

**Division of Health Care Quality Office of Health Facilities Licensing and Certification
Interested Provider Meeting Frequently Asked Questions**

Please review before submitting questions to: DHSS_DHCQ_OHFLCFax@delaware.gov

Office location

Are PASAs or HHAs required to have commercial offices, or can they work out of the owner's home?

They can work out of their homes as long as the home has a room that can be designated as an office with a door and a lock and key for the purpose of securing consumer/patient and personnel information.

If I own a licensed agency and want to open another office in the state, do I need another license? Is the process the same as starting a new agency?

If you own an agency in the State of Delaware and wish to open another office, you will need a separate license. Regulation 2.1.2 states, "a separate license shall be required for each office maintained by a home health agency/personal assistance services agency." The procedure is a little different if you already own an agency and want to open another office for that same type of agency using the same policies. Please contact our office for the details.

My office is located in New Castle County, can I serve patients through the entire State of Delaware?

No, "**Service Area**" means the county in the state of Delaware in which the agency office is located and the county or counties in the state of Delaware which are immediately adjacent.

If the Owner/ Director has current commercial space being used for another business but have unused space that wouldn't interfere with the current business, can that unused space be used for the PASAs/Home health Agency use and business mailing address? (Consumer/Patient files, interviews, etc.)

Yes, if the office has a room that can be designated for the PASA/Home Health Agency with a door and a lock and key for the purpose of securing consumer/patient and personnel information.

Can I open two agencies at the same time?

No, you can only open one agency at a time. You can open the second agency once you receive a full (annual) license with the first agency.

Can I have more than one business as with PASA. Yes, you may. You can only open one at a time. I suggest you open the most involved first then, open less involved. For example, if you want a health agency and a PASA open the health agency first then the PASA. The process is easier.

Can the business be in any county? Yes, but you may only service clients in the county that your office is located and the adjacent county.

Staffing/Personnel

Are the Agency Directors considered hired today or after the document approved? Each agency must hire their staff including directors, clinical directors when they have their OHFLC Health License. They can hire them conditionally until they pass their background checks and have their resumes approved.

Do all independent contractors, including RNs must have a business license? Independent contractor licenses are for companies or independent business owners your agency may hire to help you provide services, i.e., a staffing agency, a physical therapy company, etc. RNs would need to have their professional license in their personnel file, as well as Occupational therapist, speech therapist, social workers, etc. also need their licenses in their file.

As an owner or Director of a PASA can I work as the direct care worker while establishing my business?

Yes, you may. If you are an RN, you must be very careful to only act as a direct care worker, performing any tasks that require the skill set for an RN would be out of scope of service for the PASA.

Are we limited to how many people we have working for the agency? No, you can have as many employees as you like; however, they all need to have their criminal background checks completed.

Director

Can one person be a director of an agency located in two different states?

The State of Delaware requires the Director to be full time and available to the field staff and consumers/patients during operating hours.

If the home health agency director has a lot of experience but not in homecare, can they be the clinical director?

The regulation requires the Director to have a Baccalaureate Degree in health or a related field. The clinical Director must be a registered nurse who is sufficiently qualified to provide general supervision and direction of the services offered by the home health agency **and who has at least one year of home health and administrative/supervisory experience.** The experience cannot be waived.

Does the director for a PASA have to have the educational requirement plus the supervisory experience?

Yes, the director shall have at least an associate degree **plus two (2) years healthcare or homecare supervisory experience.** The experience cannot be waived.

Is experience supervising at a PASA enough for a director position?

The experience must be in healthcare or homecare. If the person meets the other requirements, yes.

I have been a nurse for 20 years, but I do not have 1 year supervisory experience in home health. Do I still qualify as the Clinical Director?

No, you must have at least one year of home health and administrative/supervisory experience. The experience cannot be waived.

I have a bachelor's degree with over 5 years health care experience, but I do not have 1 year supervisory experience in Home Health, do I still qualify as the Director of a skilled home health agency?

No, you must have at least one year of home health and administrative/supervisory experience. The experience cannot be waived.

I have many years' experience at a non-skilled home care. Do I qualify as Director?

Generally, the supervisory experience would include the supervision of any individuals providing healthcare in a variety of settings including but not limited to long term care facilities, acute care facilities home health facilities, etc. A non-medical home care facility does not qualify as healthcare supervisory experience.

Does the Alternate Director have to have equal experience? yes

Does the RN license have to be registered in the state of Delaware? Yes

Can a RN be a Director?

For a PASA the RN can be the Director if they have at least an Associate Degree, plus two (2) years of healthcare or homecare supervisory experience.

For Home Health Agency Skilled (HHAS), the RN can be a Director if they have five years health care experience and at least one year of supervisory experience (full-time or equivalent) in home health care. The RN can be a Clinical Director if they have at least one year of home health and administrative/supervisory experience.

For Home Health Aide Only Agency (HHAO), the RN can be a Director if they have a Baccalaureate Degree in Health or a related field.

The RN can be the Clinical Director if sufficiently qualified to provide general supervision and direction of the services offered by the home health agency and who has at least one year of home health and administrative/supervisory experience.

Can the Director of a HHA (home health agency) and Clinical Director be the same person?

Yes, if they meet the qualifications for both positions.

Clarify the PASA Director experience.

The director shall have at least an associate degree **plus two (2) years healthcare or homecare supervisory experience.**

Can you have one Director for more than one agency?

No, the director must be full time and available for the agency during operating hours. You cannot be full time at 2 agencies at the same time.

What is the difference between a Home Health Agency (HHA) Aide Only agency and a Personal Assistance Services Agency (PASA)?

PASA is a **non-medical model** for an agency which provides services for compensation that do not require the judgment and skills of a licensed nurse or other professional. The services are limited to individual assistance with/or supervision of activities of daily living, companion services, transportation services, homemaker services, reporting changes in consumer's condition, medication reminders and completing reports. Medication administration is permitted **if all of the requirements under subsection 5.4.3** of these regulations are met. These services do not require physician's orders. This is a non-medical model.

Home Health Aide Only Agency is an agency which provides services to an individual primarily in their place of residence, that are limited to personal care services, companion services, homemaker services and tasks delegated by a licensed nurse as permitted by 24 Del.C. Ch. 19. This is a **medical model**.

What is the difference between an Aide, a Direct Care Worker (DCW) and a CNA?

Home health aide means a non-licensed person employed by the agency who provides personal care services, companion services, homemaker services, transportation services and who may perform tasks delegated by a licensed nurse as permitted by 24 Del.C. Ch. 19. A home health aide (A) has at least one year of practical experience in a Department licensed or approved hospital, nursing home, or home care setting; or (B) has satisfactorily completed an appropriate home care course which includes the training requirements contained within these regulations; or (C) is a student nurse pursuing a degree in nursing who has completed the clinical practicum portion of their training.

Direct Care Workers (DCW)

DCW means those individuals (aide, assistant, caregiver, technician or other designation used) employed by or under contract to a PASA to provide personal care services, companion services, homemaker services, transportation services and those services as permitted in 24 Del.C. Section 1921(a)(19)(15) to consumers. These individuals are oriented by their agencies.

CNA

A CNA is a nursing assistant that has become certified in the state of Delaware by completing a CNA training program. It is also possible to apply to transfer your nursing assistant certification from another state to Delaware. The state of Delaware requires a total of 150 hours of training for individuals who are attending a nursing assistant training course. Training courses can offer more than 150 hours of training. In order to sit for the nursing assistant certification test, you will need to finish a training course that has been approved by the state. These training programs will offer classroom segments as well as clinical instruction.

Can a PASA hire a CNA?

Yes, a PASA may hire a CNA; however, the CNA must work as a direct care worker. In other words, they would only be allowed to do what a direct care worker is allowed even though they have more education and are certified.

In non-medical in-home care, we utilize a RN to do the initial consumer assessment, which is then used to develop the plan of care for the consumer. Our P&P reference those (assessment, RN, etc.) ... is that OK for a PASA license review?

PASA regulation 3.13 states, "the personal assistance service agency must not use the word healthcare or any other language which implies or indicates the provision of healthcare services, in its title or advertising." The RN implies healthcare so it cannot be used.

When a PASA hires a nurse, what do they need to do? Re: consumers Re: OHFLC requirements

The nurse is limited to the scope of service of the PASA. The RN may meet with consumers to ensure the agency is able to meet the needs of the consumer, within the regulatory scope of the PASA's permitted practice and complete intake documents, develop care plans, and conduct initial and follow up visits to ensure the consumer's needs are being met. The RN can also supervise the agency's direct care workers. The nurse may not perform any nursing interventions or provide any "skilled nursing" services for the consumer.

The agency must certify, by signing an attestation, that nursing personnel are not performing nursing interventions other than assessment of the consumer to ensure that the direct care workers and the agency are able to meet the consumer's needs, within the regulatory scope of a PASA.

What can an aide do when working for a home health agency, that the same aide cannot do when they are working at a PASA?

When working at the home health agency, the aide is working under the supervision of a licensed nurse. The aide can do vital signs, some treatments, emptying of a foley etc. When working at a PASA, the same aide must stay within the scope of service or stay within the regulations of the PASA. The aide working at the PASA is limited to the same jobs as a direct care worker such as activities of daily living, companionship, housekeeping transportation, etc.

If our agency currently has aides working under our skilled home health license, are we able to use these employees under the PASA license in addition to our skilled license? Would these employees need to be rehired under the PASA license?

You can use the aides under the PASA license as well as the HHA license, but you must ensure that while working under the PASA license, they are subject to the regulations governing a PASA. In other words, they can only do the tasks that a Direct Care Worker would be able to do. You would also have to have separate employee files at each agency with all the required information.

If interested in PASA, are we able to do Non-Skilled Home Care as well?

A Personal Assistance Service Agency (PASA Regulation # 3345) is a non-skilled non-medical home care agency. A Home Health Aide Only (HHAO Regulation #4406) is a medical model home health agency with aide and nursing. These are 2 different types of agencies that require following different regulations. Although you may own more than one type of agency you cannot open them at the same time. Please review the regulations on our website for each.

Who needs to be present for the initial 90-day survey...the Agency Owner or the Agency Director?

During any survey, OHFLC personnel require someone who has access to the policies and procedures, personnel files and consumer/patient files, agency forms, orientation material and competency test. We need someone at the agency that has the authority to answer questions on the agency's behalf and receive the survey findings.

Treatment

Can you touch on the requirement for least restrictive environment? I know it is mainly associated with children.

Least restrictive environment is one in which the consumer or patients maintains their independence. Agencies provide services to encourage the consumer or patients to stay in their homes focus on their strengths, independence and be an active participant in their own care.

Can you explain again the requirement for administering medication?

For PASA please refer to regulation # 5.4.3.

For Home Health Agency - Medications and treatments shall be administered in accordance with all State and Federal laws, including the State of Delaware Board of Professional Regulation's requirements.

Background Checks

Once you have passed your Document Compliance Review, then you will be given the ok to sign up for access within the BCC. The paperwork will be e-mailed with your part 2 DCR checklist and requirements.

Background Checks for your Key Administrative Staff (Directors/Administrators, Startup Staff entering patient/consumer Homes):

OHFLC will notify the BCC that you are approved for licensure. You will need to fill out the BCC forms that are sent with your part 2 checklist and forward them to the BCC mailbox. There are directions to follow. Please use the directions as a checklist. It is very important that you follow these directions. This is giving you security access to the BCC. If these are not filled out correctly the application will be denied, and you will need to resubmit everything in its entirety. Setting this up takes time. For this reason, you will not get your license until you have access. Your initial license is only good for 90 days. During your 90-day process you must have a client and provide services in time to have a survey and make any corrections that may be needed. An initial survey cannot be renewed or extended. If we sent out your license before your BCC access, you may not have enough time to get a client and start services, your license could expire, and you would need to start the licensing process over. The BCC process is time sensitive also, so once you send in your paperwork make sure to monitor your e-mail for a response.

- Fingerprinting must be done by Delaware State Bureau of Investigation (SBI) after you pass your binder review.
- Chapter 11: Nursing facilities and similar facilities, Subchapter V, Section 1145 [DE Code Title 16 Link](#)
- Title 16 Health and Safety Delaware Administrative Code DHSS, DHCQ 3110 "Background Checks and Drug Testing for Programs and Home Care Agencies"

This link is about special employment practices: (goes over background checks and services letters)
<http://regulations.delaware.gov/AdminCode/title19/1000/1300/1320/1325.shtml>

Document Compliance

Are physicals and TB tests still waived?

No. • Employees that were hired under this waiver and did not have a baseline tuberculosis test upon hire must have a baseline tuberculosis test completed by October 13, 2021.

• As of July 13, 2021, All new employees/contractors shall be required to have a physical examination prior to providing care. The physical examination must have been completed within three (3) months prior to employment/referral.

Physicals - can we accept a physical that has been done within the last 12 months?

No, the physical examination must have been completed within three (3) months prior to employment/referral; and a copy of the physical examination shall be maintained in the individual's file.

Are agencies required to submit three service letters for agency directors?

No. All employees/owners must have the same prescreening, physicals, drug tests, and service letters. One service letter from the current or most recent employer is required for persons seeking employment with no previous health care or childcare employment. If a person seeking employment was employed by a health care or childcare facility within the last five years, the employer shall obtain a service letter from each employer(s) for those five years (Del. C. Title 19, Chapter 7, subchapter 1 §708).

Are we required to do a child abuse check if we only work with adults?

Yes

When do we have to submit our pre-hire information for licensure, and what if the owner needs to back-up a DCW?

Your pre-hire information must be available for all employees of the agency prior to care of the consumer/patient corresponding to your agency's regulations. These will be reviewed during our unannounced initial survey.

Do we need a face-to-face review of the documents after submission?

No, once your documents are prepared and ready for review, you will fill out the appropriate document compliance checklist. Once the checklist is complete, you will place a copy of the checklist in your binder and e-mail a copy of your checklist and Emergency Management Plan to the OHFLC. You can then bring your binder to OHFLC anytime Monday through Friday from 8am-4pm. If all the required documents are included in your binder and it is organized properly, we will accept your binder and add it to the waitlist for review. When your binder is selected for review, we will reference the regulations with the documents in your binder to determine if you are in compliance ****.

Can the checklist material be sent electronically or must be physical together with payment?

The Document Compliance Checklist (excel spreadsheet) must be submitted electronically as an excel file type to the email listed on the cover page. A copy of the checklist should also be placed in the binder along with all other material and payment (Cashiers check or money order made payable to State of Delaware) and brought into our office anytime Monday through Friday from 8am-4pm.

What is the time frame between submission of my binder and getting a response?

There are many variables in place that prevent us from giving you a time frame for a response from your checklist submission. The Division of Health Care Quality (DHCQ) Office of Health Facilities Licensing and Certification (OHFLC) is the office that regulates and oversees all the acute and outpatient healthcare providers, including home care agencies, in the State of Delaware. The DHCQ OHFLC responsibilities include licensing/overseeing and conducting State and Federal surveys and investigations of the acute and outpatient providers to ensure compliance with State and/or Federal regulations. There are over 308 acute and outpatient providers (hospitals, psychiatric hospitals, home care agencies, hospices, dialysis facilities, ambulatory surgical centers, etc.) throughout the state. In addition, the OHFLC must investigate all complaint allegations and incidents regarding each of these existing provider types and assist new providers through the licensure/certification process. There are several interested providers who are preparing documents for review. When you submit your binder with all required documents, you will be added to the waitlist for review. Document Compliance Binders are reviewed in the order they are received. This number varies depending on how many have been received and our State and Federal workload.

Misc

What does the WAIVER do? Waivers are generally made when there is an unprecedented need such as a public health emergency. Each waiver does something different but generally it eases the burden on the staff or the agency. It relaxes the rule for a period of time for instance during Covid there were waivers (which are no longer in effect) that allowed agencies to do tele med visits instead of in person visits etc.

What services are covered and what's the best agency to get qualified for in order to be a part of the safe haven program? OHFLC does not regulate the Safe Haven Program. Please reach out to Division of Substance Abuse & Mental Health, Administration www.dhss.delaware.gov/dhss/dsamh

What about requirement for group home. OHFLC does not regulate group homes. Please contact DDDS Division of Developmental Disabilities Services at <https://dhss.delaware.gov>

What services does the MCO'S pay and provide services for? The managed Care organizations help refer patients for Medicaid and Medical Assistance. OHFLC is not involved with the MCO's. Please contact Medicaid customer Relations 302-571-4900 or 866-843-7212 or provider services 800-999-3371

Can I change my mind about which type of agency I want to open?
Yes, all you need to do is submit a new Statement of Intent.

How do we get started?

How do we get our consumers/patients?

Each agency must procure their own consumers/patients.

I would like to receive Medicare payments; how does my agency get certified to receive Medicare payments?
PASA and home health agency aide-only HHA/O are non-medical and may not apply to receive Medicare payments. Once a skilled home health agency HHAS has received their full (Annual) license, they may contact the OHFLC for further guidance.

Can our agency hire you, the compliance nurse, to help us write our policies/procedures?
No, that would be a conflict of interest.

Can I submit my policies and procedures to have you read them prior to submitting our binder?
No, that would be unfair to all the other agencies. If you have specific questions, send an e-mail to DHSS_DHCQ_OHFLCFax@delaware.gov.

The Office of Health Facilities Licensing and Certification (OHFLC) website:

This website contains links to the Delaware Department of Health and Social Services (DHSS) Rules and Regulations pertaining to skilled HHA, HHA – aide only and PASA Licensure. Please print and review the regulations in detail for your type of agency prior to submitting your Statement of Intent.

Additional Resources:

Can I apply for licensing on Delaware One Stop prior to receiving my agencies license from OHFLC?

Delaware One Stop is where you would apply for a Delaware business license. You will need a Delaware Business license when completing the Step 2 checklist AFTER your binders have passed, but prior to being issued your license from OHFLC. You may not establish, conduct, or maintain in this State any agency without first obtaining a license from our Office of Health Facilities Licensing and Certification. This would include advertising as an agency.

How does PASA get reimbursed? You said Medicaid doesn't reimburse?

PASA and Home Health Agency Aide-Only are non-medical and may not apply to receive Medicare payments. OHFLC does not get involved with fees, self-pay or reimbursement. If you have any questions regarding Medicaid, please contact them at 302-454-7622 and Medicare at 800-633-4227.

Can homecare agency get its own CLIA license?

For questions regarding CLIA please contact Public Health Lab 302-223-1520.

What if I have to change the company name?

There is a change of information form on our website, follow the directions on the form.

Do you refer any companies that prepares Policy & Procedures Manual?

No, we do not refer or recommended any companies. If you do hire a company and they prepare your binder, make sure you review it to assure they are following the Delaware Code. Also, make sure you fill in any blanks or agency specific information.

Are there other information guidelines to help us to get our policy together?

The regulations tell you what policies you need and what needs to be in the policy. You must know the information and the regulations.

You should receive Interested Provider Review guides. This is a copy of the checklist and what we expect to see in your binder.

Some helpful sites include:

<https://www.dhss.delaware.gov/dhss/dph/dpc/files/tbscreeningtool.pdf>

<https://www.cdc.gov/tb/topic/testing/healthcareworkers.htm>

ASPR TRACIE

<https://asprtracie.hhs.gov/technical-resources/51/homecare-and-hospice/47>

Video by Visiting Nurse Association of America

<https://www.youtube.com/watch?v=2fxTLuV299c>

Packet by The National Association for Home Care & Hospice

http://www.nahc.org/wp-content/uploads/2017/10/EP_Binder.pdf

<https://business.delaware.gov>

(small business support- you must know the regulations and requirements for the agency: they can only assist in what policies and procedures should cover and include/ annual review, etc. but will not know about the regulations the policies must address.

Will the slides from the presentation be made available to us after the training?

The slides will be emailed after the meeting.

Additional Information

- Use this email for all forms and questions. It will be sent to the proper contact person and they will reply
DHSS_DHCQ_OHFLCFax@delaware.gov.

- We do not regulate nurses but the website for the Board of Nursing (Division of Professional Regulation) is:
<https://dpr.delaware.gov/boards/nursing/>

- If you have any questions regarding Medicaid, please contact them at 302-454-7622 and Medicare at 800-633-4227.

- If you are interested in opening an Adult Day Care from home, please call the other Divisions below to see what their requirements are.

- For Family Care Homes or Neighborhood Homes and Rest Residential Homes, please contact the Division of Health Care Quality (Long Term Care Office) at 302-421-7400.
 - For Group homes for substance abuse or developmentally disabled people, please contact the Division of Substance Abuse and Mental Health (DSAMH) at 302-255-9399.
 - For Adult foster care homes, please contact the Division of Services for Aging & Adults with Physical Disabilities (DSAAPD) at 302-255-9374.
- Other than the original submission of your binder, do not attempt to “stop in” at the OHFLC, as team members may not be available to assist you.
 - You may NOT provide services to any patients/consumers until such time as you have received a license from this office.
 - Do not submit payment until directed to do so.

When submitting your Document Compliance Review (DCR), please make sure to include your initial application and certified check made payable to: State of Delaware. Please email your emergency plan to
DHSS_DHCQ_OHFLCFax@delaware.gov per the application requirements.

**** Note: Please do not put your DCR documents in sheet protectors because it makes it more difficult to read.

Can we reach out to you if we have questions while we are getting documents together?

OHFLC employees will answer any questions as able. Keep in mind that the staff at OHFLC have a variety of duties and are often not in the office so send your questions via e-mail to DHSS_DHCQ_OHFLCFax@delaware.gov. If you send an e-mail inquiry, it may take a few days to get back to you, so please have patience.

When handing in your binder for Document Compliance Review make sure you have one copy for OHFLC and one copy for your agency. Your binder will not be returned.