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Via email

August 24, 2018

Allyson Zinno
Rules Coordinator
NH Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301

Re: He-P822 Home Care Service Provider Agencies (Initial Proposal)

Ms. Zinno:

The Granite State Home Health Association (GSHHA) appreciates the opportunity to provide comments on the Initial Proposal (dated 6/28/18) to update the He-P822 licensing rules for Home Care Service Provider Agencies. GSHHA advocates on behalf of home care and hospice agencies and the people they serve. A representative group of our member agencies reviewed the revisions to this rule and recommended changes. I presented testimony at the August 23 public hearing.

We respectfully submit the following comments:

He-P 822.02 Scope

- Page 1, (e) "licensed" should be changed to "registered." He-P 820 does not "license" individual home care service providers. It is a registration process.
- Page 1, (g) Delete this clause. The exemption for EMS providers using the "mobile integrated healthcare protocol" does not apply to personal care or homemaking services.

822.03 Definitions

- Page 3, (b) We suggest adding "grooming" to the definition of ADLs. This would include shaving, brushing teeth, etc. Also, the word "and" should not be deleted.
- Page 3, (c) The definition of "administer" should be consistent with the definition in the He-P 809 rules. The pending Initial Proposal of the 809 rules uses the definition that is being deleted and replaced in the Initial Proposal of the 822 rules.

- Page 4, (ad) “Infectious waste,” The proposed rule references Env-Wm2604. On the OLS Administrative Rules website, Env-Wm appears to be renumbered to Env-Sw. Infectious waste is Env-Sw 904.
- Page 5, (a) (3) The definition of APRN should be “Advanced Practice Registered Nurse.” The proposed rule deletes the word “registered.”
- Page 5, (ae) We believe the definition of “personal care services” should not be deleted. There are numerous places in the rule where this term is used. The definition is critical to comprehensive understanding of the rule.
- Page 5, (ar) “Personnel,” The definition of personnel should not include “volunteer” or “independent contractor.” Home care agencies – whether medical or non-medical—do not utilize volunteers. The only entity that utilizes volunteers is hospice, because it is required by Medicare.

We also strongly urge the deletion of “independent contractors.” NH RSA 281-A:2, VI (b) has specific criteria for what constitutes an independent contractor, including that the contractor has “control and discretion over the means and manner of the performance of the work,” has control over the “time when the work is performed” and is “not dictated by the employer.” This is inconsistent with how private duty agencies function, including the development of a client-specific care plan and schedule.

We ask that all references to volunteers and independent contractors be deleted from the proposed rules. However, we recognize that agencies may utilize the services of a “staffing agency.” He-P 809 agencies often hire “traveler” nurses – who have individual professional licenses and are employed by a staffing agency – to fill temporary vacancies. We understand that in times of workforce shortages, personal care agencies might also seek assistance from a temporary staffing agency. Employees provided on a temporary basis by staffing agencies would need to meet all the requirements of directly-hired personnel. We are willing to work the Department to come up with language that includes employees from a staffing agency.

- Page 6, (at) Point of Care Testing and (au) Point of care devices. After thoughtful discussion with our member agencies, we ask the department to delete these sections of the proposed rule. While some devices, such as glucometers, are routinely used in home settings by clients, we believe the use of these devices by personal care providers goes beyond the scope of the 822 licensee. The definition itself refers to “laboratory testing” and “patient care.”
- Page 6, (ay) There are words missing in this sentence. We presume the intent is that a reportable incident is one that occurs “in the presence of” personnel. The rule erroneously references HHCP. It should be HCSPA for “Home Care Service Provider Agency.” *This error occurs in numerous places throughout the rule.*
- Page 7, (bb) delete the definition of “volunteer” as this position is not offered by personal care agencies.

He-P 822.04 Initial License Application Requirements

- Page 9, (b) This section refers to the deleted requirement on page 6 regarding written disclosures. It should also be deleted, which will make it consistent with the He-P 809 rules.

He-P 822.05 Processing of Applications and Issuance of Licenses

- Page 9, (e) (2) The proposed rule states that a license would be denied to an applicant with certain convictions “in this or any other state.” This is consistent with the language in (e)(1). However, it’s important to note that the criminal records check required in 822.04(6) is for a NH Department of Safety check, which would not include other states. We are uncertain how this impacts the background check obligation for applicants.
- Page 9, (h) Clarify the word “clinical”. Since the 822 rules regulate non-medical providers, the inspection of the facility is not a clinical inspection.

He-P 822.06 License Expirations and Procedures for Renewals

- Page 11, (f), We ask the department to clarify why it is deleting the notice requirement if an agency chooses to cease operation. We agree that full 30 days advance notice may not be necessary, but we believe that agencies should provide some notification of closure. RSA 151:26-a requires agencies to provide 14 days written notice to clients of their intent to discharge. It’s important that the department to have some mechanism to assure that agencies are meeting the statutory requirements for discharge in order to protect consumers.

He-P 822.08 HCSPA Requirements for Organizational or Services Changes

- Page 14, (p) We object to the rule that states that license issued for change of ownership will expire on the date the license would have expired to the previous owner. Section (b) (1) requires an application for *new* license for any change in ownership. Section (g) explicitly states that a new license and license certificate shall be issued for any change in ownership. We see no reason why the previous owner’s expiration date should be on a new license. Depending on the timing, this could require a new owner to go through the renewal process shortly after obtaining a new license. The license expiration date should be one year from the issuance of the new license.

He.P 822.09 Inspections

- Page 15, (d) We recommend that any statement of findings regarding an inspection for licensure or a POC be issued within a specific time frame. We recommend 21 days, which is the time frame by which a licensee must submit a POC.

He-P 822.11 Complaints

- Page 17, (d) We recommend the department include a time frame for which it will notify a licensee of the results once a complaint investigation is completed.

He-P 822.12 Administrative Remedies

- Page 20, (c)(5) We recommend the department include a timeframe for notifying an agency of a rejection of a POC. As stated above, we suggest 21 days.

He-P 822.14 Duties and Responsibilities of All Licensees

- Page 28, (b) (1) We recommend adding the words “and discharge policies in accordance with RSA 151:26-a”

- Page 28, (b)(3) The requirement for a safety policy where firearms are permitted on the licensed premises raises many questions regarding individuals' rights to carry weapons in public places. This requirement did not appear in the Initial Proposals for the He-P 809 and He-P 823 rules, and we question why it was included in these rules. We recommend deletion. Of greater concern is that the agency should have a policy for safety of its personnel in clients' homes. (eg. a requirement that any client-owned firearms be locked and put while the staff is present in the home.)
- Page 29, (i) (2) The rules have been changed from "the Licensee shall 'provide the services as specified in the care plan', to "meet the needs, as determined by the care plan..." Meeting the needs of a client is subjective, and the ability to meet needs may change as the client's needs change. We urge the Department to retain the language that is in the current rule.
- Page 30, (m) We recommend deleting the requirement to report all positive TB tests for personnel to the office of disease control. Those test results should be reported by the medical provider who performed the test, not the agency.
- Page 30, (o) (1) We are concerned about the requirement that agencies "conduct an investigation" to determine if abuse or neglect could have contributed to a reportable incident. While it's reasonable to assume that an agency would interview the client and personnel present when the incident occurred, abuse and neglect is considered a crime and should be investigated by the appropriate law enforcement or BEAS personnel.
- Page 30, (o) (2) We recommend that a reportable incident report be conveyed to the department within 2 business days, not 48 hours. 48 hours is burdensome to agencies if the deadline falls on a weekend or holiday.
- Page 31, (o)(4) The rule requires notification to the department by phone, fax or email when a client dies within 10 days of a reportable incident. The rule should clearly state an email address for reports.

822.15 Required Services

- Pages 32 and 33 The words "care and" have been added to the word "services" throughout this section. We believe the word "services" sufficiently describe the type of services offered by providers licensed by these rules. "Care" implies medical care, which is beyond the scope of this licensees.
- Page 33, (d) (1), Add the word "or" at the end of this section.
- Page 33, (f) As was voiced by many providers at the public hearing on August 23rd, requiring a "new director of client services" to be a registered nurse or have a bachelor's degree in a health-related field is unnecessary. The agencies are providing non-medical services which do not require oversight by a nurse. Hiring one would be difficult and costly. While we have no objections to replacing the word "coordinator" with "director", we ask that the existing rule remain in place.
- Page 34, (h)(1)(a), We suggest adding "and information about the provider's discharge policy in accordance with RSA 151:26-a."
- Page 34, (h)(1)(d) Delete this reference to independent contractors.
- Page 34 (i) This section is awkwardly worded and should be revised for clarity.
- Page 34, (i) (2) We object to changing the time frame for client assessments from every 6 months to every 90 days. This would be a scheduling burden for most agencies. Since the services are non-medical services, we believe the 6-month requirement is appropriate. Six months is also consistent with the requirement for personal care services provided by an 809 agency, per He-P 809.15 (q).

- Pages 34 and 35 (j) (1) – (12) The minimum assessment requirements that have been inserted in the rule are medical in nature and more suited to an agency licensed under He-P 809. For instance, non-medical providers would not have the capabilities to assess prognosis or rehabilitation potential. We urge the department to retain the six requirements that are in the current rule and deleted in the proposed rule.
- Page 35, (l)(1) This section should delete the references to RN or LPN. The assessment should be conducted by the director of client services and we recommend adding the words “or designee.”,
- (l)(2) Revise to be consistent with our recommendation for (j) (1) – (12)
- Page 35, (m) and (n) Delete these sections and retain ~~(j)~~ on the top of page 36.
- Page 36, (o) The changes made to this section are more appropriate for a medical agency and not relevant to a non-medical agency. We recommend retaining ~~(3)~~ and deleting the new (3), (4) and (5). In (6), we recommend changing it to read “The date of changes to the care plan. In (7), we recommend changing it to read “Documentation that the client ~~and~~ or their legal representative...”
- (p) We recommend this to read as follows: “The licensee shall develop a discharge plan, in accordance with RSA 151:26-a, with the input of...” We also recommend deleting sections (3) and (4)

He-P 822.17 Personnel

- Page 38, (b) Delete the references to “volunteers” and “independent contractors”.
- Page 39, (c), (d) and (f) In these sections, the rule uses the terms “hired, contracted or engaged with.” We ask the department to clarify the differences between “contracted” and “engaged with.” If the department eliminates the option for “independent contractors” but allows for temporary employees from a staffing company, the contact is with the staffing company. Therefore, this entire section needs to be clarified.
- Page 40, (h) This section prohibits an agency from hiring a person listed on the NH Board of Nursing’s licensed nursing assistant registry. The LNA’s on this list are indeed eligible for hiring. This requirement should be clarified.
- Pages 40 and 41 (i) and (k) We believe these sections should be deleted. For purposes of public safety, we believe that it is the licensee’s obligation to meet the requirements of (b) and (g), and (j) (7) and (9) not simply accept a signed statement from a staffing agency.
- Page 42, (m) (3) (e), (f) and (m)(5)(d) We recommend adding the words “or designee” after each reference to “director of client services.”
- Page 43, (k) Delete “or a licensed professional such as an LPN or RN” and replace it with “the director of client services or designee.”
- Page 44, (s) We recommend the agency require supervisory visits of personal care service providers every 6 months as required in the existing rule, not 3 months as in the proposed rule. The proposed change would be a burden to most agencies and the department has offered no evidence reason for more frequent visits.
- Page 45, 822.17 (v) *currently (r)(1-5)* We recommend that the department retain this section as it is in the current rule, except that the words “independent contractor” should be changed to “staffing agency.”
- Page 46, (y) We recommended deleting the references to “independent contractors” and “volunteers” and substitute “employees from a staffing agency” and deleting sections (1) and (2).

He-P 822.18 Quality Improvement

- Page 46, (d) (1) and (2) Delete these sections as they are useful for medical agencies, but not for non-medical providers.

He-P 822.19 Infection Control and Sanitation

- Page 47, (b) (3) We believe the regulatory reference for infectious disease should be Emv-Sw 904.
- Page 47, (b)(4) We urge the department to delete the requirement that agencies report infectious and communicable diseases as required by He-P 301. As non-medical service providers who deliver services in clients' homes, licensees are not healthcare providers that diagnose or treat illnesses. They are also not listed in the He-P 301 rule as a reporting entity when a healthcare provider is not in attendance. Communicable or infectious diseases of any clients would be reported by the client's healthcare provider.
- Page 48, (d) (1) and (2) We request that the department delete this section related to policies for the use of point of care testing (POCT) devices. As mentioned earlier in this letter, we believe the use of these devices by personal care providers is beyond the scope of the licensee. In addition, while this section covers the safe use and handling of devices, the rules fail to require any training for staff on how to respond to various test results. Such training would involve medical training that is more appropriate for an 809 licensee, not an 822 licensee.
- Page 49, (h) and (i) (1) and (2) These sections should be deleted because they are not applicable to a non-medical provider.

He-P 822.20 Physical Environment and Emergency Preparedness

- Page 49-50, (d) (1)-(11). We believe the rule for an emergency preparedness plan should remain as it is in the current rule, therefore we recommend deletion of sections (1) through (11) or a pared-down version. We realize that proscriptive federal requirements for emergency preparedness are in place for Medicare and Medicaid providers. Agencies licensed under He-P 822 (except for one agency that is the state's sole provider of Medicaid Personal Care Attendant Services) are non-medical providers that do not qualify as Medicare or Medicaid providers.

While some licensees are enrolled providers in the Medicare-waiver Choices for Independence Program, our understanding is that states have discretion on whether to apply these requirements to waiver program providers. The requirements outlined in sections (1) through (11) are extremely burdensome for licensees, most of which are small businesses. Lastly, most employees are not actually on the facility premises; they are out in clients' homes providing services. Requiring a comprehensive ICS model for an office with a few employees is an unreasonable burden.

The Granite State Home Health Association appreciates the opportunity to offer our comments on the He-P 822 Initial Proposal. Please contact me if you have questions about any of our comments.

Respectfully,



Gina Balkus
Chief Executive Officer