



## Department of Health

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Executive Deputy Commissioner

March 5, 2019

DAL# 19-04: Private Pay Home Care Services in  
Assisted Living Residences

Dear Administrator:

The purpose of this letter is to clarify the policy of the New York State Department of Health (the Department) on the use of private pay home care services in assisted living residences (ALRs) and to provide guidance to those ALR Operators. Consistent with Public Health Law §3602(1), home care services for purposes of this correspondence, are defined as personal care or HHA services. While this guidance is not intended to replace the social and non-personal care supports provided by companions referenced in DAL #09-02, the guidance may be updated in the future to comport with evolving Department initiatives.

Public Health Law §4658(3)(vi) stipulates that residents have the right to choose their health care providers; however, the Operator must not invoke this practice to absolve their responsibility under licensure and certification. The Department's expectation is that Operators support their residents' individual preferences by engaging in supervision and strong case management practices to ensure that any outside provider including privately paid providers, when applicable, are meeting the personal care needs of the resident.

The term "private pay home care services," as referenced herein, refers to licensed home care services agencies (LHCSA) or certified home health agencies (CHHA) selected by a resident to provide personal or home health care services that will be privately paid for by the resident. To assure that the rendered services are properly coordinated, the Department has outlined minimum requirements for ALRs to follow in the development of policies and procedures. These policies and procedures are intended to protect both the residents receiving these services and all other residents of the ALR. Accordingly, the Operator retains sole responsibility for the functions of case management and supervision.

Written policies and procedures must address each of the following elements:

- I. A personal care aide or home health aide providing services must be listed on the NYS Home Care Worker Registry and be actively employed by the LHCSA or CHHA that has an arrangement with the resident to provide care.
- II. For those ALRs who offer their residents this optional arrangement, the ALR must clearly document in its residency agreement its policy on the use of private pay home care services. If the ALR permits private pay home care services, its residency agreement must also state:
  - a. If the ALR uses tiered billing, the ALR may not include any of the services delivered by the LHCSA or CHHA in determining the applicable tier of the resident's basic rate;

- b. If the LHCSA or CHHA is unable to deliver services and terminates the agreement, or if the resident terminates the agreement with the LHCSA or CHHA, the ALR must then provide the necessary services.
    - c. The resident or resident representative must be informed of the ALR's policy regarding private pay home care services, and sign an acknowledgement confirming that he or she has reviewed and understands the policy. Accordingly, such policy and acknowledgement must be maintained as an addendum to the Department-approved Residency Agreement.
- III. Prior to approving the arrangement between the resident and the private pay home care services entity, the Operator must:
  - a. Confirm that the private pay home care services entity is licensed to provide home care services and approved to provide services in the county in which the ALR is located;
  - b. Develop a protocol for orientation of the private pay home care services entity's employees to the ALR, and collect and retain signatures of employees for a period of not less than eighteen (18) months;
  - c. Develop a sign in/out protocol and establish a sign in/out log for use by aides of the LHCSA or CHHA to use each time they enter and exit the ALR. This sign in sheet must be made available to the Department upon request and retained for a period of not less than eighteen (18) months;
  - d. Develop a protocol to communicate updates on the resident's care plan; and
  - e. Retain the policy acknowledgement, signed by the resident or resident representative, in the resident's record.
- IV. Prior to performing any private pay home care services, the LHCSA or CHHA must:
  - a. Provide all relevant admission materials to both the resident and the ALR to be maintained in the resident's record;
  - b. Provide the name and contact information of the supervisor who will oversee care delivered by the LHCSA or CHHA personnel; and
  - c. Ensure that each employee providing care and services participates in an orientation to the ALR with the Operator's representative. Such record must be maintained by the ALR and available for the Department's review;
  - d. Review a copy of the ALR's policy for outside providers and sign a statement confirming that they have reviewed and understands the policy.
- V. After private pay home care services commence, the Operator must:
  - a. Have a facility-employed personal care aide, resident care aide, or nurse observe, on an ongoing basis, the resident and note any apparent unmet needs or indices of improperly delivered services;
  - b. Maintain in the resident record all reports and communications from the personnel of the LHCSA or CHHA, including the anticipated hours and specific services to be provided;
  - c. Continue all supervisory and case management services, with particular focus on any change in condition or signs of unmet needs.

- VI. After private pay home care services commence, the LHCHSA or CHHA must:
  - a. Report at least weekly to the Operator's designee regarding the services delivered to the resident to ensure that the individualized needs of the resident are met, and
  - b. Immediately report any concerns regarding the resident's condition to the Operator's designee and the supervising nurse of the LHCSA or CHHA, any abrupt or progressive changes in the resident's behavior, any concerns with the delivery of personal care or refusals of personal care.
- VII. Personnel under an optional agreement for private pay home care services are not allowed to provide assistance with or administration of medications.
- VIII. The ALR retains the responsibility to perform all regulatorily required services. To meet these obligations:
  - a. The ALR is required to ensure sufficient staffing to meet the needs of the residents. Staffing may not be adjusted and/or based on the use of privately paid personnel from licensed home care services agencies;
  - b. The ALR may not use personnel from privately paid home care services agencies to meet the needs identified in the resident's service plan; and
  - c. The ALR may not rely upon personnel from privately paid home care services agencies in any way in its emergency and evacuation procedures, including assisting the resident who has retained the services of a privately paid licensed home care services agency. The ALR must plan to use only its own employees in implementing all aspects of the emergency and evacuation procedures.
- IX. The ALR will not permit any resident to exceed applicable retention standards of the ALR's existing licensure and certification through the resident's use of a privately paid home care services agency unless the resident's record clearly documents the ALR's persistent efforts to place the resident in a clinically appropriate setting.

The Department retains the authority to inspect and request revisions to policies and procedures at any time. Lastly, the ALR must comply with all reporting regulations and requirements governing its licensure and certification. If you have any questions regarding this correspondence, please contact my office at (518) 408-1133.

Sincerely,

Valerie A. Deetz, Director  
Division of Adult Care Facility and  
Assisted Living Surveillance

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