

# Medicaid Certified Home Health Agency (CHHA) Services

A Certified Home Health Agency (CHHA) provides what is commonly known as "visiting nurse" services, as well as physical or occupational or speech therapy (PT/OT) in the home, "home health aide" (HHA) services, and medical supplies. The nursing visits are "part-time or intermittent " and NOT full-time private duty nursing, which is a different Medicaid home care service.

## Legal cites:

NY Social Services Law [SSL] Â§Â§365-a(2)(d), 367-j; 18 NYCRR Â§505.23 and Appendix I, 10 NYCRR Â§763.5

**NYS Dept. of Health Complaint Number** - CHHA's and Licensed Home Care Services Agencies (LHCSA) or Hospice - 800-628-5972 / [homecare@health.ny.gov](mailto:homecare@health.ny.gov)

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**CAUTION -- Spurred by Medicaid changes effective April 1, 2011 that change how much CHHAs get paid, many CHHAs, especially in NYC, have abruptly reduced services or terminated them altogether, or refused to reinstate them after a hospital or rehab stay. The rights set forth below are very important. News about a class action lawsuit filed to challenge the CHHAs' cuts in services, and some advocacy tips, is posted in this news article.**

## 1. HOW IS CHHA DIFFERENT THAN PERSONAL CARE, also known as Home Attendant services?

CHHAs provide a "higher level" of home care than personal care (home attendant) services because the federal certification requires extensive supervision of the aides by a

nurse, and allows the aides to perform some semi-skilled tasks in some situations. For this reason, it is most appropriate for people with unstable or acute medical conditions, needing close nursing supervision as opposed to those who solely need assistance with "ADLs". CHHA services are often provided after a hospital stay for a short term, but *may also be long-term*, where the individual needs the aide to perform semi--skilled tasks or a nurse's continued involvement. CHHA services can be obtained more quickly than personal care, so can be used temporarily while the personal care application is processed - either after a hospital stay or for clients at home.

## **2. WHICH TASKS MAY HOME HEALTH AIDES PERFORM that PERSONAL CARE AIDES may not?**

- Selfhelp's "Q-Tips" fact sheet (also in Spanish) has a chart comparing the NYS Dept. of Health's Scope of Tasks for Personal Care Aides (PCAs) to the Scope of Tasks for Certified Home Health Aides. See pp. 5-7 of Q-Tips.
- Note that many of the semi-skilled tasks that home health aides may perform have a restriction -- they may only perform them for consumers who are "self-directing." Thus they may not perform them for consumers who cannot direct an aide because of dementia or other disabilities.
- Aides in the Consumer Directed Personal Assistance Program (CDPAP) may perform tasks that are skilled!!

## **3. What is the difference between what CHHA services Medicare and Medicaid will pay for?**

1. AMOUNT OF HOURS -- Medicare will pay only for up to 35 hours a week of home health aide care (though rarely more than 12-20 hours/week), while Medicaid in New York State will pay for 24-hour/day sleep-in or split-shift care.
2. "SKILLED NEED" REQUIREMENT -- Medicare CHHA services are conditioned on the consumer having a need for "skilled" care on a part-time or intermittent basis - meaning they need a nurse, physical/occupational/or speech therapist to provide a skilled service. The frequency of this service can, in theory, be as little as once every 60 days but most CHHAs interpret this requirement more strictly as requiring a weekly or bi-weekly need. Even though a home health aide does not provide "skilled" services, Medicare will only pay for home health aide services as part of a CHHA service if the individual also needs a nurse or therapist to provide a skilled service.
  - ◆ There is not a specific directive saying that Medicaid requires "skilled" needs. However, many CHHAs will deny care absent a "skilled" need. A recent letter from CMS to the Missouri Medicaid program verifies that Medicaid has no skilled need requirement as a condition for paying for home health aide services from a CHHA. See Gene Coffey, To be or not to be Homebound: The Limits of States' Discretion in Medicaid's Coverage for Home Health Services, National Senior Citizens Law Center, December 2009.
3. HOMEBOUND REQUIREMENT -- SEE HCFA Olmstead Update No. 3, letter to

State Medicaid Directors, July 25, 2000 (says "The 'homebound' requirement is a Medicare requirement that does not apply to the Medicaid program.")

4. ALERT: Medicare criteria for payment for home care are stricter than Medicaid's. CHHAs sometimes conflate the two sets of criteria, imposing Medicare criteria on Medicaid eligibility. These requirements DO NOT apply to Medicaid, though many CHHA personnel do not know this.
5. For more on Medicare home health care services, see the Medicare Rights Center website and its Medicare Interactive site, and Center for Medicare Advocacy websites - see its FAQ on Home Health Care.

#### **4. HOW TO OBTAIN CHHA SERVICES --**

Unlike personal care, CHHA services initially do not require "prior approval" of DSS/HRA. The treating physician orders them directly from the CHHA, which does its own assessment of the client (in the hospital or at home) and decides whether to "admit" the patient and establishes a "plan of care" -- how much of each of the home care services (nursing, PT, OT, HHA) to give - up to 24 hour split-shift. A family member or advocate can make the referral to the CHHA by calling their intake number. The CHHA sends a nurse to assess, and if nurse finds services are warranted, will then contact the treating physician to sign the physician's orders and "plan of care." CHHAs do not use the same form as in personal care (M11q in NYC).

**LIST OF CHHAs -- New York State website listing CHHAs, Long Term Home Health Care Programs and hospices by county at [https://profiles.health.ny.gov/home\\_care/index](https://profiles.health.ny.gov/home_care/index).**

#### **5. What are consumer's rights if CHHA does not approve amount of hours consumer needs? Or denies or terminates services?**

**CAUTION -- Spurred by Medicaid changes effective April 1, 2011 that change how much CHHAs get paid, many CHHAs, especially in NYC, have abruptly reduced services or terminated them altogether, or refused to reinstate them after a hospital or rehab stay. The rights set forth below are very important. News about a class action lawsuit filed to challenge the CHHAs' cuts in services, and some advocacy tips, is posted in this news article.**

CHHA applicants and recipients who have Medicaid have a limited right to appeal when a CHHA denies, reduces or terminates their care. *If the treating physician disagrees with the CHHA*, and agrees with the consumer, the consumer has the right to appeal a denial or termination. under *Catanzano v. Dowling*, 60 F.3d 113 (2nd Cir. 1995). This differs from personal care/home attendant services, where applicant/recipient has the right to appeal regardless of what treating physician says in M11q/physician's order.

CAUTION: Since CHHA's generally complete the physician's order and plan of care form for the physician's signature, the physician sometimes unknowingly signs off on a reduction of hours, or even termination of services. Under *Catanzano*, this signature is interpreted as the physician "agreeing" with the CHHA, precluding any right to appeal. Many of these

cases can be resolved by simply contacting the physician, verifying that this is what happened, and submitting written confirmation to the CHHA that the physician does not agree with the reduction and continues to prescribe x amount of care.

The circumstances under which CHHAs may deny, reduce or terminate services, and the notice and hearing procedures, are set forth in state regulations at 10 NYCRR Â§ 763 and 18 NYCRR Â§ 505.23 Appendix I. These rules are complex and are summarized in this fact sheet.

### **SPECIAL RULE ABOUT RESUMING SERVICES AFTER A HOSPITAL OR REHAB STAY**

-- A "recipient" of home health services has a limited right to notice, fair hearing, and continued services pending a hearing before services are reduced or terminated, described in the above fact sheet and regulations. A new "applicant" for services may have the right to appeal a denial of home health services, but has no right to "aid continuing" while awaiting the fair hearing. This is a key difference between "recipients" and "applicants." As a result of the *Catanzano* litigation, the state regulation defines an "applicant" as (a) a Medicaid recipient who is not currently receiving home health services and who resides in his or her own home or other community setting, OR (b) "each hospitalized Medicaid recipient who did not receive home health services immediately prior to hospitalization." 18 NYCRR 505.23 Appendix 1, section I. 1.0(a). This means that hospitalized individuals who DID receive home health services before being hospitalized are "recipients," are entitled to reinstatement of home health services following a hospital stay -- if the CHHA wants to reduce or discontinue services, it must give advance notice that gives the right to the recipient to request a hearing and continued services pending the hearing. If the person is hospitalized, "continued" services means reinstated services.

**6. MEDICAID PENDING AND CHHAs** - Few if any CHHAs will provide services to a client who does not yet have Medicaid while the Medicaid application is pending. In the past, the CHHA would take a calculated risk that Medicaid will be accepted and that CHHA can then bill retroactively for Medicaid. Note that there are many private home care agencies that are NOT Medicaid providers and that may NOT bill Medicaid retroactively. These are called Licensed Home Care Services Agencies or LHCSA's, licensed under Public Health Law Â§ 3605. There are many more LHCSA's than CHHA's. See <http://homecare.nyhealth.gov/>. If the consumer retains a LHCSA to provide home care services while the Medicaid application is pending, the LHCSA may not then bill Medicaid for these services once Medicaid is accepted. The consumer or his or her family would have to pay the LHCSA for the services, then apply for reimbursement from Medicaid.

A. This gets more confusing because even when the home care service plan is arranged for and supervised by a CHHA, the CHHA may subcontract to a LHCSA to provide the home health aide services as part of the service plan. That LHCSA is paid by the CHHA as a subcontractor -- it may not bill Medicaid directly. The CHHA nurse supervises the aides sent by the LHCSA. In these cases, it is the CHHA that accepts the case "Medicaid pending" and eventually bills Medicaid.

B. Since a CHHA and LHCSA are often sponsored by the same organization, it can be confusing to know which you are hiring. Be sure to ask or *check the website*. (Don't depend on the aide to tell you who is her employer - you don't know if that's just a subcontractor). They may not use the same terminology!

C. DAMAGE CONTROL - Your client may already be receiving private home care through a LHCSA but doesn't realize Medicaid won't pay the bill when Medicaid is approved. If the LHCSA is connected to a CHHA, try to get the CHHA to accept the case "Medicaid pending" - client should be able to keep the same aides. This way CHHA can bill for the services once Medicaid is accepted. Otherwise client/family must PAY the LHCSA and then seek reimbursement from Medicaid.

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