

## Personal Care Services

### Provider Conditions of Participation

*Personal care services may be authorized for a Medicaid recipient who experiences functional limitations, resulting from a physical condition, that cause the recipient to be unable to perform activities of daily living (ADLs), instrumental activities of daily living (IADLs), and other activities covered under 7 AAC 125.030. Personal care services may be provided in the recipient's residence; at the recipient's workplace, if necessary to prevent job loss; and at other locations specified in regulations.*

*Following an assessment to determine the level of assistance needed to enable a recipient to perform covered activities, Senior and Disabilities Services (SDS) prepares a service level authorization specifying the activities for which physical assistance may be provided by personal care assistants. Some activities may be performed entirely by a personal care assistant for a recipient dependent on another for performance.*

*Certified personal care services agencies may offer both agency-based and consumer-directed programs. Agencies are responsible for hiring, training, scheduling, and supervising personal care assistants in agency-based programs. In consumer-directed programs, agencies have administrative responsibilities regarding the personal care assistants that are chosen by the recipients who are responsible for training, scheduling, and supervising them.*

*The provider that chooses to offer personal care services must be certified as a provider of personal care services under 7 AAC 125.060, and operate in compliance with the following standards.*

#### **I. Program operations**

##### **A. Certification requirements.**

1. The provider must demonstrate, through documents describing provider operations, readiness to provide services and comprehension of Medicaid regulations, Personal Care Services regulations, and these Conditions of Participation.
2. The provider must submit to the department
  - a. policies and procedures addressing the following:
    - i. financial accountability;
    - ii. confidentiality of protected health information, including a Notice of Privacy Practices;
    - iii. conflicts of interest;
    - iv. complaint management;
    - v. emergency response planning;
    - vi. acceptance of new recipients for program services;
    - vii. termination and transfer of provider services;
    - viii. training of employees;
    - ix. evaluation of employees;
    - x. background checks for potential and current employees;
    - xi. quality improvement;
    - xii. critical incident reporting;
    - xiii. restrictive interventions;
    - xiv. assistance with self-administration of medication;
    - xv. backup plans for personal care assistants;
  - b. documentation showing compliance with state or local regulations, including
    - i. State of Alaska business license; and
    - ii. Certificate of Insurance or similar documentation of insurance coverage;
  - c. personnel information, including
    - i. organization chart; and
    - ii. personnel lists;
  - d. a quality improvement report for renewal of the provider's certification.

3. The provider must implement and abide by all policies and procedures that were submitted for the purposes of gaining certification.
4. The provider must grant to SDS, for certification and oversight purposes, access to all service locations and to locations where provider records are stored.

**B. Operations requirements.**

1. The provider must
  - a. utilize the SDS secure electronic interface to submit confidential and protected health information;
  - b. maintain records, required under 7 AAC 105.230 and 7 AAC 125.120 , in English;
  - c. comply with the criminal history checks requirements of 7 AAC 10.900 – 7 AAC 10.990;
  - d. comply with all regulatory training requirements;
  - e. if applicable, implement a corrective action plan approved by the department under 7 AAC 125.080 (c); and
  - f. practice open communications and cooperate with other providers of services.
2. The provider must employ a program administrator who is responsible and accountable for the day-to-day management of the personal care services program, including
  - a. orientation, training, and supervision of personal care assistants;
  - b. implementation of policies and procedures;
  - c. intake processing and evaluation of new admissions to services;
  - d. review of services to
    - i. assure services in the amount, duration and scope specified in the recipient's service level authorization are provided;
    - ii. evaluate whether personal care services provide the physical assistance needed by the recipient to perform ADLs, IADLs, and other covered activities specified in the service level authorization; and
    - iii. evaluate the quality of care provided by individual personal care assistants;
  - e. if the recipient is also a home and community-based waiver services recipient, coordinate services with the recipient's care coordinator and other service providers; and
  - f. submit required reports to SDS.
3. An individual newly hired as program administrator for an existing personal care services program must attend the personal care services agency training course provided by the department not later than three months after the date of hire by the personal care services agency.
4. An individual may serve as program administrator for more than one location if
  - a. necessitated by the location of the agency offices; and
  - b. given the size of the recipient population served and the number of personnel supervised by that individual, the program administrator is capable of being actively engaged in the management of services at each location.
5. If the provider agency has been granted an exception under 7 AAC 130.220 (j), an individual may not supervise both personal care assistants and care coordinators.
6. The provider that operates an agency-based personal care services program must retain a supervising registered nurse to carry out the duties specified in 7 AAC 125.170.
7. No individual may be associated with a personal care services agency as owner, executive director, board member, authorized agent, or employee, or be involved in the provision of services to recipients if that individual
  - a. has been convicted of Medicaid fraud;
  - b. has been sanctioned under Medicaid regulations, or has been suspended or terminated from the Medicaid program, because of program abuse or abuse of a recipient; or
  - c. has had a valid criminal history check or variance revoked under 7 AAC 10.945.
8. The provider may not allow an employee, volunteer, or contractor to provide any services to recipients or to have access to protected health information until the provider has
  - a. notification of the individual's valid criminal history check, or of a variance or reconsideration, in accordance with 7 AAC 10.900 – 7 AAC 10.990; and

- b. confirmation that the individual's name does not appear on either of the following lists:
  - i. *Alaska Medical Assistance Excluded Provider List*, and
  - ii. *List of Excluded Individuals and Entities (LEIE)* maintained by the U.S. Department of Health and Human Services, Office of Inspector General.

**C. Financial accountability.**

- 1. The provider must maintain insurance that
  - a. includes coverage for comprehensive general liability and workers' compensation, as is appropriate to the services the provider seeks to offer recipients; and
  - b. names Senior and Disabilities Services, Provider Certification Section, 550 W. 8<sup>th</sup> Avenue, Anchorage, AK 99501, as a certificate holder for that insurance; a copy of the Certificate of Insurance or similar document showing insurance coverage must be submitted with its application for certification or recertification.
- 2. The provider may not charge fees for recipient services at a rate higher than those charged to private pay clients for comparable services.
- 3. The provider must
  - a. maintain financial records to show the provider's capacity to meet at least three months of operating expenses, including sufficient funds to
    - i. pay employee salaries and employee-related tax obligations timely;
    - ii. maintain current general liability and workers' compensation insurance;
    - iii. maintain operations in a physical office space; and
    - iv. ensure service delivery to all recipients served by the provider;
  - b. implement a financial system, based on generally accepted accounting principles, that ensures claims for payment are accurate;
  - c. maintain, in accordance with 7 AAC 105.230 and 7 AAC 125.120, records that support claims for services;
  - d. cooperate with all required audits;
  - e. report to the Medicaid fiscal agent, and void or adjust, when identified, Medicaid monies that represent overpayments; and
  - f. cooperate with investigation and remediation activities.
- 4. The provider may not submit a claim for reimbursement
  - a. until services have been rendered;
  - b. for services rendered by a personal care assistant who does not have documentation of a current, valid criminal history check or variance; or
  - c. for services that are not specified on the recipient's service level authorization or documented in accordance with 7 AAC 105.230 and 7 AAC 125.120.
- 5. The provider must report suspected Medicaid fraud, abuse, or waste to the Medicaid Fraud Control Unit by calling 1-907-269-6279 or sending a message to FAX number 1-907-279-6202.

**D. Quality management.**

- 1. Complaint process.
  - a. The provider must implement a protocol for handling and resolving written and oral complaints about services or personnel.
  - b. The provider must analyze the complaints each calendar quarter to determine whether issues raised represent single incidents or a pattern, and take appropriate action to resolve issues brought to light by the quarterly analysis.
- 2. Quality improvement process.
  - a. The provider must engage in monitoring and data collection activities related to the delivery of services and recipient satisfaction with the services, analyze findings, and identify problems and opportunities for improvement.
  - b. The provider must implement a process to remedy problems, whether the issues relate to a single individual or to systemic program operations.

- c. The provider must utilize its findings from data collection and analysis activities to engage in actions (e.g., policy development, management changes, staff training, or other system level interventions) that lead to continuous improvements in its delivery of services.
- 3. Self-assessment.
  - a. The provider must conduct a self-assessment of its quality improvement process annually, at a minimum, for each year of its certification period.
  - b. The process must include evaluation of the findings from, and corrective actions taken in regard to,
    - i. written and oral complaints;
    - ii. critical incident reports, including reports of harm;
    - iii. analyses of medication errors;
    - iv. analyses of the use of restrictive interventions;
    - v. consumer satisfaction surveys; and
    - vi. internal reviews of services rendered to determine that they were provided in accordance with recipient service level authorizations and met recipient needs.
- 4. Quality improvement report.
  - a. The provider must summarize, in a quality improvement report data collection activities, findings, and resulting corrective actions and program improvements and submit that report with its application for recertification.
  - b. The provider must be able to support the report submitted with data that must be made available to SDS upon request.

#### **E. Reporting changes in provider status.**

The provider must report the following changes in provider status, in writing, in a format provided by the department, within the timeframe specified:

- 1. one business day of
  - a. an unplanned change of program administrator; and
  - b. learning that an agency owner or administrator has been charged with or convicted of a criminal offense;
- 2. ten days prior to a change of the provider's mailing address, email address, or telephone or fax number;
- 3. thirty days prior to a planned change of program administrator; and
- 4. sixty days prior to
  - a. a change of agency name;
  - b. a change in physical location of an agency;
  - c. a change in the form of organization of agency business;
  - d. a change of agency ownership or percentage of agency ownership; and
  - e. an agency sale or closure.

## **II. Program administration**

### **A. Personnel.**

- 1. The provider must ensure that the employment and education history offered by a potential employee is verified, and resulted in the acquisition of the knowledge based and skills required for the position.
- 2. Program administrator.
  - a. The provider must verify that the individual hired for a program administrator position meets the qualifications specified.
  - b. The program administrator must be at least 21 years of age, and qualified through experience and education in a human services field or setting.
    - i. Required experience: one year of full-time or equivalent part-time experience providing services to individuals in a human services setting in a position with responsibility for planning, development, and management or operation of programs involving service delivery, fiscal management, needs assessment, program evaluation, or similar tasks.

- ii. Required education and additional experience or alternatives to formal education:
    - A) Bachelor of Arts or Bachelor of Science degree from an accredited college or university in social work, psychology, rehabilitation, nursing, developmental disabilities, or a closely related human services field; or
    - B) Associate of Arts degree from an accredited college or university in psychology, rehabilitation, nursing, developmental disabilities, or a closely related human services field, and two years of full-time, or equivalent part-time experience working with human services recipients; or
    - C) four years of full-time or equivalent part-time experience working with human services recipients in social work, psychology, rehabilitation, nursing, developmental disabilities, or a closely related human services field or setting; or
    - D) certification as a rural community health aide or practitioner, and one year of full-time or equivalent part-time experience working with human services recipients.
  - c. An individual that does not have documentation of successful completion of training equivalent to that specified in 7 AAC 125.160 must complete such training within three months of hire for the position of program administrator.
  - d. The provider may accept an applicant whose education was completed in a country other than the United States if the applicant can show that his/her foreign education is comparable to that received in an accredited educational institution in the United States.
    - i. The provider may accept a copy of a State of Alaska license issued under AS 08 as showing an applicant's foreign education is comparable to education in the United States.
    - ii. For applicants not licensed under AS 08, the provider must inform the applicant that the applicant is responsible for providing
      - A) a foreign educational credentials evaluation report, from an evaluation service approved by the National Association of Credential Evaluation Services, that includes, at a minimum, a description of each course and semester or quarter hour credits earned for that course, and a statement of degree equivalency to education in the United States; and
      - B) certified English translations of any document submitted as part of the application, if the original documents are not in English.
    - iii. The provider must keep documents showing a program administrator's foreign education comparability to that of the United States on file, and make them available to Senior and Disabilities Services upon request.
  - e. The provider may use a term other than program administrator for this position (e.g., program director, program manager or program supervisor), but the individual filling the position must meet the requirements for program administrator.
2. Supervising Registered Nurse.
- The provider that operates an agency-based personal care services program must verify that the individual retained as the agency's supervising registered nurse
- i. is licensed as a registered nurse in accordance with AS 08;
  - ii. is at least 21 years of age; and
  - iii. is qualified through the following experience
    - A) at least one year of full-time or equivalent part-time experience providing services to individuals in a human services delivery setting; and
    - B) one year (which may be concurrent) of full-time or equivalent part-time experience as a supervisor of staff who worked full-time or equivalent part-time in a human services setting, in a position with responsibility for planning, development, and management or operation of programs involving service delivery, needs assessment, program evaluation, or similar tasks.

**3. Personal care assistants.**

- a. The provider must assure that only individuals who meet the requirements of 7 AAC 125.090 are associated with the agency as personal care assistants.
- b. The provider must implement a performance evaluation process for personal care assistants.
- c. The provider must evaluate the performance of personal care assistants to ensure they have the ability to work effectively and to identify skills that need further development.
  - i. For personal care assistants working in a consumer-directed program, the provider must evaluate performance as provided in the process implemented under (b), but not less than every six months in connection with the review of recipient's services under 7 AAC 125.130 (a)(1).
  - ii. For personal care assistants working in an agency-based program, the provider must evaluate performance as provided in the process implemented under (b), but not less than every six months in connection with the review of recipient's services under 7 AAC 125.170 (a)(2).

**B. Training.****1. CPR and first aid training.**

- a. The provider must have on file, for each personal care assistant, documentation showing successful completion of
  - i. cardiopulmonary resuscitation (CPR) training, within the previous two years, that
    - A) was taught by an individual who holds a valid CPR instructor credential in accordance with 7 AAC 26.985; and
    - B) includes hands-on demonstration to the instructor by the personal care assistant of skills learned during the course;
  - ii. first aid training, within the previous two years, that was taught by an individual certified by the American Red Cross, the American Heart Association, or an equivalent organization approved by Senior and Disabilities Services.
- b. The provider must ensure that its personal care assistants provide documentation of attendance and successful completion of CPR and first aid training every two years; however, if that training is not periodically available within 100 miles of the workplace, the training requirement may be met by attendance and completion of the required course every three years.

**2. Orientation and training.**

- a. The provider that operates an agency-based personal care services program for all personal care assistants must provide, and have on file, documentation of,
  - i. orientation to the agency and its relationship to the department;
  - ii. training necessary to render services to recipients;
  - iii. coaching and feedback regarding performance of services, as needed; and
  - iv. all information necessary to perform the services for which the individual is responsible, including pertinent health information, and contact information for assistance and emergencies.
- b. The provider that operates a consumer-directed personal care services program must provide for all personal care assistants
  - i. orientation to the agency and its relationship to Senior and Disabilities Services; and
  - ii. information regarding
    - A) responsibilities of the recipient for training the personal care assistant and management of his/her personal care services program; and
    - B) responsibilities of the personal care assistant in a consumer-directed program.

**3. Critical incident reporting training.**

- a. The provider must have on file, for each personal care assistant, documentation of attendance and completion of, at least every two years, training on how to report critical incidents to SDS.
- b. The provider may
  - i. arrange for staff to attend SDS critical incident reporting training, or
  - ii. appoint staff who have attended the SDS training to train other staff.
- c. At a minimum, the following agency employees must refresh, every two years, critical incident reporting training by attending and completing the course offered by SDS:
  - i. the program administrator; and
  - ii. the individuals who supervise the personal care assistants.

**4. Assistance with self-administration of medication training.**

- a. The provider must develop and submit to Senior and Disabilities Services a training policy that includes
  - i. the methods the provider will use to teach personal care assistants that assistance with self-administration of medication includes only the activities described in 7 AAC 125.030 (h);
  - ii. training goals;
  - iii. plans and activities to enable trainees to achieve those goals;
  - iv. methods of assessing trainee achievement of the training goals; and
  - v. processes for evaluating the effectiveness of the training methods.
- b. The provider must have on file, for each personal care assistant, documentation of successful completion of training on assistance with self-administration of medication.

**C. Supervision.**

1. The provider must monitor personal care assistants
  - a. to ensure the health, safety, and welfare of recipients;
  - b. to identify and report fraud, abuse or waste; and
  - c. to ensure training needed to render services to recipients is sufficient and completed as required.
2. The provider must act to ensure substandard care is improved or arrange for service delivery from other personal care assistants.
3. When a Report of Harm is made to Adult Protective Services (APS) or the Office of Children's Services (OCS) alleging abuse, neglect, or exploitation against a personal care assistant, the provider must bar that individual from contact with recipients until the investigation is complete or the allegation is found to be unsubstantiated.

**III. Recipient relationships****A. Conflicts of interest.**

No owner, executive director, board member, authorized agent, employee, or contractor of a provider agency may

1. exploit a relationship with any recipient for personal or business benefit;
2. allow or engage in any financial transaction with, or on the behalf of, any recipient if that transaction could result in personal or financial benefit to anyone other than the recipient;
3. offer, promote, or sell products or non-program services to, or engage in any commercial transactions with, recipients or their representatives without the written consent of the department;
4. accept payment in any form from recipients, their families, or their representatives for personal care services or other services paid with Medicaid funds;
5. solicit as clients any recipients known to be receiving services from another provider;
6. seek to influence the eligibility determination process by providing false or misleading information about an applicant or recipient; or
7. represent a recipient during any hearing or appeal process.



**B. Recipient health, safety, and welfare.**

1. The provider must determine whether, given the recipient's diagnosis and needs, its personal care assistants have the capacity to provide services for that recipient.
2. The personal care assistant must report any material changes or concerns regarding a recipient
  - a. to the individual who supervises the personal care assistant or the personal care services program administrator; and
  - b. to the recipient's representative or representative's designee; and
  - c. if the change or concerns meets the criteria for mandatory reporting or critical incident reporting, to the appropriate authority, in accordance with the training provided under 7 AAC 125.100 (a)(2).
3. If a recipient requires evaluation by or consultation with a medical professional because of a medical emergency, or an accident, incident, or injury, or the personal care assistant believes emergency assistance is needed because of circumstances that create a risk to the health, safety, and welfare of a recipient or others, the personal care assistant must
  - a. contact the appropriate emergency responder, and provide emergency care and support, appropriate to the personal care assistant's skill and experience, until the responder arrives; and
  - b. cooperate with the responder as requested, including providing current health, diagnostic, and medication information as needed and as available on-site or accessible through a data base or contact known to the personal care assistant.
4. The provider must communicate and cooperate with other providers to prevent placing recipients at risk; if disagreements or disputes regarding a recipient arise, the recipient's health, safety, and welfare must be the primary factor in reaching a resolution.

**C. Interactions with recipients.**

The provider must

1. treat all recipients respectfully;
2. encourage recipient involvement in planning care;
3. cooperate with recipients who elect to change service providers;
4. collaborate with other providers to deliver an integrated program of services;
5. provide information regarding fees for services to recipients;
6. address recipient complaints about services;
7. evaluate whether services are appropriate and effective for the recipient; and
8. render quality care by employing competent, trained staff.

**D. Termination of recipient services.**

The provider must implement, in accordance with 7 AAC 125.110, a termination or discharge procedure for ending involvement with a recipient that

1. factors in the health, safety, and welfare of the recipient;
2. requires documentation that shows risks of physical injury to the personal care assistant, failure of the recipient to cooperate with the delivery of services, and financial risk for the agency;
3. includes supervisory review to determine whether
  - a. reasonable accommodation measures have been considered and tried, and
  - b. termination is appropriate;
4. provides written notice of the reasons for termination to the recipient and to Senior and Disabilities Services; and
5. informs the recipient regarding the provider's process for appealing a decision to terminate services, and other possible sources for the services being terminated.