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**RULES  
OF  
DEPARTMENT OF COMMUNITY HEALTH**

(Successor agency to the Department of Human Resources for these particular rules—see O.C.G.A. §31-2-5)

**CHAPTER 290-5-54  
RULES AND REGULATIONS FOR PRIVATE HOME CARE PROVIDERS**

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### **290-5-54-.01 Legal Authority.**

These rules are adopted and published pursuant to the Official Code of Georgia Annotated (O.C.G.A.) Sec. 31-7-300 et seq.

Authority O.C.G.A. Sec. 31-7-300 et seq. History. Original Rule entitled "Legal Authority" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

### **290-5-54-.02 Title and Purposes.**

These rules shall be known as the Rules and Regulations for Private Home Care Providers. The purposes of these rules are to provide for the licensing and inspection of private home care providers.

Authority O.C.G.A. Sec. 31-7-300 et seq. History. Original Rule entitled "Title and Purposes" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

### **290-5-54-.03 Definitions.**

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

(a) "Ambulation and transfer" means the acts of moving or walking about or walking or being moved from place to place with or without assistance.

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

(b) "Applicant" means:

1. When the private home care provider is owned by a sole proprietorship, the individual proprietor shall be the applicant for the license, complete the statement of responsibility and serve as the licensee;

2. When the private home care provider is owned by a partnership, the general partners shall be the applicant for the license, complete the statement of responsibility and serve as the licensee;

3. When the private home care provider is owned by an association limited liability company (LLC), the governing body of the association or LLC shall authorize the application for the license and complete the statement of responsibility and the association shall serve as the licensee; and

4. When the private home care provider is owned by a corporation, the governing body of the corporation shall authorize the application for the license and complete the statement of responsibility and the corporation shall serve as the licensee.

(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.

(d) "Criminal history background check" means a search as required by law of the criminal records maintained by law enforcement authorities to determine whether the applicant has a criminal record as defined in these rules.

(e) "Criminal record" means:

1. Conviction of a crime; or

2. Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge; or

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

3. Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17 O.C.G.A.

(f) "Department" means the Department of Human Resources.

(g) "Director" means the chief administrative or executive officer or manager.

(h) "Home health agency" means a facility licensed as a home health agency in accordance with the applicable licensing statutes and associated rules.

(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.

(j) "Housekeeping or housekeeping tasks" means those activities performed for the upkeep and cleanliness of the home, including but not limited to such activities as laundry, changing linens, trash disposal, and cleaning.

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

(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.

(n) "Owner" means any individual or any person affiliated with the corporation, partnership, or association with 10 percent or greater ownership interest in a business or agency licensed as a private home care provider and who:

1. Purports to or exercises authority of an owner in the business or agency;
2. Applies to operate or operates the business or agency; or
3. Enters into a contract to acquire ownership of such a business or agency.

(o) "Personal care home" means a facility licensed as a personal care home in accordance with the applicable 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;
2. contractual arrangements with independent contractors; 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.

(s) "Records check application" means two sets of classifiable fingerprints, a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(t) "Residence" means the place where an individual makes that person's permanent or temporary home, whether that person's own apartment or house, a friend or relative's home, or a personal care home, but shall not include a hospital, nursing home, hospice, or other health care facility licensed under Chapter 31-7-1 et seq.

(u) "Responsible Party" means any person authorized in writing by the client or appointed by an appropriate court to act upon the client's behalf; the term shall include a family member of a physically or mentally impaired client unable to grant the above authorization.

(v) "Satisfactory criminal history background check determination" means a written determination that a person for whom a records check was performed was found to have no criminal record which includes one of the covered crimes outlined in O.C.G.A. Sec. 49-2-14.1 *et seq.*, if applicable.

(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. If the mode of transportation is not owned by the client and is operated by an employee of the provider, the provider shall either obtain a signed waiver by the client of any claims for damages arising out of the operation of the vehicle or make reasonable efforts to insure that there is current motor vehicle insurance that will provide medical coverage for the client, in the event that the vehicle is involved in an accident causing injuries to the client.

(x) "Unsatisfactory criminal history background check determination" means a written determination that a person for whom a records check was performed has a criminal record which includes one of the covered crimes outlined in O.C.G.A. Sec. 49-2-14.1 *et seq.*, if applicable.

Authority O.C.G.A. Secs. 26-5-3, 31-7-300 et seq. History. Original Rule entitled "Definitions" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

#### **290-5-54-.04 Governing Body.**

Each private home care provider shall have a governing body empowered and responsible to determine all policies and procedures and to ensure compliance with these rules.

Authority O.C.G.A. Secs. 26-5-3, 31-7-300 et seq. History. Original Rule entitled "Governing Body" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

#### **290-5-54-.05 Licenses.**

(1) No private home care provider shall operate without a license or provisional license issued by the department.

(a) A license shall be issued and renewed periodically by the department upon a providers' compliance with these rules and shall remain in force and effect until the license expires or is suspended, revoked or limited.

(b) Prior to the issuance of any new license, the owner of the business or agency applying for the license shall be required to submit a records check application so as to permit the department to obtain a criminal history background check.

1. An owner may not be required to submit a records check application if a determination is made by the Department that the owner does not do any of the following:

(i) Maintains an office at the location where services are provided to clients;

(ii) Resides at a location where services are provided to clients;

(iii) Has direct access to persons receiving care; nor

(iv) Provides direct personal supervision of personnel by being immediately available to provide assistance and direction during the time services are being provided.

2. In lieu of a records check application, the owner may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the owner has received a satisfactory criminal records check determination.

(c) A private home care provider license shall not be issued, and any issued license shall be revoked, where it has been determined that the owner has received an unsatisfactory criminal records check determination involving any of the following covered crimes, as outlined in O.C.G.A. 49-2-14.1 *et seq.*:

1. A violation of Code Section 16-5-1, relating to murder and felony murder;

2. A violation of Code Section 16-5-21, relating to aggravated assault;

3. A violation of Code Section 16-5-70, relating to aggravated battery;

4. A violation of Code Section 16-5-70 relating to cruelty to children;

5. A violation of Code Section 16-5-100, relating to cruelty to a person 65 year of age or older;

6. A violation of Code Section 16-6-1, relating to rape;

7. A violation of Code Section 16-6-2, relating to aggravated sodomy;

8. A violation of Code Section 16-6-4, relating to child molestation;

9. A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;

10. A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions;

11. A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;

12. A violation of Code Section 16-8-41, relating to armed robbery;

13. A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person; or

14. Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere;

(d) An owner holding a valid private home care provider license issued on or before June 30, 2007 shall be required to obtain a fingerprint records check determination no later than December 31, 2008.

1. An owner holding a valid private home care provider license issued on or before June 30, 2007 who has received an unsatisfactory criminal records determination which includes any one of the covered crimes listed in Rule .05(c)(1)-(14) above, shall not have the license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedures Act'.

2. An owner with a valid private home care provider license who acquires a criminal record for any of the crimes listed in Rule .14(7)(c)(1)-(14) above subsequent to the effective date of these rules shall disclose the criminal record to the department.

(e) If at any time the department has reason to believe an owner holding a valid license has been arrested, charged, or convicted of any of the covered crimes listed in Rule .14(7)(c)(1)-(14) above, the department shall require the owner to submit a records check application immediately for determination of whether a revocation action is necessary.

(f) A provisional license may be issued by the department on a conditional basis for one of the following reasons:

1. To allow a newly established provider a reasonable, but limited, time to demonstrate that its operational procedures comply with these rules; or

2. To allow an existing provider a reasonable length of time to comply with these rules and regulations, provided that the provider shall present a plan of improvement acceptable to the department.

(2) Qualifications Requirement. In order to obtain or retain a license or provisional license, the provider's administrator and its employees must be qualified, as defined in these rules, to direct or work in a program. However, the department may require additional reasonable verification of the qualifications of the administrator and employees either at the time of application for a license or provisional license or at any time during the license period whenever the department has reason to believe that an administrator or employee is not qualified under these rules to direct or work in a program.

(a) If a governing body maintains offices as a private home care provider in more than one location, then each location shall be separately licensed.

(b) The license shall be prominently and appropriately displayed at the private home care providers licensed location.

(c) No license issued under these rules is assignable or transferable. Each license or provisional license shall be returned to the department in cases of changes in name, location, ownership or governing body or if suspended, revoked, or limited. The department shall be provided 15 days notice in advance of any providers change in location.

Authority O.C.G.A. Sec. 31-7-300 et seq. History. Original Rule entitled "Licenses" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

### **290-5-54-.06 Applications.**

(1) Initial applications for a license as a private home care provider must be submitted to the department on forms provided by the department, and shall include the submission of an application fee and a license fee established by the Board of Human Resources, and a records check application for the owner. Such application shall include a description of the private home care provider services to be offered by the applicant and the geographic area that will be served.

(2) Renewal of Licenses. Licenses shall be renewed by the department periodically from the date of initial issuance upon submission of a renewal application, and a license renewal fee established by the Board of Human Resources. Such renewal application shall include a description of the private home care provider services offered by the licensee and the geographic area served.

(3) Fees. Fees shall be reasonable and shall be set so that the total of the fees approximates the total of the direct and indirect costs to the state of the licensing program. Fees may be refunded for good cause as determined by the department.

(4) False or Misleading Information. The application for any license or renewal must be truthfully and fully completed. In the event that the department has reason to believe that any application has not been completed truthfully, the department may require additional reasonable verification for the facts alleged. The department may refuse to issue or renew any license where false statements have been made in connection with the application or any other documents required by the department.

Authority O.C.G.A. Secs. 31-2-6, 31-7-300 et seq. History. Original Rule entitled "Applications" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

### **290-5-54-.07 Exemptions.**

(1) These rules shall not apply to private home care services which are provided under the following conditions:

(a) When those services are provided directly by an individual, either with or without compensation, and not by agents or employees of the individual and not through independent contractors or referral arrangements made by an individual who has ownership or financial interest in the delivery of those services by others who would deliver those services.

(b) When those services are home infusion therapy services and the intermittent skilled nursing care is provided only as an integral part of the delivery and infusion of pharmaceuticals; however, such skilled nursing care, whether hourly or intermittent, which provides care licensed by these rules beyond the basic delivery and infusion of pharmaceuticals is not exempt;

(c) When those services are provided through the temporary placement of professionals and paraprofessionals to perform those services in places other than a person's residence;

(d) When those services are provided by home health agencies which are licensed under state law;

(e) When those services are provided in a personal care home by the staff of the personal care home; and

(f) When those services are services within the scope of practice of pharmacy and provided by persons licensed to practice pharmacy.

(g) RESERVED.

(2) A certificate of need issued pursuant to O.C.G.A. Sec. 31-6-1 *et seq.* is not required for licensure so long as the provider does not operate as a licensed home health agency or personal care home.

Authority O.C.G.A. Secs. 31-7-305, 31-7-307. History. Original Rule entitled "Exemptions" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

### **290-5-54-.08 Inspections and Plans of Correction.**

(1) Providers shall be inspected by the department periodically; provided, however, the department may exempt a provider from such periodic inspections if it is certified or accredited by a certification or accreditation entity recognized and approved by the department.

(a) A provider seeking exemption from on-site inspection shall be required to submit to the department documentation of certification or accreditation, including a copy of its most recent certification or accreditation report.

(b) Nothing contained herein shall be construed to prohibit the department from conducting inspections of any provider as the department determines necessary.

(2) Consent to Entry and Access. An application for a license or the issuance and renewal of any license by the department constitutes consent by the applicant or licensee and the owner of the premises for the department's representatives to enter the premises for the purpose of conducting any inspection during regular business hours.

(a) Department representatives shall be allowed reasonable and meaningful access to the provider's premises, all records relevant to licensure and all provider staff. Providers shall assist and cooperate in arranging for department representatives to have meaningful access to provider's clients who consent to be interviewed by department representatives in connection with any licensure activity.

(3) Cooperation with Inspection. All provider staff shall cooperate with any inspection conducted by the department and shall provide, without unreasonable delay, any documents to which the department is entitled hereunder.

(4) If as a result of the inspection, violations of these licensure regulations are identified, the provider will be given a written report of the inspection which identifies the licensure regulations violated. The provider must submit a written plan of correction (improvement) in response to the inspection report which states what the provider will do when to correct each of the violations identified. The provider may offer any explanation or dispute the findings of violations in the written plan of correction so long as an

acceptable plan of correction is submitted within ten days of the receipt of the written report of licensure inspection.

Authority O.C.G.A. Secs. 31-2-6, 31-7-300 et seq. History. Original Rule entitled "Inspections and Plans of Correction" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

### **290-5-54-.09 Administration and Organization.**

(1) Services Description. A provider shall establish and implement written policies and procedures that define the scope of private home care services it offers and the types of clients it serves. No provider shall provide services that are prohibited by these rules, the applicable legal authority, or other laws.

(2) Service Agreements. No provider shall offer to provide a client any private home care services that it cannot reasonably expect to deliver in accordance with these rules.

(a) A provider shall establish and implement policies and procedures for service agreements. All services provided to a client shall be based on a written service agreement entered into with the client or the client's responsible party, if applicable. The service agreement must include the following:

1. Date that provider makes initial contact with client for services;
2. Date of referral, i.e. the date on which the provider received a specific request to deliver private home care services to a particular client;
3. Description of services needed as stated by client or responsible party, if applicable;
4. Description of services to be provided and expected frequency and duration of services;
5. Charges for such services, and mechanisms for billing and payment of such charges;
6. Acknowledgment of receipt of a copy of client's rights and responsibilities as outlined at rule .12;
7. A telephone number of the provider that a client can call for information, questions, or complaints about services supplied by the provider;
8. The telephone number of the state licensing authority, i.e. the department, to call for information or questions about the provider concerning a violation of licensing requirements that was not resolved to the client's satisfaction by complaining to the provider;
9. Authorization from client or responsible party, if applicable, for access to client's personal funds when home management services are to be provided and when those services include assistance with bill paying or any activities, such as shopping, that involve access to or use of such funds; similarly approved authorization for use of client's motor vehicle when services to be provided include transport and escort services and when the client's personal vehicle will be used;
10. Signatures for the provider's representative and the client or responsible party, if applicable, and date signed; if a client or responsible party refuses to sign the

agreement, such refusal shall be noted on the agreement with an explanation from the provider's representative.

(b) For new clients, such initial service agreements shall be completed not later than the second visit to the client's residence to provide services if the second visit occurs on a different day from the first visit or not later than seven calendar days after services are initially provided in the residence, whichever is earlier.

1. If the provider is unable to complete the service agreement for good cause, the provider will document such reason(s) in the client's file.

2. Subsequent revisions to the initial service agreement may be handled by the provider noting in the client's record the specific changes in service (e.g. addition or deletion of service, changes in frequency, or duration, or charge for services, etc.) that will occur and that the change was discussed with and agreed to by the client and/or responsible party, as appropriate, who signed the initial agreement prior to the change in services occurring.

(c) A client has the right to cancel any service agreement at any time and shall only be charged for services actually rendered prior to the time that the provider is notified of the cancellation. The provider may assess a reasonable charge for travel and staff time if notice of the cancellation of the service agreement is not provided in time to cancel the service prior to the provider's staff member arriving at the client's house to perform the service.

(3) Administrator. The governing body shall appoint an administrator who shall have full authority and responsibility for the operation of the private home care provider.

(a) Any administrator employed after the effective date of these rules must meet the following minimum qualifications:

1. Never have been shown by credible evidence (e.g. a court or jury, a department investigation, or other reliable evidence) to have abused, neglected, sexually assaulted, exploited, or deprived any person or to have subjected any person to serious injury as a result of intentional or grossly negligent misconduct as evidenced by an oral or written statement to this effect obtained at the time of application;

2. Participate in the orientation and training required by these rules;

3. Not have made any material false statements concerning qualifications requirements either to the department or the provider.

(4) Record keeping.

(a) Client Records. A provider shall maintain a separate file containing all written records pertaining to the services provided for each client that it serves and the file shall contain the following:

1. Identifying information including name, address, telephone number, and responsible party, if any;

2. Current service agreement as described at rule .09(2);

3. Current service plan as described at rule .11;

4. Clinical and/or progress notes if the client is receiving nursing services that have been signed and dated by the staff providing the direct care;
5. Documentation of personal care tasks and companion or sitter tasks actually performed for the client;
6. Documentation of findings of home supervisory visits by the supervisor unless entered in service plan;
7. Any material reports from or about the client that relate to the care being provided to the client including items such as progress notes and problems reported by employees of the provider, communications with personal physicians or other health care providers, communications with family members or responsible parties, or similar items;
8. The names, addresses, and telephone numbers of the client's personal physicians, if any; and
9. Date and source of referral.

(b) Retention and Confidentiality of Client Records. Written policies and procedures shall be established and implemented for the maintenance and security of client records specifying who shall supervise the maintenance of records, who shall have custody of records, to whom records may be released and for what purposes and how long the records will be retained.

1. At a minimum, all client records shall be retained for five years from the date of last service provided. The provider shall maintain the confidentiality of client records.

2. Employees of the provider shall not disclose or knowingly permit the disclosure of any information in a client record except to appropriate provider staff, the client, responsible party (if applicable), the client's physician or other health care provider, the department, other individuals authorized by the client in writing or by subpoena.

(c) Personnel Records. A provider shall maintain separate written records for each employee and the records shall include the following:

1. Identifying information such as name, address, telephone number, and emergency contact person(s);
2. A five year employment history or a complete employment history if the person has not been employed five years;
3. Records of qualifications;
4. Documentation of a satisfactory TB screening test upon employment and annually thereafter;
5. Date of employment;
6. The person's job description or statements of the person's duties and responsibilities;
7. Documentation of orientation and training required by these rules;
8. Documentation of at least an annual performance evaluation;

9. Documentation of bonding if the employee performs home management services which permit unlimited access to the client's personal funds. (If bonding is provided through a universal coverage bond, evidence of bonding need not be maintained separately in each personnel folder.)

(d) Reports of Complaints and Incidents. The provider shall maintain files of all documentation of complaints submitted pursuant to rule .12(2). A provider shall also maintain on file for a minimum of five years all incident reports or reports of unusual occurrences (e.g. falls, accidents, significant medication errors, etc.) that affect the health, safety, and welfare of its clients. Documentation required to be maintained shall include what actions, if any, the provider took to resolve clients' complaints and to address any incident reports or unusual occurrences required to be retained.

(5) Staffing. The provider shall have sufficient numbers of qualified staff as required by these rules to provide the services specified in the service agreements with its clients. In the event that the provider becomes aware that it is unable to deliver the specified services to the client because of an unexpected staff shortage, the provider shall advise the client and refer the client to another provider if the client so desires.

(a) All staff employed by a provider shall have included in their personnel records or files maintained by the particular provider a written evaluation that was performed within one year before or after the effective date of these rules. The written evaluation must reflect that the employee's performance of required job tasks was observed personally by a supervisor either by demonstration or observation and such performance was determined to be competent for all job tasks required to be performed. All staff hired after the effective date of these rules must meet the following minimum qualifications:

1. Never have been shown by credible evidence (e.g. a court or jury, a department investigation, or other reliable evidence) to have abused, neglected, sexually assaulted, exploited, or deprived any person or to have subjected any person to serious injury as a result of intentional or grossly negligent misconduct as evidenced by an oral or written statement to this effect obtained at the time of application;

2. Participate in the orientation and training required by these rules;

3. Not have made any material false statements concerning qualifications requirements either to the department or the provider.

(b) Nursing Personnel. Any persons employed by the provider to provide nursing services shall be licensed in Georgia in accordance with professional licensing laws and associated rules. Such persons may also provide any other types of private home care services offered by the provider.

(c) Personal Care Assistant (PCA). The provider may have PCAs perform personal care tasks for clients. Such persons may also perform companion or sitter tasks for clients, but shall not provide nursing services unless qualified as stated in rule .09(5)(b) above.

1. Any PCA hired after the effective date of these rules shall have the following training and/or experience:

(i) successful completion of a nurse aide training and competency evaluation program pursuant to the requirements of 42 CFR Part 483, Subpart D, as revised or recodified, if applicable; or

(ii) successful completion of a competency examination for nurse aides recognized by the department; or

(iii) successful completion of a health care or personal care credentialing program recognized and approved by the department; or

(iv) successful completion or progress in the completion of a 40 hour training program provided by a private home care provider, which addresses at least the following areas:

(I) Ambulation and transfer of clients, including positioning;

(II) Assistance with bathing, toileting, grooming, shaving, dental care, dressing, and eating;

(III) Basic first aide and CPR;

(IV) Caring for clients with special conditions and needs so long as the services are within the scope of the tasks authorized to be performed by demonstration;

(V) Home management;

(VI) Home safety and sanitation;

(VII) Infection control in the home;

(VIII) Medically related activities to include the taking of vital signs; and

(IX) Proper nutrition.

2. A training program described in rule .09(5)(c)1.(iv) must be conducted under the direction of a licensed registered professional nurse, or a health care professional with commensurate education and experience. Twenty hours of the program must be completed by the employee prior to serving clients and the additional twenty hours must be completed within six months of the date the training initially began. No PCA shall be assigned to perform a task for which training has not been completed and competency has not been determined. No PCA shall be assigned to care for a client with special conditions unless the PCA has received training and has demonstrated competency in performing such services related to such special conditions.

(d) Companions or Sitters. The provider may have companions or sitters perform companion or sitter tasks for clients.

1. Such persons may not provide other private home care services to clients unless qualified as stated in rules .09(5)(b) and (c).

2. Any companion or sitter hired after the effective date of these rules must meet the following minimal requirements:

(i) Be able to read and write, follow verbal and written instructions, and complete written reports and documents;

(ii) Successfully complete training or demonstrate understanding and practical competency in the following areas: understanding the needs and characteristics of elderly, handicapped, or convalescing individuals; meal preparation and serving; transportation and escort services; housekeeping to include sanitation; home safety; handling medical emergencies in the home; and infection control.

(6) Staff Training. Prior to working with clients, all employees hired or used on or after the effective date of these rules and who provide services to clients shall be oriented in accordance with these rules and shall thereafter receive additional training in accordance with these rules.

(a) Orientation shall include instruction in:

1. The provider's written policies and procedures regarding its scope of services and the types of clients it serves (rule .09 (1) and clients rights and responsibilities and complaints (rule .12), as well as other policies that are relevant to the employee's range of duties and responsibilities;

2. The employee's assigned duties and responsibilities;

3. Reporting client progress and problems to supervisory personnel and procedures for handling medical emergencies or other incidents that affect the delivery of services in accordance with the client's services plan;

4. The employee's obligation to report known exposure to tuberculosis and hepatitis to the employer.

(b) Additional training consisting of a minimum of eight clock hours of training or instruction shall be provided annually for each employee after the first year of employment. Employees hired prior to the effective date of these rules are also required to receive eight clock hours of training or instruction annually beginning with the effective date of these rules. Such training or instruction shall be in subjects that relate to the employee's assigned duties and responsibilities.

(7) Contracted Services. If a provider arranges with independent contractors, individuals, or agents for them to provide any authorized private home care services on behalf of the provider in any way, such arrangements shall be set forth in writing detailing the services to be provided. The provider must assure that the independent contractor, individual, or agent supplying the services follow the provisions of these rules and are qualified to provide the services. The services must be supervised, as outlined in rule .10(2) (Supervision of Services), by a supervisor of the licensed provider.

Authority O.C.G.A. Sec. 31-7-300 et seq. History. Original Rule entitled "Administration and Organization" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

#### **290-5-54-.10 Private Home Care Provider Services.**

(1) A provider may provide three categories of home care services as defined in these rules.

(a) Nursing Services. If a provider provides nursing services, such services shall be provided by a licensed registered professional nurse or a licensed practical nurse under the direction of a supervisor as required by these rules. Such services shall be provided in accordance with the scope of nursing practice laws and associated rules, and the client's service plan.

1. Nursing services shall include the following: ...

(i) Regularly assess the nursing needs of the client;

- (ii) Participate in the establishment and implementation of the client's service plan;
- (iii) Provide nursing services as needed and in accordance with the client's service plan;
- (iv) Report problems and progress of client to supervisory personnel or the client's personal physician.

(b) Personal Care Tasks. If a provider provides personal care tasks, such tasks, at a minimum, shall be performed by a qualified PCA under the direction of a supervisor as required by these rules, and in accordance with the client's service plan. In addition to following the service plan, a PCA must report on the personal care needs of the client, on changes in the client's condition, and on any observed problems that affect the client. Licensed nurses are also authorized to perform personal care tasks.

(c) Companion or Sitter Tasks. If a provider provides companion or sitter tasks, such tasks, at a minimum, shall be performed by a qualified companion or sitter under the direction of a qualified supervisor as required by these rules, and in accordance with the client's service plan. In addition to following the service plan, a companion or sitter must report on the needs of the client, on changes in the client's condition, and on any observed problems that affect the client.

(2) Supervision of Services. Services shall be supervised by qualified staff of the provider. Each staff member providing services to a client shall be evaluated in writing by his or her supervisor, at least annually, either through direct observation or demonstration, on the job tasks the staff member is required to perform. No supervisor shall knowingly permit an employee who has been exposed to tuberculosis or hepatitis or diagnosed with the same to provide services to clients until it is determined that the employee is not contagious.

(a) Supervision of Nursing Services. If a provider provides nursing services, it shall employ fully licensed Georgia registered professional nurse to supervise the provision of such services and the employees who provide the services. Such supervisor may perform other duties provided he or she is able to fulfill the supervisory responsibilities described in these rules. A supervisor shall complete the client's service plan in accordance with rule .11 and in coordination with the appropriate staff who will be providing the client's services.

(b) Supervision of Personal Care Tasks. If a provider offers personal care task services, the provider shall employ supervisor(s) that have been determined to be qualified by education, training and experience to supervise the provision of such tasks in accordance with accepted standards of care. A licensed registered professional or practical nurse shall supervise the provision of personal care tasks for clients determined to be medically frail or medically compromised. If such supervision is provided by a licensed practical nurse, the licensed practical nurse shall report to a licensed registered professional nurse who will continue to be responsible for the development and management of the service plan. Such supervisor may perform other duties provided he or she is able to fulfill the supervisory responsibilities described in these rules.

1. The appropriate supervisor as specified in these rules shall complete the client's service plan in accordance with rule .11 and in coordination with the appropriate staff who will be providing the client's services. For clients who are determined to be medically frail or compromised, a licensed registered professional nurse shall complete

the initial service plan. Subsequent revisions to the service plan may be made by a licensed practical nurse who is supervising the provision of personal care tasks services to the client. Revisions made by the licensed practical nurse will be reviewed in a timely manner by the provider's licensed registered professional nurse ultimately responsible for the management of the client's care.

2. The appropriate supervisor shall make a supervisory home visit to each client's residence at least every 92 days, starting from date of initial service in a residence or as the level of care requires to ensure that the client's needs are met. The visit shall include an assessment of the client's general condition, vital signs, a review of the progress being made, the problems encountered by the client and the client's satisfaction with the services being delivered by the provider's staff. Such supervision shall also include observations about the appropriateness of the level of services being offered. Routine quarterly supervisory visits shall be made in the client's residence and shall be documented in the client's file or service plan.

(c) Supervision of Companion or Sitter Tasks. If a provider provides companion or sitter tasks, supervision of such tasks shall be provided by a qualified supervisor (e.g. registered professional nurse, licensed practical nurse, the administrator, or any other staff member assigned responsibility for supervision of the delivery of care.)

1. The appropriate supervisor, as specified in these rules, shall complete the client's service plan in accordance with rule .11 and in coordination with the appropriate staff who will be providing the client's services.

2. The appropriate supervisor shall make a supervisory home visit to each client's residence at least every 122 days starting from date of initial service in the residence or when the provider receives a complaint concerning services and the complaint raises a serious question concerning the services being delivered. The visit shall include an assessment of the client's general condition, a review of the progress being made, the problems encountered by the client and the client's satisfaction with the services being delivered by the provider's staff. Such supervision shall also include observations about the appropriateness of the level of services being offered. Routine supervisory visits shall be made in the client's residence. All supervisory visits shall be documented in the client's file or service plan.

(d) When employees or subcontractors are performing personal care tasks for clients who are medically frail or medically compromised in the clients' residences, the provider shall have a representative on call and accessible who shall be able to contact a nurse supervisor by telephone or other means to provide appropriate consultation to the employees or subcontractors concerning responding to the clients' medical needs.

(3) Documentation of Home Care Services Provided. A provider shall establish and implement written policies and procedures for documenting the services actually performed for its clients each day. Such documentation shall be incorporated into the client's file in accordance with rule .09(4)(a).

(4) Quality Improvement Program. The provider must have and maintain documentation reflecting that there is an effective quality improvement program that continuously monitors the performance of the program itself and client outcomes to ensure that the care provided to the clients meets acceptable standards of care and complies with the minimum requirements set forth in these rules. At a minimum, the

quality improvement program must document the receipt and resolution (if possible) of client complaints, problems with care identified and corrective actions taken.

Authority O.C.G.A. Sec. 31-7-300 et seq. History. Original Rule entitled "Private Home Care Provider Services" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

#### **290-5-54-.11 Service Plans.**

(1) Service Plan Content. A provider shall establish and implement written policies and procedures for service planning. A written plan of service shall be established in collaboration with the client and the responsible party, if applicable, and the client's personal physician if the services to be provided are nursing services and the client has a personal physician.

(a) The service plan shall include the functional limitations of the client, types of service required, the expected times and frequency of service delivery in the client's residence, the expected duration of services that will be provided, the stated goals and objectives of the services, and discharge plans.

(b) When applicable to the condition of the client and the services to be provided, the [service] plan shall also include pertinent diagnoses, medications and treatments, equipment needs, and diet and nutritional needs.

(2) Service plans shall be completed by the service supervisor within seven working days after services are initially provided in the residence. Service plans for nursing services shall be reviewed and updated at least every sixty-two days. Other service plans shall be reviewed and updated at the time of each supervisory visit. Parts of the plans must be revised whenever there are changes in the items listed in rules .11(l)(a) and (b), above.

Authority O.C.G.A. Sec. 31-7-300 et seq. History. Original Rule entitled "Service Plans" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

#### **290-5-54-.12 Client Rights, Responsibilities and Complaints.**

(1) A provider shall establish and implement written policies and procedures regarding the rights and responsibilities of clients, and the handling and resolution of complaints.

(2) Such policies and procedures shall include a written notice of rights and responsibilities which shall be provided to each client or responsible party, if applicable, when the service agreement described in rule .09(2) is completed. The required notice shall include the following items:

- (a) Right to be informed about plan of service and to participate in the planning;
- (b) Right to be promptly and fully informed of any changes in the plan of service;
- (c) Right to accept or refuse services;
- (d) Right to be fully informed of the charges for services;
- (e) Right to be informed of the name, business telephone number and business address of the person supervising the services and how to contact that person;

(f) Right to be informed of the complaint procedures and the right to submit complaints without fear of discrimination or retaliation and to have them investigated by the provider within a reasonable period of time. The complaint procedure provided shall include the name, business address and telephone number of the person designated by the provider to handle complaints and questions;

(g) Right of confidentiality of client record;

(h) Right to have property and residence treated with respect;

(i) Right to receive a written notice of the address and telephone number of the state licensing authority, i.e. the department, which further explains that the department is charged with the responsibility of licensing the provider and investigating client complaints which appear to violate licensing regulations;

(j) Right to obtain a copy of the provider's most recent completed report of licensure inspection from the provider upon written request. The provider is not required to release the report of licensure inspection until the provider has had an opportunity to file a written plan of correction for the violations, if any, identified. The facility may charge the client reasonable photocopying charges;

(k) Right to be advised that the client and the responsible party, if applicable, must advise the provider of any changes in the client's condition or any events that affect the client's service needs.

(3) Such policies shall also include procedures for clients and others to present complaints, either orally or in writing, about services and to have their complaints addressed and resolved as appropriate by the provider in a timely manner.

(4) A provider shall supply all clients and responsible parties, if applicable, with the specific telephone number of the provider for information, questions or complaints about services being delivered by the provider.

Authority O.C.G.A. Sec. 31-7-300 et seq. History. Original Rule entitled "Client Rights, Responsibilities and Complaints" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule entitled "Rights, Responsibilities, and Complaints" adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

### **290-5-54-.13 Enforcement and Penalties.**

(1) Enforcement of these rules and regulations shall be conducted in accordance with Rules and Regulations for Enforcement of Licensing Requirements,

(2) If the department finds that an applicant for a license has violated any provisions of these rules or other laws, rules, regulations, or formal orders related to initial or continued licensing, it may, subject to notice and an opportunity for hearing, refuse to grant any license or limit or restrict any license.

(3) If the department finds that a provider has violated any provision of these rules or other laws, rules, regulations, or formal orders related to initial or continued registration, it may, subject to notice and an opportunity for hearing, take any of the following actions: administer a public reprimand; limit or restrict a license; suspend a license; impose a fine; refuse to renew a license; or revoke a license.

Authority O.C.G.A. Sec. 31-2-6. History. Original Rule entitled "Enforcement and Penalties" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

**290-5-54-.14 Waivers and Variances.**

(1) The department may, in its discretion, grant waivers and variances of specific rules upon application or petition being filed on forms provided by the department. The department may establish conditions which must be met by the provider in order to operate under the waiver or variance granted. Waivers and variances may be granted in accordance with the following conditions:

(2) **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 persons in care exist and will be met in lieu of the exact requirements of the rule or regulation in question.

(3) **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 and care of persons in care.

(4) **Experimental Variance or Waiver.** The department may grant waivers and variances 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. Authority O.C.G.A. Sec. 31-2-4. History. Original Rule entitled "Waivers and Variances" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.

**290-5-54-.15 Severability.**

(1) In the event that any rule, sentence, clause or phrase of any of these 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.

(2) The remaining rules or portions thereof shall remain in full force and effect, as if such rule or portions thereof so determined, declared, or adjudged invalid or unconstitutional were not originally a part of these rules.

Authority O.C.G.A. Sec. 31-7-300 et seq. History. Original Rule entitled "Severability" adopted. F. June 26, 1995; eff. July 21, 1995, as specified by the Agency. Repealed: New Rule of same title adopted. F. Jan. 23, 2008; eff. Feb. 12, 2008.