



NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE THAT on June 22, 2011, at 10:00 a.m., in the Board Room at the Department of Community Health, #2 Peachtree Street, 5th Floor, Atlanta, Georgia, a public hearing will be held for the presentation of proposed administrative rule changes.

The chapter affected by the proposed changes of administrative rules & regulations is listed below:

(New) Ga. Admin. Comp. Ch. 111-8-100, Proxy Caregivers Used in Licensed Healthcare Facilities; Healthcare Facility Regulation Division

All interested persons are hereby given the opportunity to participate by submitting data, views or arguments (orally or in writing). Oral comments may be limited to 10 minutes per person. If you need auxiliary aids or services because of a disability, please contact the Office of General Counsel at (404) 657-7195 at least (3) three business days prior to the hearing.

Written comments must be submitted to the Department no later than the close of business at 5:00 p.m. on June 24, 2011. Comments may be faxed to (404) 656-0663, emailed to pjohnson@dch.ga.gov or mailed to the address above, attention Office of General Counsel.

Unless revision of the proposed rule changes is indicated as a result of the public comments, it is the intent of the Department of Community Health to ask the Board of Community Health to approve the rule(s) as promulgated herein for final adoption on July 14, 2011.

This 13th day of May, 2011.

David A. Cook
Commissioner

DAC:pmj

Attachments

**RULES OF
DEPARTMENT OF COMMUNITY HEALTH
HEALTHCARE FACILITY REGULATION**

ADOPTION OF CHAPTER 111-8-100

RULES AND REGULATIONS FOR

PROXY CAREGIVERS

USED IN LICENSED HEALTHCARE FACILITIES

SYNOPSIS OF PROPOSED RULES

STATEMENT OF PURPOSE: The Department of Community Health, through the Division of Healthcare Facility Regulation proposes the adoption of new Rules and Regulations for Proxy Caregivers Used in Licensed Healthcare Facilities, Chapter 111-8-100. These rules are being proposed as a result of the passage of HB 1040 (2010), which authorizes unlicensed designated proxy caregivers to perform health maintenance activities for individuals with disabilities who provide their informed consent for such care. These rules are being proposed pursuant to the authority granted the Department of Community Health in O.C.G.A. §§ 43-26-12(a)(9), 31-2-9 and 31-7-2.1 to develop rules and regulations regarding the training of proxy caregivers and rules which promote, safeguard and protect the well-being of persons being served through various licensed facilities and providers.

In the formulation of the proposed new rules, the Department has considered the economic costs associated with the regulations and the impact on small businesses in the state. To the extent possible, the proposed rules do not impose excessive regulatory costs on the regulated entities while supporting the quality of care being delivered and the health and safety of the participants receiving care.

MAIN FEATURES OF THE PROPOSED RULES: The Rules and Regulations for Proxy Caregivers Used in Licensed Healthcare Facilities, Chapter 111-8-100 include the following features:

- **Rule 111-8-100-.01** states **Legal Authority** for the rules;
- **Rule 111-8-100-.02** states **Title and Purpose** of the rules which is to provide for the use of proxy caregivers in various licensed healthcare facilities;

- **Rule 111-8-100-.03** states the **Definitions** of terms used in these rules, such as, complex care, legally authorized representative, licensed healthcare facilities, health maintenance activities, proxy caregivers, written plan of care;
- **Rule 111-8-100-.04** regarding **Use of Proxy Caregivers and Informed Consent** states how proxy caregivers may be used in licensed facilities. The rule permits proxy caregivers to function independently in licensed healthcare facilities where the licensed facility determines that there is a written plan of care approved by a physician, advance practice registered nurse or physician's assistant working under protocol or job description respectively, a properly executed written informed consent and a back-up plan for the provision of health maintenance activities when the designated proxy caregiver is not available. The rule also permits various licensed healthcare facilities to employ proxy caregivers to provide health maintenance activities for individuals with disabilities who have consented to such care. The rule specifies the information that must be included in the written informed consent and the use of a written plan of care which has been approved by a licensed physician, advance practice registered nurse or physician's assistant;
- **Rule 111-8-100-.05** regarding **Training and Other Requirements for Proxy Caregivers** details the requirements that the licensed facility must meet if it chooses to use proxy caregivers to deliver health maintenance activities. These training requirements include the use of a written training curricula developed by licensed healthcare professionals which includes learning objectives, content knowledge, learning activities and the results of a Test of Functional Health Literacy for Adults (TOFHLA) used as an assessment tool (in the absence of a high school diploma or G.E.D.) to individualize training. The rule also requires the proxy caregiver to demonstrate satisfactory performance of skills competency checklist before a licensed healthcare professional. Where the licensed facility permits the proxy caregiver to provide assistance in specialized health maintenance activities, such as medication management, the rules require the proxy caregiver to receive training using a medication curriculum that meets the criteria in the rules, to demonstrate health literacy using the TOFHLA and satisfactory performance of skills competency checklists initially and at least annually, if not more often. The rule also prohibits proxy caregivers from providing assistance with certain medications, such as those that require intravenous administration, interpretation of a PRN order and over-the-counter medications without a written order signed by a licensed healthcare professional;
- **Rule 111-8-100-.06** regarding **Variations and Waivers** sets forth the criteria for granting a waiver of an existing rule where the licensed facility demonstrates that compliance with the rules would cause an undue

hardship and the intent of the rule can be met through alternative means that afford equivalent protection for the health, safety, care and rights of the individuals;

- **Rule 111-8-100-.07** regarding **Enforcement of Licensing Requirements** identifies the legal authorities for civil and administrative actions which may be brought by the Department to ensure compliance with these rules and other applicable licensing requirements; and
- **Rule 111-8-100-.08** regarding **Severability** clarifies that if a portion of the rules is determined to be unenforceable, the remainder of the rule is intended to survive and is enforceable.

**RULES OF
DEPARTMENT OF COMMUNITY HEALTH
HEALTHCARE FACILITY REGULATION**

**CHAPTER 111-8-100
RULES AND REGULATIONS FOR
PROXY CAREGIVERS
USED IN LICENSED HEALTHCARE FACILITIES**

- 111-8-100-.01 Legal Authority**
- 111-8-100-.02 Title and Purpose**
- 111-8-100-.03 Definitions**
- 111-8-100-.04 Use of Proxy Caregivers and Informed Consent**
- 111-8-100-.05 Training and Other Requirements for Proxy Caregivers**
- 111-8-100-.06 Variances and Waivers**
- 111-8-100-.07 Enforcement**
- 111-8-100-.08 Severability**

111-8-100-.01 Legal Authority. These rules are adopted and published pursuant to the Official Code of Georgia Annotated (O.C.G.A.) §§ 31-7-2.1 and 43-26-12.

-Authority O.C.G.A. §§ 31-7-2.1 and 43-26-12.

111-8-100-.02 Title and Purpose. 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.

Authority O.C.G.A. §§ 31-2-9, 31-7-2.1 and 43-26-12(a)(9).

111-8-100-.03 Definitions. In these rules, unless the context otherwise requires, the terms set forth herein shall mean the following:

(a) "Administrative action" means the initiation of a contested case as defined in the Georgia Administrative Procedures Act (APA), O.C.G.A. § 50-13-2(2) against a licensed facility for violation of licensing requirements.

(b) "Client(s)" means a person or persons receiving services through the licensed facility. Clients include such terms as residents, consumers, patients and program participants.

(c) "Competency-based training" means training which is tied to an identified set of skills and knowledge and requires demonstration and documentation of an acceptable level of performance of a task or achievement of an outcome.

(d) "Complex wound care" means the specialized nursing care that is required for certain wounds. Typically, the following kinds of wounds require complex care: wounds in the lower extremity of diabetic patients, pressure ulcers, chronic venous ulcers, wounds following extensive necrotic processes caused by infections (Fournier's and

other), and chronic wounds related to vasculitis and immunosuppressive therapy that have not healed using simple care.

(e) "Department" means the Department of Community Health, its agents and employees.

(f) "Health maintenance activities" means those limited activities that, but for a disability, a person could reasonably be expected to do for himself or herself. Such activities are typically taught by a registered professional nurse, but may be taught by an attending physician, advanced practice registered nurse, physician assistant, or directly to a patient and are part of ongoing care. Health maintenance activities are those activities that do not include complex care such as administration of intravenous medications, central line maintenance, and complex wound care; do not require complex observations or critical decisions; can be safely performed and have reasonably precise, unchanging directions; and have outcomes or results that are reasonably predictable. Health maintenance activities conducted pursuant to this paragraph shall not be considered the practice of nursing.

(g) "Individual with a disability" or "disabled individual" means an individual who has a physical or mental impairment that substantially limits one or more major life activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing and/or learning, and who meets the criteria for a disability under state or federal law.

(h) "Inspection" means any examination by the department or its representatives of a licensed healthcare facility, 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 facility is operating in compliance with licensing requirements. The term "inspection" includes any survey, complaint investigation, monitoring visit, or other inquiry conducted for the purpose of making a compliance determination with respect to licensing requirements.

(i) "Legally authorized representative" means the person legally authorized to act on behalf of the individual with a disability with respect to providing consent to medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed or directed by a duly licensed physician or as otherwise authorized by law. The representative is not authorized to act on behalf of the individual with a disability to provide consent until a medical determination has been made that the individual with a disability lacks decision-making capacity regarding medical treatment or the ability to communicate such decisions by any means.

(j) "Licensed healthcare professional" means an individual who is licensed and authorized under Georgia law to perform certain healthcare practices. The term includes physicians, advance practice registered nurses, physician's assistants, registered nurses, pharmacists, physical, speech and occupational therapists who are functioning within their scopes of licensed practice. The term does not include licensed practical nurses, certified nursing assistants or medication aides.

(k) "Licensed healthcare facility" or "licensed facility" means any agency, institution, entity or person subject to regulation by the department under Chapters 7, 13, 22, 23, 44 of Title 31; paragraph (8) of subsection (d) of Code Section 31-2-4; Chapter 5 of Title 26; and Article 7 of Chapter 6 of Title 49 of the Official Code of Georgia Annotated, except hospitals, residential mental health facilities, nursing homes, intermediate care facilities for the mentally retarded, Medicare-certified home health agencies and hospices.

(l) "Licensed residential facility" means a licensed facility which serves as the home, either temporarily or permanently, of an individual with a disability. Such facilities are licensed as assisted living communities, personal care homes, community living arrangements, residential drug abuse treatment programs and traumatic brain injury facilities.

(m) "Proxy caregiver" means an unlicensed person who has been determined qualified to have the necessary knowledge and skills acquired through training by a licensed healthcare professional to perform documented health maintenance activities, including specialized procedures, for an individual with a disability who has delegated to the designated proxy caregiver the performance of such health maintenance activities through execution of a written informed consent by the individual with a disability or a person legally authorized to act on behalf of such individual with a disability.

(n) "Written plan of care" means the specific set of written instructions which have been determined necessary, usually by a registered professional nurse, to implement the written orders of the attending physician or an advanced practice registered nurse or physician assistant working under a nurse protocol agreement or job description respectively.

Authority O.C.G.A. §§ 31-7-2.2, 31-9-2 and 43-26-12(a)(9).

111-8-100-.04 Use of Proxy Caregivers and Informed Consent

(1) **Proxy Caregiving Permitted.** Licensed facilities, may allow proxy caregivers to perform health maintenance activities for individuals with disabilities who are being served by or through the licensed facility, as authorized in these rules, provided that the individual with a disability or legally authorized representative has executed a written informed consent.

(2) **Written Informed Consent.** No licensed facility will permit a proxy caregiver to provide health maintenance activities by or through the licensed facility unless the individual with a disability, or the legally authorized representative has executed an informed consent. The written informed consent must contain the following information:

(a) a definition of health maintenance activities as set forth in the law;

(b) the actual health maintenance activities to be performed;

(c) an explanation that such health maintenance activities are to be provided pursuant to the written orders of an attending physician, advance practice registered nurse or physician's assistant working under protocol or job description as further detailed in the written plan of care;

(d) the name(s) of the proxy caregiver(s) who are being authorized to provide health maintenance activities;

(e) a disclosure that Georgia law now allows licensed healthcare professionals to train unlicensed proxy caregivers to provide the specific health maintenance activities listed on the written plan of care;

(f) an acknowledgement that proxy caregivers are not licensed healthcare professionals and do not have the same education and training as licensed healthcare professionals. Therefore, there may be additional health risks associated with receiving this care from proxy caregivers who may not recognize an important change in the individual's medical condition requiring assessment and/or treatment;

(g) an acknowledgment that the individual with a disability, or the legally authorized representative consents and is willing to take such risks;

(h) that the informed consent is conditioned upon the proxy caregiver(s) being determined by an appropriately qualified licensed healthcare professional to have the knowledge and skills necessary to perform safely the specific health maintenance activities listed on the consent;

(i) a statement that the informed consent for any proxy caregiver designated to deliver health maintenance activities may be withdrawn orally or in writing by the individual with a disability or the legally authorized representative by informing the proxy caregiver and any licensed facility through which the proxy caregiver may be operating; and

(j) an authorization for such health maintenance activities to be provided which is signed and dated by the individual with a disability or the legally authorized representative.

(3) Proxy Caregivers Functioning Independently in Licensed Residential Facilities. Where the licensed residential facility permits the individual with a disability or the legally authorized representative to hire a proxy caregiver directly to perform tasks that are appropriately classified as health maintenance activities, the licensed residential facility must do the following:

(a) Develop and enforce written policies and procedures which do not conflict with the requirements of the law and these rules, and which outline the following:

1. The scope of the health maintenance activities that proxy caregivers are permitted to perform;

2. The notification procedures that will be utilized when either the proxy caregiver observes a change in the condition of the individual with a disability which may require evaluation/treatment by a licensed healthcare professional, or there is a change in the care being provided through the licensed residential facility that might impact the performance of health maintenance activities; and

3. The safety and security precautions that will be employed in the licensed residential facility to protect clients being served from harm by proxy caregivers who are independent and not under the control of the facility.

(b) Maintain a copy of the written informed consent which meets the requirements of rule 111-8-100-.04(2) and appears to be properly executed by the individual with a disability or the legally authorized representative

(c) Maintain a copy of the written plan of care for the individual with a disability which has been developed by a licensed healthcare professional pursuant to written orders of an attending physician, or an advanced practice registered nurse or physician assistant working under a nurse protocol agreement or job description respectively.

(d) Determine that the written plan of care provided specifies the health maintenance activities to be performed, the frequency of training and evaluation for the proxy caregiver and the kinds of changes in the written plan of care that would necessitate additional training for the proxy caregiver.

(e) Maintain current documentation signed by a licensed healthcare professional which reflects that the proxy caregiver has been determined to have the knowledge and skills necessary to perform safely the required health maintenance activities for the individual client.

(f) Verify that there is a back-up proxy caregiver service plan which has been put in place for the individual with a disability which addresses at a minimum the following:

1. The notification procedures and contact information that will be utilized when the proxy caregiver and/or licensed facility staff observe a change in the condition of the individual with a disability which may require evaluation/treatment by a licensed healthcare professional;

2. The alternative resources to be used to provide needed health maintenance activities in the event that the proxy caregiver is not available for any reason; and

3. The notification procedures and contact information that will be utilized if staff members of the licensed facility become aware of a potentially unsafe situation involving the client and the proxy caregiver.

(g) Ensure that the proxy caregiver is familiar with emergency evacuation procedures.

(4) Licensed Facilities Delivering Services Through Proxy Caregivers. Where the licensed facility employs, contracts or refers proxy caregivers to deliver health maintenance activities to individuals with disabilities receiving services through the licensed facility, the licensed facility must do the following:

(a) Develop and enforce written policies and procedures, which do not conflict with the requirements of the law and these rules and which outline the following:

1. The scope of the health maintenance activities that proxy caregivers are permitted to perform;

2. The notification procedures that will be utilized when the proxy caregiver observes a change in the condition of the individual with a disability which may require evaluation/treatment by a licensed healthcare professional; and

3. The safety and security precautions that will be employed by the licensed facility to protect clients being served by the licensed facility from harm by proxy caregivers.

(b) Disclose to individuals with disabilities who are potential clients of the licensed facility or the legally authorized representative the following:

1. The manner in which proxy caregivers are used to deliver health maintenance activities and the general professional qualifications of the staff providing supervision to the proxy caregivers;

2. Whether there are additional charges for such proxy caregivers and the amount that would be charged;

3. The manner in which the licensed facility ensures that clients are permitted to designate and change proxy caregivers;

4. The qualifications of the licensed healthcare professionals who develop written plans of care for the clients and provide training; and

5. The frequency of competency-based skills determinations and the extent of trainings provided to proxy caregivers.

(c) Ensure that the individual with a disability or the legally authorized representative has executed a written informed consent which meets the requirements of rule 111-8-100-.04(2).

(d) Ensure that a written plan of care is developed for the individual with a disability by a licensed healthcare professional in accordance with the written orders of an attending physician, an advanced practice registered nurse or physician's assistant working under a nurse protocol agreement or job description respectively, and that such plan of care specifies the frequency of training and evaluation requirements for the proxy caregiver and when additional training will be required for new duties added to the written plan of care for which the proxy caregiver has not been previously trained. The licensed facility must either use the written plan of care form made available by the Department or another form containing all the required elements.

(e) Ensure that the written plan of care is implemented by appropriately trained proxy caregivers who have been specifically designated by the individual with a disability or the legally authorized representative.

(f) Maintain documentation of the specific training that was provided on the health maintenance activities that the proxy caregiver performs. The documentation must

include a competency-based skills checklist completed by the licensed healthcare professional. The checklist must reflect that the proxy caregiver has personally demonstrated to the satisfaction of the licensed healthcare professional the necessary knowledge and skills to perform safely the specific health maintenance activities.

(g) Maintain supporting documentation reflecting that the employee or contractor serving as the proxy caregiver has the basic qualifications as represented, e.g. no findings of abuse, neglect or exploitation entered against the individual in the nurse aide registry, a satisfactory report of motor vehicle driving record where the proxy caregiver may be transporting clients and a satisfactory criminal records check where required by other rules applicable to the specific licensed facility.

(h) Maintain written evidence of satisfactory performances on initial and annual skills competency determinations utilizing skills competency checklists which have either been made available by the department or developed and completed by appropriately licensed healthcare professionals. The competency-based skills checklists must reflect a testing of the knowledge and observation of the skills associated with the completion of all of the discrete tasks necessary to do the specific health maintenance activity in accordance with accepted standards of care.

Authority O.C.G.A. §§ 31-7-2.2, 31-9-2 and 43-26-12(a)(9).

111-8-100-.05 Training and Other Requirements for Proxy Caregivers

(1) Training Curricula. A licensed facility utilizing proxy caregivers must employ a written training curricula developed by appropriately licensed healthcare professionals which ensures that the proxy caregiver accurately demonstrates how to do the required health maintenance activities correctly and safely. At a minimum, the training curricula used for proxy caregivers must include the following:

(a) Learning objectives which relate specifically to the health maintenance activities to be performed;

(b) Content knowledge and skills that are required to accomplish the learning objectives;

(c) Learning activities that will be utilized to provide instruction on knowledge and skills required;

(d) The results of the Test of Functional Health Literacy (TOFHLA) used as an assessment tool to individualize necessary training for the specific skills if the caregiver does not have a high school diploma or a general equivalency degree (G.E.D);

(e) Satisfactory and independent completion of the required skills competency checklists relating to the specific health maintenance activities to be performed before an appropriately licensed healthcare professional;

(f) The use of skills competency checklist forms when made available by the department for the specific health maintenance activities to be performed or other skills checklist forms that include all of the competencies in the correct order as contained on the forms made available by the department and as required for the specific client ; and

(g) Satisfactory evidence of routine evaluations of continued skills competencies by an appropriately licensed healthcare professional, at least annually if not assessed more frequently as specified on the written plan of care.

(2) Licensed Facilities Providing Medication Assistance. A licensed facility may use proxy caregivers to provide assistance with managing medications for an individual with a disability unless the use of proxy caregivers is subsequently prohibited or modified by regulations applicable to a specific type of licensed facility adopted after the effective date of these rules. In the absence of more specific requirements, the licensed facility using proxy caregivers for medication assistance must meet the following conditions:

(a) The individual with a disability or the legally authorized representative has provided a written informed consent which meets the requirement of these rules;

(b) The medications and assistance being provided have been determined by an appropriately licensed healthcare professional to be health maintenance activities that may be safely performed by properly trained proxy caregivers; and

(c) The proxy caregiver has been trained in accordance with these rules and determined through completion of a skills competency checklist before an appropriately licensed healthcare professional to have the knowledge and skills necessary to perform the specific health maintenance activities in accordance with the written plan of care.

(3) Medication Assistance Curriculum. Where the licensed facility provides medication assistance through proxy caregivers, the licensed facility must maintain documentation reflecting that the proxy caregiver providing assistance with medications has received training with an established written curriculum developed by an appropriately licensed healthcare professional that includes all of the topics listed:

(a) The licensed facility's medication policies and procedures;

(b) How to read prescription labels including common abbreviations;

(c) Providing the right medication to the right client at the right time in the right amount and the right way including how to measure various medications that the specific client is taking;

(d) The importance of taking the medications as prescribed;

(e) Recognition of side effects and adverse reactions for the specific medications;

(f) Understanding the common classifications of medications, typical side effects and adverse reactions and medications which must never be administered by proxy caregivers;

(g) Actions to take when concerns regarding medications are identified;

(h) Infection control procedures;

(i) Proper medication storage and disposal;

(j) Proper documentation and record keeping that the proxy caregiver is required to complete using a Medication Assistance Record (MAR) and the role of reference documents such as package inserts and medication manuals; and

(k) Information about medication errors, error-prone situations and strategies to prevent such medication errors and instruction on proper documentation and reporting of medication errors.

(4) The training on medication assistance must be provided by an appropriately licensed healthcare professional, e.g. registered professional nurse, advance practice registered nurse, physician's assistant, pharmacist or physician and must be individualized and supplemented as appropriate to meet the unique needs of the individual with a disability being served.

(5) Where a new medication is ordered, the licensed healthcare professional who completed the written plan of care must be contacted by phone to ensure that no additional training is required prior to the caregiver providing assistance with the new medication. The date, time and the outcome of the phone call to the licensed healthcare professional must be documented in the individual's record by the caregiver making the call at the time that the call is made. Where additional training is required prior to the caregiver providing assistance, such training will be provided and documented by a licensed healthcare professional.

(6) Proxy caregivers providing medication assistance must be proficient in reading and following detailed written instructions in English, recording understandable written entries in the client's records, communicating effectively with the client and have achieved at least a minimum score of 75 on the Test of Functional Health Literacy for Adults (TOFHLA).

(6) Prohibited Assistance. The licensed facility providing medication management services must not train or permit proxy caregivers to provide the following assistance with medications:

(a) Mixing, compounding, converting, or calculating medication doses, except for measuring a prescribed amount of liquid medication, breaking a scored tablet, crushing a tablet or adding water or other liquid to laxatives and nutritional supplements when such substance preparations are being done in accordance with a specific written prescription;

(b) Preparing syringes for intravenous injection or the administration of medications intravenously;

(c) Administering any intravenous medications and the first dose of any subcutaneous or intramuscular injection;

(d) Interpreting a "PRN" (as needed) medication order when the order does not identify the resident behaviors or symptoms which would trigger the need for the medication and/or does not identify the appropriate dosing and is not specifically authorized on the written plan of care;

(e) Irrigating or debriding agents used in the treatment of skin conditions;

(f) Assisting in the administration of sample or over the counter medications where there is no written doctor's order providing amount and dosing instructions; and

(g) Assisting in the administration of any medication to a client without appropriate evidence of a written order signed by an appropriately licensed healthcare professional; and

(h) Performing any health maintenance activities where the licensed health care professional has determined that either the care required no longer meets the definition of health maintenance activities or the proxy caregiver has not demonstrated the knowledge and skill necessary to perform the health maintenance activities safely.

(7) Maintaining Records on Medication Assistance. Where the licensed facility manages medications for an individual with a disability, the licensed facility must maintain a daily Medication Assistance Record (MAR) for each person who receives assistance. At a minimum, the MAR must include the name of the specific person receiving assistance, any known allergies, the name and telephone number of the individual's health care provider, the name, strength and specific directions for the medications being managed, and a chart for staff who provide assistance to record initials, time and date when medications are taken, refused or a medication error is identified (e.g. missed dosage). The staff providing the assistance must immediately update the MAR for each individual each time the medication is offered or taken.

(a) The licensed facility must make medication information concerning the descriptions of medication, dosing, side effects, adverse reactions and contraindications for each medication being administered to the individual with a disability immediately available for reference by proxy caregivers providing medication assistance. The licensed facility must utilize a properly indexed medication information notebook or folder which contains information about only the medications for which the caregivers are providing assistance.

(b) Proxy caregivers provided by the licensed facility who provide assistance with medications must document in the client's record any unusual reactions to the medications and provide such information to the individual with a disability, legally authorized representative, if any, and healthcare provider as appropriate.

(8) Medication Assistance Competency Assessments. The licensed facility must maintain documentation showing that the proxy caregivers have been trained and determined to have the knowledge and skills necessary to provide the assistance with medications by the specified licensed healthcare professional.

(a) The specified licensed healthcare professional must sign and date the skills competency checklist for the staff they are evaluating.

(b) Skills competency checklists for proxy caregivers assisting with medications must be promptly updated by a licensed healthcare professional whenever new medications are added for which such staff has not previously received training and at least annually.

(c) The licensed facility must not allow any proxy caregiver to assist with administration of specific medications unless the proxy caregiver has been trained and determined competent by a registered professional nurse, or an authorized advance practice registered nurse, a physician's assistant or physician to assist with the administration of medications in that classification.

(9) Competency Evaluations for Specialized Health Maintenance Activities.

Where the health maintenance activity to be performed has multiple discrete tasks that must be performed in proper sequence to deliver safe care, the licensed healthcare professional must ensure that the skills competency checklist properly sequences all necessary tasks. The licensed healthcare professional must verify by direct observations and sign documentation that the proxy caregiver can complete all tasks required satisfactorily in proper sequence from memory without prompting or assistance of any kind. Competency to perform specialized health maintenance activities must be reevaluated whenever the health maintenance activities change, and on a regularly recurring schedule as determined appropriate by the licensed healthcare professional on the written plan of care. The schedule for such re-evaluations must take into consideration the nature of the health maintenance activities to be performed and the condition of the client. At a minimum, such reevaluations by the licensed healthcare professional must occur no less frequently than annually.

Authority O.C.G.A. §§ 31-7-2.2 and 43-26-12(a)(9).

111-8-100-.06 Variance and Waivers.

(1) The Department may, in its discretion, grant variances and waivers of specific rules upon application or petition filed on forms provided by the Department. The Department may establish conditions which must be met by the licensed facility in order to operate under the variance or waiver granted.

(a) Variance. A variance may be granted by the Department upon a showing by the applicant or petitioner that the particular rule or regulation that is the subject of the variance request should not be applied as written because strict application of the rule would cause undue hardship. The applicant or petitioner must also show that adequate standards affording protection for the health, safety, and care of the individuals with disabilities exist and will be met in lieu of the exact requirements of the rule or regulations in question.

(b) Waiver. The Department may dispense entirely with the enforcement of a rule or regulation by granting a waiver upon a showing by the applicant or petitioner that the purpose of the rule or regulation is met through equivalent standards affording equivalent protection for the health, safety, care, and rights of the individuals being served; and

(c) Experimental Variance or Waiver. The Department may grant variances and waivers to allow experimentation and demonstration of new and innovative approaches to delivery of services upon a showing by the applicant or petitioner that the intended protections afforded by the rule or regulation which is the subject of the request are met and that the innovative approach has the potential to improve service delivery without compromising health, safety, individuals' rights, or other relevant standards.

(2) The decision of the Department regarding either granting or denying the application of the governing body of the licensed facility for a waiver or variance is not subject to further administrative review. The governing body may file a petition for judicial review in the appropriate superior court.

(3) Where the Department has denied the application for a waiver or variance in writing, the Department will not consider a subsequent application for the same waiver or variance as a new application unless the applicant includes new evidence of a substantial change in the circumstances which formed the basis for the initial request.
Authority O.C.G.A. §§ 31-2-9, 31-7-2.1, 31-7-12, 50-13-9.1 and 50-13-19.

111-8-100-.07 Enforcement of Licensing Requirements.

A licensed facility which permits proxy caregivers to deliver health maintenance activities is subject to inspection by the Department to determine compliance with the requirements contained in the Rules and Regulations for Proxy Caregivers Used in Licensed Healthcare Facilities, Chapter 111-8-100 or other licensure regulations applicable to the specific licensed facility. A licensed facility which is determined not to be in compliance with these rules or other rules applicable to the licensed facility, is subject to civil and administrative actions brought by the Department to enforce licensing requirements as provided by law and rules. Such actions will be initiated in compliance with the Georgia Administrative Procedures Act, O.C.G.A. § 50-13-1 et seq., O.C.G.A. §31-2-11 and the Rules and Regulations for General Licensing and Enforcement Requirements, Chapter 111-8-25.
Authority O.C.G.A. §§ 31-7-2.1 and 31-7-2.2 and 50-13-1 et seq.

111-8-100-.08 Severability.

In the event that any rule, sentence, clause or phrase of any of the rules and regulations may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions thereof shall remain in full force and effect as if such rule or portions thereof so determined, declared or adjudicated invalid or unconstitutional were not originally part of these rules.
Authority: O.C.G.A. § 31-7-2.1

**PLAN OF CARE USING UNLICENSED PROXY CAREGIVERS TO
PERFORM HEALTH MAINTENANCE ACTIVITIES**

1. Client's Claim No.	2. Start of Care Date: _____	4. Initial training date _____	7. Medical Record Number
	3. Date of this Assessment: _____	5. Frequency of Skill Recheck: _____	8. Provider Number:
9. Client's Name, Address, and Telephone Number		10. Provider's Name, Address, and Telephone Number	
11. Date of Birth:		12. Sex <input type="checkbox"/> M <input type="checkbox"/> F	13. Medications: Dose/Frequency/Route (N)ew (C)hanged-List or Attach List or MAR.
14.	Principal Diagnosis and ICD-9 & date if required		Vital Signs: BP _____ HR _____ Resp _____ Temp _____ Treatments:
15.	Surgical Procedures and ICD-9 & date if required		
16.	Other Pertinent Diagnoses and ICD if required		
17. DME and Supplies & Equipment:		18 Safety Measures: Universal Precautions, Infection Control, and Protect from physical injury.	
19. Diet or Nutritional Requirements:		20. Allergies:	
21. A. Functional/Physical Limitations <input type="checkbox"/> Amputee <input type="checkbox"/> Legally Blind <input type="checkbox"/> Bowel/Bladder (Incontinence) <input type="checkbox"/> Endurance <input type="checkbox"/> Dyspnea with minimal exertion <input type="checkbox"/> Swallowing difficulty <input type="checkbox"/> Ambulatory asst. _____ <input type="checkbox"/> Other (Specify) _____		<input type="checkbox"/> Dressing/Groom Asst <input type="checkbox"/> Contractures <input type="checkbox"/> Ambulation <input type="checkbox"/> Hearing <input type="checkbox"/> Paralysis <input type="checkbox"/> Bathing Asst _____ <input type="checkbox"/> Speech _____	22. B. Activities Permitted <input type="checkbox"/> Complete Bedrest <input type="checkbox"/> Partial Weight Bearing <input type="checkbox"/> Wheelchair <input type="checkbox"/> Bedrest BRP <input type="checkbox"/> Independent at Home <input type="checkbox"/> Walker <input type="checkbox"/> Up as Tolerated <input type="checkbox"/> Crutches <input type="checkbox"/> No Restrictions <input type="checkbox"/> Transfer Bed/Chair <input type="checkbox"/> Cane <input type="checkbox"/> Exercises Prescribed <input type="checkbox"/> Other _____
23. Mental/Cognitive Status: ... <input type="checkbox"/> Oriented <input type="checkbox"/> Forgetful <input type="checkbox"/> Disoriented <input type="checkbox"/> Agitated <input type="checkbox"/> Memory Impairment <input type="checkbox"/> Lacks decision-making capacity regarding medical treatment or ability to communicate such decisions by any means <input type="checkbox"/> Comatose <input type="checkbox"/> Depressed <input type="checkbox"/> Lethargic <input type="checkbox"/> Other _____			
24. Stability: <input type="checkbox"/> stable <input type="checkbox"/> medically frail <input type="checkbox"/> medically compromised <input type="checkbox"/> health maintenance activities listed may be performed by properly trained unlicensed caregivers with consent			
25. Health Maintenance Activity, Frequency of the Activity, Duration and any special adaptations if applicable.			
26. Goals and Objectives:			
27. Nurse's Signature and Date of Training		28. Discharge Plans:	
29. Physician's Name, Address, Telephone and Fax Number:		30. I recommend the care and services as prescribed and listed above for my patient who is living at home or in a community-based setting. I understand that the patient has consented to having the health maintenance activities listed above performed by properly trained unlicensed proxy caregivers.	
31. Physician's, A.P.R.N.'s or P.A.'s Signature:		32. Date Signed:	

Informed Consent for Proxy Caregiver to Perform Health Maintenance Activities

Client Name:		Client Phone #	
Client Address	City:	State:	
Client's Legal Representative Name:			Legal Representative's Phone #:

Understanding Benefits and Risks in Allowing Unlicensed Proxy Caregivers to Take Care of Me

Georgia law now permits me, as an individual with a disability to choose to allow unlicensed proxy caregivers who have been properly trained to perform health maintenance activities for me. Health maintenance activities are those health-related things I would normally do for myself, but for my disability. Typically, a registered nurse would teach me how to do these things as part of my ongoing care. However, I could also be taught by my attending physician, an advance practice registered nurse or a physician's assistant. My proxy caregivers will be taught by a licensed healthcare professional to do the health maintenance activities generally described below and more specifically listed on my written plan of care. Health maintenance activities are defined as those activities that have reasonably precise and unchanging directions, reasonably predictable outcomes and do not require complex observation skills or critical decisions. Health maintenance activities do not include things like administering medications by injection directly into the blood stream or taking care of a central intravenous line or a complex wound. **I understand that:**

1. using proxy caregivers may make it more affordable or convenient for me to receive health maintenance activities I need in the place I consider my home rather than in a more structured kind of healthcare facility, such as a nursing home, personal care home or hospital;
2. my proxy caregivers are not licensed healthcare professionals and have not had the same extensive training that licensed healthcare professionals receive;
3. there may be additional health risks in having unlicensed proxy caregivers do health maintenance activities for me since they may not recognize an important change in my medical condition that needs to be assessed or treated by a licensed healthcare professional;
4. I am consenting to my medical information being shared with my proxy caregivers to be trained to provide care to me;
5. the attending physician, an advance practice registered nurse or a physician's assistant whose orders or written plan of care allow health maintenance activities to be performed for me is not responsible for my proxy caregivers' negligent performance of those activities unless the proxy caregivers are employed by the physician, advance practice registered nurse or physician's assistant to perform the health maintenance activities for me;
6. it is my responsibility, or a person legally authorized to act on my behalf, to notify the licensed healthcare professional to arrange for any additional training and evaluation if the health maintenance activities listed on my written plan of care change;
7. my consent for proxy caregivers to perform health maintenance activities for me may be revoked at any time either orally or in writing by notifying the designated proxy caregiver or licensed healthcare professional involved with my care.

My Health Maintenance Activities:

I give my consent for my proxy caregivers to do the following health maintenance activities for me. These health maintenance activities may be further explained on my written plan of care.

My Proxy Caregivers:

I give my consent for the following proxy caregivers to do the health maintenance activities listed above for me.

Signature of Client or Person Legally Authorized to Act on Behalf of the Client Consenting to Use of Proxy Caregivers:

My Signature Consenting:	Date:
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Legal Representative's Signature:
(Circle Legal Authority Below If Applicable)

Address of Person Signing (if different from Client's)

1. Advance Directive for Healthcare	2. Married Person for Spouse	3. Parent for Minor Child	4. Person Standing in Loco Parentis, Guardian for Ward	5. Female in relation to pregnancy/birth	6. Adult Child for Parent
7. Parent for Adult Child	8. Adult for Sibling	9. Grandparent for grandchild	10. Adult grandchild for grandparent	11. Adult niece, nephew, aunt, uncle (1 st degree)	12. Adult friend
13. Temporary Consent-Guardian					

Appendix A