

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

November 6, 2013 - 11:00 A.M.

**VIDEO CONFERENCE**

535 W. Jefferson, Springfield, Illinois  
122 S. Michigan, Room 711, Chicago, Illinois  
4212 St. Charles Road, Bellwood, Illinois

**Members Present:**

Teresa Fitzgerald, Chairperson  
James Wilson  
Michael Rohan  
Michele Running  
Gail Ripka  
Michael Melinger  
Patricia Menoni  
Sheila McMackin

**Members Not Present:**

Dennis Norem, MD  
Patricia Gibson  
Kathleen Kraft  
Michael Bader  
Nancy Nelson  
Visitacion Hicks

**Department Staff:**

Toni Colon  
Karen Senger  
Kendra Fabish  
Andrew Schwartz  
Aida Trinidad

**CALL TO ORDER:**

The meeting was called to order at 11:00 a.m. committee members, guests and the Department staff were asked to introduce themselves. Many guests were present and are not included in the above list.

Board members were asked to approve draft minutes for July 15, 2013 committee meeting. The minutes were moved by Patricia Menoni, seconded by Michele Running and approved with the following change: on page 2 under Placement Agency Practices, placement agency should be replaced by home service agency in the second sentence.

**OLD BUSINESS:**

**Update from Subcommittee (Part 245):**

Item addressed by Michael Melinger. At the January, 2013 meeting it was determined that upon the 5 year anniversary of the implementation of the home care license, it was the appropriate time for changes to the regulations to improve the license. Several informal conference calls were conducted with advisory board members and other participants. Minutes were taken by Jack Krueger and Rebecca Zuber and were sent to all participating parties. Numerous changes were agreed upon by the subcommittee and submitted to the Department. There were recurring disagreement in relation to worker status and whether employees were employees of an agency versus employees of a client, the status of a domestic employee versus an independent contractor and agency boundaries in relation to workers and clients. After the September, 2013 call, the Department, and Karen Senger, compiled an e-mail outlining the proposed rule changes after the input of the subcommittee. The proposed rule changes were reviewed by the subcommittee in

October during several conference calls. It was determined that any opinions about the rule changes that could not be agreed upon by the whole committee could be submitted in the form of a minority report. Two parties indicated they were going to submit a minority report. The PCA (Private Care Association) submitted a minority report in September, 2013 to the Department. Home Care Association of America was going to submit a minority report but after reviewing the proposed changes decided not to submit a report, but instead support the Department's changes.

## **NEW BUSINESS:**

### **Repeal of Nurse Registry Regulation, Section 400.506, Florida Statutes**

Item addressed by Michele Running (Bellwood). This item was submitted with PCA's minority report. An organization was attempting to do away with the nurse registry. This same issue was happening in Florida. A Study was done by legislature and other interested parties and the findings were that the home services and home service placement agencies should remain as is and are both pliable options for the consumers.

There was no other history available for comparison of Florida's law to Illinois law regarding hourly wage, overtime or agency requirements.

### **Minority Report-Placement Agencies**

Item addressed by Michele Running (Bellwood). In the minority report they submitted, there were several issues that came up limiting the services placement agencies can provide. It appeared as though motivation to make changes had nothing to do with customer complaints. Several letters were submitted from customers that were pleased with the services they received. PCA's position is that it was ruled by the competition. They recommend no changes to the regulations.

Theresa Fitzgerald inquired as to whom the consumer satisfaction letters were addressed to. Michele responded that they were addressed to the Griswald agencies only. Theresa Fitzgerald clarified that all agencies are being addressed.

Michele responded to question addressing the minority report being submitted by the Private Care Association of Illinois. This is a newly formed association and only has 7 members. Their website is not up and running yet.

### **Home Health Agency Initial Applications Report**

Item addressed by Karen Senger see attached report. Have seen a decline in applicants but still have large number considering the volume within the state.

Theresa requests clarification regarding the moratorium placed by CMS on certain counties. Karen clarified that applications are still being accepted for licensure, but not for Medicare certification. No new initial Medicare enrollees will be added in McHenry, Lake, Kane, DuPage,

Will and Cook counties. They cannot become newly Medicare certified, add a branch, or add any of these counties to existing agencies while moratorium is in effect. The moratorium is in force until January, 2014 and will be re-evaluated by CMS at that end of December, 2013 to determine if it should be extended.

### **Home Services, Home Nursing, Home Services Placement and Home Nursing Placement Applications Received and Licensed.**

Item addressed by Kendra Fabish. See attached report.

### **Oasis Updates**

Item addressed by Aida Trinidad. Ms Trinidad provided the group with an update on OASIS. In fiscal year 2014, CMS will continue with OASIS activities as prescribed in the mission and priority documents. As time permits, Aida will continue in her quarterly training for new home health providers and existing providers with new data collectors.

The new conditions of participations (COPs) that are in final clearance will be released by the end of 2013. There is a new regulation sanctioning for new home health agencies that do not meet the condition of participations - in addition to what is already in place. This new regulation is similar to nursing homes the release target date is July 2014. OASIS will be revised and will be called OASIS C1. This revision will be in rhythm with ICD 10 coding. OASIS C1 will be implanted October 1, 2014. The revisions are currently on the first comment review period.

### **Future Meeting Dates**

Item addressed by Theresa Fitzgerald. No objections were noted for dates listed for upcoming board meetings.

### **Board Vacancies**

Springfield has one vacancy for a private not-for-profit home health agency representative. Michael Bader resigned and a replacement is being sought. Would prefer to have a resume' for replacement by the end of November in order for this person to be in place by January board meeting.

### **Departments Recommendations for Changes to the Proposed Regulations**

Karen Senger confirmed that the comments are advisory and the department still makes the determination of whether the changes will be made.

Section 245.20 Definitions. On first page where it talks about client records where it says written will add the word electronic.

Section 245.30 Organization and Administration. (c) Personnel Policies (1) (B) Requirements for an initial health evaluation or each new employee or the placed home service worker, or nurse, who has contact with clients/patients, as specified by the governing body;

Section 245.30 (c) (3) The agency shall check the status of employees or placement prospects who have direct patient/client care responsibilities with the Illinois Department of Public Health (IDPH)-Health Care Worker Registry prior to hiring concerning IDPH findings of abuse, neglect or misappropriation of property.

Section 245.30 (g) Agency Manager-Home Services and Home Nursing Agencies (2) If the home nursing agency has appointed an agency manager who is not a registered nurse or an advanced practice nurse, the home nursing agency shall identify a registered nurse or advanced practice nurse who is responsible to supervise the provision of skilled nursing services as required by Section 2.11 of the Act. This nursing supervisor shall be a full-time registered nurse who is available at all times during operating hours of the agency and who participates in all activities relevant to the provision of home nursing services.

Section 245.40 (b) Home Health Aide (2) Duties of the home health aide may include. B) Skilled Personal Care and Personal care, as defined in this Part.

Section 245.40 (c) Home Services or In-Home Service Worker (2) Home services or in-home services workers may only provide services in accordance with the regulations at Title 77 Admin. Code 245.

Section 245.40 (c) Home Services or In-Home Service Worker (3) Duties of home services or in-home services workers may include the following: (A) Observation of client functioning and reporting changes to his/her supervisor or employer and person whom the client designates;

Section 245.40 (c) Home Services or In-Home Service Worker (4) (C) Bathing.

Home services workers may assist individuals who are unable to be bathed in a tub or shower only when the following circumstances are met:

- i) The home services worker must have been trained in the particular methods required to perform a bed bath.
- ii) The client or client representative must be able to participate or direct the bathing process and provide ongoing feedback to the home services worker.
- iii) The agency must have conducted a competency evaluation of the home services worker's ability to employ the methods required to perform a bed bath.

Question from Patricia Menoni in Bellwood, who is qualified to train the home services worker to perform a bed bath? This would fall under general training within the agency. The Department will make sure it meets general standards of practice and care. An agency should be evaluating a workers competency.

Section 245.71 Each agency shall ensure and maintain documentation in the home service workers file.

Section 245.71 (e) All home service workers shall complete a minimum of eight hours of training during each year of employment, or to maintain placement availability.

Section 245.71 (f) All training shall be documented with the date of the training, length of time spent on each training topic.

Section 245.75 (a) Each agency shall develop and implement policies and procedures for investigating, controlling and preventing infections. Placement agencies shall provide basic hand hygiene educational materials per Centers for Disease Control and Prevention.

Section 245.80 Licensures required. Added new section number (D) Change of Ownership

4) A licensee shall notify the Department in writing at least 45 days in advance of its intentions to change ownerships or to sell its agency.

5) What constitutes a change of ownership? Mirrors what Medicare looks at.

6) If a sale of an agency causes a change in a person or persons who control or operate the agency, the agency is considered a new agency and the licensee shall apply for a new license and conform to all regulations applicable at the time of the sale of the operation.

7) When an ownership of an agency is sold from the person/organization named on the license to another person/organization, the future owner shall apply for a new license. The future owner shall file an application for the license on the Renewal Change of Ownership application at least 45 days before the sale.

8) The Department shall issue a new license to a new owner who meets the requirements for licensure under the regulations. The former licensee shall return its license to the Department by certified mail.

Rebecca Zuber questions if an agency sells to another agency and does not meet the 45 day advanced period, what is the Department's recourse. Karen replied that the agency will be fined \$100 per month that the Department was not notified prior to the sale. The Department will process the ownership and move forward with the process, but the agency will be fined. This is based on the Fine section of the rules.

Section 245.90 Renewal Application. Home Health. What kind of data would be included as far as statistical data that was not a part of the Home Services or Home Nursing but has been added. Also added what type of statistical information needed from the Placement Agencies as well.

(E) A home health agency must be operational and be able to demonstrate client activity prior to the third renewal of the agencies license to verify compliance for renewal of the agencies license. A home services, home nursing, home services placement, home nursing placement agency must be operational and be able to demonstrate client activity prior to the second renewal of the agencies license to verify compliance of the renewal of the agencies license.

## Section 245.95 License Application Fee-for Multiple Licenses

- e) An applicant for dual licenses as a Home Services Agency and a Home Services Placement Agency or Home Nursing Agency and Home Nursing Placement Agency must maintain the operations as two legal entities separately to meet State regulations as an employer and a placement agency.

Karen clarified that two entities can operate out of the same office, but must be separate entities. Advertising should be distinct in the separation of the programs and shall reference the different types of services offered and should outline the separate procedures. Karen will look into wording regarding the two legal entities operating out of the same office. Statutory law permits the agencies to have dual licenses. That said, the same agency can offer different services to the same client based on the clients needs. The department is interviewing clients during surveys to determine if the service agencies and placement agencies are providing the services they are suppose to be based on their license types. Workers' Compensation issues were inquired regarding employees being injured and whether they are employees of the client or employees of the agency, but were referred to the Department of Labor for clarification.

Section 245.200 Home Health –Electronic Records. Home Services and Home Nursing- Last section –all verbal orders for medication or change in medication orders shall be taken by a nurse.

Section 245.205 Home Nursing Agency -If the agency has a contract for their staff, with a third party, the requirements must be outlined in the contract. The rest were cleaning up the language. No other changes to Home Nursing.

Section 245.210 Home Services Agencies (Same language as in home health)

If the agency provides services under contractual arrangements with a third party, it shall have a written agreement that includes, but is not limited to, the following:

- 1) Services to be provided
- 2) Provision for adherence to all applicable agency policies and personnel requirements, including requirements for initial health evaluations and employee health policies and criminal background check;
- 3) Designation of full responsibility for agency control over contracted services;
- 4) Procedures for submitting clinical and progress notes;
- 5) Charges for contracted services;
- 6) Statement of responsibility of liability and insurance coverage (employment, workers compensation) taxes (employment and social security)
- 7) Period of time in effect;
- 8) Date and signature of appropriate authorities; and
- 9) Provision for termination of services.

c) Acceptance of Clients

- 1) Person shall be accepted for service on the basis of their desire or need for assistance with household or personal support and/or companionship services. A home services agency shall not provide medical services that would be performed by an agency licensed as a home health agency or home nursing agency.

- 4) The Acceptance of the client for non medical services shall be based on the following documented information in consultation with the client and his or her appropriate family members or representative;
  - a) Any functional limitations of the client and the relevance of the limitation to the services requested.
  - b) On circumstances that may have an impact on activity or involvement by the client, such as basic information on medications being taken, treatments received, client's physician, activity, diet and mental status to the services requested.
- d) Service Plan
  - 1) The level, **frequency** and/or scope of services the client is receiving;
  - 3) Information received from the client, in consultation with the client and his or her appropriate family members or representative, on circumstances that may have an impact on activity or involvement by the client for the home services worker to be aware of, such as basic information on medications being taken, treatments received, client's physician, activity, diet and mental status.
- g) 6) Documentation by the home services worker of each of the services provided at each visit.

Patricia Menoni questions if this documentation could be electronic and where these records should be maintained, in the client's home or in the agencies office? This is covered in the definitions that a client's records can be written or electronic. From a surveyor's perspective, the client's records should be maintained in the agency office as proof of the care the agency provided to the client.

Section 245.212 Home Nursing Placement Agency (c) The placement agency must identify itself as a placement agency and all advertisement and marketing materials **and** educate the client that the placed nurse is the employee of the client and not the agency.

(d) (2) Anyone wishing to remain eligible for placement by the agency shall provide a copy of the current license, RN or LPN, **redacted** competency and criminal background check as it is not mandated under the healthcare criminal background check code of 955, which is strictly for non-licensed personnel. Also **redacted** mandated minimum 8 hours of training for professionals.

(10) The placement agency shall provide the placed nurse with the contact numbers for the Illinois Department on Aging, Department on Children and Family Services to report abuse, neglect or financial exploitation and what situations whereby the client and/or placed worker shall contact local law enforcement.

Section 245.214 Home Services Placement Agency. The placement agency is not the employer of the home service worker for whom it procures, offers, refers, provides or attempts to provide work. The home services worker performs services as per Section 245.71 without any direction, control or supervision exercised by the home services placement agency with respect to the manner and means of performing the home service work. Following the placement of the worker

with the client, the placement agency shall not have any control of the workers assignments, duties or involvement in the placement of the worker. The placement agency may only charge a one-time for service. The placement agency may allow the client up to 90 days to make a payment on the fee for services. Ongoing, continuous client fee shall not be allowed. This is re-emphasized under (b) defining and (c) for advertising to include verbiage of the client being an employee of the client not the agency. Also added verbiage to educate the placed worker about contact information for the Department on Aging.

Michele Running questioned whether this item was being tabled pending review by IDPH legal? Was confirmed by IDPH legal that the worker is an employee of the client and not of the agency. This worker may have multiple employers if he/she does work for multiple clients. The Illinois Department of Labor representative agrees with IDPH on this issue. However, their position with the case where the care giver is an independent contractor or still an employee of the placement agency will require further review.

Toni Colon Deputy Director for IDPH Health Care Regulation confirms that after the placement agency has provided the care-worker name and number to the client, that relationship will be expected to cease. Upon vacation or leave from a care-worker, the expectation will be a new agreement needs to be established if that client chooses to use the same placement agency as the client has other options. Business owners should project the needs of the clients and have policies in force that will cover care-giver and clients needs. A second agreement may need to be established in order to cover the time-off for care-givers in order for the care needs of the client to be met. This should be addressed in the initial assessment of the clients needs. The two agreements shall be clearly separate and distinct in meeting that clients needs. This should be implemented in the agencies business practices.

Meeting lost video feed at 1:10 and only Springfield and Bellwood were reconnected. Pat Gibson attempted to reconnect and was unable.

IDPH needs to identify whether the same care-worker can at the same time be an employee and a non-employee for the same client.