

Policy Title: *Regulation & Compliance: COVID-19 State-wide Emergency Order*

Primary Contact and Names of Members who worked on the Proposal:

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Personal care agencies are facing many challenges, including an unprecedented workforce crisis that is jeopardizing the health, safety and independence of older adults and people with disabilities. Over the past decade, we have become increasingly concerned about the stability of our community-based direct care provider network. More than 80 personal care agencies have closed or stopped providing Medicaid Personal Care in the past six years, and 24 Wisconsin counties have five or fewer personal care providers.

Ongoing regulatory flexibility is needed to ensure the ongoing provision of critical in-home services while blunting the spread of COVID-19.

Direct care providers have been taking steps throughout the COVID-19 outbreak to protect our workers, clients, and community members. Personal care agencies are facing a serious challenge to prevent the spread of disease while continuing to provide in-home long-term care services.

We are asking our personal care workers to put themselves at risk by entering clients' homes during this public health emergency. They are truly on the frontlines of this pandemic as best practice is for individuals who do not require hospitalization to self-quarantine at home. The Wisconsin Department of Health Services (DHS) estimates that 17% of COVID-19 patients have required hospitalization. This means that more than three-quarters of patients have remained in their homes while ill. According to an April 2020 WPSA Survey, 43% of agencies that responded have provided care to someone who was exposed to COVID-19. Hospitals and other medical providers across the state have reached out to personal care agencies about ways to use our in-home services to support COVID-19 patients.

1. Medicaid providers need clarity regarding regulatory changes that have been made during the COVID-19 public health emergency:

- a. **Prevent DHS OIG From Conducting Audits and Recoupments During the Public Health Emergency.** Given that agencies need increased regulatory flexibility in order to respond to this public health emergency, DHS OIG audits and recoupments should be suspended during this time to ensure that agencies can leverage administrative flexibilities and limited resources without the threat of penalty. **In addition, action should be taken to prohibit DHS OIG from including the public**

health emergency time frame in any future audit lookbacks. We appreciate all of DHS's efforts to give providers regulatory flexibility during this time. Due to the rapidly changing guidance and temporary rule changes that have been rolled out over the past several months, the state should ensure that providers are protected from future DHS OIG audit and recoupment efforts that could lead to penalties during this unprecedented time period.

- b. **DHS should provide an official, comprehensive guidance document that includes a list of all temporary regulatory flexibility granted to community-based providers during the COVID-19 public health emergency.** This document should also include the exact coverage period for the list of COVID-19 temporary regulatory changes to avoid inconsistency between DHS, OIG, and CMS. This will help providers navigate the changing regulatory landscape and provide assurances that auditors have an accurate list of regulatory changes to prevent unnecessary recoupment efforts in the future. Examples of temporary regulatory changes issued include:
 - i. Virtual RN Supervisory visit (audio and/or video) and new admission assessment
 - ii. Telehealth
 - iii. Allowing skills checks to be done virtually
 - iv. NP/PA able to sign MD order/physician order
- c. **DHS should work with Medicaid providers to develop a plan on how to transition to "business as usual" following the end of Safer at Home/*State Public Health Emergency* and recommend some permanent regulatory changes.** Providers will need guidance and support to transition back to "business as usual" following the end of the temporary regulatory changes made during COVID-19. A grace period will need to be in place as providers work to transition their policies following the end of Safer at Home/*State Public Health Emergency*. (i.e., MD unavailable to sign continuation-of-care or hold-service orders). Providers will also need guidance about how to address the needs of clients who choose to continue isolating after the end of Safer at Home. The State should also consider making some of the temporary changes permanent. Examples:
 - i. Explore options to use Telehealth/Virtual communication after the COVID-19 crisis for situations where face-to-face is unavailable.

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- ii. Permit nurse practitioners and physician assistants to sign MD orders/physician orders for personal care on a permanent basis. This is consistent with 2017 Wisconsin Act 119, which permits Medicaid reimbursement for services ordered by any provider acting within the scope of their practice.

2) Community-Based Residential Facilities Hiring: On April 3, 2020 Governor Evers issued Emergency Order #21 which in part, suspended Wis. Admin. Code 83.16(2). This regulation requires resident care staff to be 18 years old. Under the order, "Resident care staff may be 16 and 17 years of age so long as they meet Wis. Admin. Code ch. DHS 83 training requirements, do not work alone, do not pass medications, and work under supervision." Wis. Admin. Code 83.16(2) is no longer suspended as of May 11, 2020. Many community-based residential facilities (CBRF) appreciated the flexibility to hire caregivers that were 16 and 17 years old given the caregiver crisis intensified during the COVID-19 pandemic. We are working to obtain data from CBRFs and the Department of Health Services/Bureau of Assisted Living to determine the pros and cons of the effectiveness of this regulatory flexibility. We would appreciate it if the Task Force would continue to entertain this regulatory proposal as we obtain more information.

Analysis - Anticipated benefits

Regulatory flexibility is needed for providers to confidently and safely deliver continuation of care to members in our community during this state-wide health emergency.

- Providers can better **protect caregivers and members** from the virus.
- Streamlined regulations reducing administrative burden on providers, which in turn leads to **cost savings**.
- **Safety.** Uninterrupted care/services to members of the community.

- **Potential funding options:**

These regulatory changes bear zero cost to DHS/Medicaid.

- **What State agency or other entity would be responsible for implementing the proposal, if it were approved?**

- *DHS (DQA) and OIG*

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- **Cost estimates:**

*These regulatory **changes bear zero cost** to DHS/Medicaid, with potential to produce cost savings.*

- **Equity issues:**

Ensures that members of our community who need care can continue to receive it, regardless of where they live.

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