



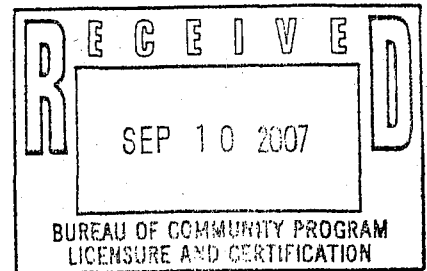
Pennsylvania Homecare Association

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DEPARTMENT OF HEALTH

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OFFICE OF LEGAL COUNSEL



September 10, 2007

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

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2007 SEP 14 AM 9:41

INDEPENDENT REGULATORY
REVIEW COMMISSION

RE: Final draft regulations by the Department of Health amending the Health Care Facilities Act, providing for the licensure of home care agencies and home care registries.

Dear Ms. Staloski:

The Pennsylvania Homecare Association represents more than 300 agencies that deliver care and support directly in the homes of more than a million elderly and disabled citizens each year in Pennsylvania. As our state's elderly population continues to rise as well as the cost of nursing home care, state officials now recognize the value and cost effectiveness of helping people to remain in their own homes. The proposed regulations to license homecare agencies and registries are critical to helping thousands of older and disabled Pennsylvanians to remain in their own homes.

For the last 17 years, our association, which represents the homecare agencies that will be licensed under this new law, has been the driving force behind the crafting of this legislation. Our advocacy efforts have been based on establishing minimum standards for homecare agencies and registries so that appropriate consumer protections are in place. It is also important to note that the majority of homecare agencies, which would be licensed under this new law, receive the bulk of their revenue from private pay clients. Therefore, it is more important than ever to contain any undue financial burden as a result of regulatory oversight.

Over the last year, we have worked closely with lawmakers and state officials on crafting regulations that balance sufficient consumer protections with fair policy and minimal financial impact. We appreciate the Department of Health's continued assertion that these regulations are meant to provide minimum standards while allowing flexibility for both the providers and the Department in its oversight.

We also support the Department's pledge to make these regulations more of a social model, rather than a medical model. Act 69 clearly states that its purpose is to oversee homecare agencies providing *non-medical services*. However after reviewing the published draft regulations, our member agencies have **two major concerns** that focus on chapters relating to training requirements and health evaluations. These two issues will have a significant impact on the ability of homecare agencies to control administrative costs and hire qualified staff.

Your
partner in
bringing care
home

If Pennsylvania is to continue with its efforts to create a long-term care system that promotes independence along with home and community-based care options; these regulations must provide fair and reasonable expectations for an industry that is reliant on market demand and private pay; not burdensome regulations that will add administrative costs with no additional benefit to consumers.

The two major concerns appear below:

- **§611.55. Training Requirements** – Subsection (d) details the 16 subject areas that any competency training program must address. Subject areas 10-16 are far more intensive and medical in nature, than are appropriate for someone performing only instrumental activities of daily living (IADLs). We recommend that the Department reinsert language from the previous draft of the regulations that would allow subject areas 10-16 to be optional subject areas – depending on the responsibilities of the direct care worker. Requiring these subject areas for all direct care workers is unnecessary and will add additional time and cost, particularly for those agencies that provide only companion services.

We also recommend that the Department offer at least three pre-approved competency exams to assist agencies in meeting the training requirements. These competency programs, per the statute, should be optional. By offering samples of approved competency programs; it will not only save time for Department surveyors; it will also assist agencies in their preparation for their initial survey. PHA would be willing to work with the Department in creating such competency programs.

- **§611.56. Health Evaluations** – The Department added five additional screening requirements beyond the originally mandated TB testing. Requiring workers to be screened for conditions 1-5 adds to the overhead costs for agencies while providing no additional benefit to consumers. This requirement far exceeds health screenings for other facilities under the Health Care Facilities Act, including hospitals and nursing homes. In addition, prospective homecare employees do not have access to clinics that would provide these additional health care screenings. Also homecare agencies and registries, because they are non-medical providers; do not have qualified health care professionals on staff to conduct the screenings. This will only serve to further exacerbate a growing shortage of direct care workers. In addition, the Department has not defined what would constitute “screened” for these additional conditions. We recommend removing these additional diseases.
- Agencies also need a time period of 180 days to meet the requirements of this chapter for individuals currently employed or rostered. We recommend adding a subsection (c) for *Individuals currently employed or rostered*. A home care agency or registry as of _____ (*Editor’s Note: The blank refers to the effective date of adoption of this chapter.*) shall achieve compliance with the hiring or rostering requirements imposed by this subpart by _____ (*Editor’s Note: The blank refers to 180 days after the effective date of adoption of this chapter.*)

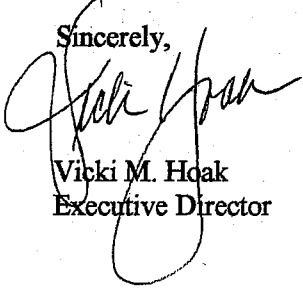
The following are comments on additional chapters.

1. **General Comment:** The term “personnel” customarily imputes an employment relationship. We recommend the use of generic and consistent language such as direct care workers, in order to cover both employee and contractor-based businesses. The term “personnel” is not used in the statute purposely so as not to pose problems for contractors. It should also be deleted from the regulations.
2. **Section 611.11. License Required**
 - i. Under the current license for home health agencies, the organization is permitted to have one license for a central office and branch locations connected to the central office. We recommend that this same rule apply to a homecare agency/registry. Many agencies/registries may have a branch office with staff but the personnel files are housed in a central location.
3. **Section 611.14. Issuance of license.**
 - i. Under subsection (a) we recommend that the phrase “or review of materials submitted” be inserted after the word inspection. This would provide the Department with the flexibility to conduct inspections through a review of materials if such a method is deemed appropriate.
4. **Section 611.17 Responsibility of owners of home care agencies and home care registries**
 - i. The following changes are recommended: 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.
5. **Section 611.18 Change in ownership or management**
 - i. Under subsection (d) we recommend changing the notice to 90 days; rather than 30. The extension in time would allow for the typical probationary period of three months. We also recommend changing the word “management” to “senior level personnel.”
6. **Section 611.19. Void License**
 - i. Subsection (4) should read as the prior statements: “The facility relocates to another site *without notice* to the Department required by § 611.17 (c).” If an agency relocates their office that should not automatically void their license.
7. **Section 611.31. Inspections**
 - i. We recommend adding subsection (f) “On-site inspections may be scheduled in advance or unannounced”. Many homecare agencies and registries operate out of their homes or small offices and the manager and/or owner are also caregivers that are out on the road providing care. Many times an individual is not in the office to greet an inspector without prior notice. Similar language is found in the regulations for home health agencies.
8. **Section 611.32 Retention of Records**
 - i. We recommend removing the word “onsite” in regard to the retention of records and replace it with “*and be reasonably accessible*”. Many agencies do not have storage space, consequently older files are sent off-site for storage. In other instances

when information was provided as well as dates informational packets were mailed should be required.

PHA is very interested in continuing to assist the Department and we look forward to continued cooperation throughout this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Vicki Hoak", written over the typed name and title.

Vicki M. Hoak
Executive Director