

Home Care Agency – Chapter XXVI Rules – Department of Public Health and Environment (CDPHE)

CDPHE Section/Rule	Statute/DDD Regulation or Standard	Agreements/Comment
Section 3. Definitions		
3.1 Authorized Representative	16.120 Definitions	The definition for authorized representative is slightly different in this context from what the DD service community is familiar with. CDPHE discussed that there would not be a conflict between this definition and the intent of Authorized Representation for the DD community, as described to CDPHE.
3.2 Branch Office		A branch office in this context is an office at a site separate from where direct care services are operated. Fees apply to branch offices. If off-site <u>offices</u> are involved, they would be considered work stations and additional fees would be based on number of work stations.
3.4 Certified home care agency		Would PASAs and CCBs fall under these definitions since they are certified by HCPF? This would affect the fees to be paid for licensing. <i>CDPHE discussed creating a new category/classification in the licensing database which would indicate certification through DDD/HCPF, but not already certified by CDPHE.</i> This could then affect the licensing fees.
3.11 Home Care Agency		The agency responsible for the hiring, firing and scheduling of employees would require licensing. The CCB, as an OHCDs, would not require licensure if direct services are not being provided. Licensing would not be required for independent contractors who do not have employees, unless part of an LLC.
3.12 Home Care Placement Agency		Placement agencies are similar to temporary agencies, where the placement agency would have a pool of employees to be used by other agencies. This distinction would not apply to CCBs/PASAs.
3.13 Informal care giver		Discussed how this would impact non-paid family members. CDPHE stated that this is not an issue.
3.17 Personal care services	SLS/CES Waivers define PC services	The definition states ‘were he or she physically capable’. These are the services requiring licensure, regardless of the individual’s physical or cognitive abilities. Personal care services are those services provided in the consumer’s home and do not relate to community-based services.
3.19 Primary agency	Statutes/rules define agency/CCB	<u>Care management</u> refers to the agency providing the majority of <u>personal care</u> services having the responsibility for oversight to ensure that there is no duplication of services by more than one provider. While this does not translate smoothly to Case Management services, the intent is for there to be coordination when a consumer receives personal care services from more than one licensed agency. The primary agency delivers the majority of care and coordination of services, not CCB related (as case management services).
3.23 Skilled home health services	25-1.5-301 27-10.5-103 Nurse Practice Act	SLS/CES requirements would fall under <u>Class B</u> licensing and would not fall under the definition of skilled home health, even though medication administration might be a service delivered. This is addressed under exemptions in statute. PASAs and CCBs would not provide other skilled home health services under the SLS and CES waivers. Skilled home health services would be billed to the Medicaid State Plan and Home Health Agencies would provide the services. Class A licensing for these skilled services would be needed if services were to be provided to individuals other than those in SLS/CES or under the PASA’s skilled health services to individuals in SLS/CES.

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Section 4. Placement Agencies		
		Placement agencies are similar to temporary agencies, where the placement agency would have a pool of employees to be used by other agencies. This distinction would not apply to CCBs/PASAs.

Section 5 –Department Oversight		
5.1 License classification	25-1.5-301 27-10.5-103 Nurse Practice Act	PASAs and CCBs providing services under the waivers would not be required to obtain a Class A license for skilled healthcare. See 3.23 above regarding medication administration. PASAs and CCBs will be licensed as Class B agencies.
5.1 (B) (2) Alternative plan		The group has discussed the ever tightening budget and monies available to provide services. The fees put in place for licensing could present a hardship to existing providers who have already seen several rate cuts and revenue cuts over the last fiscal year. If licensing is required, current agencies may withdrawal from providing services to SLS/CES consumers. This poses a concern to CCBs and Case Managers who are already finding it difficult to locate providers for consumers in services in some areas. CDPHE discussed that this provision in rule is in place to assure that the scenario described is prevented. Fees are based only for direct personal care services provided <i>in the person's home</i> . This would not include homemaker, respite or community-based services.
5.1 (C) Residential facilities		Residential services, provided under the HCB-DD waiver, are excluded from requirements for licensing per 5.1 (D) of these rules.
5.1 (D)		PASAs that provide personal care services to individuals receiving SLS/CES services will be required to obtain licensure, regardless of their OHCDs relationship with the CCB. The agency responsible for hiring, firing and scheduling employees is the agency requiring licensure. If the service is provided by an individual/independent contractor, licensing is not needed, unless part of an LLC.
5.2 (E) License renewal	DDD Rule 16.230	Surveys will occur every three years, unless there is a complaint. There will be some overlap with DDD's monitoring as a result. The group discussed interest in determining if a collaborative survey method is feasible with DDD or if DDD surveys could be modified/amended to include additional requirements by CDPHE for licensing to avoid duplicative processes.
5.4 License fees		(A) discusses that license fees are non-refundable, however, CDPHE can deny an application. If the application is denied, can the fee be refundable? If time has not been invested in the application process, and a provider has been refused as a 'bad player', fees would be refunded. However, if time invested = to fees to determine the provider is a 'bad player', fees would not be refunded.

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5.4.1 Initial licensure		Fees will be configured based on the <i>direct services provided in consumers' homes</i> . This can be taken from the worker's comp codes. See 5.4.1 (A) (1). If the code is not available, another justifiable method will be needed to evidence the in home wages. See Section 3 above for classification for PASAs/CCB certified through HCPF/DDD.
5.4.5 Branch fees		See Section 3 above.
5.46 Revisit fee		As with group home licensing, the revisit fee will be charge if a second revisit is needed, or the third visit.

Section 6 – General Requirements		
6.4 Consumer Rights	27-10.5-113 to 117 DDD Rule 16.130 (B), 16.310, 16.311, 16.312, 16.530, 16.540	<p>The rights of individuals with developmental disabilities are delineated in statute. Each PASA/CCB providing services is required to have written p&ps concerning the exercise and protection of rights. Rules governing the safeguarding of rights are identified in 16.311 and 16.312 including protection from retaliation/retribution [6.4 (C) (1)]. CDPHE does not see a conflict in this area.</p> <p>6.4. (C) (3) identifies a right to be informed of agency personnel associated with care, staffing and supervision. This is not a current 'right' and would need to be incorporated into the agency's operating procedures.</p> <p>6.4 (C) (4) discusses freedom from physical/chemical restraints. DDD rules (16.530) provides for the use of restraints under emergency conditions. Rules specify training needs, documentation needs and safeguards to the consumer during the use of restraint. 16.540 further defines rules for the use of Control Procedures that are utilized to protect the imminent health and safety of the consumer. <u>Chapter II, Part 8 (8.103 (4)) rule applies, which references 27-10.5. Statute supersedes the CDPHE rule.</u></p>
6.4 (C) 5 Complaints	DDD Rule 16.322, 16.326	<p>Rules define actions that are disputable and eligible for appeal (including hearing by ALJ) in 16.322. The rule defines required steps for addressing disputes and defining the appeal process including timelines, notice, documentation, findings. Disputes are narrowed to ineligibility (initial and no longer), termination of services and services which are to be changed (increased, decreased or denied). In addition, rules identify requirements for PASAs and CCBs to establish procedures for consumers, guardians, advocates, representatives, etc. to lodge a complaint with the PASA or CCB. DDD has also provided technical assistance guides for addressing both appeals and complaints. <u>CCB and PASA procedures will need to add the ability for a consumer/guardian to lodge a complaint with CDPHE.</u></p>

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6.4 (D) (2) (b) Advanced Directives		<p>Federal statute requires Medicaid providers to distribute information regarding advanced directives (and specific to home care agencies): (as interpreted) "provide written information" to patients at the time of admission concerning "an individual's right under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives"; <i>to all adult patients upon admission.</i></p> <p>A question regarding the specifics of the statute, as it relates to services provided through the State Plan, was not able to be answered. However, CDPHE discussed that a basic pamphlet can be provided when the consumer begins (or continues under the Home Care Agency) personal care services. The agency will also need to develop a policy around advanced directives per law.</p>
6.4 (E) Information regarding payment		<p>This rule relates to a private pay component, not 3rd party payment. This is in place to ensure consistency. The agency would need to notify if payment would be due. In SLS/CES, it would not relate, as co-pays are not an option.</p>
6.4 (F) Rates		<p>This rule would apply in situations where the consumer would private pay or if co-pays were allowable. Would not apply due to state rates for SLS/CES.</p>
6.4 (G) Hotline		<p>Addition needed for agency to provide. <i><u>This information will need to be added to complaints information provided to consumers/families.</u></i></p>
6.6 Discharge planning	16.322	<p>Discharge planning is not expected for long term care under SLS/CES but could include transition planning through the service plan. Service plans identify services for the plan year, so would show a termination date. Any ISSPs developed would also be specific to the plan year. 16.322 identifies rules for terminating services and the rights of individuals to appeal termination decisions. Needs for this area are covered by current DDD rule.</p>
6.7 Disclosure notice		<p>This will be a new requirement for the home care agency. CDPHE has a one page form on their website that can be used.</p>
6.9 Complaints	DDD Rule 16.326	<p>CDPHE, when surveying, would be reviewing to determine if agencies are looking at and addressing trends. No addition requirements to current DDD rules and guidelines.</p>

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6.10 (A) & (B) Occurrence Reporting and Investigation	DDD Rule 16.560A, 16.580 B DDD Manual on Conducting Investigations; DDD Critical Incident Reporting Requirements; Contract	<p>This is a requirement for all licenses by statute, so will be required for all CCBs/PASAs obtaining Home Care Agency licensure.</p> <p>CDPHE will work on coordinating this with DDD in the long term and a larger discussion is needed to address occurrence reporting for all DDD services, in addition to investigations.</p> <p>It was discussed that occurrence may not be reported by consumers/family members participating in SLS/CES. The expectation for reporting is <u>only if a paid staff is involved in the incident or present at the time of the incident.</u></p>
6.10 (D) Discharge	DDD Rule 16.322 D	<p>Consumers are provided with notice of termination at least 15 days before the action is to occur. Dispute resolution procedures are to be provided to the consumer/guardian with the notice, as well as information on advocacy organizations to support the consumer if an appeal is pursued. Providers may terminate services at any time if they do not believe they can continue to meet the consumer’s needs. Consumers may also terminate services at will, and may not have another provider in line to continue services. This would go back to the mentor, family or IDT to find an alternate provider. This rule applies to situations which involve no-known transfer arrangements, or if no care is available. CDPHE discussed that this is a rare occurrence.</p>
6.10 (E) At-risk Adults	DDD Rule 16.580 DDD Minimum Training Guidelines	<p>DDD rules define requirements for PASAs/CCBs development of policies and procedures for handling cases of alleged mistreatment, abuse, neglect, exploitation (M/A/N/E). Rules include identification, monitoring for the prevention of M/A/N/E, actions required to address allegations, including investigation and reporting to authorities as required by statute (Children’s Code, Criminal Code, Social Services Code - Protective Services). Reporting included in information above regarding occurrence reporting. Training requirements identified in DDD Minimum Training Guidelines provided to CDPHE. No changes needed.</p>
6.11 Personnel records and policies	DDD Minimum Training Guidelines SLS/CES Waivers DDD Rule 16.246	<p>DDD Minimum Training Guidelines define required training for individuals providing direct service to consumers receiving funded services. The requirements include the establishment of competency. Qualifications for the provision of services are identified in the waivers for each program and for each allowable service in the waiver. DDD rule defines requirements for personnel and contractor administration including the PASA/CCB establishment of qualifications, conducting background checks, obtaining reference checks, and establishing an organized program of orientation and training.</p> <p>CCBs/PASAs will need to add DORA for all direct care employees.</p>

Section 6 – General Requirements (continued)

CDPHE Section/Rule	Statute/DDD Regulation or Standard	Agreements/Comment
6.12 Emergency Preparedness	DDD Rule 16.613	In addition to individual safety assessment and planning, the CCB/PASA would be required to meet this rule, regardless of the individual’s living situation (i.e. living with family vs. in an independent setting. CDPHE discussed options, such as looking at partnering with emergency response, triage need based on high level of need, i.e. support level 5 and 6, those living without additional supports; acknowledging that not all individuals would require assistance in the event of an emergency.
6.13 Coordination		Discussed that the IDT/CM could coordinate consumer services with other HCAs providing care to the same consumer. Allows for flexibility instead of requiring the current HCA to coordinate.
6.14 Quality Management	DDD Rule 16.622	Providers are required to conduct monitoring of programs and individuals as well as gather information on customer satisfaction. Rules and Program Quality Standards define methods for monitoring as well as requirements. Quality Management requirements are delineated in Chapter II of CDPHE rules requiring that a plan is to be submitted within 90 days. The plan could be the submission of policies and procedures. See 3.1 of Chapter II
6.15 Infection Control	DDD Minimum Training Guidelines	DDD training guidelines do not identify the need for training in infection control to employees who work with one to two consumers in SLS/CES services. CDPHE stated that this does not necessarily have to be a full, formal training, it can be information dispersed in <i>written format</i> and provided during employee orientation. The training should be applicable to the population served.
6.20 Consumer records	DDD Rules 16.612	Records are to be retained for seven years per Chapter II rules. Please note, Chapter VIII states ten years.

Section 7 – Skilled Care

Section 7- Skilled Care		Does not apply to services provided by PASAs and CCBs under the SLS and CES waivers. Requirements would still need to be met if <i>other than</i> waiver services provided that meet skilled care definitions.
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CDPHE Section/Rule	Statute/DDD Regulation or Standard	Agreements/Comment
Section 8 – Non-Medical/Personal Care		
This section relates to the services to be provided under SLS/CES by CCBs/PASAs.		
8.1 Governing Body		This is the ‘yes’ person for the HCA and responsible for the policies and procedures for the agency. <i>Bylaws required per Secretary of State.</i>
8.2 Administration	DDD Rules	Administrative p&ps to ensure safe and adequate care of the consumer. DDD Rules and Program Quality Standards all address this area.
8.3 Agency Manager	DDD Minimum Training Guidelines; SLS/CES Waivers	CDPHE rules are more restrictive than current waiver and DDD rules. CDPHE stated that the more restrictive rules would apply. Existing staff/managers will be grandfathered in. For new staff/managers, the requirements should be included in a formalized training. The group discussed that CCBs/PASAs have varied managerial training; however, it is in place across the board.
8.4 Supervisor		CDPHE stated that an additional entity is not required to meet this rule. The agency administrator, manager and supervisor, as well as direct care provider could all be the same person as long as qualifications are met.
8.5 Personal Care Worker	DDD Minimum Training Guidelines; SLS/CES Waivers 25-1.5-301 27-10.5-103 Nurse Practice Act	8.5 (D) (5) defines exercise as a personal care service that may be provided. Since DDD’s definition is more restrictive under current waiver, <i>the more restrictive definition</i> applies. 8.5 (D) (6) defines feeding as a personal care services. It excludes tube feedings (added) unless otherwise allowed by statute. Current DDD rules would allow for this under personal care. 8.5 (D) (15) defines transfers and the need for training in transfers and states that the personal care worker may only assist in transfers when the consumer can balance and have strength. Since informal support is provided through SLS and CES in this area, an addition was made to allow for this service if directed by the consumer, guardian or family member. 8.5 (D) (18) Accompaniment. This definition is broader than what is allowable under the DDD SLS/CES definition. Judy stated that the DDD rule would apply. DDD has changed its definitions under waiver, so this is now in line with allowable SLS services. 8.5 (D) (20) Respite services does not pose a problem for where services may be provided under current DDD rule. 8.5 (D) (21) Housekeeping services – does not apply to SLS/CES waiver definitions for homemaker services. 8.5 (E) Medication administration will be allowable under non-medical services as it applies to 27-10.5.

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8.5 (F) Supervision of personal care worker		<p>8.5 (F) (2) & (3) indicates the need for on-site supervision every three months to include observation of tasks/relationship with consumer. This is inconsistent with service delivery and waiver definitions and could be intrusive to families and consumers. Rates do not include oversight at a prescribed interval. CDPHE allowed for an exception for SLS/CES under current practices for monitoring due to family members providing the majority of care, family recruited providers, case management monitoring as potential alternatives to meet this requirement. As a result, an addition referencing DDD rule 16.612 was made to indicate that monitoring can include a variety of methodology to ensure health, safety and welfare of the individual in services. This can be accomplished by interview with family members, consumers, guardians, service delivery records review, incident reports, etc., as is current practice (not specific to the support coordinating agency-now the CCB), but to the agency providing the direct service) to be an alternative to the requirement as written in this rule.</p>
8.6 Training	<p>DDD Minimum Training Guidelines SLS/CES Waivers DDD Rule 16.246</p>	<p>Training requirements are defined in DDD rule and guidelines. Timelines established in 8.6 (B) are inconsistent with DDD rule (45 days vs. 60-90 days).</p> <p>8.6 (D) defines that competency is established in all areas defined under personal care. Training in many of these areas, requiring ‘specific hands-on’ application, is often provided by family members, not by the agency.</p> <p>8.6 (E) & (F) regarding additional training, timelines and documentation also not consistent with DDD rule and guidelines.</p> <p>Requirements would be in addition to DDD requirements. CDPHE rules would apply to this section. In situations where a family member is providing care or instruction specific to the individual receiving services, the agency could create a template to show that the training was completed, and could specify a level of training needed; i.e. for an individual living independently vs. under the family care. Regardless, the agency is responsible to ensure that safe practices are followed in all areas of care.</p>