



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: April 29, 2020

TO: Ms. Corrine Getchell, DHCQ
Office of Health Facilities Licensing and Certification

FROM: J. Todd Webb – Chairperson *JTW*
State Council for Persons with Disabilities

RE: 23 DE Reg. 818 [DHCQ Proposed Regulation Regarding Personal Assistance Services Agencies (April 1, 2020)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services' (DHSS) Division of Health Care Quality's (DHCQ's) proposed regulation to amend existing regulations pertaining to personal assistance services agencies, which are currently found at 16 Del. Admin. C. § 4469. The proposed regulation was published as 23 DE Reg. 818 in the April 1, 2020 issue of the Register of Regulations. SCPD has the following observations and recommendations.

Personal assistance services are defined by the regulations as “services for compensation that do not require the judgment and skills of a licensed nurse or other professional,” which are limited to “individual assistance with/or supervision of activities of daily living, companion services, transportation services, homemaker services, reporting changes in consumer's condition, and completing reports” (see existing regulations at subsection 1.1).

The amendments implement the terms of the “Share the Care Act” (SB 27) which was passed by the General Assembly in April 2019 and signed into law by Governor Carney on June 13, 2019. The “Share the Care Act,” codified at 24 Del. C. § 1921 (17), allows the employee of a personal assistance services agency to administer medication to service recipients in certain

circumstances. The stated reasons in the bill were the time and resource constraints that many family caregivers may face, and that contracting for nursing care solely for the purposes of medication administration could be prohibitively expensive and may discourage individuals from continuing to live independently in the community.

The proposed amendments to the regulations expand the defined scope of personal assistance services to include “medication reminders” as well as “medication administration” if certain conditions are met (see subsection 1.1 of the proposed regulations). As laid out in subsection 5.4.3 of the proposed regulations, the administration of medication must be authorized by “a responsible caregiver with appropriate capacity.” SCPD recommends that language be added consistent with the following: “Verify that recipients of services have appropriate capacity to make decisions so caregivers cannot override such decisions by persons with appropriate capacity.” There must be an agreement between the caregiver and the personal assistance services provider which includes the caregiver’s confirmation that the medication and administration method are both “safe and appropriate.” The caregiver must pre-package and label the medication to be administered, including the date and time it is to be administered, and provide written instructions for administering the medication. These provisions specifically exclude administration of medication by injection, intravenously, through the rectum or vagina, through a catheter, or through a feeding tube. All of these requirements mirror the language in the statute. The proposed regulations also include requirements for the documentation of medication administration at subsection 5.5.2.5, and make clear at 5.5.12 that a medication diversion, error or omission is a major adverse event that must be reported to the Department within forty-eight (48) hours.

In addition to implementing the changes created by the “Share the Care Act” the proposed amendments clarify the distinction between a “complaint” and a “grievance” and explicitly requires provider agencies to create a formalized grievance procedure for consumers of personal assistance services and their representatives (see subsection 6.4 of the proposed regulations). This process must include a procedure for submission of written or verbal grievances, a set timeline for reviewing and responding to grievances, and a written notice of decision to be issued in response to every grievance. Having such a mechanism seems necessary to meaningfully enforce the consumer rights established in subsection 6.0 of the existing regulations.

The proposed regulations also add a requirement at subsection 8.0 that each provider agency develop a “comprehensive emergency management plan” for disaster preparedness. This plan must include “provisions for continuing personal assistance services during an emergency that interrupts consumer care or services in the consumer’s home,” and must be disseminated to both staff and service recipients. In light of the recent COVID-19 pandemic, such a requirement seems more than reasonable and would hopefully help to prevent service disruptions in future disasters.

Per the terms of the “Share the Care Act,” the Act is to be implemented a year after the date of enactment, or after the promulgation of final regulations by DHSS, whichever is earliest. The DLP suggests that the Councils support the proposed regulations, as they implement existing law and also add additional protections for consumers in the form of requiring providers to implement grievance procedures and disaster preparedness plans.

SCPD believes there are solid provisions contained in the proposed regulations, but also recommends that the aforementioned language be added regarding capacity of the actual recipients of services.

Thank you for your consideration and please contact the SCPD if you have any questions regarding our observations or recommendations on the proposed regulation.

cc: Ms. Yrene Waldon, DHCQ
Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disability Council

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