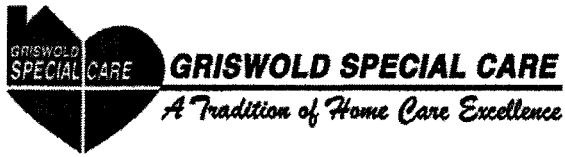


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VIA E-Mail ([ksimpson@state.pa.us](mailto:ksimpson@state.pa.us))

August 14, 2008

Karin Simpson, Senior Counsel  
PA Department of Health, Office of Legal Counsel  
Room 825 Health & Welfare Building  
7<sup>th</sup> and Forster Streets  
Harrisburg PA 17120

Dear Ms. Simpson,

It is our sincere hope that the Department of Health will review/revise a couple items in the proposed final regulations for home care agencies/registries.

- 1) Our major concern deals with the need for annual clearances for communicable disease. We propose two options for your consideration:
  - a) eliminating the entire section for annual follow-ups. Each agency can determine how best to approach such an issue knowing that the CDC Guidelines are used for the initial screening.
  - OR**
  - b) modify the section to require annual follow-ups only for persons with positive tb tests or communicable disease.

**6.11.56 Health Evaluations.**

~~-(e) (B) A home care agency or home care registry shall require each individual or rostered by the agency or registry DIRECT CARE WORKER, and other office staff or contractors with direct consumer contact, to obtain an updated screening assessment. UPDATE THE DOCUMENTATION REQUIRED BY SUBSECTION (A) NOT LESS THAN every 12 months and provide those results THE DOCUMENTATION to the agency or registry. THE 12 MONTHS SHALL RUN FROM THE DATE OF THE LAST EVALUATION. The updated screening assessment DOCUMENTATION REQUIRED BY SUBSECTION 9A) shall be made part of INCLUDED IN the individual's personnel file.~~

OR

(c) (B) A home care agency or home care registry shall require each individual or rostered by the agency or registry DIRECT CARE WORKER, and other office staff or contractors with direct consumer contact, who has a positive tuberculosis test or other communicable disease as determined by the licensed health care professional to ~~obtain an updated screening assessment.~~ UPDATE THE DOCUMENTATION REQUIRED BY SUBSECTION (A) NOT LESS THAN every 12 months and provide ~~those results~~ THE DOCUMENTATION to the agency or registry. THE 12 MONTHS SHALL RUN FROM THE DATE OF THE LAST EVALUATION. ~~The updated screening assessment~~ DOCUMENTATION REQUIRED BY SUBSECTION 9A) shall be ~~made part of~~ INCLUDED IN the individual's ~~personnel~~ file.

*As stated in our previous comments in 2007:*

*"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 believe that it would be reasonable and within public health guidelines to require only an initial clearance and allow the agency to determine what annual follow-ups are necessary. If you determine that annual follow-ups are necessary, then do so only for individuals with positive tb tests. It would be unreasonable to require individuals with no communicable disease to be required to confirm such annually. Currently, in our 21 offices throughout the Commonwealth of PA, it would pose a significant financial impact on our 2000+ direct care workers--- something that could impact the ability to recruit and retain quality direct care workers during a time of severe shortages.*

*For your additional consideration and review, I have provided some examples from other states in which we operate regarding health screening requirements. I selected these states since they have recently passed new or revised regs for non-medical home care agencies. Based on our own research and 26 years of experience, most states leave it up to the agency to do any annual follow-up---most only require initial (if that) and do not include any follow-up requirements. The industry trend is to follow the CDC guidelines to ensure consistency on this issue ---as is already the case in 611.56(A).*

**A) Delaware.** Personal Assistance Service Agencies (PASA's; a similar non-medical licensure recently passed in DE) that addresses the Health History. These regs rely on the CDC guidelines but also allow the direct care worker with a positive test to sign an annual attestation re: their disease status, etc.

**Department of Health and Social Services, Division of Public Health**  
**Statutory Authority: 16 Delaware Code, §122(3)x**

**4469 Personal Assistance Services Agencies**

**4.4.2.6 Health History**

4.4.2.6.1 Minimum requirements for pre-employment/referral and annual tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

4.4.2.6.2 No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to consumers.

4.4.2.6.3 Any person having a positive skin test but a negative X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.

4.4.2.6.4 A report of all test results and all attestation statements shall be on file at the agency.

4.4.2.6.5 All new direct care workers shall be required to have a pre-employment/referral physical examination, a copy of which shall be maintained in individual files.

4.4.2.6.6 Any individual who cannot adequately perform the duties required or who may jeopardize the health or safety of the consumers shall be relieved of their duties and removed from the agency until such time as the condition is resolved. This includes infections of a temporary nature.

**B. Florida---**In Florida, they required annual tb tests for many years and in 2006 changed the statute/regs to reflect only an initial communicable disease clearance. See below current regs for nurse registries (entities licensed by the Agency for Healthcare Administration/AHCA to refer independent contractors for non-medical home care; also the regs for home health agencies in Florida).

**59A-18.005 Registration Policies (nurse registries)**

**[http://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Home\\_Care/docs/NR\\_CHAPTER\\_%2059A-18\\_Aug8.doc](http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Home_Care/docs/NR_CHAPTER_%2059A-18_Aug8.doc)**

(6) Prior to contact with patients, each independent contractor referred for client care must furnish to the registry a statement from a health care professional licensed under Chapter 458, F.S., or Chapter 459, F.S., a physician's assistant, or an advanced registered nurse practitioner (ARNP) or a registered nurse licensed under Chapter 464, F.S., under the supervision of a licensed physician, or acting pursuant to an established protocol

signed by a licensed physician, based upon an examination within the last six months, that the contractor is free from-communicable disease. If any independent contractor is later found to have, or is suspected of having, a communicable disease, he or she shall immediately cease to be referred as an independent contractor. If the independent contractor later provides a statement from a health care professional that such condition no longer exists, then the nurse registry can again refer patients to the independent contractor. It is the responsibility of the independent contractor to ensure that patients are not placed at risk by immediately removing him or herself as a caregiver if he or she is found to have or is suspected of having a communicable disease. In the event that an independent contractor refuses to remove him or herself, the nurse registry shall report the situation to the county health department as an immediate threat to health, welfare and safety.

**Home health agency---59A-8.0185 Personnel Policies.**

[http://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Home\\_Care/docs/CH  
APTER%2059A-8%20HHA%203-29-07.doc](http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Home_Care/docs/CHAPTER%2059A-8%20HHA%203-29-07.doc)

(a) Requirement that, prior to contact with patients the new employee must submit a statement from a health care professional licensed under Chapter 458 or 459, F.S., a physician's assistant, or an advanced registered nurse practitioner (ARNP) or a registered nurse licensed under Chapter 464, F.S., under the supervision of a licensed physician, or acting pursuant to an established protocol signed by a licensed physician, based on an exam within the last six months, that the employee is in reasonably good health and appears to be free from apparent signs or symptoms of a communicable disease including tuberculosis, pursuant to Section 381.0011(4), F.S. It is the responsibility of the agency to ensure that employees continue to appear to be in good health. If any employee is later found to have, or is suspected of having, a communicable disease, he shall be removed from duties until the administrator determines that such condition no longer exists. A new employee, who has been an employee of another licensed home health agency, may provide a copy of his health care statement from the files of the former employer provided that the statement was not issued more than 2 years prior and that the employee has not had a break in service of more than 90 days. Medical information is confidential and must not be disclosed without the specific consent of the person to whom it pertains. The written request to release medical information must be kept on file.

**C) Illinois. Home Services Agencies (regs just finalized in July, 2008).**

Section 245.30 Organization and Administration. c) Personnel Policies. (1)(B)

“Requirements for an initial health evaluation of each new employee who has contact with clients/patients, including a physical examination and any other component as specified by the governing body;”

- 2) The second item deals with the list of individuals qualified to confirm a direct care worker's communicable disease status.

**611.4.5. Definitions. Qualified Health Professional.** *The term includes a physician, physician's assistant, a registered nurse and a certified registered nurse practitioner.*

*--Currently in PA and around the country, registered nurses conduct and read TB tests in facility, office and agency settings. We would encourage the DOH to consider including this professional as it is currently the industry standard and most importantly, allowed under the PA Nurse Practice Act. The ability to use an RN also significantly reduces the cost to the worker and the agency.*

- 3) The final item for consideration deals with language. We would ask that you consider the proposed changes as they follow the statute and other regulatory language.

**611.57(c)(6) Consumer protections.**

*"The ~~hiring and training~~ hiring or rostering prerequisites and COMPETENCY requirements applicable....."*

*--We respectfully request that the phrase used in the above section be changed as there is no "hiring" or "training" for independent contractors nor are they used as such in the statute. The above suggested phrase is used elsewhere in the proposed final regulations and we believe might be easier for providers to understand what is expected for distribution (as required items are listed in the respective sections).*

Thank you for your consideration of these requests. Please let me know if you have any questions or need additional information.

Sincerely,

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

Cc: Cindy Boyne, Department of Health, Home Health Division ([cboyne@state.pa.us](mailto:cboyne@state.pa.us))  
Vicki Hoak and Eric Kiehl, Pennsylvania Homecare Association  
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