

PROPOSED RULEMAKING

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 611]

Home Care Agencies and Home Care Registries

The Department of Health (Department), Bureau of Community Program Licensure and Certification, Division of Home Health, proposes to add Chapter 611 (relating to home care agencies and home care registries) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

The purpose of the proposed rulemaking is to set minimum standards for the operation of home care agencies and home care registries. The act of July 7, 2006 (P. L. 334, No. 69) (Act 69) amended the Health Care Facilities Act (act) (35 P. S. §§ 448.101—448.904) to require the Department to license home care agencies and home care registries. Home care agencies employ direct care workers to provide home care services to individuals in their homes or other independent living environments. Home care registries refer direct care workers who are independent contractors to provide home care services to individuals in their homes or other independent living environments. Services provided by home care agencies and home care registries include assistance with activities of daily living (for example, bathing, dressing and feeding) and instrumental activities of daily living (for example, housekeeping, shopping, meal planning and preparation, and transportation), companionship, respite care and other nonmedical services.

This proposed rulemaking is 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. This proposed rulemaking provides consumer protection by establishing oversight, by requiring criminal background checks, child abuse clearance and communicable disease screens, and by imposing hiring and training requirements for individuals employed by a home care agency or referred by a home care registry to provide care.

Statutory Authority

Section 803(1) of the act (35 P. S. § 448.803(1)) authorizes the Department, after consultation with the Health Policy Board, to promulgate regulations necessary to carry out the purposes and provisions of the act. Act 69 also included a provision expressly authorizing the Department to promulgate regulations to implement sections 806(d.1) and 806.3 of the act (35 P. S. §§ 448.806(d.1) and 448.806(c)), regarding licensure standards and consumer protections.

Summary

Act 69 requires the Department to develop regulations in consultation with the Department of Public Welfare and other advisory groups that represent persons in the home health care industry, persons with physical disabilities and the aging community. The Department also is required to take into consideration the preferences and philosophies of persons with physical disabilities who receive home and community-based services through Medicaid waiver or other publicly funded programs.

The Department distributed a set of draft regulations to the Department of Public Welfare, the Department of

Aging, other designated stakeholders and interested persons in advance of stakeholder meetings in Harrisburg on December 7, 2006, in Muhlenberg on December 12, 2006, and in Pittsburgh on December 15, 2006. The Department also met on January 26, 2007, with representatives of what was, at that time, the Pennsylvania Protection and Advocacy, now known as the Disability Rights Network of Pennsylvania, and with other individuals representing organizations serving the disability community. Following meetings with stakeholders, and receipt of comments on the draft regulations, the Department revised the draft regulations based on comments received and presented the proposed rulemaking to the Department's Health Policy Board on March 14, 2007, in accordance with the Department's obligation to consult with the Health Policy Board when promulgating regulations under section 803(1) of the act.

The proposed regulations are divided into several parts. Sections 611.1—611.4 (relating to general) contain general provisions, including definitions. Sections 611.11—611.19 (relating to licensure), §§ 611.31—611.33 (relating to inspection and survey activities) and §§ 611.41—611.45 (relating to sanctions and corrective actions) reflect the Department's existing practices and protocols for licensure and enforcement of licensure standards for all health care facilities covered by the act. Sections 611.51—611.57 (relating to governance and management) address the substantive requirements set forth in the act that a home care agency or home care registry must meet to obtain and maintain a license. These sections address hiring and training of direct care workers employed or on contract, background checks, child abuse clearances and consumer protections.

Section 611.1 (relating to legal base) explains the statutory authority and the purpose of the regulations. Section 611.2 (relating to affected home care agencies and home care registries) explains that the regulations affect home care agencies and home care registries that meet the definition in the regulations and establishes the time frame within which existing home care agencies and home care registries must come into compliance. Section 611.3 (relating to requirements for home care agencies and home care registries) explains the obligation of the home care agency and home care registry to comply with existing laws and regulations addressing environment, health, sanitation and professional licensure standards imposed by Federal, State and local authorities.

Section 611.4 (relating to definitions) includes definitions of terms used in the proposed rulemaking. Terms used in the proposed rulemaking that are defined in the act are not defined again, except to the extent that a definition has been expanded to clarify or interpret compliance obligations for the home care agencies and registries. Thus, the proposed rulemaking includes definitions of "home care agency" and "home care registry" to clarify that entities providing only "financial management services" to consumers of home and community-based services through Medicaid waiver or other publicly funded programs would not be subject to the regulations. "Home care agency" and "home care registry" are defined to exclude an entity designated under 26 U.S.C. § 3504 (relating to acts to be performed by agents) and either IRS Revenue Procedure 70-6 or IRS Revenue Procedure 80-4 that provides only "financial management services" to consumers of home and community-based services through Medicaid waiver or other publicly funded pro-

grams. "Financial management services" means one or more of five specified services associated with meeting the payroll and other responsibilities of a consumer of home care services who is also the employer of the direct care worker. If the entity provides only financial management services to a consumer of home and community-based services, the entity would not be a covered entity for licensure purposes. The corollary, of course, is that if the entity provides more than financial management services, the entity would not be automatically excluded and would have to examine its operations to determine if it were subject to the licensure requirements.

Section 611.4 also includes a definition of "inspection," also defined in the act, to clarify the means by which the Department would determine the agency's or registry's compliance with licensure standards, and to establish that the inspection might or might not be onsite. The remaining definitions are self-explanatory.

Sections 611.11—611.19 set forth requirements for the licensure process that is consistent with those for health care facilities that the Department licenses. These sections contain several provisions, however, that would be specific to home care agencies and home care registries. Section 611.11(a) (relating to license required) requires that to the extent that an entity operates a home care business from more than one location, each physical location of the agency or registry must be separately licensed. Section 611.11(b) addresses the possibility that an entity could be operating as both a home care agency and a home care registry. That is, the entity might offer employees as direct care workers to consumers, and the entity might also offer a roster of individuals who are independent contractors for a consumer to choose from to receive services. In that case, the entity would be required to apply for a license to operate as a home care agency and a home care registry. Section 611.11(c) addresses how existing home care agencies and home care registries would transition from nonlicensed to licensed status. This subsection permits the entity operating as a home care agency or home care registry as of the effective date of the final-form rulemaking to continue to operate after the effective date provided the entity submits an application for a license in accordance with time frames to be announced in the *Pennsylvania Bulletin* and on the Department's website.

Sections 611.31—611.33 contain requirements that would be consistent with those of the Department for all health care facilities that the Department licenses. There are no proposed provisions in this section that vary the inspection and survey process for home care agencies and home care registries. However, § 611.31(e)(4) (relating to inspections) defines access to the agency or registry to include private interviews with the consumer, with the consumer's consent. This proposed language is intended to address concerns expressed during the stakeholder process that the Department might insert itself in the consumer and care-giver relationship without appropriate regard for the consumer's privacy. This provision makes clear that the Department's approach with regard to home care agencies and home care registries would be the same as it is for all other health care facilities. In all circumstances and in all settings in which the services of licensed entities are being assessed for regulatory compliance, the Department does not seek to interview the recipient of regulated services or observe direct care without that person's consent.

Sections 611.41—611.45, which address sanctions for deficiencies, reasons for revocation or nonrenewal of a

license, notice and form of notice of sanctions to be imposed, and request for hearing, also reflect the Department's practices and procedures for all health care facilities that the Department licenses. Much of what is proposed in these sections, most notably the reasons for revocation or nonrenewal of a license, is pulled directly from the act, whose provisions apply to all facilities covered by the act.

Sections 611.51—611.57 address the substantive requirements in the act applicable to home care agencies and home care registries. Section 611.51 (relating to hiring or rostering of direct care workers) requires that, before a home care agency may hire a direct care worker or a home care registry may enter into a contract with and place an individual on a list of available direct care workers (for example, roster the individual), the agency or registry conduct a face-to-face interview with the individual, obtain satisfactory references and require the individual to submit a criminal history report and a ChildLine verification, if necessary. Agencies and registries would be required to include documentation of the face-to-face interview, references obtained and criminal background check and child-line verification in a personnel file for the direct care worker.

Section 611.52 (relating to criminal background checks) includes requirements that mirror those in 6 Pa. Code Chapter 15 (relating to protective services for older adults) to implement the criminal background check requirements under the Older Adults Protective Services Act (OAPSA) (35 P. S. §§ 10225.101—10225.5102). Thus, § 611.52(a) requires that the criminal history report, listed as a prerequisite for hire or roster under § 611.51, be obtained at the time of the application or within 1 year immediately preceding the date of the application. Section 611.52(b) also would require that the applicant for employment or roster submit a State Police criminal history record if the individual has been a resident of this Commonwealth for 2 years preceding the date of application. Under § 611.52(c), if the individual has not been a resident of this Commonwealth for the requisite 2-year period, the applicant would be required to follow the procedures in 6 Pa. Code § 15.144(b) (relating to procedure) to 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, regarding the individual's eligibility for hire or roster.

This proposed rulemaking anticipates that the Department of Aging, based on an interagency agreement to be developed between the Department and the Department of Aging, will expand its work under OAPSA for nursing care facilities, home health agencies, hospice and other health care providers and review Federal criminal history records for individuals applying to work for home care agencies and home care registries and issue letters of determination. The Department of Aging would review the Federal criminal history record to determine whether the record lists a prohibited conviction (listed in 6 Pa. Code § 15.143 (relating to facility responsibilities)) and then issue a letter of determination.

Under § 611.52(e), the home care agency or home care registry would not be permitted to hire or roster an individual if the State Police criminal history record revealed a prohibited conviction or if the Department of Aging letter of determination stated that the individual is not eligible for hire or roster. Until OAPSA is amended, in light of *Nixon v. Commonwealth of Pennsylvania*, 576 Pa. 385, 839 A.2d 277 (2003), and the life-time prohibition against hire or the list of prohibited convictions revised,

the Department is proposing that the regulations to implement the background check provisions of Act 69 should mirror the existing background check provisions and prohibitions applicable to other health care providers under OAPSA.

Section 611.52(j) requires persons who are employed by or rostered by a home care agency or home care registry as of the effective date of the final-form rulemaking to 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 within 120 days of the effective date of the final-form rulemaking. This requirement would not apply if the home care agency or home care registry obtained a criminal history report meeting the requirements of the regulation when the individual was hired or rostered and a copy of the report is included in the individual's personnel file.

Under § 611.53(a) (relating to child abuse clearance), a home care agency or home care registry that serves persons under 18 years of age would need to require each applicant for employment or referral as a direct care worker, and each member of the agency or registry office staff, to request a verification regarding whether that individual 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). Under § 611.53(b), the home care agency or home care registry would be prohibited from hiring or rostering an individual named in the Statewide Central Register as the perpetrator of a founded or indicated report of child abuse. Under § 611.53(d), persons currently employed or rostered as of the effective date of the final-form rulemaking will have 120 days to comply, except that a person for whom a ChildLine verification had been obtained when the person was hired or rostered need not obtain another verification as long as a copy of the verification is contained in the individual's personnel file.

During the stakeholder process, the Department received many suggestions that the ChildLine clearance requirement should apply only to those direct care workers employed or rostered specifically to provide care to an individual under 18 years of age. Act 69 requires that "prior to licensing a home care agency or home care registry which provides services to persons under 18 years of age, the department shall determine that all individuals employed by an agency or referred by a register, all office staff working within each entity and the owner or owners have obtained clearance from the child abuse registry, in accordance with 23 Pa.C.S. Ch. 63 (relating to child protective services) and maintain that information on file in the home care agency or registry office." The Department is not permitted to promulgate a regulation less stringent than the act on which the regulation is based.

Section 611.54(a) permits a home care agency or home care registry to 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 certain listed conditions are met. The applicant would be required to apply for a criminal history report and ChildLine verification, as applicable, to affirm in writing that the applicant is not disqualified from employment because of a criminal background or history of child abuse, and to have the training required by the proposed rulemaking. The home care agency or home care registry would be required to monitor the provisionally

hired applicant through random, direct observation and consumer feedback. The period of provisional employment cannot exceed 120 days.

During the stakeholder process, a number of participants suggested that the concept of provisional hiring should be eliminated from the proposed rulemaking. The Department emphasized then, and again points out, that the proposed rulemaking permits, but does not require, provisional hiring. A home care agency or home care registry would be free to assess the risks associated with provisional hiring and to determine that the risks would outweigh the benefits. This proposed rulemaking is meant to establish the parameters within which provisional hiring might occur for those home care agencies or home care registries that would choose to provisionally hire.

Section 611.55 (relating to training requirements) addresses training requirements and allows the home care agency or home care registry several different options for ensuring that the direct care worker is appropriately trained. Section 611.55(b) provides that a direct care worker who provides only assistance with activities of daily living and instrumental activities of daily living may demonstrate competency by successfully completing a competency examination approved by the Department. Section 611.55(c) provides that a direct care worker will have satisfied the training requirements if the direct care worker has a valid nurse's license or has successfully completed one of the listed training programs or other training program approved by the Department and published in the *Pennsylvania Bulletin*. Section 611.55(d) includes required core elements for the competency examination or other training program to be approved by the Department. In response to recommendations made during the stakeholder process by individuals representing persons with physical disabilities and persons who receive services through publicly funded home and community-based programs, the Department proposes to include among the core elements for competency testing consumer control and the independent living philosophy.

Section 611.55(e) would state, in part, that documentation of satisfactory completion of training prerequisites 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. See § 611.55(f). Section 611.55(f) requires periodic reassessment of the individual's competency to perform assigned duties. Reassessment would occur annually and more frequently when discipline or other sanction is imposed because of a quality of care infraction. Finally, § 611.55(g) permits existing home care agencies and registries 2 years from the effective date of the final-form rulemaking to achieve compliance.

Section 611.56 (relating to health evaluations) requires the home care agency or home care registry to ensure that each individual employed by an agency or rostered by a registry, and other office staff or contractors with direct consumer contact, prior to beginning work, provide documentation to be included in the individual's personnel file evidencing a screening assessment performed by a qualified health professional within 180 days prior to the individual's start date. "Qualified health professional" is defined in § 611.4 as an individual who holds a license or certification issued by the Commonwealth which allows for the performance of a physical examination, evaluation or assessment. The term includes a physician, a physician's assistant, a registered nurse and a certified registered nurse practitioner. Under § 611.56(a), the screening assessment would need to show that the individual was

evaluated for tuberculosis risk factors and tested as necessary, and screened for the listed communicable diseases and conditions. Section 611.56(b) prohibits the home care agency or home care registry from referring a direct care worker if the agency or registry suspects the direct care worker has one of the listed communicable diseases or conditions until the direct care worker has been evaluated by a qualified health professional and cleared to return to work. Section 611.56(c) requires the home care agency or home care registry to require the individual to obtain an updated screening assessment annually.

Section 611.57(a) (relating to consumer protections) addresses consumer rights, subsection (b) addresses prohibitions for the home care agency and home care registry and subsection (c) lists information that the home care agency and home care registry must provide to the consumer in advance of providing services. These requirements were taken directly from the act. Section 611.57(c)(7) requires the home care agency to provide a disclosure, addressing the employee or independent contractor status of the direct care worker and the resultant respective tax and insurance obligations and other responsibilities of the consumer, in a format to be published by the Department within 60 days of the effective date of the final-form rulemaking.

Fiscal Impact

State government. The licensure program for home care agencies and home care registries would cost approximately \$1.008 million for the first full year of the program. This projection is based on the approximate cost to survey a home care agency or registry and the projected number of home care agencies and home care registries (650).

The Department also would incur certain start-up costs associated with hiring and training of surveyors or inspectors and updating the Department's electronic Survey Agency Information System (SAIS) through which the Department coordinates and manages its licensure functions. Through SAIS, the Department schedules and tracks surveys or inspections of facilities, tracks surveyor time and efforts and tracks complaints about facilities. The SAIS also includes a function through which a statement of deficiencies, in the event of regulatory violations identified during an inspection, can be generated. The SAIS also allows the facilities to submit its plan of correction electronically. The SAIS will need to be revised to include the home care agency and home care registry licensing function.

Local government. There would be no cost to local government.

Public. There may be a cost to the public in the form of higher charges for care because the home care agency or home care registry would need to recoup start-up and ongoing costs of compliance with licensure criteria.

Regulated entity. Home care agencies and home care registries would incur costs as a result of this proposed rulemaking. To the extent an agency or registry currently does not have hiring policies and procedures in place equal to or more stringent than the hiring prerequisites in the proposed rulemaking, the agency or registry would incur the onetime cost of establishing systems and procedures that comply with the proposed rulemaking and the ongoing cost of doing business in the manner dictated by the regulations. The proposed rulemaking would permit choices, however, and the choice made by an agency or registry would have an impact on overall costs. Establish-

ing competency of a direct care worker through a competency examination, for example, might cost less than establishing competency through a training program. The agency or registry also would be required to pay the annual licensing fee of \$100.

Paperwork Requirements

State government. The Department will have additional paperwork responsibilities connected with its role as the licensing agency. Much of the licensing paperwork is handled electronically through the Department's SAIS system. The Department would issue a hard copy license which the agency or registry must post at the licensed location. The Department also would issue hard copy statement of deficiencies which would be required to be available for public inspection, along with any plan of correction.

Local government. There will be no additional paperwork requirements for local government.

Public. Consumers of home care services would receive paperwork as a result of this proposed rulemaking. Consumers would receive written notice of termination of services. Consumers also would receive written notice of services to be provided, the hours when those services would be provided, fees and costs associated with the services and who to contact with complaints. Consumers also would receive a written description of the hiring and training requirements applicable to direct care workers and a written disclosure of the worker's status as an employee or independent contractor and the resultant respective tax and insurance obligations of the consumer and the agency or registry.

Regulated entity. Home care agencies and home care registries will be required to submit paperwork to receive or renew a license. Home care agencies and home care registries will need to respond to identified regulatory deficiencies in the form of a plan of correction. They will need to notify the Department in writing prior to a change in ownership, change in officers, directors, members, partner or principals or change in management. They will need to create and maintain certain personnel files containing documentation of a face-to-face interview, references, a criminal history report and ChildLine verification, if necessary, and documentation of satisfactory completion of the training prerequisites and the annual reassessment. The personnel file also will be required to contain documentation of a health evaluation obtained prior to employment or roster.

Home care agencies and home care registries will be required to provide written notice to the consumer of the intent to terminate services. Finally, home care agencies and home care registries will be required to provide written documentation to the consumer listing services to be provided, the hours when those services would be provided, fees and costs associated with the services and who to contact with complaints. The written documentation also will be required to describe the hiring and training requirements applicable to the direct care worker being sent to the consumer's home or other independent living environment and disclose the worker's status as an employee or independent contractor and the resultant respective tax and insurance obligations of the consumer and the agency or registry.

Effective Date

This proposed rulemaking will take effect upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

The regulations will be continually monitored for their effectiveness and updated as needed. Therefore, no sunset date has been established.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 25, 2007, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Contact Person

Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to Janice Staloski, Director, Bureau of Community Program Licensure and Certification, 132 Kline Plaza, Suite A, Harrisburg, PA 17104-1579, (717) 783-8665 within 30 days after publication in the *Pennsylvania Bulletin*. For persons with a disability, comments, suggestions or objections regarding the proposed rulemaking should be submitted to Janice Staloski in alternative formats, such as by audio tape, Braille or by using (717) 783-6514 (TDD). Persons with a disability who require an alternative format of this proposed rulemaking (for example, large print, audio tape or Braille), contact Janice Staloski to make the necessary arrangements.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

Fiscal Note: 10-184. (1) General Fund; (2) Implementing Year 2006-07 is \$447,000; (3) 1st Succeeding Year 2007-08 is \$1,008,000; 2nd Succeeding Year 2008-09 is \$1,058,000; 3rd Succeeding Year 2009-10 is \$1,112,000; 4th Succeeding Year 2010-11 is \$1,169,000; 5th Succeeding Year 2011-12 is \$1,230,000; (4) 2005-06 Program—\$14,529,526; 2004-05 Program—\$14,157,071; 2003-04 Program—\$14,529,526; (7) Quality Assurance; (8) recommends adoption. Funds have been included in the budget to cover these increases.

Annex A**TITLE 28. HEALTH AND SAFETY****PART IV. HEALTH FACILITIES****Subpart H. HOME CARE AGENCIES AND HOME CARE REGISTRIES**

Chap.
611. Home Care Agencies and Home Care Registries

(*Editor's Note:* The following chapter is new. It has been printed in regular type to enhance readability.)

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

Sec.
611.1. Legal base.
611.2. Affected home care agencies and home care registries.
611.3. Requirements for home care agencies and home care registries.
611.4. Definitions.

LICENSURE

611.11. License required.
611.12. Application for license.
611.13. Ownership.
611.14. Issuance of license.
611.15. Posting of license.
611.16. Nontransfer of license.
611.17. Responsibility of owners of home care agencies and home care registries.
611.18. Change in ownership or management.
611.19. Void license.

INSPECTION AND SURVEY ACTIVITIES

611.31. Inspections.
611.32. Retention of records.
611.33. Statement of deficiencies and plan of correction.

SANCTIONS AND CORRECTIVE ACTIONS

611.41. Sanctions for deficiencies.
611.42. Reasons for sanctions.
611.43. Notice.
611.44. Form of notice.
611.45. Request for hearing.

GOVERNANCE AND MANAGEMENT

611.51. Hiring or rostering of direct care workers.
611.52. Criminal background checks.
611.53. Child abuse clearance.
611.54. Provisional hiring.
611.55. Training requirements.
611.56. Health evaluations.
611.57. Consumer protections.

GENERAL**§ 611.1. Legal base.**

(a) This subpart is promulgated by the Department under the powers granted and the duties mandated by sections 803 and 809.1 of the act (35 P. S. §§ 448.803 and 448.809.1).

(b) The Department has the power and its duty is to promulgate the regulations necessary to implement 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 subpart 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. Affected home care agencies and home care registries.

(a) This subpart 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 subpart.

(b) Existing home care agencies and home care registries which were home care agencies or home care registries prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this chapter.) shall be required to meet the same standards as home care agencies and home care registries created

after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this chapter.).

§ 611.3. 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) 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.

(c) 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.

§ 611.4. Definitions.

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

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

ChildLine—An organizational unit of the Department of Public Welfare which operates a Statewide 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)).

Consumer—An individual to whom services are provided.

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 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 publicly funded home and community based waiver 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—

(i) An organization that supplies, arranges or schedules employees to provide assistance with activities of daily living or instrumental activities of daily living, companionship services or specialized care on an hourly, shift or continual basis to a consumer 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.

(ii) The term does not include a home health care agency, a durable medical equipment provider, a volunteer provider, or an organization or business entity designated under 26 U.S.C. § 3504 (relating to acts to be performed by agents) and either IRS Revenue Procedure 70-6 or IRS Revenue Procedure 80-4 that provides only financial management services to consumers of home and community-based services through Medicaid waiver or other publicly funded programs.

Home care registry—

(i) An organization or business entity or part of an organization or business entity that supplies, arranges or refers independent contractors to provide assistance with activities of daily living or instrumental activities of daily living, or specialized care, 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.

(ii) The term does not include an organization or business entity designated under 26 U.S.C. § 3504 and either IRS Revenue Procedure 70-6 or IRS Revenue Procedure 80-4 that provides only financial management services to consumers of home and community-based services through Medicaid waiver or other publicly funded programs.

Inspection—An examination or assessment of a home care agency or home care registry 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. The inspection may or may not be onsite.

Nurse—A registered nurse or a licensed practical nurse.

Qualified health professional—

(i) An individual who holds a license or certification issued by the Commonwealth which allows for the performance of a physical examination, evaluation or assessment.

(ii) The term includes a physician, a physician's assistant, a registered nurse and a certified registered nurse practitioner.

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

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.

LICENSURE

§ 611.11. License required.

(a) Except as set forth in subsection (c), an entity or organization may not 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.

(b) The license will specify whether the entity is licensed as a home care agency or 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 _____ (*Editor's Note:* The blank refers to the effective date of adoption of this chapter.) may continue to operate after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this chapter 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 website by _____ (*Editor's Note:* The blank refers to a date within 60 days after the effective date of adoption of this chapter.). 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 the date 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.

§ 611.12. Application for license.

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

(b) The applicant shall submit an application or renewal form to the Department with the fee required under section 807 of the act (35 P.S. § 448.807). 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 an 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.

(c) The applicant shall provide documentation required by the Department in connection with the application and complete and submit the forms specified by the Department and additional information required by the Department so that the Department can determine if the applicant is a responsible person and otherwise qualified to obtain a license to maintain or operate a home care agency or home care registry.

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

§ 611.13. Ownership.

The owner of a home care agency or home care registry may be an individual, partnership, association, corporation or a combination of these forms of ownership. The following requirements apply to a home care agency and a home care registry according to the mode of ownership:

(1) *Individual ownership.* A complete list of names and addresses of the owners of the home care agency or home care registry shall be submitted with the application.

(2) *Partnerships.* A complete list of names and addresses of the owners, general partners and partners responsible for the management of the home care agency or home care registry shall be submitted with the application.

(3) *Association or corporation.* A complete list of names and addresses of the officers, directors, principal stockholders, either beneficial or of record, of the corporate owners and of the parent corporation, if applicable, and of the persons in charge who are responsible for the management of the home care agency or home care registry, shall be submitted with the application. Ownership interest of 5% or more—direct or indirect—shall be disclosed on the application.

§ 611.14. Issuance of license.

(a) The Department will issue a license to operate a home care agency or home care registry, or both, after the Department determines the applicant is a responsible person and an inspection conducted by the Department indicates that the applicant is in substantial compliance with this chapter.

(b) A license issued by the Department will expire 1 year from the date of issue.

§ 611.15. Posting of license.

The home care agency or home care registry shall prominently post its license, or duplicate copy of the license, as requested and obtained from the Department, in a public and conspicuous location on the premises.

§ 611.16. Nontransfer of license.

A license may not be transferred to another home care agency or home care registry, or to the purchaser or new owners of a home care agency or home care registry in the event of a change in ownership under § 611.18 (relating to change in ownership or management), and may not extend to another home care agency or home care registry, or to another physical location of the home care agency or home care registry.

§ 611.17. Responsibility of owners of home care agencies and home care registries.

(a) The owner shall be responsible for meeting the minimum standards for operation as set forth by the Department and by other State and local agencies responsible for the health, welfare and safety of the consumers of services.

(b) The owner, administrator or designee shall immediately report to the Department any catastrophic incident, such as a fire or flood, or any incident that may cause interruption or cessation of the delivery of services, or another interruption of services which would affect the health and safety of the consumers of services.

(c) The owner, administrator or designee shall immediately report to the Department a relocation of the home care agency or home care registry or a change of address for the home care agency or home care registry.

§ 611.18. Change in ownership or management.

(a) The home care agency or home care registry shall notify the Department in writing at least 60 days prior to any anticipated change in ownership, form of ownership, or name, and immediately prior to any unanticipated change in ownership, form of ownership, or name. A change in ownership means any transfer of the controlling interest in the facility.

(b) The home care agency or home care registry shall notify the Department in writing at least 60 days prior to any anticipated change in officers, directors, members, partners or principals, and immediately prior to any unanticipated change in officers, directors, members, partners or principals.

(c) The home care agency or home care registry shall notify the Department in writing at least 30 days prior to any transfer involving 5% or more of the stock or equity in the entity that operates the home care agency or home care registry.

(d) The home care agency or home care registry shall notify the Department in writing no later than 30 days following a change in management. Management includes any individual responsible for oversight of day-to-day operations in the facility.

(e) Information regarding an anticipated change in ownership, change in form of ownership or transfer involving 5% or more of the stock or equity in an entity subject to the regulations of the United States Securities and Exchange Commission will not be considered a public record and will remain confidential until the transaction is complete.

§ 611.19. Void license.

A license will be immediately void if any of the following occur:

- (1) The license term expires.
- (2) The facility adds, terminates or otherwise changes the services it provides without notice to the Department required by § 611.17 (relating to responsibility of owners of home care agencies and home care registries).
- (3) The facility is transferred or sold, or substantially changes its ownership, form of ownership or management without notice to the Department required by § 611.18 (relating to change in ownership or management).
- (4) The facility relocates to another site.

INSPECTION AND SURVEY ACTIVITIES**§ 611.31. Inspections.**

(a) Prior to issuance of an initial license or renewal of a regular or provisional license, representatives of the Department will conduct an inspection of a home care agency or home care registry. Whenever the Department has received any complaint or has other reasonable grounds to believe that a deficiency exists, the Department may conduct an inspection to determine whether a deficiency exists.

(b) The Department will make reasonable efforts to prevent duplication of inspections by State and Federal regulatory agencies and will coordinate inspections whenever practical.

(c) Inspections to investigate complaints or other allegation of regulatory deficiency will be prioritized in accordance with the level of perceived threat to the health and welfare of consumers.

(d) Prior to the inspection by the Department, the Department may request from the home care agency or home care registry documents or records of the home care agency or home care registry including those held by other organizations or agencies, or other information necessary for the Department to prepare for the inspection. The home care agency or home care registry shall provide all of the information requested.

(e) Upon presenting a Department identification card, authorized agents of the Department will have access to the home care agency or home care registry to determine compliance with this chapter. The access includes the following:

(1) Entry to the premises.

(2) Examination of all of the facilities, buildings, grounds, files, policies and procedures, records, documents, offices, computer files, quality assurance files, risk management documents, governing body and management documents.

(3) Private interviews with any staff, employees and direct care workers.

(4) Private interviews with the consumer, with the consumer's consent.

§ 611.32. Retention of records.

The documentation required by this chapter and documentation with respect to establishing that the home care agency or home care registry is in compliance with applicable Federal, State and local requirements shall be retained by the home care agency or home care registry onsite. Documentation shall be retained for 4 years after termination of services to a consumer unless otherwise required by applicable Federal and State laws and regulations. Personnel records required under § 611.51 (relating to hiring or rostering of direct care workers) shall be retained for at least 4 years following termination of employment or roster status of a direct care worker. Documentation and records shall be retained even if the home care agency or home care registry discontinues operation. Documentation includes paper and electronic information.

§ 611.33. Statement of deficiencies and plan of correction.

(a) After completion of the inspection, the Department will evaluate all relevant information gathered during the inspection and formulate its compliance findings and determinations. In the event that the Department makes a determination of noncompliance with any provision of this chapter, the Department will issue to the home care agency or home care registry a statement of deficiencies.

(b) Upon receipt of a statement of deficiencies, the home care agency or home care registry shall provide the Department, within the time frame set by the Department, a plan of correction. The plan of correction must address the deficiencies cited in the statement of deficiencies and identify the corrective action to be taken, the individuals responsible for the corrective action and the time frames within which the corrective action will be accomplished. The plan of correction shall be attested to by the individual given signature authority by the home care agency or home care registry.

(c) Copies of the statement of deficiencies and plan of correction will be readily available on the Department's website for the purpose of public inspection. The agency or registry also shall make available for inspection and

examination by any person a copy of the most recent statement of deficiencies and plan of correction.

SANCTIONS AND CORRECTIVE ACTIONS

§ 611.41. Sanctions for deficiencies.

In the event of one or more regulatory deficiencies, in addition to requiring a plan of correction, the Department may impose a civil monetary penalty, not to exceed \$500 per deficiency per day, and the Department may take one of the following actions:

- (1) Suspend the license.
- (2) Revoke the license.
- (3) Refuse to renew the license.
- (4) Limit the license.
- (5) Issue a provisional license.

§ 611.42. Reasons for sanctions.

(a) The Department may refuse to renew a license, may suspend, revoke or limit a license of a home care agency or home care registry for any of the following reasons:

- (1) A serious violation of this chapter, the act or other statutes and regulations, which seriously threatens the health, safety and welfare of consumers.
- (2) Failure of an owner to submit a reasonable timetable for correction of deficiencies.
- (3) The existence of a pattern of cyclical deficiencies which extends over 2 or more years.
- (4) Failure, by the holder of a provisional license, to correct deficiencies in accordance with a timetable submitted by the owner and agreed upon by the Department.
- (5) Fraud or deceit in obtaining or attempting to obtain a license.
- (6) Lending, borrowing or using the license of another, or knowingly aiding or abetting the improper granting of a license.
- (7) Incompetence, negligence or misconduct in operating the home care agency or home care registry or in providing services to consumers.
- (8) Mistreating or abusing consumers cared for by direct care workers employed by the home care agency or contractor referred by the home care registry to provide care.
- (9) Serious violation of the laws relating to medical assistance or Medicare reimbursement.
- (10) Serious violation of other applicable Federal or State laws.

(b) The Department may issue a provisional license when there are numerous deficiencies or a serious specific deficiency which has a substantial impact on governance and management or services, which indicates that the home care agency or home care registry is not in compliance with applicable statutes, ordinances or this chapter, and the Department finds that:

- (1) The applicant is taking appropriate steps to correct the deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the Department.
- (2) There is no pattern of deficiencies over a period of 2 or more years.
- (3) There is no danger to the health or safety of the consumers.

(c) The Department may issue a provisional license for a specific period of not more than 6 months. A provisional license may be renewed three times.

§ 611.43. Notice.

Whenever the Department proposes to impose a sanction for deficiencies, it will give written notice to the home care agency or home care registry by certified mail.

§ 611.44. Form of notice.

The notice under § 611.43 (relating to notice) will conform to 1 Pa. Code § 35.14 (relating to orders to show cause). The order will specify the reasons for the proposed action of the Department and will notify the home care agency or home care registry of its right to an appeal under 37 Pa. Code Chapter 197 (relating to practice and procedure). The order will specify the time within which the home care agency or home care registry shall file its appeal with the Department.

§ 611.45. Request for hearing.

(a) A finding by the Department that a home care agency or home care registry is in violation of the act or this chapter may not be appealed unless the Department also imposes a sanction under § 611.41 (relating to sanctions for deficiencies).

(b) Appeals relating to the Department's imposition of a sanction must address the factual and legal bases asserted by the Department for imposing the sanction, and the facts and law upon which the health care facility relies and be made in accordance with 37 Pa. Code § 197.84 (relating to notice of appeal and answer) and 1 Pa. Code § 35.37 (relating to answers to order to show cause).

(c) A request for supersedeas of a sanction imposed by the Department must be made under 37 Pa. Code § 197.87 (relating to supersedeas).

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.
- (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 necessary, in accordance with § 611.53 (relating to child abuse clearance).

(b) *Personnel files.* Personnel 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. Personnel files also must include the other information as required under § 611.52, § 611.53, if applicable, and §§ 611.55 and 611.56 (relating to training requirements; and health evaluations).

§ 611.52. Criminal background checks.

(a) *General rule.* The home care agency or home care registry shall require each applicant for employment or referral to submit a criminal history report obtained at the time of application or within 1 year immediately preceding the date of application.

(b) *State Police criminal history record.* If the applicant for employment or referral has been a resident of this Commonwealth for 2 years preceding the date of application, the applicant shall submit a State Police criminal history record.

(c) *Federal criminal history record.* If the applicant for employment or referral has not been a resident of this Commonwealth for the 2 years immediately preceding the date of the application, the home care agency or home care registry shall require the applicant to follow the procedures in 6 Pa. Code § 15.144(b) (relating to procedure) to 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, regarding the individual's eligibility for hire or roster.

(d) *Proof of residency.* The home care agency or home care registry may require an applicant for employment or referral to furnish proof of residency, including any one of the following documents:

(1) Motor vehicle records, such as a valid driver's license.

(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 or roster 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 personnel records for individuals employed or rostered which include copies of State Police criminal history records or Department of Aging letters of determination regarding Federal criminal history records. The personnel records 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 or 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.* An individual employed or rostered who has complied with this section and who transfers to another agency or registry owned and operated by same entity is not required to submit another criminal history report. An individual who is employed or rostered by an

entity that undergoes a change of ownership is not required to submit another criminal history report.

(j) *Individuals currently employed or rostered.* A person who is employed by or rostered by a home care agency or home care registry as of _____ (*Editor's Note:* The blank refers to the effective date of adoption of this chapter.) 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 _____ (*Editor's Note:* The blank refers to a date 120 days after the effective date of adoption of this chapter.). 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 individual was hired or rostered and a copy of the report is included in the individual's personnel 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, and each member of the agency or registry office staff to request a ChildLine verification regarding whether the applicant or member 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 or roster an individual when ChildLine has verified that the applicant is named in the Statewide Central Register as the perpetrator of a founded or indicated report of child abuse.

(c) *Records maintained.* The personnel records 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 as of _____ (*Editor's Note:* The blank refers to the effective date of adoption of this chapter.) shall obtain and submit a ChildLine verification to the home care agency or home care registry by _____ (*Editor's Note:* The blank refers to a date 120 days after the effective date of adoption of this chapter.). 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 personnel 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 dis-

qualify the applicant under 18 Pa.C.S. § 4911 (relating to tampering with public records or 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 provisionally hired applicant shall meet the requirements of § 611.55 (relating to training requirements).

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

(6) The period of provisional hire may not exceed 120 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 120-day period permitted for provisional hire, the individual shall be terminated by the home care agency or removed from the home care registry's roster.

§ 611.55. Training 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 demonstrated competency in accordance with subsection (b) or has satisfied the training requirements in subsection (c), as applicable.

(b) A direct care worker who will provide to a consumer only assistance with activities of daily living and instrumental activities of daily living may demonstrate competency by successfully completing a competency examination approved by the Department.

(c) A direct care worker, including a direct care worker providing only assistance with activities of daily living and instrumental activities of daily living, will satisfy the training requirements if the direct care worker has a valid nurse's license or has successfully completed one of the following:

(1) The home health aide training program described in 42 CFR 484.36 (relating to the condition of participation: Home health aide services).

(2) The nurse aid certification and training program approved by the Department of Education.

(3) Other training programs, approved by the Department, notice of which will be published in the *Pennsylvania Bulletin* and posted on the Department's website.

(d) To be eligible for approval by the Department, a competency examination or other training program must address, at a minimum, each of the following subject areas:

(1) Confidentiality.

(2) Consumer control and the independent living philosophy.

(3) Recognizing changes in the consumer that need to be addressed.

(4) Basic infection control.

(5) Universal precautions.

(6) Handling of emergencies.

(7) Documentation.

(8) Recognizing and reporting abuse or neglect.

(9) Dealing with difficult behaviors.

(10) Bathing, shaving, grooming and dressing.

(11) Hair, skin and mouth care.

(12) Assistance with ambulation and transferring.

(13) Meal preparation and feeding.

(14) Toileting.

(15) Assistance with self-administered medications.

(16) Home management.

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

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

(g) Individuals employed by a home care agency or rostered by the home care registry on _____ (*Editor's Note:* The blank refers to the effective date of adoption of this chapter.) shall achieve compliance with the training requirements imposed by this subpart by _____ (*Editor's Note:* The blank refers to a date 2 years after the effective date of adoption of this chapter.).

§ 611.56. Health evaluations.

(a) A home care agency or home care registry shall insure that each individual employed or rostered by the agency or registry and other office staff or contractors with direct consumer contact, prior to beginning work, provide documentation that is made part of the individual's personnel file, evidencing a screening assessment performed by a qualified health professional within 180 days prior to the individual's start date. The results of the screening assessment must include information showing that the individual was evaluated for tuberculosis risk factors, in accordance with guidelines issued by the Federal Centers for Disease Control and Prevention, and tested as necessary, and was screened for the following communicable diseases or conditions:

(1) Hepatitis A.

(2) Salmonella.

(3) Shigella.

(4) Shiga toxin producing Escherichia coli.

(5) Symptom caused by illness, infection or other source when the symptom is associated with gastrointestinal illness such as diarrhea, fever, vomiting, jaundice or, sore throat with fever.

(b) A home care agency or home care registry may not refer a direct care worker that is suspected by the home care agency or home care registry of having any of the communicable diseases or conditions listed in subsection (a). Subsequent referral shall be contingent on verification from a qualified health professional that the direct care worker is free from any of the communicable diseases or conditions listed in subsection (a).

(c) A home care agency or home care registry shall require each individual employed or rostered by the agency or registry, and other office staff or contractors with direct consumer contact, to obtain an updated screening assessment every 12 months and provide those results to the agency or registry. The updated screening assessment shall be made part of the individual's personnel file.

§ 611.57. Consumer protections.

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

(2) To receive at least 10 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 agency or home care registry services that will be provided to the consumer by the direct care worker.

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

(3) The 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 Hot Line (1-800-222-0989) and the telephone number of the Ombudsman Program located with the local Area Agency on Aging (AAA).

(6) The hiring and training requirements applicable to direct care workers employed by the home care agency or referred by the home care registry, a description of the manner and frequency of periodic reassessment of direct care worker competency, and documentation maintained by the home care agency or home care registry to confirm compliance with hiring and training requirements under §§ 611.51 and 611.55 (relating to hiring or rostering of direct care workers; and training requirements).

(7) A disclosure, in a format to be published by the Department in the *Pennsylvania Bulletin* by _____ (*Editor's Note:* The blank refers to a date within 60 days after the effective date of adoption of this chapter.), 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.

[Pa.B. Doc. No. 07-1395. Filed for public inspection August 3, 2007, 9:00 a.m.]

STATE EMPLOYEES' RETIREMENT BOARD

[4 PA. CODE CH. 250]

Special Rules of Administrative Practice and Procedure

The State Employees' Retirement Board (Board) proposes to amend § 250.1 (relating to applicability of general rules) and add § 250.2 (relating to appeal period from decisions of administrative staff) to read as set forth in Annex A.

A. *Effective Date*

The proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information, contact Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, P. O. Box 1147, Harrisburg, PA 17108-1147, (717) 787-9657; or Paul M. Stahlnecker, Counsel, State Employees' Retirement System, 30 North Third Street, Harrisburg, PA 17101, (717) 783-7317. Information regarding submitting comments on this proposed rulemaking appears in Section H of this preamble.

C. *Statutory Authority*

This rulemaking is proposed under 71 Pa.C.S. § 5902(h) (relating to administrative duties of the board).

D. *Background and Purpose*

The proposed rulemaking will formalize current Board practice of granting a 30-day appeal period from decisions of administrative staff made under authority delegated by the Board. The provisions of 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) (GRAPP), which has been adopted by the Board under § 250.1, only provides for a 10-day appeal period.

The proposed rulemaking is intended to alleviate confusion and prevent possible disputes with regard to the

granting of the additional 20-day period in which an aggrieved party may file an appeal.

E. Benefits, Costs and Compliance

Benefits

The proposed rulemaking is intended to alleviate confusion and prevent possible disputes with regard to the granting of the additional 20-day period in which an aggrieved party may file an appeal.

Costs

There are no costs to the Commonwealth, its citizens or State employees associated with this proposed rulemaking.

Compliance Costs

The proposed rulemaking is not expected to impose additional compliance costs on State employees.

F. Sunset Review

Not applicable.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 24, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House State Government Committee and the Senate Finance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Public Comments

Written comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, 5th Floor, Harrisburg, PA 17101. Comments submitted by facsimile will not be

accepted. The Board must receive comments, suggestions or objections within 30 days of publication in the *Pennsylvania Bulletin*.

Electronic comments—Comments may be submitted electronically to the Board at rgentzel@state.pa.us and must be received by the Board within 30 days of publication in the *Pennsylvania Bulletin*. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

NICHOLAS J. MAIALE,
Chairperson

Fiscal Note: 31-6. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

**PART X. STATE [EMPLOYEES'] EMPLOYEES'
RETIREMENT BOARD**

**CHAPTER 250. SPECIAL RULES OF
ADMINISTRATIVE PRACTICE AND PROCEDURE**

Subchapter A. APPLICABILITY OF RULES

§ 250.1. Applicability of general rules

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to [**general rules of administrative practice and procedure**] **General Rules of Administrative Practice and Procedure**) is applicable to the activities of and proceedings before the Board, **except as provided in this chapter.**

§ 250.2. Appeal period from decisions of administrative staff.

(a) Decisions of administrative staff under authority delegated by the Board may be appealed to the Board by filing a formal appeal within 30 days after service of notice of the administrative decision. Extensions of this appeal period may be requested for good cause and will be granted at the discretion of the Board Secretary.

(b) This section supersedes 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

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