RULES OF
GEORGIA DEPARTMENT OF COMMUNITY HEALTH
HEALTCARE FACILITY REGULATION DIVISION
REVISE CHAPTER 111-8-65-.03
RULES FOR PRIVATE HOME CARE PROVIDERS

SYNOPSIS OF PROPOSED RULE CHANGES

STATEMENT OF PURPOSE: The Georgia Department of Community Health proposes to revise the Rules and Regulations for Private Home Care Providers, Chapter 111-8-65-.03, in response to the adoption of HB 183 which modifies the existing law governing private home care providers to limit the use of independent contractors to "licensed" independent contractors. These changes are being proposed pursuant to the authority granted the Department of Community Health in O.C.G.A. § 31-6-21 and O.C.G.A. § 31-6-21.1.

MAIN FEATURE OF THE PROPOSED RULE: Revision of the definition of private home care provider in accordance with the requirements of House Bill 183.

RULES OF
DEPARTMENT OF COMMUNITY HEALTH

CHAPTER 111-8
HEALTHCARE FACILITY
REGULATION

111-8-65
RULES AND REGULATIONS FOR PRIVATE
HOME CARE PROVIDERS

TABLE OF CONTENTS

111-8-65-.03 Definitions

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In these rules, unless the context otherwise requires, the words and phrases set forth herein shall mean the following:

(a) "Ambulation and transfer" means the acts of moving or walking about or walking or being moved from place to place with or without assistance.

In these rules, unless the context otherwise requires, the words and phrases set forth herein shall mean the following. . .

(b) "Applicant" means:

1. When the private home care provider is owned by a sole proprietorship, the individual proprietor shall be the applicant for the license, complete the statement of responsibility and serve as the licensee;

2. When the private home care provider is owned by a partnership, the general partners shall be the applicant for the license, complete the statement of responsibility and serve as the licensee;

3. When the private home care provider is owned by an association limited liability company (LLC), the governing body of the association or LLC shall authorize the application for the license and complete the statement of responsibility and the association shall serve as the licensee; and

4. When the private home care provider is owned by a corporation, the governing body of the corporation shall authorize

the application for the license and complete the statement of responsibility and the corporation shall serve as the licensee.

(c) "Companion or sitter tasks" means the following tasks which are provided to elderly, handicapped, or convalescing individuals: transport and escort services; meal preparation and serving; and household tasks essential to cleanliness and safety.

(d) "Criminal history background check" means a search as required by law of the criminal records maintained by law enforcement authorities to determine whether the applicant has a criminal record as defined in these rules.

(e) "Criminal record" means:

1. Conviction of a crime; or

2. Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge; or

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

3. Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17 O.C.G.A.

(f) "Department" means the Department of Community Health.

(g) "Director" means the chief administrative or executive officer or manager.

(h) "Home health agency" means a facility licensed as a home health agency in accordance with the applicable licensing statutes and associated rules.

(i) "Home management" means those activities normally performed by a homemaker for the maintenance of a home's essential services, including but not limited to activities such as meal planning, shopping, and bill paying; any employee that is authorized unlimited access to a client's personal funds for home management shall be bonded through the provider.

(j) "Housekeeping or housekeeping tasks" means those activities performed for the upkeep and cleanliness of the home, including but not limited to such activities as laundry, changing linens, trash disposal, and cleaning.

(k) "Inspection" means any examination by the department or its representatives of a provider, including but not necessarily limited to the premises, and staff, persons in care, and documents pertinent to initial and continued licensing so that the department may determine whether a provider is operating in compliance with licensing requirements for has violated any licensing requirements. The term inspection includes any survey, monitoring visit, complaint investigation, or other inquiry conducted for the purposes of making a compliance determination with respect to licensing requirements.

(l) "Medically frail or medically compromised client" means a client whose health status, as determined by appropriate provider staff in accordance with accepted standards of practice, is likely to change or has changed because of a disease process, injury, disability or advanced age and underlying disease process(es).

(m) "Medically related activities" means activities such as but not limited to observing and reporting changes in a client's condition, arranging trips to the doctor, picking up prescription drugs, accompanying clients on medical appointments, documenting client's food and/or liquid intake or output, reminding clients to take medication, and assisting with self-administration of medication; such activities shall not include professional services that are subject to regulation under professional practice and licensing statutes and associated rules.

(n) "Owner" means any individual or any person affiliated with the corporation, partnership, or association with 10 percent or greater ownership interest in a business or agency licensed as a private home care provider and who:

1. Purports to or exercises authority of an owner in the business or agency;

2. Applies to operate or operates the business or agency; or

3. Enters into a contract to acquire ownership of such a business or agency.

(o) "Personal care home" means a facility licensed as a personal care home in accordance with the applicable licensing statutes and associated rules.

(p) "Personal care tasks" means assistance with bathing, toileting, grooming, shaving, dental care, dressing, and eating; and may include but are not limited to proper nutrition, home management, housekeeping tasks, ambulation and transfer, and medically related activities, including the taking of vital signs only in conjunction with the above tasks.

(q) "Private home care provider" means any person, business entity, corporation, or association, whether operated for profit or not for profit, that directly provides or makes provision for private home care services through:

1. its own employees ~~or agents~~ who provide nursing services, personal care tasks or companion or sitter tasks;

2. contractual arrangements with independent contractors who are health care professionals licensed pursuant to Title 43;

or

3. referral of other persons to render home care services, when the individual making the referral has ownership or financial interest in the delivery of those services by those other persons who would deliver those services.

(r) "Private home care services" means those items and services provided at a patient's residence that involve direct care to that patient and includes, without limitation, any or all of the following:

1. nursing services, provided that such services can only be provided by a person licensed as a Registered Professional Nurse or Licensed Practical Nurse in accordance with applicable professional licensing statutes and associated rules;

2. personal care tasks; and

3. companion or sitter tasks.

4. Private home care services shall not include physical, speech, or occupational therapy; medical nutrition therapy; medical social services; or home health aide services provided by a home health agency.

(s) "Records check application" means two sets of classifiable fingerprints, a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(t) "Residence" means the place where an individual makes that person's permanent or temporary home, whether that person's own apartment or house, a friend or relative's home, or a personal care home, but shall not include a hospital, nursing home, hospice, or other health care facility licensed under O.C.G.A. § 31-7-1 et seq.

(u) "Responsible Party" means any person authorized in writing by the client or appointed by an appropriate court to act upon the client's behalf; the term shall include a family member of a physically or mentally impaired client unable to grant the above authorization.

(v) "Satisfactory criminal history background check determination" means a written determination that a person for whom a records check was performed was found to have no criminal record which includes one of the covered crimes outlined in O.C.G.A. § 31-2-9, if applicable.

(w) "Transport and escort services" means accompanying clients or providing or arranging transportation for clients to places outside of their residences for purposes such as appointments, entertainment, exercise, recreation, shopping, or social activities. If the mode of transportation is not owned by the client and is operated by an employee of the provider, the provider shall either obtain a signed waiver by the client of any claims for damages arising out of the operation of the vehicle or make reasonable efforts to insure that there is current motor vehicle insurance that will provide medical coverage for the client, in the event that the vehicle is involved in an accident causing injuries to the client.

(x) "Unsatisfactory criminal history background check determination" means a written determination that a person for whom a records check was performed has a criminal record which includes one of the covered crimes outlined in O.C.G.A. § 31-2-9, if applicable.

Authority: O.C.G.A. §§ 31-2-5, 31-2-7 and 31-7-300 et seq.