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September 10, 2007

VIA ELECTRONIC MAIL and FIRST CLASS MAIL

Janice Staloski, Director
Bureau of Community Program
Licensure and Certification
Pennsylvania Department of Health
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INDEPENDENT REGULATORY
REVIEW COMMISSION

**RE: Department of Health Proposed Rulemaking:
Comments on Proposed Rule Home Care Agencies
and Home Care Registries,
37 Pa. Bulletin 4198 (August 4, 2007) (IRRC #2623)**

Dear Ms. Staloski:

We are counsel to the County Commissioners Association of Pennsylvania (CCAP) and the Pennsylvania Association of County Affiliated Homes (PACAH) and on their behalf appreciate the opportunity to comment on the Department of Health's (Department) proposed rule *Home Care Agencies and Home Care Registries*, 37 Pa. Bulletin 4198 (August 4, 2007).

CCAP is a statewide, nonprofit, bipartisan association representing the commissioners, chief clerks, and solicitors of Pennsylvania's sixty-seven (67) counties. CCAP serves to strengthen Pennsylvania counties' ability to govern their own affairs and improve the well-being and quality of life of their constituents. CCAP strives to educate and inform the public, administrative, legislative and regulatory bodies, decision makers, and the media about county government. CCAP also has contractual agreements with a number of independent associations and organizations having ties to county government. PACAH is an affiliate of CCAP and represents the interests of county and county-affiliated nursing homes as well as private nursing homes in Pennsylvania. The overall intent of this affiliation process is to have mechanisms whereby these groups and CCAP can arrive at common policy positions.

CCAP and PACAH support the Department's efforts to regulate home care agencies and home care registries. In general, we are supportive of the proposed regulations. We do, however, have the following comments and suggestions.

Section 611.4

We believe that the definitions of "home care agency" and "home care registry" are overly broad to the extent that they encompass organizations that may supply, arrange or schedule employees to provide assistance to residents/consumers who live on the same campus as the supplying entity. For example, it is not uncommon for nursing homes and personal care homes to provide employees on an intermittent basis to people who live in those campuses' independent living apartments. Since such employees of the nursing home and/or personal care home are already certified and otherwise qualified pursuant to Department of Health and/or Department of Public Welfare licensure regulations and would only be providing services to clients of the same or sister organizations, we believe that the proposed regulations, by not exempting such workers, create an unnecessary redundancy. Please know that we do support the regulation of agencies and registries that provide services to clients unrelated to themselves or sister organizations, as in the case where services are provided in clients' homes or independent apartments at other locations.

Section 611.31(e)(2)

CCAP and PACAH respectfully request that the Department limit its examination of facility documents that may be subject to an attorney/client, attorney work product, or peer review privilege. As currently proposed, Section 611.31(e)(2) may inadvertently cause a facility to waive or forfeit claims to any confidentiality or peer review protections those documents may otherwise possess. CCAP and PACAH respectfully submit that the Department has access to sufficient other documents that will allow it to perform its licensure and inspection responsibilities without necessitating waiver of privileged and otherwise confidential and protected documents such as broad categories of "quality assurance" material or "risk management" documents.

Section 611.56(a) and (c)

While CCAP and PACAH support the Department's attempt to protect consumers from workers with communicable diseases or conditions, we believe that the proposed rulemaking with regard to annual screenings is excessive, intrusive and too expensive to implement. The proposed screenings far exceed employee screenings required in other licensed health care facilities. Moreover, the specific conditions for which the Department is requiring screening appear, in large measure, to be food related. We question, for example, why the Department would require screening only for Hepatitis A but not for other variants of the Hepatitis virus. We respectfully suggest that the Department revise this specific regulation to track those set forth in the Department's Long Term Care Facilities Licensure Regulations at Section 201.22 regarding prevention control and surveillance of tuberculosis.

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CCAP and PACAH are concerned about the costs of annual screening assessments. The proposed screenings are invasive, requiring blood tests as well as potential stool samples. This type of testing far exceeds the testing otherwise required for employees who work with patients and residents in an in-patient setting. We respectfully request that the Department reconsider these specific regulations and adopt a more broadly based regulation that would require home care agencies or home care registries to assure that employees do not have communicable diseases or conditions without specifying the list or the way those assessments should be done. With the possible exception of testing for tuberculosis, we are not aware of any other licensed facility that is required to obtain annual employee health assessments and screenings. We question why home care agencies and home care registries would be required to obtain annual employee assessments and screening when such is not required in any in-patient settings.

We appreciate the opportunity to comment on these proposed regulations and thank you for your consideration.

Sincerely yours,



Paula G. Sanders

PGS/cln

cc: Michael J. Stephens (via electronic mail)
Michael J. Wilt (via electronic mail)