

HOME CARE CLIENT ALERT



Effective January 2019, Personal Care Services may be Covered by Medicare

December 11, 2018

The Centers for Medicare and Medicaid Services (CMS) announced during the month of April 2018 that it would cover non-skilled in-home personal care under the Medicare Advantage program (commonly referred to as “Part C” or “MA Plans”). LHCSAs should contact their MLTCs to see whether they can obtain Medicare reimbursement, at potentially higher rates, for provision of personal care services.

By way of background, to date, Medicare has only covered non-skilled aide services under Medicare part A’s home health category to patients who need at least one skilled service. Medicare part A paid for part-time or intermittent physician-ordered home health aide services provided under a plan of care and supervised by a skilled nurse. However, in May 2018, CMS Administrator, Seema Verma confirmed that personal care services, which offer assistance with activities of daily living, were included under Medicare’s “supplemental benefits” definition. Unlike the part-time and intermittent aide services previously offered under Medicare Part A’s home health category, personal care services under Part C are offered for daily maintenance to patients who do not need skilled services, such as skilled nursing or occupational, physical, or speech therapies.

CMS has reinforced that personal care services must be performed by individuals licensed by the Department of Health. Additionally, all personal care services must be medically appropriate, focus directly on an enrollee’s health care needs, and must be recommended by a physician or licensed medical professional as part of a care plan. CMS also urged that these personal care services must not be used primarily for comfort, general use, or other non-medical reasons. CMS stressed that the described requirements and prohibitions should not present a burden to home care agencies that participate in Medicaid because most states place similar requirements on personal or home care providers under their Medicaid programs.

Home Care providers currently enrolled in a Medicaid managed care plan must check with their account manager or plan representative to see if the plan is also an enrolled Medicare managed care provider participating in the Medicare part C program. If the MLTC is enrolled in Medicare part C, providers who offer personal care services may be eligible to provide personal care services and receive reimbursement under Medicare Part C.

For any questions concerning this alert, please contact:

Emina Poricanin
646.218.7543
eporican@hodgsonruss.com

Roopa Chakkappan
716.848.1258
rchakkap@hodgsonruss.com



CONTACT

Emina Poricanin

716.848.1336

eporican@hodgsonruss.com

PROFESSIONALS

ATTORNEYS

Jane Bello Burke
Roopa Chakkappan
Reetuparna Dutta
Robert Fluskey, Jr.
Peter Godfrey
John Godwin
Timothy Hoover
Stephen Kelkenberg
Sharon Kelly
Michelle Merola
Sarah Miller
Kinsey O’Brien
Matthew Parker
Emina Poricanin
David Stark
Amy Walters
Margot Watt
Sujata Yalamanchili

HOME CARE CLIENT ALERT



Annual OMIG Compliance Certifications are now Due

December 11, 2018

As a reminder, providers must submit their annual OMIG compliance certifications within the month of December for the certification to be valid for the certifying year.

By way of background, Article 28 providers (including nursing homes and clinics), Article 36 providers (including CHHAs and LHCSAs) and any person who has submitted at least \$500,000 in Medicaid claims in any consecutive 12-month period are required to have an effective compliance program in place and certify annually to OMIG that they have an effective program. Assisted Living Program (ALP) providers with at least \$500,000 in annual Medicaid claims are also subject to this requirement. Any ALP that operates a LHCSA to serve their ALP will need to have an effective compliance program in place for the LHCSA, even if the ALP did not submit \$500,000 in annual Medicaid claims.

To assist providers, OMIG's website identifies seven compliance areas that a provider's Compliance Program must apply to, as well as eight elements that should be included in all Compliance Programs, regardless of provider type.

1. Billings;
2. Payments;
3. Medical necessity and quality of care;
4. Governance;
5. Mandatory reporting;
6. Credentialing; and
7. Other risk areas that are or should with due diligence be identified by the provider.

Beginning this year, "in order to make the annual compliance certification process more efficient," OMIG is transitioning from using Federal Employer Identification Numbers (FEIN) to a system based on Provider Identification Numbers.

Providers that fail to fulfill their mandatory compliance certification obligations may be identified for potential administrative action. Certification must be completed every December and be done through the OMIG website that can be accessed [here](#).

If you have questions concerning your compliance program or these certifications, please contact:

Emina Poricanin
646.218.7543
eporican@hodgsonruss.com

Roopa Chakkappan
716.848.1258
rchakkap@hodgsonruss.com



CONTACT

Emina Poricanin

716.848.1336

eporican@hodgsonruss.com

Our Home Care Practice attorneys provide counsel to multiple home care agencies with respect to corporate, transactional, regulatory, reimbursement, compliance, wage and hour, wage parity enforcement, and litigation matters. With a broad understanding of the New York regulatory landscape, we help clients anticipate and respond to the increasingly complex rules governing the industry.

Hodgson Russ has been awarded a prestigious "Best Law Firms" National Tier 2 ranking by *Best Lawyers/U.S. News & World Report* in the Health Care Law category. Our Health Practice is recognized by *Chambers USA: America's Leading Lawyers for Business*.