

## **TITLE 28. HEALTH AND SAFETY**

### **PART IV. HEALTH FACILITIES**

#### **Subpart H. HOME CARE AGENCIES AND HOME CARE REGISTRIES**

#### **CHAPTER 611. HOME CARE AGENCIES AND HOME CARE REGISTRIES**

##### **GENERAL**

##### **§ 611.1. Legal base.**

(a) This chapter is promulgated by the Department under the powers granted and the duties mandated under sections 803 and 809.1 of the act (35 P. S. §§ 448.803 and 448.804a).

(b) The Department has the power and its duty is to promulgate the regulations necessary to implement the provisions of Chapter 8 of the act (35 P. S. §§ 448.801a—448.820) and to assure that its regulations and the act are enforced.

(c) The purpose of this chapter is to protect and promote the public health and welfare through the establishment and enforcement of regulations setting minimum standards for the operation of home care agencies and home care registries. The standards are intended by the Department to assure safe, adequate and efficient home care agencies and home care registries, and to promote the health, safety and adequate care of the consumers of services provided by home care agencies and home care registries.

##### **§ 611.2. License required.**

(a) Except as set forth in subsection (c), no entity or organization may operate, maintain, or hold itself out as operating or maintaining a home care agency or home care registry without first having obtained a license from the Department in accordance with this chapter. Each physical location of the home care agency or home care registry must be separately licensed. The Department will conduct an inspection prior to issuing an initial license or a license renewal.

(b) The license will specify whether the entity is licensed as a home care agency, a home care registry, or both, the term of the license, and any conditions or limitations imposed on the license.

(c) An entity operating a home care agency or home care registry, or both, as of December 12, 2009, may continue to operate after December 12, 2009, provided it submits an application for a license to the Department in accordance with instructions published in the *Pennsylvania Bulletin* and posted on the Department's web site by February 10, 2010. An entity that has submitted an application for licensure in accordance with the requirements of this subsection may continue to operate the home care agency or home care registry until a date that the Department may refuse the application for licensure. If the Department grants the application for licensure, the home

care agency or home care registry may continue operation of the agency or registry in accordance with this chapter.

(d) The applicant shall obtain the application for a license to operate a home care agency or home care registry from the Department of Health, Division of Home Health.

(e) The applicant shall submit an application or renewal form to the Department with the fee of \$100. The applicant shall submit a renewal form at least 60 days prior to the expiration date on the license. There will be no rebate, refund, or prorating of the application fee. The applicant shall complete a separate application and pay a separate application fee for each separately licensed home care agency or home care registry that it intends to operate.

(f) The applicant shall specify on its application the type of facility for which it is seeking a license.

### **§ 611.3. Affected home care agencies and home care registries.**

(a) This chapter applies to home care agencies, home care registries and to entities that meet both definitions, profit or nonprofit, operated in this Commonwealth, as defined in this chapter. This chapter does not apply to a home health care agency, a durable medical equipment provider, a volunteer provider, or an organization or business entity designated under section 3504 of the Internal Revenue Code (26 U.S.C.A. § 3504) regarding acts to be performed by agents and either IRS revenue procedure 70-6 or IRS revenue procedure 80-4, that provides financial management services or supports coordination services, or both, to consumers of home and community-based services through Medicaid Waiver or other publicly funded programs.

(b) Existing home care agencies and home care registries which were home care agencies or home care registries prior to December 12, 2009, shall be required to meet the same standards as home care agencies and home care registries created after December 12, 2009.

### **§ 611.4. Requirements for home care agencies and home care registries.**

(a) A current copy of this chapter shall be maintained at the home care agency or home care registry.

(b) Chapter 51 (relating to general information), applicable to all entities licensed as health care facilities under the act, applies to home care agencies and home care registries licensed under this chapter.

(c) Home care agencies and home care registries licensed under this chapter shall comply with applicable environmental, health, sanitation and professional licensure standards which are required by Federal, State and local authorities.

(d) If there is a difference in applicable State or local standards, the standards established under State statutes apply for the purpose of compliance with this chapter.

## § 611.5. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Health Care Facilities Act (35 P. S. §§ 448.101—448.904b).

*ChildLine*—An organizational unit of the Department of Public Welfare which operates a State-wide toll-free system for receiving reports of suspected child abuse established under 23 Pa.C.S. 6332 (relating to establishment of Statewide toll-free telephone number), refers the reports for investigation and maintains the reports in the appropriate file.

*ChildLine verification*—Confirmation regarding whether an applicant for employment or referral by a home care agency or home care registry is named in the Department of Public Welfare's 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)).

*Companionship services*—Socialization, support and assistance with instrumental activities of daily living.

*Consumer*—An individual to whom services are provided.

*Consumer control*—Control and direction by the consumer in identifying, exercising choice of, and managing home care services in accordance with the consumer's needs and personal preferences.

*Criminal history report*—A State Police criminal history record or a Department of Aging letter of determination of eligibility for hire or roster based on a review of a Federal criminal history record.

*Department*—The Department of Health of the Commonwealth.

*Department of Aging letter of determination*—A written decision supplied by the Department of Aging regarding whether, based on the criminal history report from the Federal Bureau of Investigation, the applicant for employment by a home care agency or referral by a home care registry may be employed or rostered.

*Direct care worker*—The individual employed by a home care agency or referred by a home care registry to provide home care services to a consumer.

*Direct consumer contact*—Face-to-face interaction with the consumer in the consumer's place of residence or other independent living environment.

*Financial management services*—One or more of the following services:

- (i) Managing payroll including Federal, State and local employment taxes for direct care workers recruited and retained by the consumer.
- (ii) Processing the payment of workers' compensation, health and other insurance benefits for the direct care worker.
- (iii) Assisting consumers in calculating and managing individual budgets for Medicaid Waiver and other publicly funded home and community based services.
- (iv) Monitoring the consumer's spending of public funds and any underage or overage in accordance with the consumer's approved budget.
- (v) Collecting, processing and maintaining time sheets for direct care workers.
- (vi) Providing training to consumers related to employer-related tasks (for example, recruiting, hiring, training, managing and discharging direct care workers and managing payroll and bill paying).

*Home care agency*—An organization that supplies, arranges or schedules employees to provide home care services, as directed by the consumer or the consumer's representative, in the consumer's place of residence or other independent living environment for which the organization receives a fee, consideration or compensation of any kind.

*Home care registry*—An organization or business entity or part of an organization or business entity that supplies, arranges or refers independent contractors to provide home care services, as directed by the consumer or the consumer's representative, 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.

*Home care services*—The term encompasses the following activities:

- (i) Personal care.
- (ii) Assistance with instrumental activities of daily living.
- (iii) Companionship services.
- (iv) Respite care.
- (v) Specialized care.

*Independent living philosophy*—A system of beliefs, concepts and attitudes that emphasize self-direction, control, peer support and community integration for individuals with disabilities.

*Inspection*—A scheduled or unscheduled examination or assessment of a home care agency or home care registry during regular business hours, to determine compliance with requirements for

licensure using one or more of the following means: inspection of records, interviews with office staff, consumers and direct care workers, and observation of the provision of services to consumers who have consented in advance to observation.

*Instrumental activities of daily living*—As defined in section 802.1 of the act (35 P. S. § 448.802a).

*Nurse*—A registered nurse or a licensed practical nurse.

*Personal care*—The term includes, but is not limited to, assistance with self-administered medications, feeding, oral, skin and mouth care, shaving, assistance with ambulation, bathing, hair care and grooming, dressing, toileting and transfer activities.

*Respite care*—Personal care and assistance with instrumental activities of daily living provided on a short term basis because of the absence or need for relief for those persons normally providing the services.

*Roster*—To place an individual on a list of individuals eligible to be referred by a home care registry to provide home care services to an individual in the individual's place of residence or other independent living environment; or the list of individuals eligible to be referred by a home care registry to provide home care services to an individual in the individual's place of residence or other independent living environment.

*Specialized care*—Nonskilled services unique to the consumer's care needs that facilitate the consumer's health, safety and welfare, and ability to live independently.

*Statewide central register*—A register of child abuse established in the Department of Public Welfare, which consists of founded and indicated reports of child abuse.

*Supports coordination services*—Services to consumers of home and community-based services through Medicaid Waiver or other publicly funded programs including intake services, needs assessment, and advocacy to ensure coordination of medical, social, educational and other services and maximum consumer independence.

## **GOVERNANCE AND MANAGEMENT**

### **§ 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. A satisfactory reference is a positive, verifiable reference, either verbal or written, from a former employer or other person

not related to the individual that affirms the ability of the individual to provide home care services.

(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 applicable, in accordance with the requirements of § 611.53 (relating to child abuse clearance).

(b) *Direct care worker files.* 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. Direct care worker files must also include other information as required under § 611.52, § 611.53, and if applicable, §§ 611.54, 611.55 and 611.56 (relating to provisional hiring; competency requirements; and health screening).

### **§ 611.52. Criminal background checks.**

(a) *General rule.* The home care agency or home care registry shall require each applicant for employment or referral as a direct care worker to submit a criminal history report obtained at the time of application or within 1 year immediately preceding the date of application. An applicant for employment as a member of the office staff for the home care agency or home care registry and the owner or owners of the home care agency or home care registry also are required to obtain a criminal history report in accordance with requirements contained in this section.

(b) *State Police criminal history record.* If the individual required to submit or obtain a criminal history report has been a resident of this Commonwealth for 2 years preceding the date of the request for a criminal history report, the individual shall request a State Police criminal history record.

(c) *Federal criminal history record.* If the individual required to submit or obtain a criminal history report has not been a resident of this Commonwealth for the 2 years immediately preceding the date of the the request for a criminal history report, the individual shall obtain a Federal criminal history record and a letter of determination from the Department of Aging, based on the individual's Federal criminal history record, in accordance with 6 Pa. Code § 15.144(b) (relating to procedure).

(d) *Proof of residency.* The home care agency or home care registry may request an individual required to submit or obtain a criminal history record to furnish proof of residency through submission of any one of the following documents:

- (1) Motor vehicle records, such as a valid driver's license or a State-issued identification.
- (2) Housing records, such as mortgage records or rent receipts.
- (3) Public utility records and receipts, such as electric bills.
- (4) 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.

(e) *Prohibition.* The home care agency or home care registry may not hire, roster or retain an individual if the State Police criminal history record reveals a prohibited conviction listed in 6 Pa. Code § 15.143 (relating to facility responsibilities), or if the Department of Aging letter of determination states that the individual is not eligible for hire or roster.

(f) *Records maintained.* The home care agency or home care registry shall maintain files for direct care workers and members of the office staff which include copies of State Police criminal history records or Department of Aging letters of determination regarding Federal criminal history records. The files shall be available for Department inspection. The agency or registry shall maintain copies of the criminal history report for the agency or registry owners, which shall be available for Department inspection.

(g) *Confidentiality.* The home care agency or home care registry shall keep the information obtained from State Police criminal history records and Department of Aging letters of determination regarding Federal criminal history records confidential and use it solely to determine an applicant's eligibility to be hired, rostered or retained.

(h) *Opportunity to appeal.* If the decision not to hire, roster or retain an individual is based in whole or in part on State Police criminal history records, Department of Aging letters of determination regarding Federal criminal history records, or both, the home care agency or home care registry shall provide an affected individual with information on how to appeal to the sources of criminal history records if the individual believes the records are in error.

(i) *Exceptions.* A direct care worker who has complied with this section and who transfers to another agency or registry owned and operated by same entity is not required to obtain another criminal history report. A direct care worker employed or rostered by an entity that undergoes a change of ownership is not required to obtain another criminal history report to submit to the new owner.

(j) *Individuals currently employed or rostered.* A direct care worker and each member of the agency or registry office staff who is employed by or rostered by a home care agency or home care registry as of December 12, 2009, shall obtain and submit a State Police criminal history record or Department of Aging letter of determination, as applicable, to the home care agency or home care registry by April 12, 2010. This subsection does not apply if the home care agency or home care registry obtained a criminal history report meeting the requirements of this subsection when the direct care worker or office staff member was hired or rostered and a copy of the report is included in the individual's file.

### **§ 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 for employment or referral as a direct care worker, each applicant for employment as a member of the agency or registry office staff to request a ChildLine verification regarding whether the applicant 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).

(b) *Prohibition.* A home care agency or home care registry may not employ, roster or retain an individual where ChildLine has verified that the individual is named in the Statewide Central Register as the perpetrator of a founded or indicated report of child abuse.

(c) *Records maintained.* The files maintained by the home care agency or home care registry for each individual employed or rostered and for each member of the office staff must include copies of the ChildLine verification. The agency or registry shall maintain copies of the ChildLine verification for the agency or registry owners, which shall be available for Department inspection.

(d) *Individuals currently employed or rostered.* A person who is employed by or rostered by the home care agency or home care registry, including each member of the agency or registry office staff, as of December 12, 2009, shall obtain and submit a ChildLine verification to the home care agency or home care registry by April 12, 2010. 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 file.

#### **§ 611.54. Provisional hiring.**

(a) *General rule.* The home care agency or home care registry may hire an applicant for employment or referral on a provisional basis, pending receipt of a criminal history report or a ChildLine verification, as applicable, if the following conditions are met:

(1) The applicant shall have applied for a criminal history report and ChildLine verification, as applicable, and provided the home care agency or home care registry with a copy of the completed request forms.

(2) The home care agency or home care registry shall have no knowledge about the applicant that would disqualify the applicant under 18 Pa.C.S. § 4911 (relating to tampering with public record information).

(3) The applicant shall swear or affirm in writing that the applicant is not disqualified from employment or referral under this chapter.

(4) The home care agency or home care registry may not assign or refer the provisionally hired applicant until that person has met the requirements of § 611.55 (relating to competency requirements).



(5) The home care agency or home care registry shall monitor the provisionally hired applicant awaiting a criminal background check through random, direct observation and consumer feedback. The results of monitoring shall be documented in the individual's file.

(6) The home care agency or home care registry shall directly supervise, or assign another direct care worker to accompany, a provisionally hired applicant awaiting a child abuse clearance who will provide home care services to a consumer less than 18 years of age.

(7) The period of provisional hire of an individual who is and has been, for a period of 2 years or more, a resident of this Commonwealth, may not exceed 30 days. The period of provisional hire of an individual who has not been a resident of this Commonwealth for 2 years or more may not exceed 90 days.

(b) *Termination.* If the information obtained from the criminal history report or ChildLine verification, or both, reveals that the individual is disqualified from employment or referral under § 611.52 (relating to criminal background checks) or under § 611.53 (relating to child abuse clearance), the individual shall be terminated by the home care agency or removed from the home care registry's roster immediately. If the individual fails to provide the ChildLine verification or criminal history report, or both, within the time period permitted for provisional hire, the individual shall be terminated by the home care agency or removed from the home care registry's roster immediately.

## **§ 611.55. Competency requirements.**

(a) Prior to assigning or referring a direct care worker to provide services to a consumer, the home care agency or home care registry shall ensure that the direct care worker has done one of the following:

(1) Obtained a valid nurse's license in this Commonwealth.

(2) Demonstrated competency by passing a competency examination developed by the home care agency or home care registry which meets the requirements of subsections (b) and (c).

(3) Successfully completed one of the following:

(i) A training program developed by a home care agency, home care registry, or other entity which meets the requirements of subsections (b) and (c).

(ii) A home health aide training program meeting the requirements of 42 CFR 484.36 (relating to the conditions of participation; home health aide services).

(iii) The nurse aid certification and training program sponsored by the Department of Education and located at [www.pde.state.pa.us](http://www.pde.state.pa.us).

(iv) A training program meeting the training standards imposed on the agency or registry by virtue of the agency's or registry's participation as a provider in a Medicaid Waiver or other

publicly funded program providing home and community based services to qualifying consumers.

(v) Another program identified by the Department by subsequent publication in the *Pennsylvania Bulletin* or on the Department's web site.

(b) A competency examination or training program developed by an agency or registry for a direct care worker must address, at a minimum, the following subject areas:

- (1) Confidentiality.
- (2) Consumer control and the independent living philosophy.
- (3) Instrumental activities of daily living.
- (4) Recognizing changes in the consumer that need to be addressed.
- (5) Basic infection control.
- (6) Universal precautions.
- (7) Handling of emergencies.
- (8) Documentation.
- (9) Recognizing and reporting abuse or neglect.
- (10) Dealing with difficult behaviors.

(c) A competency examination or training program developed by an agency or registry for a direct care worker who will provide personal care must address the following additional subject areas:

- (1) Bathing, shaving, grooming and dressing.
- (2) Hair, skin and mouth care.
- (3) Assistance with ambulation and transferring.
- (4) Meal preparation and feeding.
- (5) Toileting.
- (6) Assistance with self-administered medications.

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

(e) The home care agency or home care registry also shall include documentation in the direct care worker's file that the agency or registry has reviewed the individual's competency to perform assigned duties through direct observation, testing, training, consumer feedback or other method approved by the Department or through a combination of methods. The competency review must occur at least once per year after initial competency is established, and more frequently when discipline or other sanction, including, for example, a verbal warning or suspension, is imposed because of a quality of care infraction.

(f) A direct care worker employed by a home care agency or rostered by the home care registry on December 12, 2009, shall achieve compliance with the competency requirements imposed by this chapter by December 12, 2011.

#### **§ 611.56. Health screening.**

(a) A home care agency or home care registry shall insure that each direct care worker and other office staff or contractors with direct consumer contact, prior to consumer contact, provide documentation that the individual has been screened for and is free from active mycobacterium tuberculosis. The screening shall be conducted in accordance with CDC guidelines for preventing the transmission of mycobacterium tuberculosis in health care settings. The documentation must indicate the date of the screening which may not be more than 1 year prior to the individual's start date.

(b) A home care agency or home care registry shall require each direct care worker, and other office staff or contractors with direct consumer contact, to update the documentation required under subsection (a) at least every 12 months and provide the documentation to the agency or registry. The 12 months must run from the date of the last evaluation. The documentation required under subsection (a) shall be included in the individual's file.

(c) A direct care worker employed by a home care agency or rostered by the home care registry on December 12, 2009, shall achieve compliance with the health evaluation requirements imposed by this chapter by June 10, 2010.

#### **§ 611.57. Consumer protections.**

(a) *Consumer rights.* The consumer of home care 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 where the health and safety of the direct care worker is at risk.

(2) To receive at least 10 calendar 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 services that will be provided to the consumer by the direct care worker and the identity of the direct care worker who will provide the services.

(2) The hours when those services will be provided.

(3) 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 complaint Hot Line (1-866-826-3644) and the telephone number of the Ombudsman Program located with the local Area Agency on Aging (AAA).

(6) The hiring and competency requirements applicable to direct care workers employed by the home care agency or referred by the home care registry.

(7) A disclosure, in a format to be published by the Department in the *Pennsylvania Bulletin* by February 10, 2010, 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.

(d) *Documentation.* The home care agency or home care registry shall maintain documentation on file at the agency or registry of compliance with the requirements of this section which shall be available for Department inspection.