

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

December 3, 2013 – 10:00 A.M.

VIDEOCONFERENCE

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

Members Present:

Teresa Garcia-Fitzgerald, Chair
Sheila McMackin
Michael Rohan
Patricia Menoni
Patricia Gibson
Michelle Running
Gail Ripka, co-Chair
Michael Melinger
James Wilson
Donna McNally
Kathleen Kraft

Members Not Present:

Dennis Norem, MD
Nancy Nelson
Vistacion Hicks

Department Staff:

Toni Colón
Debra Bryars
Aida Trinidad
Kendra Fabish
Siji Varghese
Maurice McAllister

CALL TO ORDER:

The meeting was called to order at 10:37 a.m. Committee members, guests and department staff were asked to introduce themselves.

APPROVAL OF MINUTES

No minutes were approved at this meeting. The minutes for November 6, 2013 will be approved during our next meeting January 8, 2014.

OLD BUSINESS:

Proposed changes from subcommittee (Part 245)

Kendra Fabish addressed the revisited and proposed changes to Part 245. If the information is italicized this is part of the Act and cannot be changed at this board. If the information is underlined it was added to the regulation and can be changed. If a line goes through a word, paragraph or sentence these are deleted items from the regulations.

Section 245.20 Definitions:

The changes to this section did not include the full definition of a Home Services Placement Agencies. This section will conclude with the Departments position.

Placement Agency - any person engaged for gain or profit, regardless of the agency tax status, in the business of securing or attempting to secure work for hire for persons seeking work or workers for employers. The term includes a private employment agency and any other entity that places a worker for private hire by a consumer in that consumer's residence for purposes of providing home services. The term does not include a person that provides or procures temporary employment in health care facilities, as defined in the Nurse Agency Licensing Act (Section 2.12 of the Act). For the purposes of this Part, there are two types of placement agencies: Home Nursing Placement Agencies (see Section 245.212). A placement agency does not provide ongoing continuous client support management of services.

Section 245.71 Qualifications and Requirements for Home Services Workers

- c) Each home services agency shall provide or arrange for 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 subsections (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 and this includes a certified nurse aide that is in good standing with the Health Care Workers Registry. The agency shall give the certified nurse aide a competency evaluation prior to the first assignment. 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 hour 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.

Section 245.95 License Application Fee Single or 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 operate each licensed entity as a separate entity to meet State regulations as an employer or workers and a placement agency which places individuals.

Section 245.212 Services - Home Nursing Placement Agency

- c) A placement agency must identify itself as a placement agency in all advertisement and marketing materials and educate the client that the placed nurse is the employee of the client and not the agency.

A question was raised as to why the definition for Home Nursing Placement Agency and Home Services Placement Agency are different. According to Ms Fabish the difference was not intended but an oversight. The Department will have an internal review of both definitions.

Section 245.214 Home Services Placement Agency

- a) Agencies licensed as home services placement agencies are in the business of securing or attempting to secure work for hire for persons seeking work or workers for employers. A placement agency is not the employer of a home service worker for whom it procures, offers, refers, provides, or attempts to provide work. The home service worker performs services as per Section 245.71 without any direction, control, or supervision exercised by the home service 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 worker's assignment/duties, or involvement in the payment of the worker. The Placement Agency may only charge a onetime fee for service. The Placement Agency may allow the client up to ninety (90) days to make payment on the fee for services. An ongoing continuous client service fee shall not be allowed.
- b) A placement agency, by definition, cannot be the employer of the worker. The client and placement agency relationship shall conclude at the time of the work placement. If a client requires additional placement services from the placement agency the relationship begins a new contract and concludes at the time of worker placement.
 - 1) Actions taken by the Placement Agency as part of its quality review process as Required by 77 Ill. Admin. Code 245.240 (d) shall not be considered an ongoing relationship.
 - 2) Actions taken by a client which falls under 77 Ill. Admin Code 245.250 (a) (4) shall not be considered an ongoing relationship.
- c) A placement agency shall identify itself as a placement agency in all advertisement and marketing materials including, but not limited to, a statement that the period home service worker would be the client's employee and not the placement agency's employee.
- e) 11) A Placement agency shall provide the placed worker with the contact numbers to the Illinois Department of Aging and the Department of Children and Family Services to report abuse, neglect and or financial exploitation and what situations where by the client and or placed worker shall contact local law enforcement.

Ms. Valerie Puccini, Assistant General Counsel, Illinois Department of Labor (DOL) addressed item 245.214. The Department of Labor's position is that the Worker is not an independent contractor and the Employer is either the Placement Agency or the Family. Placement agencies must represent to all parties concerned as to who is the Employer in any given circumstance. Pursuant to the IDOL's wage and hour laws, in order to determine whether a worker is an independent contractor, the worker must meet the independent contractor test, which is commonly referred to as the "ABC test". The Department's position is that the health care workers do not meet that test and therefore are not independent contractors.

Section 245.220 Client Services Contracts - Home Nursing and Home Services Agencies

A contract between a home nursing or home services agency and a client shall be in force, a copy of which is provided to the client and a copy of which is maintained in the client file at the agency. If the agency has both a Home Services and Home Nursing licensure, they must have two separate client contracts, one for skilled medical care and one for non medical services to ensure accurate client information. The document shall be printed in no less than 12 point type, and shall include at least the following elements in the body or through supporting documents or attachments:

Section 245.225 Client Services Contracts - Home Nursing Placement Agency and Home Services Placement Agency

- f) ~~The placement rate fees to be paid by the client and a detailed description of services to be provided as part of the rate.~~
- h) ~~A description of the agency complaint resolution process;~~
- j) ~~A statement regarding the agency's policy on notification of a relative or other individual in case of an emergency;~~
- k) ~~A statement on how to whom the client can report abuse, neglect or financial exploitation; and the Illinois Department of Public Health's complaint hotline (800-252-4343)~~
- l) A notice, as developed and provided by the agency, indicating the client is the employer of the in-home service worker and the client is the responsible part for the following:
 - 1) ~~Employer of the in-home/licensed worker;~~
 - 10) ~~All placement fees, procedures for refunds of these fees, and a complaint resolution process for disputes concerning placement fees, as currently provided under the Private Employment Agency Act.~~

Section 245.240 Quality Improvement Program

- a) Each agency shall develop a quality improvement program for the agency. The quality improvement program shall include written policies and shall evaluate the agency's total program at least once a year. The evaluation for Home Health Agencies, Home Services Agencies and Home Nursing Agencies shall, at a minimum, include a clinical or client record review, as appropriate. This evaluation shall assess the extent to which the agency's program is appropriate, adequate, effective and efficient. Results of the evaluation shall be reported to and acted upon by those responsible for the operation of the agency and shall be maintained separately as administrative records.
- b) 4) Whether the service plan was followed by the home service worker and or nursing staff
- d) Placement agencies shall assess the extent to which the agency's program is appropriate, adequate, effective and efficient including but not limited to the placement of workers with prior training and with a clear criminal background check. Results of the evaluation shall be reported to by those responsible for the operation of the agency and shall be maintained separately as administrative records.

Section 245.250 Abuse, Neglect and Financial Exploitation Prevention and Reporting

- a) When an agency has reasonable suspicion that a client has been the victim of abuse, neglect or financial exploitation, the agency shall do the following:
 - 3) If the abuse or neglect is alleged to be a result of actions by an employee of the agency, ~~or one placed by an agency~~ providing in-home, home health, or home nursing services, the agency shall immediately remove the alleged perpetrator from direct contact with clients and investigate the allegation.
 - 4) If the placement agency is contacted by the client regarding an allegation of abuse or neglect by the placed worker; the agency shall comply with all relevant mandatory reported rules and regulations.
- b) In cases of allegations of abuse or neglect by an employee or ~~an individual who has been placed by an agency~~, the agency shall conduct an investigation and develop a written report of the findings of the investigation within 14 days after the initial report. The agency shall send the written report of the investigation to the Department within 24 hours after completion of the investigation and shall maintain a copy of the report on the agency premises for 12 months after the date of the report.

- c) A Placement agency shall provide the client, at the time of the placement of the worker, and the placed worker with the contact numbers to the Illinois Department of Aging and the Department of Children and Family Services to report abuse, neglect and or financial exploitation and what situations where by the client and or placed worker shall contact local law enforcement.
 - d)e) The written report of the investigation conducted pursuant to this Section shall contain at least the following:
 - e)d) Agency employees, persons ~~placed by a placement agency~~ and volunteers shall report abuse, neglect or financial exploitation of a client to the agency management and to the appropriate elder abuse provider agency or the Illinois Department of Aging.
 - f)e) The agency shall immediately contact local law enforcement authorities (e.g., telephoning 911 where available) in the following situations:
 - g)f) The agency shall develop and implement a policy concerning local law enforcement notification, including:
 - h)g) Nothing in this Section relieves a mandates reporter from the responsibility of making a report to an agency designated to receive such reports under the Elder Abuse and Neglect Act or to the Department.
- (Source: Added at 32 Ill. Reg. 8949, effective June 5, 2008)

NOTHING FOLLOWS

The proposed changes will be prepared for review by IDPH legal; then to the Governor's office; and be ready for mail by February 6th, 2014 to the State Board of Health for their meeting February 20, 2014; then the rules will be processed for 1st notice; and then the agencies or members can comment at 1st notice.

This completes the recommended changes to the Department. The chairman wanted to thank everyone involved with the regulations review and recommendations and especially to the subcommittee for making it all happen. The next board meeting is scheduled for January 8, 2014.

Meeting adjourned: 12:25 p.m.