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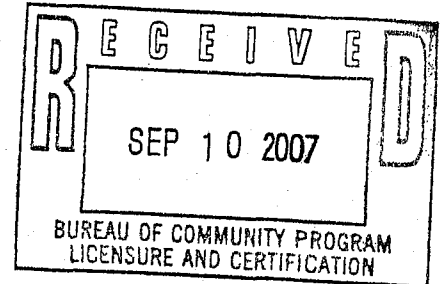
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Dear Ms. Staloski:

Enclosed please find comments submitted by JEVS Human Services in response to the Department's proposed regulations for Pennsylvania Act 69 of 2006 providing for providing for licensure of home care agencies and home care registries (28 Pa. Code Ch.611) . We appreciate the opportunity to participate in the Commonwealth's efforts to preserve quality and consumer direction in its home and community-based services system.

If you have any questions or need further information regarding these comments, please feel free to contact Dave Stephens, Director of JEVS Supports for Independence (267-298-1300 [dave.stephens@jevs.org](mailto:dave.stephens@jevs.org)) or Mark Davis, JEVS' Director of Public Policy (215-854-1869 [mark.davis@jevs.org](mailto:mark.davis@jevs.org)).

Sincerely,

Jay Spector  
President & CEO



**JEVS Human Services  
Comments to  
Department of Health proposed Rulemaking  
28 PA. Code Ch. 611  
Home Care Agencies and Home Care Registries  
[37 Pa.B. 4198]**

**Overview**

JEVS Human Services is one of the largest private non-profit human services organizations in the Philadelphia region. JEVS serves approximately 16,000 persons annually through a variety of job training, vocational rehabilitation, adult residential and community-based supports for persons with disabilities. One of JEVS' leading programs is our Supports for Independence (SFI). SFI empowers over 2,500 seniors and people with disabilities to self-direct their own care, enabling them to remain independent in their own homes with a broad continuum of high quality personal assistance, fiscal and service coordination supports. Under contracts and funding agreements with the Department of Public Welfare, Office of Long Term Living and 26 County Area Agencies on Aging, these supports provide individuals with the choice, control and flexibility necessary to assure that they will receive services tailored to their needs.

SFI's consumer base is comprised of participants in Pennsylvania's consumer-directed model of home and community-based services. These consumers decide which services they wish to use which workers to hire, and what activities and the time of day they want service. In this service model, consumers are the employer of record and managed and direct their own care from workers they employ to provide their personal assistance. The workers providing personal assistance are therefore not JEVS Human Services' "employees", nor are they "independent contractors", terms included in § 611.4. in the definitions of "*Home care agency*" and "*Home care registry*".

The following comments are intended to preserve the self-directing consumer's independence, choice and control while they continue to receive the supports necessary to direct their services compatible with the intent of Act 69 of 2006. The regulations need to take into account circumstances where the consumer is the employer of record and at the same time receive assistance with "supports coordination" services that are required of fiscal management service providers. This is the actual locus of control and direction of the service that should guide authority for licensing. The Department has agreed that regulating consumers as employers living in their own homes is not consistent with the Commonwealth's commitment to consumer direction. Similarly inconsistent, in our estimation, is the regulation of "supports coordination" services that assist them in that regard.

## Areas for Comment:

### Summary

In the *Summary* of the regulations, paragraph 5 clarifies several definitions used in the regulations. It states, “ **'Financial management services' means one or more of five specified services associated with meeting the payroll and other responsibilities of a consumer of home care services who is also the employer of the direct care worker. If the entity provides only financial management services to a consumer of home and community-based services, the entity would not be a covered entity for licensure purposes. The corollary, of course, is that if the entity provides more than financial management services, the entity would not be automatically excluded and would have to examine its operations to determine if it were subject to the licensure requirements**”.

Under the federal Medicaid 1915(c) waiver program guidelines, as well as contracts with the Department of Public Welfare and local Area Agencies on Aging, entities providing financial management services (FMS) are also required to provide a range of supports coordination activities, some of which are beyond the six items listed under the definition of “Financial management services” in the definition section of the proposed regulations. Examples include: performing criminal background checks, assisting consumers with conflict resolution, and coordinating services with other state and county agencies. Supports coordination services are further described in the Departments of Aging’s and Public Welfare’s Home and Community-Based Services Procedure manuals. These services do not create an “employment” or “independent contracting” relationship between the financial management services provider and the consumers’ employees. These relationships remain the essence of the definitions of entities to be licensed. Reliable delivery of these supports coordination services are required of fiscal management service providers and are necessary to enhance the ability of consumers to be employers and to direct their own services.

Given that programs that provide Fiscal Management Services operating under IRS Revenue Procedures 70-6 or 80-4, as referred to in the proposed regulations, are all required to provide “Supports Coordination”, JEVS suggests adding language to include “Supports Coordination” together with and in addition to the definition of “Financial Management Services”. We also suggest removing the term “only” in reference to FMS under the definitions of “Home care agency” and Home care registry”. We ask that the section of the Summary referenced above (in bold) be amended to align with these suggested changes.

## General

### § 611.2. Affected home care agencies and home care registries.

JEVS suggests that this section be amended to include a specific exemption from the proposed regulations for financial management and other supports coordination services for consumer/employers who self-direct their own personal assistance services.

### § 611.4. Definitions

JEVS suggests the following changes to the "Definitions" section:

*"Financial management services"*—add: (vii) Other Supports Coordination services as defined below, required by the Pennsylvania Departments of Aging and Public Welfare, and outlined in the Commonwealth's Home and Community-Based Services Procedures Manual.

*"Home care agency"* -- Paragraph (ii) should be amended by deleting the term "only" in reference to financial management services to read:

(ii) The term does not include.....an organization or business entity designated under 26 U.S.C. § 3504 and either IRS Revenue Procedure 70-6 or IRS Revenue Procedure 80-4 that provides financial management services to consumers of home and community-based services through Medicaid waiver or other publicly funded programs.

*"Home care registry"* -- Paragraph (ii) should be amended by deleting the term "only" in reference to financial management services to read:

(ii) The term does not include an organization or business entity designated under 26 U.S.C. § 3504 and either IRS Revenue Procedure 70-6 or IRS Revenue Procedure 80-4 that provides financial management services to consumers of home and community-based services through Medicaid waiver or other publicly funded programs.

*"Supports coordination"*— A range of supportive services, provided at the consumer's direction, designed to maximize individuals' capacity to manage and direct their home and community-based services and supports. Supports coordination involves working with consumers to identify, coordinate, and facilitate Medicaid home and community-based waiver services. Supports coordination includes intake, needs assessment, advocacy for services from local resources, as well as coordination of needed medical, social, educational and other services to achieve maximum consumer independence.