

**HOME HEALTH, HOME SERVICES AND HOME NURSING ADVISORY
BOARD COMMITTEE MINUTES**

October 14, 2009 – 11:00 A.M.

VIDEOCONFERENCE

535 W Jefferson, Springfield, Illinois
122 S Michigan, Room 723, Chicago, Illinois

Members Present:

Gail Ripka, Chairperson
Teresa Garcia, Co-Chairperson
Patricia Gibson
Michelle Running
Dr. Dennis Norem
Michael Melinger
Visitacion Hicks
Sheila McMackin

Department Staff:

Bill Bell
Aida Trinidad
Karen Senger
Kendra Fabish
Maurice McAllister
Sean Dailey

INTRODUCTIONS:

The meeting was called to order at 11:15 a.m. Committee members, guests and department staff were asked to introduce themselves.

APPROVAL OF MINUTES

The board members were asked to review the draft minutes from the April 8, 2009 board meeting. The draft minutes were motioned, seconded and approved October 14, 2009 with corrections.

OLD BUSINESS:

Review Comments from 1st Notice on Changes to the Regulation (Home Health, Home Services, and Home Nursing, 77 Ill. Adm. Code 245)

Karen Senger and Sean Dailey presented the board members with comments that were sent to the Department and provided responses to the comments:

COMMENT:

Mary M. Newberry of the Illinois Home Care Council submitted several comments. First, Ms. Newberry objected to a proposed change to the definition for “Client.” In the proposes amendments to the Home Health, Home Services, and Home Nursing Agency Code (77 Ill. Adm. Code 245), the Department struck “home nursing agency” from the definition, so that “client” would refer only to people who receive services from a home services agency or a placement agency. However, “the term ‘client’ is used by many agencies licensed as home nursing agencies because they view the service recipient as a consumer of their services, rather than as a patient who has been sent to them for care.”

Additionally, the proposed change makes the definition inconsistent with how “client” is used in Section 245.205 (Services – Home Nursing Agencies) and 245.220 (Client Service Contracts – Home Nursing and Home Nursing Agencies), Ms. Newberry said.

RESPONSE:

The Department agrees, and will retain the definition’s current adopted language.

COMMENT:

Ms. Newberry writes with concerns over proposed amendments to Section 245.30 (Organization and Administration), specifically, changes to the regulations regarding supervision of home health agencies, and the responsibilities for a home health agency supervisor. The position of the IHCC is that “the administrator and agency supervisor of a home health agency should be employees of the home health agency in which they serve these functions,” Ms. Newberry says. She also asks that “employee” be defined in the regulation as “an individual for whom an agency licensed under these regulations pays withholding taxes.”

Ms. Newberry also asks that, in instances where an agency holds multiple licenses and a single licensed nurse provides clinical oversight for both home health and home nursing services, “these instances should be narrowly defined in the regulations and that other safeguards should be required to ensure that adequate clinical oversight is available to field staff in both units in the absence of the agency supervisor.”

RESPONSE:

The Department agrees. In Section 245.20 (Definitions) the Department will add a definition for “Employee” that reads, “an individual for whom an agency licensed under this Part pays withholding taxes.” The Department also will modify the definition of “Home Health Agency Administrator” by inserting a requirement that the administrator be an employee of the home health agency. In subsection 245.30(e)(3), the Department will insert, at the end of the subsection, “The agency supervisor shall designate a qualified staff member to act in his or her absence.”

The Department will alter subsection 245.30(e)(5) as Ms. Newberry asks, changing the language to “No one ~~One~~ person may hold the positions of both home health agency administrator and agency supervisor.” The Department had proposed it be amended as, “One person may not hold...” The Department accepts Ms. Newberry’s recommendation to add a new subsection (6) in 245.30(e), which says, “If the licensed home health agency also is licensed as a home nursing agency, the agency supervisor may supervise the provision of skilled nursing services in the home nursing agency only if there are equally qualified individuals available in each licensed component of the organization to act in his or her absence.”

In subsection 245.30(f)(1), the Department accepts Ms. Newberry’s recommendation that “supervision” in the first line be changed to “direction”.

COMMENT:

Ms. Newberry writes that the phrase “home nursing agency administration” in the proposed revision to subsection 245.30(g)(2) is confusing because, “It is not clear from the regulations who this would be.” She asks that “administration” be deleted from the proposed language.

RESPONSE:

The Department agrees and made the change.

COMMENTS:

Ms. Newberry is concerned that the proposed amendments to subsection 245.71(b) “appears to allow home services placement agencies to avoid the requirement to provide eight hours of training to home services workers prior to their first assignment.” As currently worded, the subsection requires home services placement agencies to “provide a minimum of eight hours of training for each home services worker prior to his or her first assignment.” The Department’s proposed amendment reads, “Each placement agency shall require proof that the home services worker has completed ~~provide~~ a minimum of eight hours of training ~~for each home services worker~~ prior to his or her first assignment.”

According to Ms. Newberry, “IHCC believes that it is most appropriate to require both home services agencies and home services placement agencies to either provide or arrange for the required training.” She proposed that the amendments be changed to read, “Each placement agency shall provide or arrange for a minimum of eight hours of training for each home services worker prior to his or her first assignment. The training shall include all of the items noted in subsection (d) of this Section.”

RESPONSE:

The Department thanks Ms. Newberry for her comment. However, the Department proposed the change because a placement agency, by definition, is not an employer of home services workers and requiring a placement agency to provide training would imply an employer-employee relationship. The Department’s legal counsel concurs, writing that an employer relationship “cannot exist pursuant to the definition of home services placement agency within [Section 245.214].” Furthermore, “The proposed rule requires that a placement agency document training. It is the responsibility of the individual (not the agency) to submit proof of that training.”

COMMENT:

Ms. Newberry also asked that the following language be added to subsection 245.71(b): “The placement agency may accept proof that the worker has successfully completed a training program at or through another licensed home services agency or home services placement agency within the prior year (previous 365 days) in lieu of providing or arranging for training. No worker may be given an assignment by the home services

placement agency without having first passed a competency evaluation given by the agency. The purpose of the competency evaluation, which shall address each of the subjects in subsection (d) of this Section, will be to insure that the home services worker is competent to provide the services required in his or her assignment."

RESPONSE:

The Department thanks Ms. Newberry for her comment. Reviewing the proposed language and its similarity to subsection 245.71(d), the Department will reword that subsection as follows: "The placement agency may accept ~~shall provide~~ proof that the worker has successfully completed a training program at or through another licensed home services agency ~~of a competency evaluation conducted by the agency or proof that the worker has successfully completed a training program at another licensed home services agency~~ within the prior year (previous 365 days). The home services placement agency shall give no worker an assignment until the worker has first passed a competency evaluation given by the agency. The competency evaluation shall insure that the home services worker is competent to provide the services required in his or her assignment. The competency evaluation or proof of prior training at a licensed home services agency within the prior year shall address each of the following subjects:"

COMMENT:

Ms. Newberry requests that subsection 245.71(c) be changed to "Each home services agency shall provide or arrange for the provision of a minimum of eight hours of training for each home services worker. Four hours of training shall be provided prior to the home services worker's first assignment, and the remaining four hours shall be provided within the worker's first 30 days after employment. The training shall include the components of subsection (d)(1)-(12) of this Section. The home services agency may accept proof that the worker has successfully completed a training program at or through another licensed home services agency or home services placement agency within the prior year (previous 365 days) in lieu of providing or arranging for training. No worker may be given an assignment by the home services agency without having first passed a competency evaluation given by the agency of the topics included in the first four hours of training. The purpose of the competency evaluation will be to insure that the home services worker is competent to provide the services required in his or her first assignment. The workers shall be similarly tested following the remaining four hours of training."

RESPONSE:

The Department can amend the subsection as Ms. Newberry requests, with a few modifications. The Department proposes the following:

to "Each home services agency shall provide or arrange for the provision of a minimum of eight hours of training for each home services worker. Four hours of training shall be provided prior to the home services worker's first assignment, and the remaining four hours shall be provided within the worker's first 30 days after employment. The training shall include the components of subsection (d)(1)-(12) of this Section. The home services agency may accept proof that the worker has successfully completed a training program

at or through another licensed home services agency within the prior year (previous 365 days) in lieu of providing or arranging for training. The home services agency shall give no worker an assignment until the worker has first passed a competency evaluation given by the agency of the topics included in the first four hours of training. The competency evaluation shall ensure that the home services worker is competent to provide the services required in his or her first assignment. The workers shall be similarly tested following the remaining four hours of training."

COMMENT:

Ms. Newberry requests that subsection 245.71(d) be modified to require home services placement agencies to "provide or arrange for" the training of home services workers. She also asks that the proposed amendments in subsection 245.214(d)(2), which changed the regulation to require that home services workers provide proof of training to home services placement agencies, rather than "undergo" training provided by the placement agency, be dropped.

RESPONSE:

The Department thanks Ms. Newberry for her comment, but for reasons already cited, the Department cannot allow the rules to imply any sort of employer-employee relationship between placement agencies and workers.

COMMENT:

In subsections 245.200(d)(5), 245.201(c)(1)(D), and 245.210(c)(3), all of which deal with the termination of services by agencies, Ms. Newberry asks that the minimum time period for notifying the patient or client be changed from "working days" to "calendar days." Ms. Newberry says, "The current industry standard is that provider organizations must be available to handle referrals seven days a week."

RESPONSE:

The Department thanks Ms. Newberry for her comment. However, while the department understands that services may be provided seven days per week, it hardly does justice to a patient or client to be told on a Friday that his or her services are to be terminated as of Monday (i.e., the three-day time period for a notice of termination by a home health agency, in subsection 245.200(d)(5)). The Department finds no compelling reason for this change.

COMMENT:

Ms. Newberry writes that some IHCC members have found the revised language in subsection 245.214(d)(1) "to be confusing." The proposed amendment to the subsection reads, "A new ~~An~~ individual ~~wishing to remain~~ eligible for placement by the agency shall submit to a health care worker ~~criminal~~ background check;". Ms. Newberry asks that it be revised to read, "An individual seeking placement ~~wishing to remain eligible for placement...~~".

RESPONSE:

The Department agrees that the language could be revised for clarity. The Department will change the language to read, “An individual wishing to remain eligible for placement by the agency has submitted ~~shall submit~~ to a health care worker ~~criminal~~ background check and is active on the Department’s Health Care Worker Registry;”.

The responses that were agreed upon with the Department will be implemented into the regulation. The Department will submit proposed changes to JCAR for their review and adoption. We anticipate the rules will be on their November agenda and providing that no clarification or changes are made the rules might be approval on or around the first of the year.

NEW BUSINESS

Discuss issue about definition of Physician and Health Care Professionals for Home Nursing

The definitions for both entities are:

Physician - Any person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987. For a patient who has received medical care in another state, or has moved from another state, and who has not secured the services of a physician licensed in Illinois, an individual who holds an active licensure to practice medicine in another state will be considered the physician for the patient during this emergency (as determined by the physician) as provided in Section 3 of the Medical Practice Act of 1987. Such as emergency may not extend more than six months in any case.

Health Care Professional – a physician licensed to practice medicine in all of its branches, a podiatrist, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes services under the Act, or a physician assistant who has been delegated the authority to perform services under the Act by his or supervising physician.

A concern was raised relative to patients that border Illinois perhaps in Missouri or Iowa and the patient’s physician lives in another State other than Illinois. If the physician is licensed in Illinois how would the department deal with this situation if the patient does not want to change their physician? The rule does specifically say “licensed in Illinois”. Mr. Bell will discuss with legal on this matter and possibly consider how or if the department can issue a waiver on a case by case basis providing the agencies are within regulatory requirements. Mr. Bell will share comments at the next meeting in January. If you have suggestions or an approach on this matter, you can e-mail your suggestions to him at bill.bell@illinois.gov.

Statistics for Home Health

Karen Senger presented the board with an overview of the statistics for Home Health. The department has received 17 new applications in September, 5 were approved and 12 are in the review process. During the end of the 3rd quarter 873 total home health agencies are listed, 282 are licensed and 591 are licensed and certified with the department.

Statistics for Home Services, Home Nursing and Placement agencies/Common Deficiencies cited on surveys for Home Nursing and Home Services

Kendra Fabish presented the board with an overview of the statistics for Home Service, Home Nursing and Placement agencies; and the Common Deficiencies cited on surveys for Home Nursing and Home Services. The department received new applications in the four program areas: 406 Home Services, 147 Home Nursing, 57 Home Services Placement, and 9 Home Nursing Placement applications since the end of the 3rd quarter. Some of the common deficiencies that have been cited during the onsite survey are as follows:

- Agency's not using Illinois State Police for background checks, providers are using outside vendors that provide information via United State wide.
- Agency's not checking the Health Care Worker Registry for non-certified in-home workers. Some agencies that do check the register and nothing is found are not printing the document in the employee's personnel record.
- Difficult to find documentation on the 90 day supervisory visits.
- Agency Manager's job description does not meet the requirements—very vague.
- Complaint Resolution policy. If they do have one, they do not follow it. E.g. A log that the supervisor will review/have available for surveyors to review.
- No policy stating annual review of bylaws.
- No policy that addresses 7 days notice prior to termination of services.
- Abuse, Neglect and Financial Exploitation Prevention and Reporting policy: Most agencies do not address reporting investigation findings to IDPH. Also, do not address if it is their employee that the allegations are against—procedure to follow.

Future Meeting Dates for 2010

The future meeting dates for the 2010 meetings were presented with locations and times. All the upcoming meetings for 2010 will be a video conference. There are three locations that the Department has established for convenience: Chicago, Bellwood, and Springfield. The meetings are posted on the IDPH web site calendar.

OASIS Updates

The OASIS data collection for OASIS "C" will begin Jan 1, 2010. Ms. Trinidad conducted OASIS "C" training with the State surveyors in Chicago and Springfield, discussing key issues relative to the survey process. OASIS training was offered to home health agencies on a first come basis. The training was initially scheduled for the OASIS

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“B” updates but since the training material was released by the Centers for Medicare and Medicare Services (CMS), the department saw a need to present the training to the providers as soon as possible. The training will be conducted October 28, 2009 in Chicago. Initially the class room was limited to 40 individuals but with the release of the new training material additional space and 35 names were added bringing the total to 75 individuals representing 38 home health agencies. The training is currently full and no projected training by the State will be offered after October 28, 2009. CMS has put together 3 teleconference sessions relative to OASIS “C” announcements can be found at www.qtso.com. Ms. Trinidad will be conducting OASIS “C” training with the Illinois Home Care Council during its regional meetings in December. The locations and time can be found on their website at ww.ilhomecare.org.

Meeting adjourned at: 12:35 p.m.