

HEALTHCARE BRIEF

Enforcement of New Home and Community - Based Service Provider Licensing Standards Begins October 1, 2011

In less than a month, the Louisiana Department of Health and Hospitals will begin enforcement of its new Home and Community-Based Service Providers Minimum Licensing Standards. The new regulations, which were published in the June 2011 Louisiana Register, contain one set of licensing standards that apply to providers of the following community-based services: Adult Day Care, Family Support, Personal Care Attendant (PCA), Respite Care, Substitute Family Care, Supervised Independent Living (SIL) and Supported Employment. While many provisions in the new regulations mirror requirements previously contained in DHH's Personal Care Attendant Services licensing standards, the following are some of the notable regulatory changes that existing providers must comply with by the October 1, 2011 enforcement date (note that this article does not address all regulatory changes, including the changes to administrator qualification and other core staffing requirements):

- **Number of Governing Body Members.** The new licensing regulations require all providers to have a governing body that is comprised of three or more persons. Previously, no minimum number of members was required. Providers are still required to have documentation identifying all governing body members by name, address, terms of membership, office title and terms of office. Additionally, the governing body must continue to hold at least two formal meetings a year.
- **Liability Insurance.** All providers must have documentation of liability insurance coverage for any vehicle used to transport clients, whether the vehicle is owned by the agency or any of its employees. The personal liability insurance of the provider's employees cannot be substituted for the required coverage. Previously, the regulations merely provided that the provider ensure that any vehicle used to transport clients carried a sufficient amount of current liability insurance.
- **Driver Histories and Driving Course Completion.** Providers are required to have documentation of successful completion of a safe driving course for each employee who transports clients. The new regulations mandate that each employee shall complete a safe driving course within 90 days of hiring, every three years thereafter, and within 90 days of the provider's discovery of any moving violation. Additionally, providers are required to run a driving history record at the time of hiring and annually thereafter for each employee. Existing providers should ensure that all current employees complete a safe driving course and that a driver history report has been run on all current employees prior to the October 1, 2011 enforcement deadline.



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- Unannounced Quarterly Supervisory Visits. Direct care staff supervisors are now required to make an onsite supervisory visit at least once per quarter for each direct care staff member. Additionally, the regulations state that supervisory visits should occur more frequently if dictated by the ISP; as needed to address worker performance; to address a client's change in status; or to assure services are provided in accordance with the ISP. Providers should note that a quarterly unannounced visit is required for each direct service worker, not for each client served by the agency. Thus, if one client is being serviced by four direct care workers, the agency is required to conduct four unannounced visits to that client's residence during the quarter. We have spoken with DHH regarding this requirement and have learned that all quarterly visits do not have to be completed by the October 1, 2011 compliance date. However, DHH expects providers to have a procedure in place by October 1 for conducting the unannounced visits and expects that at least one quarterly visit per employee will be accomplished between October 1, 2011 and December 31, 2011.

June 2011 Louisiana Register can be found at <http://www.doa.louisiana.gov/osr/reg/1106/1106.pdf>. New licensing standards can be found on pp. 1500-1532 and pp. 1888-1921.

Health Care Reform - Petition Asks For Supreme Court Review of ACA Decision

Several cases challenging the constitutionality of the Patient Protection and Affordable Care Act (the "ACA") are traveling through the country in route to the United States Supreme Court. One of those cases, entitled *Thomas More Law Center v. Obama*, 2011 WL 2556039 (6th Cir. 2011), has become the subject of a petition by the Law Center asking the Supreme Court to review the Sixth Circuit decision. The petition was filed on July 26, 2011.

The Sixth Circuit upheld the constitutionality of the ACA. The court there determined that the "insurance mandate" included in the ACA was a proper exercise by Congress under the Commerce Clause of the United States Constitution. Numerous other appellate court cases have been decided since the passage of the ACA on March 23, 2010. Most of those cases have held that the requirement that all persons maintain insurance coverage is unconstitutional, but they have disagreed on whether or not the remainder of the law is severable and, therefore, may go forward. The petition by the Thomas More Law Center to the United States Supreme Court, is seeking a decision prior to the Supreme Court's recess in the summer of 2012. Considering the political climate and the effect that this decision might have on voting in 2012, if the Supreme Court decides to take the case, the timing of its decision on the merits may be most important.



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