

**Text of Email sent by Lisa Olson, the Legislative Director of the Department of Health Services, to Lisa Pugh and Todd Costello, the Co-Chairs of the Governor's Task Force on Caregiving on April 2, 2020**

Lisa and Todd,

Thank you for your letter submitted March 20, 2020, to Governor Evers and leaders of the Department of Health Services. We appreciate the suggestions of members of the Task Force on Caregiving on how to support the paid direct care workforce and family caregivers in providing critical services in this time of crisis.

In this rapidly changing environment, the Department is continuously analyzing options to address emergent needs and is working to rapidly implement public health interventions; temporary policy and regulatory flexibilities to address COVID-19 testing, treatment, and health care workforce needs; emergency Medicaid reimbursement policies; and to provide ongoing guidance for provider communities and the general public. DHS understands the urgent needs faced by members of the direct care workforce as well as family caregivers during the COVID-19 health care crisis. This letter provides updates related to the suggestions made by Task Force Members.

**PAID DIRECT CARE WORKFORCE SUGGESTIONS**

**Expedite the Training and Onboarding of New Workers:**

Establish hiring guidelines to protect the safety of clients re COVID-19 training and hiring:

- On March 30, CMS released [COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers](#). The blanket waivers apply retroactively to March 1 and are in effect through the end of the declared emergency. They include the following provisions related to staff training and supervisory functions in Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs) and services provided by Home Health Agencies (HHA).
  - **Training and Certification of Nurse Aides:** For SNF and NF, current requirements under 42 CFR 483.35(d) that that a SNF and NF may not employ anyone for longer than four months unless they meet specified federal training and certification requirements are being waived to help with potential staffing shortages. However, CMS is not waiving the following associated provisions:
    - A requirement under 42 CFR § 483.35(d)(1)(i) that facilities not use any individual working as a nurse aide for more than four months, on a full-time basis, unless that individual is competent to provide nursing and nursing related services; or
    - A requirement under § 483.35(c) that facilities ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

- Physician Visits in SNFs/NFs. CMS is waiving a requirement in 42 CFR 483.30 for physicians and non-physician practitioners to perform in-person visits for nursing home residents and allowing visits to be conducted, as appropriate, via telehealth options.
- Waive On-Site Inspections for HHA Aide Supervision: CMS is waiving requirements at 42 CFR §484.80(h), which require a nurse to conduct an onsite visit every two weeks. This includes waiving the requirements for a nurse or other professional to conduct an onsite visit every two weeks to evaluate if aides are providing care consistent with the care plan. This waiver is temporarily suspends the 2-week aide supervision by a registered nurse for home health agencies requirement at §484.80(h)(1), but virtual supervision is encouraged.
- In addition, with the Governor's emergency declaration, the Department's Division of Quality Assurance (DQA) is able to consider changes to training requirements that are contained in the Wisconsin Administrative Code. DQA is actively working to see where flexibility can be provided to bring on staff quickly, including flexibility with the rules that relate to on boarding of staff so that recommendations may be made to the Governor.
- Nursing home specific certified nursing assistant (CNA) training is a federal requirement. The Department is working with the Legislature to submit a proposed federal 1135 waiver request to the Centers for Medicare and Medicaid Services (CMS). The proposed waiver seeks flexibilities in many areas, including CNA training.
- DQA has received inquiries regarding how to deal with current limited access to clinical training sites for CNAs. DHS is working with CMS and other states to see what can be done to get through clinical sessions so that students can move onto testing and certification to join the workforce.
- WisCaregiver Career Program: DHS is requesting that CMS reverse its previous denial and approve the state's application for renewed Civil Money Penalty funds for the WisCaregiver Career Program to attract and retain nursing home caregivers. If the request is not approved, DHS will explore other alternatives for funding a similar program.

How can workers be tested to stop spread of the virus?

- Please refer to DHS guidance for employers on the COVID-19 (Coronavirus Disease) at: <https://www.dhs.wisconsin.gov/covid-19/employers.htm>
- In addition, the Department is engaged daily in developing and sharing new resources for health care providers and the general public related to prevention, testing, and treatment of COVID-19. The Department's [COVID-19 \(Coronavirus Disease\) webpage](#) provides a clearinghouse of DHS information and guidance for providers and the public. This includes guidance on infection prevention and quarantine protocols for a number of health care, institutional, and communal settings and vulnerable population groups. Additional guidance on prevention will be published on this page as it becomes available.

**Expedite Access to Direct Care Workforce Payments Under the 2019-2021 Wisconsin Biennial Budget.**

DHS has received CMS approval to make an initial \$22 million payment for direct care workforce funding in April. DHS is engaged with CMS to expedite additional DCW payments for the remainder of the appropriated funds, and hopes to gain flexibilities to do so given the COVID-19 crisis.

**Loosen Regulatory and Oversight functions (i.e. training, supervisory functions, timelines, onboarding requirements that cause delay, accept electronic signatures for state generated forms).**

The [COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers](#) issued on March 30 also includes provisions that loosen oversight functions for a variety of health care providers. Please refer to the federal guidance for the specific provisions for Long Term Care facilities, SNFs, NFs, and services provided by HHAs.

In addition, as noted above, the Department is working with the legislature to submit an 1135 waiver to the Joint Finance Committee for approval to submit to CMS.

Section 1135 of the Social Security Act authorizes the federal DHHS Secretary to temporarily modify or waive certain Medicare, Medicaid, Children's Health Insurance Program, and Health Insurance Portability and Accountability Act requirements. The purpose of the 1135 waiver authority is to ensure that sufficient healthcare services are available to meet the needs of individuals when and where an emergency is experienced.

The Department has developed an 1135 waiver proposal, based on consultations with providers and other stakeholders. Specifically, Wisconsin's waiver proposal provides flexibility to increase reimbursement for vital services to address the pandemic at a time when our providers and plans face workforce, equipment and capacity issues. It proposes to ease administrative requirements like prior authorizations or place-of-service restrictions to allow health care professionals to continue to provide services in a rapidly changing environment. For example, if drive-thru specimen collection becomes available, this waiver would allow Medicaid to reimburse for it. It would allow Medicaid to rapidly enroll additional providers needed to meet the needs of our members, including out-of-state health care professionals to provide telehealth services. DHS has incorporated many requests of the health care community into this waiver.

In addition, a number of LTC health care providers have submitted their own applications for 1135 waivers.

### **Temporarily Relax Restrictions around Background Checks and Hiring Family Members**

For entities regulated by DQA, background checks are essential same-day procedures. It is not recommended that these procedures be relaxed.

For the IRIS program, the current policy aligns somewhat with the rules governing background checks for agency workers (e.g., from DHS Chapter 12 and Wis. Stat. 50.065). IRIS also includes 48 additional offenses applicable in the IRIS background check (that do not apply for agency workers) There currently is no rehabilitation review process for IRIS workers.

The IRIS program incorporated the 48 additional offenses since there is no agency oversight of workers in the IRIS model. However, the Department understands the hardship created by having no rehabilitation review process that would allow workers with certain offenses to work in the IRIS

program. The Department is currently reviewing the IRIS background check policy to look at the ability to incorporate a rehab review process into this background check process. The Department is currently reviewing what is allowable under a K waiver amendment to see what flexibilities might exist to allow for hiring family members during the COVID emergency.

**Connect Displaced Workers to Direct Care Openings While Ensuring Safety of New Workers; collaborate with DWD and job centers**

DHS is participating in the state Emergency Operations Center (EOC). A primary focus of the EOC is to develop strategies to maximize the available health care workforce.

**Relax or Address the 40-Hour Rule; Provide Options for Hazard Pay**

The IRIS 40 hour rule has been relaxed for the duration of the emergency. DHS is exploring hazard pay as part of the requests for federal flexibilities.

**Monitor Providers' Viability to Continue Operations; Provide Contingencies. Provide help for Non-Profits, other than Tax Credits, to Help Offset Costs of Providing Sick Pay etc.**

On March 18, Gov. Tony Evers submitted a request to the U.S. Small Business Administration (SBA) for Economic Injury Disaster Loan assistance for small Wisconsin businesses and private, non-profit organizations to help alleviate the economic impacts of the COVID-19 outbreak.

In addition, the federal government is providing relief for businesses to help ensure viability and offset the costs of providing sick pay. We are monitoring federal legislation on this topic closely.

**Consider Income Disregard Policies that can Support the Workforce and Attract New Workers; Review Income Disregard Options within Nutrition, Childcare, Unemployment and Medicaid Programs**

State agencies are working together through the state EOC to support workers that have been disrupted by COVID-19. These efforts include surge planning with respect to the workforce, and providing child care for essential workers. Requests for child care from essential workers can be submitted through [the Child Care Finder, a web-based platform](#) of the Department of Children and Families (DCF). *As defined by Emergency Order #12*, essential workers are grouped into two tiers, with Tier One taking priority over Tier Two:

Tier One: employees, contractors, and other support staff working in health care

Tier Two: employees, contractors, and other staff in vital areas including but not limited to military; long term care; residential care; pharmacies; child care; child welfare; government operations; public safety and critical infrastructure such as sanitation, transportation, utilities, telecommunications; grocery and food services; supply chain operations; and other sectors as determined by the department.

In addition to the 1135 waiver, the state is also requesting waivers through the USDA Food and Nutrition Service to ease requirements for accessing and remaining in the state's FoodShare program.

## **Sustain Essential Community Infrastructure that is Necessary to the Function of the Direct Care Workforce (e.g. Transportation)**

On March 18, 2020, the Department of Children and Families issued an [updated guidance order](#) for child care, Head Start, and pre-K programs and their workforce that prioritizes child care for health care professionals providing essential workforce functions.

In addition, the DHS 1135 waiver application will include a request to expand the authority under 1905(a) non-emergency transportation to allow for reimbursement of any Medicaid eligible individual, additional NEMT vendors, transportation for caregivers going to provide services to Medicaid members, allowing reimbursement for family members to travel with a Medicaid member to an appointment, and meal delivery to Medicaid members.

### **FAMILY CAREGIVING SUGGESTIONS**

**Incorporate NFCSP and AFCSP resources into regional coordination efforts and increase awareness of these resources to expedite use of available funding. Redirect available funding to be used for essential in-home supports to caregivers to provide relief in absence of traditional respite - including grocery and medication drop-off**

DHS will also explore potential flexibility in the allowable expenditures under OAA Title III E for the National Family Caregiver Support Program (NFCSP) and DHS Administrative Rule #68 for the Wisconsin Alzheimer's Family Caregiver Support Program (AFCSP). Under current interpretation of these program rules, DHS does not have authority to redirect funds to a regional authority. Funding for both these programs has already been allocated to county and tribal Aging Units on a population formula basis as directed by law. Regional coordination could be encouraged but would be at the discretion of counties and tribes.

Counties and tribes in Wisconsin have Family Caregiver Program coordinators, who can answer questions about local services available and enroll caregivers in NFCSP and AFCSP. Services accessed through the Family Caregiver Support programs include respite, in-home personal care and chores, limited goods and services, and connection to support groups, educational resources and caregiver seminars. Family Caregiver Program coordinators are housed in the county ADRC, the Aging Unit/county department of health and human services, or a tribal aging unit.

County and tribal program managers are being encouraged to think innovatively about how to reach caregivers given that respite will be harder to come by during COVID-19 personal distancing restrictions. Ideas encouraged include offering telephone or video conference support groups and calling caregivers to let them know ADRC staff are still available by phone.

**Utilize law enforcement, where necessary, for medication drop-off**

Please review information on the WI Department of Justice's website under [COVID-19 Resources](#).

**Temporarily loosen restrictions to allow payment to family members to provide care (i.e. allow for the ability to hire spouses and domestic partners and parents of children under the age of 18).**

A federal waiver is needed to allow parent/family member hiring for personal care per SSA 1905(a)(24), CFR 42 CFR 440.167. In IRIS, under the 1915(j), self-directed personal care providers can be legally

responsible relatives such as parents and spouses. The same applies to supportive home care services in the IRIS 1915(c) waiver

**Ensure check-ins with family caregivers, in a frequency and via a means accessible to them (i.e. phone call; texting; email)**

As noted above, county and tribal Family Caregiver Support Program managers are being encouraged to think innovatively about how to reach caregivers given that respite will be harder to come by during COVID-19 personal distancing restrictions. Caregiver programs, ADRCs, and other community groups are making calls to individual caregivers and are being encouraged to continue to do so.

**Offer mental health supports, including training for workers, and therapy or telehealth counseling for caregivers**

DHS is working with other state agencies to create a central repository of agency resources to support workers on the front lines during the COVID-19 pandemic, as well as those disproportionately impacted by the crisis. The goal is to help foster resilience in WI's workforce and communities. More information will be coming soon.

Please also refer to the Department's [COVID-19 \(Coronavirus Disease\)](#) guidance in these areas. Mental health resources are included under ["Managing your Mental Health During a Disease Outbreak."](#) Guidance for [Businesses and Employers](#) includes information on educating employees and preparing customers for prevention efforts and other training topics.

DHS is actively working to protect and ensure the capacity of the state's health system as it responds to COVID-19, including expanding coverage for telehealth to facilitate providers' ability to safely and effectively communicate with and treat patients. On March 18, 2020, the Division of Medicaid Services released ForwardHealth Medicaid Provider [Update 2020-09](#), which announced policy changes to current telehealth policy effective for dates of service on or after March 1, 2020. This update removes originating site restrictions from existing telehealth coverage. In addition, Medicaid's ForwardHealth has added coverage for e-visits and for telephone visits with qualified health care professionals.

On March 24, 2020, the Division released ForwardHealth Medicaid Provider [Update 2020-12](#) announcing additional, temporary flexibilities for fee-for-service behavioral health and targeted case management services. Managed care organizations (MCOs) have been advised to align with these flexibilities for benefits that are not solely administered under fee-for-service. Consult the MCO for information about their implementation schedule for these changes.

**Create a structure that connects MCOs and ICAs with other community based organizations to coordinate and communicate about needs in community-based care; connect with 211 and ADRCs. Provide guidance around flexibility in HIPPA rules.**

DHS is spearheading the building of regional efforts for collaboration in support of community based long term care programs. DHS is working with the geographically based MCOs, IRIS Consultant Agencies (ICAs) and Fiscal Employer Agents (FEAs), to organize in four quadrants across the state. DHS is helping

facilitate calls with MCOs, ICAs, FEAs, IRIS Self Directed Personal Care programs, children's stakeholders, ADRCs, and many external stakeholders.

The focus is to build a virtual boots-on-the-ground effort to:

- Ensure members direct care needs are met;
- Ensure members have supplies, meals, and medications;
- Ensure virtual support is available (remote monitoring, cueing/supervision, etc.);
- Shift workers from day and prevocational programs to help members in their home and/or provide virtual support;
- Shift workers into settings such as SNF, ALF, CBRF, AFH, and supported home care as permissible by regulations.

MCOs are a covered entity with respect to HIPAA rules, as they are considered a health plan. Wis. Stat. §46.284(7) permits managed care organizations to disclose personally identifiable information without the individual's informed consent if necessary to enable the MCO to perform its duties or to coordinate the delivery of services to the client.

HIPAA views the disclosure of personally identifiable information as case management and care coordination which is a health care operations activity per §45 CFR 164.501. A covered entity is permitted per 45 CFR 164.506(c)(1) to disclose protected health information for its own health care operations.

For information on flexibility in HIPAA rules, please refer [COVID-19: FAQs on Health Privacy](#). and to a February 2020 bulletin from the U.S. Department of Health and Human Services, Office of Civil Rights "[HIPAA Privacy and Novel Coronavirus](#)", which is intended to insure that HIPAA-covered entities and their business associates are aware of the ways that patient information may be shared under the HIPAA Privacy Rule in an outbreak of infectious disease or other emergency situation, and to serve as a reminder that the protections of the Privacy Rule are not set aside during an emergency.

Thank you again for your letter. We will forward to continuing to work with Task Force members on supporting the paid direct care workforce and family caregivers in providing critical services in this public health emergency.

Sincerely,

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