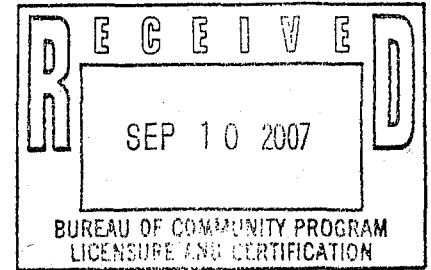



GRISWOLD SPECIAL CARE
A Tradition of Home Care Excellence
Corporate Headquarters

 RECEIVED
 DEPARTMENT OF HEALTH
 2007 SEP 11 PM 2:50
 OFFICE OF LEGAL COUNSEL


September 7, 2007

 Janice Staloski, Director
 Bureau of Community Program Licensure and Certification
 132 Kline Plaza, Suite A
 Harrisburg PA 17104-1579

Dear Ms. Staloski,

Enclosed please find our comments regarding the proposed rules for Home Care Agencies and Home Care Registries. Please note that our suggested deletions use a strikethrough format, suggested additions use red-underlined text and questions use blue text. Rationale for suggested changes are noted in italics underneath the referenced regulation.

GRISWOLD SPECIAL CARE is the oldest multi-national non-medical home care company in the world and we have been operating in Pennsylvania since 1982. Currently, we have over 90 offices in 17 states with 20 offices throughout the Commonwealth of Pennsylvania. We have worked with 12 different states on state licensure and/or regulations for non-medical home care. In some states we refer independent contractors while in others we have employees, so we have direct experience with both structures. In Pennsylvania, we have successfully referred contractors for over 25 years to help older and disabled persons remain in the community. For more information about our company, please visit our website at www.GriswoldSpecialCare.com.

We respectfully ask that you consider our suggested changes, specifically regarding language concerns, as our long-term experience has helped us refine what works and does not work (both legally and practically) when referring independent contractors in a private pay, non-medical home care setting.

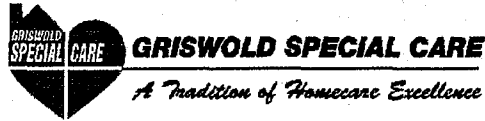
Upon review of our comments, please do not hesitate to contact me if you have questions or need additional information.

Thank you for your consideration of these comments.

Sincerely,

 Lori R. Griswold, Ph.D., M.S.G.
 Executive Vice President

 RECEIVED
 2007 SEP 14 AM 9:41
 INDEPENDENT REGULATORY
 COMMISSION



Comments

SENT VIA OVERNIGHT MAIL (USPS) TO:

Janice Staloski, Director
Bureau of Community Program Licensure and Certification
132 Kline Plaza Suite A
Harrisburg PA 17104-1579

Submitted by:

Lori R. Griswold, Ph.D., M.S.G.
Executive Vice President
GRISWOLD SPECIAL CARE, Inc.
717 Bethlehem Pike Suite 300
Erdenheim PA 19038
215-402-0200 fax 215-402-0202
e-mail: lori@GriswoldSpecialCare.com

Regarding:

Proposed Regulations for Home Care Agencies and Home Care Registries
Title 28. Health and Safety
Part IV. Health Facilities
Subpart H. Home Care Agencies and Home Care Registries

September 7, 2007

§ 611.4. Definitions.

Home care registry--

(i) An organization or business entity or part of an organization or business entity that supplies, arranges or refers independent contractors to provide assistance with activities of daily living or instrumental activities of daily living, or specialized care, in the consumer's place of residence or other independent living environment for which the registry receives a fee, consideration or compensation of any kind.

--- "specialized care" not defined anywhere.

§ 611.14. Issuance of license.

(a) The Department will issue a license to operate a home care agency or home care registry, or both, after the Department determines the applicant is a responsible person and/or an inspection or review of materials submitted, conducted by the Department indicates that the applicant is in substantial compliance with this chapter.

---The Department may want to have more flexibility when issuing licenses rather than be bound to conduct an on-site visit. Many states now require up front documentation to be sent in for review, a license is granted upon acceptance of materials and an on-site visit is done when there are at least 10 clients or before the end of the first year (ie: Texas. Home and Community Support Service Agencies).

§ 611.17. Responsibility of owners of home care agencies and home care registries.

(c) The owner, administrator or designee shall be responsible for meeting the minimum standards for operation as set forth by the Department and by other State and local agencies responsible for the health, welfare and safety of the consumers of services.

--To maintain consistency with paragraphs (b) and (c).

(a) The owner, administrator or designee shall immediately report within 30 days to the Department a relocation of the home care agency or home care registry or a change of address for the home care agency or home care registry.

--Providers should be given at least 30 days to submit a change in address to the Department. "Immediately" is undefined.

§ 611.31. Inspections.

(a) Prior to issuance of an initial license or renewal of a regular or provisional license, representatives of the Department ~~will~~may conduct an inspection of a home care agency or home care registry. Whenever the Department has received any complaint or has other reasonable grounds to believe that a deficiency exists, the Department may conduct an inspection to determine whether a deficiency exists.

(2) Examination of ~~all of the facilities, buildings, grounds, files, policies and procedures, records, documents, offices, computer files, quality assurance files, risk management documents,~~ governing body and management documents, consumer files, or direct care worker files, as appropriate.

--The Department may want to have more flexibility rather than be bound to have an inspection. The stricken items listed in (2) are beyond the scope of the statute and rules for home care.

§ 611.32. Retention of records.

The documentation required by this chapter and documentation with respect to establishing that the home care agency or home care registry is in compliance with applicable Federal, State and local requirements shall be retained by the home care agency or home care registry onsite or in a reasonably accessible and safe location. Documentation shall be retained for 4 years after termination of services to a consumer unless otherwise required by applicable Federal and State laws and regulations. Personnel records required under § 611.51 (relating to hiring or rostering of direct care workers) shall be retained for at least 4 years following termination of employment or roster status of a direct care worker. Documentation and records shall be retained even if the home care agency or home care registry discontinues operation. Documentation includes paper and electronic information.

--Closed files may be stored off-site in a secure location due to space limitations.

§ 611.51. Hiring or rostering of direct care workers.

(a) *Hiring or rostering prerequisites.* Prior to hiring or rostering a direct care worker, the home care agency or home care registry shall:

- (1) Conduct a face-to-face interview with the individual.
- (2) Obtain at least two satisfactory references for the individual.
Such references shall be either supervisory or personal references but not family or relatives.

--Clarification necessary as to type of references that are acceptable.

(3) Require the individual to submit a criminal history report, in accordance with § 611.52 (relating to criminal background checks), and a ChildLine verification, if necessary, in accordance with § 611.53 (relating to child abuse clearance).

- (b) ~~*Personnel-Direct Care Worker files.*~~ ~~*Personnel Files*~~ for direct care workers employed or rostered must include documentation of the date of the face-to-face interview with the individual and of references obtained. ~~*Personnel Files*~~ also must include the other information as required under § 611.52, § 611.53, if applicable, and §§ 611.55 and 611.56 (relating to training requirements; and health evaluations).

---The term "personnel" customarily imputes an employment relationship. Encourage the use of generic and consistent language in order to cover for both employee and contractor based businesses. The term "personnel" is not used in the statute purposely so as not to pose problems for contractors thus we respectfully request it be deleted from use in the regs

§ 611.52. Criminal background checks.

(d) *Proof of residency.* The home care agency or home care registry may require an applicant for employment or referral to furnish proof of residency, including any one of the following documents:

- (1) Motor vehicle records, such as a valid driver's license or state issued ID.
- (2) Housing records, such as mortgage records or rent receipts.
- (3) Public utility records and receipts, such as electric bills.

- (3) Local tax records.
- (5) A completed and signed, Federal, State or local income tax return with the applicant's name and address preprinted on it.
- (6) Employment records, including records of unemployment compensation.
- (f) *Records maintained.* The home care agency or home care registry shall maintain ~~personnel~~ records for ~~individuals~~ direct care workers employed or rostered which include copies of State Police criminal history records or Department of Aging letters of determination regarding Federal criminal history records. The ~~personnel~~ records shall be available for Department inspection.

--Addition of "state issued ID" as some direct care workers may not have a license but rather an ID. Eliminate the use of the term "personnel" and substitute "direct care workers" for individuals to maintain clarity and consistency with the statutory language. No need for "employed or rostered" as covered in the definition.

§ 611.53. Child abuse clearance.

- (a) *General rule.* A home care agency or home care registry that serves persons under 18 years of age shall require each applicant or registrant for employment or referral as a direct care worker who will be serving persons under 18 years of age, and each member of the agency or registry office staff who will be working with persons under 18 years of age, to request a ChildLine verification regarding whether the applicant or member is named in the Statewide Central Register as the perpetrator of a founded or indicated report of child abuse as defined in 55 Pa. Code § 3490.4 (relating to definitions). Only direct care workers providing services to individuals under the age of 18 are required to have the ChildLine clearance. If a home care agency or home care registry does not service consumers under the age of 18 then no ChildLine clearance is required.

--Clarification to ensure that the ChildLine check is only necessary when working with persons under 18 years of age. Prefer the term "registrant" rather than "applicant" for registries.

- (c) *Records maintained.* The ~~personnel~~ records maintained by the home care agency or home care registry for each ~~individual~~ direct care worker employed or rostered and for each member of the office staff

working with persons under 18 years of age must include copies of the ChildLine verification. The agency or registry shall maintain also copies of the ChildLine verification for the agency or registry owners, which shall be available for Department inspection.

- (c) *Individuals currently employed or rostered.* A person who is employed by or rostered by the home care agency or home care registry as of _____ (*Editor's Note: The blank refers to the effective date of adoption of this chapter.*) shall obtain and submit a ChildLine verification to the home care agency or home care registry by _____ (*Editor's Note: The blank refers to a date 120 days after the effective date of adoption of this chapter.*). This subsection does not apply if the home care agency or home care registry obtained a ChildLine verification when the individual was hired or rostered and a copy of the verification is included in the individual's ~~personnel~~ file.

--Eliminate the use of the term "personnel."

§ 611.55. Training requirements.

- (a) Prior to assigning or referring a direct care worker to provide activities of daily living services to a consumer, the home care agency or home care registry shall ensure that the direct care worker has successfully completed a competency examination ~~demonstrated competency~~ in accordance with subsection (b) or has satisfied the training requirements in subsection (c), as applicable.

--language clarification to reflect the statutory language used of "successful completion" rather than "demonstrated competency."

(d) To be eligible for approval by the Department, a competency examination or other training program must address, at a minimum, each of the following subject areas:

- (1) Confidentiality.
- (2) Consumer control and the independent living philosophy.
- (3) Recognizing changes in the consumer that need to be addressed.
- (4) Basic infection control.
- (5) Universal precautions.

- (6) Handling of emergencies.
- (7) Documentation.
- (8) Recognizing and reporting abuse or neglect.
- (9) Dealing with difficult behaviors.
- (10) Bathing, shaving, grooming and dressing.
- (11) Hair, skin and mouth care.
- (12) Assistance with ambulation and transferring.
- (13) Meal preparation and feeding.
- (14) Toileting.
- (15) Assistance with self-administered medications.
- (16) ~~Home management.~~

--What is home management? Not defined and potentially problematic.

(e)The home care agency or home care registry shall include documentation of the ~~individual's~~ direct care worker's satisfactory completion of training or competency requirements in the individual's ~~personnel~~ file. If the ~~individual~~ direct care worker has a nurse's license or other licensure or certification as a health professional, the individual's ~~personnel~~ file shall include a copy of the individual's current license. Documentation of satisfactory completion of training competency requirements is transferable from one home care agency or registry to another home care agency or registry, provided the training competency meets the requirements of subsection (a) and the break in the individual's employment or roster status does not exceed 12 months.

--The statute uses "competency" not training in Section 806.Licensure (d.1)(1)(v) Also, the term "personnel" is not used in the statute purposely so as not to pose problems for contractors thus we respectfully request it be deleted from use in the regs. Use the term "individual" and "direct care worker" consistently.

(f)The home care agency or home care registry also shall include documentation in the individual's ~~personnel~~ file that the agency or

registry has periodically ~~reassessed~~ reviewed the individual's competency to perform ~~assigned~~ duties through either direct observation, testing, training, consumer feedback/reference, or other method approved by the Department or through a combination of methods. Periodic ~~reassessment~~ review shall occur at least once per year after initial competency is established, and more frequently when discipline or other sanction, including a verbal warning, is imposed because of a quality of care infraction.

--Delete "personnel" as described in previous sections. Use "reviewed" rather than "reassessed" as it can imply oversight and medical model language. Addition of "consumer feedback/reference" as they provide a valuable source of information on satisfaction with services rendered.

§ 611.56. Health evaluations.

(a) A home care agency or home care registry shall insure that each individual employed or rostered by the agency or registry and other office staff or contractors with direct consumer contact, prior to beginning work, provide documentation that is made part of the individual's ~~personnel~~ file, evidencing a screening assessment performed by a ~~qualified~~ licensed health professional within ~~180 days~~ one year prior to the individual's start date or first date of referral. The results of the screening assessment must include information showing that the individual was evaluated for tuberculosis and other forms of communicable diseases as determined by the health care professional, ~~risk factors, in accordance with guidelines issued by the Federal Centers for Disease Control and Prevention, and tested as necessary, and was screened for the following communicable diseases or conditions:~~

- ~~(1) Hepatitis A.~~
- ~~(2) Salmonella.~~
- ~~(3) Shigella.~~
- ~~(4) Shiga toxin producing Escherichia coli.~~
- ~~(5) Symptom caused by illness, infection or other source when the symptom is associated with gastro-intestinal illness such as diarrhea, fever, vomiting, jaundice or, sore throat with fever.~~

(b) A home care agency or home care registry may not refer a direct care worker that is known to have or is suspected by the home care agency or home care registry of having any of the a communicable diseases or conditions listed in subsection (a). Subsequent referral shall be contingent on verification from a qualified licensed health professional that the direct care worker is free from any of the communicable diseases or conditions listed in subsection (a), and safe for referral to consumers.

(c) A home care agency or home care registry shall require each direct care worker individual employed or rostered by the agency or registry, and other office staff or contractors with direct consumer contact, to obtain an updated screening assessment every 12 months and provide those results to the agency or registry only if the individual has a positive tuberculosis test or other communicable disease as determined by the licensed health care professional. The updated screening assessment shall be made part of the individual's personnel file.

--We believe it is important to obtain health screens prior to referral to consumers. However, to request a health care professional to screen for all the items listed in 1-5 is burdensome and costly. Besides, health care professionals are not going to easily grant such a request on a regular basis. In addition, from our experience, health care professionals state that it is not necessary to get annual health screens unless a direct care worker tests positive for tb or another communicable disease. Such an annual review will increase costs to the consumer which goes contrary to the intent of the statute. In addition, for your information as you consider this issue, many direct care workers are being told by physicians that they will not conduct an annual health screen unless the caregiver has gotten a mammogram (a costly procedure for individuals if they have no insurance). We ask that the health care professional be "licensed" rather than "qualified" and/or you further define what is an acceptable health care professional (physician, RN, nurse practitioner, etc).

§ 611.57. Consumer protections.

(a) *Consumer rights.* The consumer of services provided by a home care agency or through a home care registry shall have the following rights:

(1) To be involved in the service planning process and to receive services with reasonable accommodation of individual needs and preferences, except when the health and safety of the direct care worker is at risk.

(2) To receive at least 10 days advance written notice of the intent of the home care agency or home care registry to terminate services. Less than 10 days advance written notice may be provided in the event the consumer has failed to pay for services, despite notice, and the consumer is more than 14 days in arrears, or if the health and welfare of the direct care worker is at risk.

(b) *Prohibitions.* No individual as a result of the individual's affiliation with a home care agency or home care registry may assume power of attorney or guardianship over a consumer utilizing the services of that home care agency or home care registry. The home care agency or home care registry may not require a consumer to endorse checks over to the home care agency or home care registry.

(c) *Information to be provided.* Prior to the commencement of services, the home care agency or home care registry shall provide to the consumer, the consumer's legal representative or responsible family member an information packet containing the following information in a form that is easily read and understood:

(1) A listing of the available home care agency or home care registry services that will be provided to the consumer by the direct care worker.

(2) The hours when those services will be provided. Such hours that are requested by and agreed to by the consumer.

(3) The fees and total costs for those services on an hourly or weekly basis.

(4) Who to contact at the Department for information about licensure requirements for a home care agency or home care registry and for compliance information about a particular home care agency or home care registry.

(5) The Department's Hot Line (1-800-222-0989) and the telephone number of the Ombudsman Program located with the local Area Agency on Aging (AAA).

(6) ~~The hiring and training requirements applicable to direct care workers employed by the home care agency or referred by the home care registry, a description of the manner and frequency of periodic reassessment of direct care worker competency, and documentation maintained by the home care agency or home care~~

~~registry to confirm compliance with hiring and training requirements under §§ 611.51 and 611.55 (relating to hiring or rostering of direct care workers; and training requirements).~~
Confirmation that all direct care workers referred have the following prior to referral: 1) successfully completed a competency examination approved by the Dept of Health, 2) acceptable reference checks, 3) a face-to face interview, 4) a health screen completed by a licensed health care professional and a 5) criminal background review conducted by the PA State Police and/or FBI.

---Attempt to keep the language simple and easily understood by listing the basic items.

- (7) A disclosure, in a format to be published by the Department in the *Pennsylvania Bulletin* by _____ (*Editor's Note: The blank refers to a date within 60 days after the effective date of adoption of this chapter.*), addressing the employee or independent contractor status of the direct care worker providing services to the consumer, and the resultant respective tax and insurance obligations and other responsibilities of the consumer and the home care agency or home care registry.

--Respectfully request confirmation that the disclosure form submitted to the PA Bulletin receive a formal comment period or opportunity by providers to review and submit comments prior to mandated use by the Department.