



# MEDICAID ADVOCACY

Coalition to Assure Redesign Effectiveness  
for Medicaid (CARE-M)

December 9, 2015

RE: Georgia Department of Community Health, Healthcare Facility Regulation Division

SUBJECT: Revise Chapter 111-8-65-.03 -- Rules For Private Home Care Providers

SUBMITTED BY:

**Eric E. Jacobson, Executive Director, Georgia Council on Developmental Disabilities**

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The Coalition for Redesign Effectiveness for Medicaid (CARE-M) has closely followed the efforts of the Department of Community Health 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. The policy goal behind the legislation was to require home health agencies to hire their workforce as employees, rather than pay them as "contractors". We supported that goal.

CARE-M Recommended Changes in the proposed Rules and Regulations for Private Home Care Providers:

1. To include proxy caregivers who are working for licensed HHA agencies in these licensing rules to assure their proper protection as employees.
2. To issue a formal opinion by HFR that this and other licensing rules to not limit in any way the consumer's right to hire and self-direct their own "proxy caregivers", as well as specifically cross-referencing "Proxy Caregivers" as a health maintenance service that does not require licensing when hired and directed under Code Section 43-26-12 of the Official Code of Georgia Annotated.
3. To cross reference Authority O.C.G.A. §§ 31-7-2.1 and 43-26-12 in these rules for Private Home Care Providers. We recommend amending 111-8-65-.03 Definitions, Section (r)(4) as follows:
  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, nor health maintenance services performed by a proxy caregiver for a participant in a Georgia Medicaid waiver program under Authority O.C.G.A. §§ 31-7-2.1 and 43-26-12.*

#### Background and Potential overlap with Proxy Caregiver regulations:

In 2010, Georgia added to legislation on nursing to allow proxy caregivers to provide basic services to people – an alternative to getting care from nurses. Electing to receive care from a proxy allows many people to not only receive basic care from someone they already know, but it also enables many people—including the elderly and those with disabilities—to get assistance with medications or personal care outside of a hospital or long-term care facility.

Authority O.C.G.A. §§ 31-7-2.1 and 43-26-12 of the Official Code of Georgia Annotated, relating to exceptions to the operation of the "Georgia Registered Professional Nurse Practice Act," was amended by revising subsection (a) and creating subsection (9)(A) to exclude health maintenance activities by a proxy caregiver from the licensure requirements for a registered professional nurse in Georgia.

DCH published "Proxy Caregiver Rules Interpretive Guidelines" in October 2011 and March 2012. It also published regulations CHAPTER 111-8-100 --RULES AND REGULATIONS FOR PROXY CAREGIVERS USED IN LICENSED HEALTHCARE FACILITIES. These rules, known as the Rules and Regulations for Proxy Caregivers Used in Licensed Healthcare Facilities, set forth the requirements for designated proxy caregivers performing health maintenance activities in connection with certain licensed healthcare facilities subject to regulation by the department.

#### Proposed clarifying content for **CHAPTER 111-8-65-03**

There is no HFR licensing category in the Home Health arena for "proxy caregivers" since they are most often hired and supervised by the consumer, although private home care providers may employ proxy caregivers. We believe that the proposed rules should be amended to specifically clarify that they do not apply to "proxy caregivers". It would be a tragic reversal of public policy if these licensing rules ALSO negate consumer-directed care decisions to hire and supervise individuals that do not work for licensed agencies.

CARE\_M's request is for HFR to create clear boundaries between the "health maintenance activities" in nurse practice legislation (that allow proxy caregivers) vs. "health related tasks" in home care licensing rules so that proxy caregiving does not get negated by these licensing rules.

The definitions section **CHAPTER 111-8-65-03** has several definitions that overlap with the "Proxy Caregiver" authority. These are cited below.

#### *111-8-65-.03 Definitions*

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

*(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.*

*(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.*

*(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.*

(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.

(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.

CARE\_M strongly recommends that DCH's Healthcare Facility Regulation division revise chapter 111-8-65-.03 to address the three policy concerns listed above by amending *111-8-65-.03 Definitions, Section (r)(4)* and issuing a formal opinion clarifying that this and other licensing rules do not limit in any way the consumer's right to hire and self-direct their own "proxy caregivers".

Thank you for your time and attention.

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