



## Life Sciences Health Industry Alert

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### Pennsylvania Issues Licensing Regulations for Home Care Agencies and Registries

In the *Pennsylvania Bulletin* of Saturday, Dec. 12, 2009, the Pennsylvania Department of Health published final regulations governing home care agencies and registries operating in the Commonwealth. The regulations, which became effective Dec. 12, 2009, require home care agencies and registries to obtain a license to operate. They also address the qualifications and competence of home care workers. The new regulations were required by amendments to the Pennsylvania Health Care Facilities Act that were adopted in 2006.

#### Licensure Requirements

As referenced above, two types of organizations are affected by the new regulations: home care agencies and home care registries. Pennsylvania defines a home care agency as an organization that receives compensation to supply, arrange or schedule employees to provide home care services in a consumer's residence or other independent living environment. A home care registry is an organization, business entity, or part of an organization or entity, that supplies, arranges, or refers independent contractors to provide home care services to consumers. Home care services include (1) assistance with self-administered medication; (2) personal care (e.g., assistance with personal hygiene, dressing and feeding); (3) homemaking (e.g., assistance with household tasks, housekeeping, shopping, meal planning and preparation and transportation); (4) companionship; (5) respite care (e.g., assistance and support provided to family members); and (6) other non-skilled services. The regulations do not apply to home health care agencies, durable medical equipment providers, volunteer providers, or organizations that provide financial management services through a Medicaid Waiver or other publicly funded programs, all of which are subject to separate administrative requirements.

Entities currently operating within the Commonwealth may continue to do so, provided that they file a licensure application no later than Feb. 10, 2010. The cost to apply for a license is \$100; the fee is non-refundable and will not be prorated. Licenses will be renewed annually; renewal forms must be submitted at least 60 days prior to the license expiration date. The regulations require that each physical location of a home care agency or registry apply for and receive a separate license. Facilities will be inspected before a license is issued and before each annual renewal thereafter.

The final regulations do not address procedures and protocols for licensure, inspection and survey of facilities, or enforcement of licensure standards. The Department noted that the proposed regulations, which did address these areas, were intended to incorporate and expand upon general licensing requirements outlined in the Health Care Facilities Act that apply to all health care facilities that require licensing. Without further discussion, the Department noted that the procedural provisions had been deleted, and stated that it is planning to conduct a "comprehensive revision" of the licensing process for all health care facilities.

#### Hiring, Health Screening and Worker Competency

The new regulations impose specific requirements related to hiring or "rostering" an individual to provide home care services. The term rostering means placing a person on an agency's or register's roster of persons to be referred to provide home care services to a consumer. Before hiring or rostering an individual, an agency or registry must conduct a face-to-face interview, obtain at least two satisfactory references, and require a criminal background check. For agencies or registries providing services to minors, applicants must provide a child abuse clearance report. Hiring an individual for employment or referral on a provisional basis is permitted, as long as the agency or registry does not assign or refer the applicant until the competency requirements of the regulations have been met. There are special monitoring requirements for provisionally hired individuals, and the provisional period is limited depending upon an applicant's length of residence in the Commonwealth.

The Department noted that there was nearly unanimous and consistent opposition to proposed health screening requirements, which included a “screening assessment” to test for tuberculosis and five other communicable diseases or conditions. As a result, the regulation was revised to include a “health screening” rather than a more comprehensive “screening assessment.” The final regulations state that office staff and “direct care workers,” defined to be employees or independent contractors who have direct patient contact, must submit to initial and annual health screenings for tuberculosis. This screening must be completed prior to any contact with a patient.

Agencies and registries must ensure that direct care workers meet certain competency requirements. Before a direct care worker is permitted to provide services, an agency or registry must ensure that he or she has either (1) obtained a valid nurse’s license from the Commonwealth; (2) passed a competency examination developed by the agency or registry that meets the requirements of the regulations; or (3) successfully completed a training program that is either developed by the agency or registry, or is in place pursuant to another regulatory structure, such as through a Medicaid waiver, a nurse aid certification and training program, or the conditions of participation in Medicare. If meeting competency requirements by examination, direct care workers must, at a minimum, demonstrate competency in 10 subject areas. Direct care workers providing personal care (including 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) must demonstrate competence in six additional areas.

### **Consumer Protections**

The regulations require that the consumer, the consumer’s legal representative, or a responsible family member must receive an information packet from the home care agency or home care registry before the start of services. The information packet is to include a listing of available services that will be provided to the consumer, the hours when the services will be provided, fees and costs for the services on an hourly or weekly basis, Department contact information for agency and registry licensure requirements and compliance information, information regarding the Department’s 24-hour hotline and the local ombudsman program, and information about the direct care worker who will be providing home care services, including information about the hiring process and training or testing to ensure competency. Additionally, the packet must include a disclosure whether the direct care worker is an employee or an independent contractor, and the employment and tax obligations of the consumer and the agency or registry.

### **Implications for Providers**

Existing home care agencies and registries (including registries operating as part of a larger entity, such as a health system) should obtain and complete an application from the Division of Home Health as soon as possible. Preparations for applying should include a review of the entity’s hiring, screening and training policies. Because entities licensed pursuant to the Health Care Facilities Act are, on a general level, required to comply with state and federal law, entities seeking a license may also want to consider incorporating a compliance program if one is not already in place.

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