item #3 in the June 7, 2012 letter).

3. Q: Can that nurse perform to their full scope of practice under the State Education Law?

A: A nurse can perform to their full scope of practice under New York State Education Law in an ALP, provided that these services are rendered by a Nurse (LPN or RN) contracted through a CHHA or LTHHCP – unless the ALP operates a CHHA or LTHHCP – who is under the direction of a physician, and the services to be rendered are assessed to be necessary, not continual in nature, and are included in that resident's plan of care.