



2623

Central Penn Nursing Care, Inc.

August 20, 2008

RECEIVED
DEPARTMENT OF HEALTH
2008 AUG 22 PM 1:17
OFFICE OF LEGAL COUNSEL

Ms. Karin Simpson, Esq.
Department of Health
Office of Legal Counsel
825 Health & Welfare Building
625 Forster Street
Harrisburg, PA 17120

Dear Ms. Simpson:

I would like to commend the Department on the many changes they made to this last draft of the regulations. There are many changes that demonstrate that the Department listened very carefully to comments and took thoughtful and insightful action promoting, I believe, the best interests of the consumer. The Department is certainly challenged to represent many perspectives that are not entirely all right or all wrong. Over all I think they did a heroic job of finding the middle ground.

There are, however, several areas that I believe still require change. Several of them I consider to be critical.

Starting at the bottom of page 7 and continuing onto page 8 the Regulations totally change the intent and the wording of the Health Care Facilities Act as stated in the definitions of Chapter 8 of the Act.

The Act states: "Home care agency." Is "An organization, exclusive of a home health care agency, that supplies, arranges or schedules employees to provide or perform activities of daily living or instrumental activities of daily living or companionship services or specialized care on an hourly, shift or continual basis to a consumer"....

The Department removed the assistance with activities of daily living or instrumental activities of daily living or companionship services or specialized care on an hourly, shift or continual basis to a consumer and replaced it with "home care services, as directed by the consumer or the consumer's representative.

This change creates serious and even dangerous issues. They are:

1. It eliminates the Department's need to recognize the Acts intention to address a gap in the current licensure system addressing individual's assigned by agencies to provide care given by a licensed Registered or Practical nurse on a shift or hourly basis. I will go into this issue in greater detail later in this letter.
2. It certainly suggests that the agency has little if any say in the development of the consumer's plan of care. The development of a plan of care must be a collaborative effort between the agency's supervisory staff and the consumer.

For example, there are times when what the consumer requests are not safe for either the consumer or, perhaps, the assigned employee. Additionally consumers frequently request services requiring the assignment of a licensed employee. It is important that the Regulations clearly demonstrate the Agencies need and right to refuse to perform those tasks while attempting to find a solution that meets the client's needs. There must be recognition that the agency has a right to refuse to do a consumer requested or demanded task if the request is illegal, unethical, unsafe, amoral or immoral short of a refusal to service the consumer.

I believe that the Department fails to understand that many home care agencies employ Registered Nurses to work with consumers to develop the consumer's plan of care and then to supervise care and to communicate on an on-going basis with consumers to insure their wishes are recognized and met. The consumer's relationship with this type of agency should clearly be a collaborative effort with neither entity "ruling".

It is our contention that the Department lacks the authority to change the definition of home care agency as outlined in the Act.

I would suggest that the definition of the "Health care practitioner" as defined in the Health Care Facilities Act, Chapter 1, Section 103 of the Definitions is the applicable definition. This definition says a health care practitioner is "an individual who is authorized to practice some component of the healing arts by a license, permit, certificate or registration issued by a Commonwealth licensing agency or board."

I think the changes to the language used on page 10 of the regulations where the Department has changed its definition of "Qualified health professional." from "an individual who holds a license or certification issued by the Commonwealth which allows for the performance of a physical examination, evaluation or assessment" to say it is limited to "a physician, physician's assistant or a certified registered nurse practitioner" is not consistent with the intent and definition of the legislature as defined in the Act.

I think that Registered Nurses routinely provide screening assessments and use those assessments to identify problems that need to be referred to a medical doctor for further evaluation and follow-up. I strongly urge the Department to change their definition of Qualified health professional to reflect this standard. If the CDC is currently saying that a screening questionnaire is an adequate tool for assessing an individual for active TB then I think we could apply this standard to this need.

The reality is that most physicians use a standard and relatively simple form to certify individuals free from communicable disease and are not doing extensive blood work testing or other types of screening. It seems that when one considers the cost of sending every conditional hire to a physician for screening, versus having an effective, extensive and appropriate questionnaire, with the requirement it be reviewed by a nurse and the conditional employee, we should use every resource we can to authorize a qualified R. N. to perform this screening.

It would be appropriate, I think, for the regulation to require the R. N. to use a questionnaire that could be evaluated by the Department on a survey and then require the agency to have a policy stating that the agency will refer any individual with “suspicious” responses to a medical doctor for further evaluation prior to the individual being assigned to a client.

Finally, on page 10 of the regulations is a baffling and disturbing definition of the meaning of “Specialized care.” The Department defines this care as “non-medical services unique to the consumer’s care needs that facilitate the consumer’s health, safety and welfare, and ability to live independently.”

I challenge the department on this definition because it is the understood goal of all care regardless of the skill level required to deliver the care. Is the Department suggesting that a caregiver providing ADLs and IADLs has a different goal for their client (consumer)? Is a Registered Nurse or a Licensed Practical Nurse involved with a client (consumer) living independently different? I do not believe this definition is a definition but rather a widely accepted standard of care and cannot withstand any challenge.

Since I participated in PHAs original and subsequent meetings to assist PHA in developing recommendations to be given to the legislative bodies, and since it was, to the best of my knowledge, this body that developed the term specialized care, I would like to go on record about our definition and reasoning for the term “specialized care.”

It was no secret to us that the amendment of the Health Care Facilities Act creating the requirement for licensing of Home Health Care Agencies left a serious gap in the licensure requirement for care requiring a nursing license provided on a shift basis or care not combined with another therapeutic service

When the legislature chose to define a “Home health care agency” as “an organization or part thereof staffed and equipped to provide nursing and at least one therapeutic service to persons who are disabled, aged, injured or sick in their place of residence or other independent living environment. The agency may also provide other health-related services to protect and maintain persons in their place of residence or other independent living environment.” It failed to address “specialized care” such as ventilator dependent babies or persons discharged from Medicare services but continuing to need substantial licensed medical care.

It is interesting to note that many agencies providing these types of services have chosen to become licensed in Pennsylvania. While it is interesting to note this fact, it is important to know why. As the insurance companies were challenged with providing and paying for more technically challenging and “specialized care” they sought the protection of State licensure to validate the qualifications of distant agencies providing these types services to their clients.. The insurers adopted the posture—no license—no payment. Faced with this reality agencies quickly became home health care agencies.

One could say, “Well, if providers have become licensed—what’s the issue?” It is important to note that there is currently care being provided to consumers requiring a nursing license that is privately paid for by the consumer. Examples of this care would be: care of an open wound, the administration of medications or any other skill that the Nurse Practice Act mandates that a nurse must provide if money is exchanged.

Unless this gap is addressed in the home care agency regulations as intended by the use of “specialized care” this gap will remain in place. The fact that the Department would like to say that an agency providing licensed care will have to become a home health care agency does not make it necessary for a home care agency to become licensed.

I can only tell the Department that our first choice of words was licensed care. However, we were faced with so many exclusions that it quickly became too cumbersome.

I think if you read the Act, it does not suggest in any way that its intent was to only address custodial or non-medical care. In fact, I would suggest that the wording under Section 806 (d. 1) (1) that says, “An individual with direct consumer contact employed by the home care agency and an individual referred to a consumer by a home care registry after the effective date of this subsection shall meet at least one of the following requirements prior to referral to consumer:

- (i) A valid nurse’s license in this Commonwealth.”

demonstrates recognition of the need to have oversight of licensed care.

I appreciate the opportunity to communicate my concerns to you and hope they will help to clarify some of our issues.

Sincerely,



Celia T. Rick, R.N., B.S.N.
Director of Services
Central Penn Nursing Care, Inc.