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MEMORANDUM

September 3, 2009

**TO:** Senator Gail Schwartz  
**FROM:** Kelly Stapleton, Senior Research Assistant, 303-866-4789  
**SUBJECT:** Regulation of Home Care Placement Agencies

This memorandum responds to your request for information on regulation of home care placement agencies. This memorandum provides information on Colorado's regulation of home care placement agencies and how other states regulate home care placement agencies.

Regulation of home care placement agencies varies from state to state. There are three models of regulation for home care placement agencies.

- A majority of states either are silent regarding regulation of home care placement agencies or regulate them as employment placement agencies with accompanying requirements for disclosure or notification. Regulation, if any, typically occurs through the state's department of labor. For example, Wisconsin regulates home care placement agencies as an 'employment agency' under state law. Home care placement agencies are required to provide a form to workers and consumers describing the employment relationship between the worker and the consumer, and specifying which party is responsible for paying wages, taxes, and workers' compensation liability insurance.
- Colorado is the only state that requires home care placement agencies to register with the state's department of health.
- Six states, Florida, Illinois, Maryland, Massachusetts, Oregon, and Pennsylvania, require licensure of home care placement agencies and require individuals who work for placement agencies to register with a state agency.

## Overview

**Home health agencies.** Generally, home health agencies provide services directly to a consumer and are regulated by the state's department of public health or the division that oversees elder programs.

**Home care placement agencies.** By definition, home care placement agencies do not provide *direct services* to consumers, but arrange for an individual, typically referred to as an independent contractor, to provide services directly to a consumer. Consumers looking for a home care worker use placement agencies to locate an individual to work in his or her home. A home care placement agency typically maintains a roster of eligible home care workers which they use to refer a worker to a consumer. If the consumer likes the referred worker, then the consumer and the worker enter into a contractual relationship. The contract between the worker (the independent contractor) and the consumer are between the two parties. The home care placement agency receives a finder's fee or some type of monthly payment for the referral. Each home care placement agency defines their own polices and procedures which may include:

- requiring a background screening for independent contractors;
- maintaining records on independent contractors for tax purposes;
- developing training requirements for independent contractors, if any; and
- the status of the worker.

## Regulation in Colorado

**Definition of home care placement agency.** In Colorado, a home care placement agency is defined in statute as an organization that, for a fee, provides only referrals of providers to consumers seeking home care services. Under this definition, a home care placement agency does not provide any medical or non-medical services in a consumer's home, either directly or by contract.<sup>1</sup>

**Current regulation in Colorado.** Colorado law requires home care placement agencies to register in writing with the Colorado Department of Public Health and Environment and update that registration on an annual basis. Home care placement agencies are required to:

- notify the department in writing if they provide referrals for skilled home health services; and
- require a background check for persons seeking placement.<sup>2</sup>

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<sup>1</sup> Section 25-27.5-102 (5), C.R.S.

<sup>2</sup> Section 25.27.5-103(2), C.R.S..

## Regulation in Other States

Table 1 — Regulation of Home Care Placement Agencies provides a list of states that regulate home care placement agencies. These states include Colorado, Florida, Illinois, Maryland, Oregon, and Pennsylvania. The table details the type of regulation in each of the states, provides a definition of the term 'home care placement agency' as used in each state, lists the requirements of licensure including the licensure fee, and which department is responsible for oversight. The terms registry and licensure are defined below.

- "Registry" means the home care placement agencies must register with the state's department of health or division that oversees elder programs.
- "Licensure" means that home care placement agencies obtain a license from a state agency in order to operate. Typically the license is issued by the state's department of health or division that oversees elder programs.

Table 1 — Regulation of Home Care Placement Agencies

State	Description of regulation	Regulation		Statute or Administrative Code Reference
		Registry	License	
Colorado	<ul style="list-style-type: none"> <li>Home care placement agencies must register in writing with the CDPHE and update that registration on an annual basis.</li> </ul>	✓		Section 25-27.5-103(2)(a), C.R.S. 6 CCR 1011-1, Chapter XXVI, Section 4.1(A)
Florida	<ul style="list-style-type: none"> <li>Home care placement agencies are regulated by the Agency for Health Care Administration and are required to be licensed.</li> <li>Home care placement agencies are referred to as nurse registries and are defined as any person that procures, offers, promises, or attempts to secure health-care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers who are compensated by fees as independent contractors.</li> <li>In order to obtain a license, nurse registries must:               <ul style="list-style-type: none"> <li>have a minimum of one year of supervisory or administration in health care;</li> <li>have a registered nurse available to make visits to a patient's home if requested;</li> <li>ensure that each independent contractor provides evidence of licensure, certification, or training as applicable prior to referring clients to them;</li> <li>develop instructions regarding payment for services; and</li> <li>ensure that independent contractors provide a health statement to show they are free from communicable diseases and have passed a background check.</li> </ul> </li> <li>The licensure fee for a nurse registry is \$2,000 and the license is issued for 2 years.</li> <li>Nurse registries must inform patients or guardians that the caregiver is an independent contractor.</li> <li>Nurse registries are subject to surveys and inspections by the Agency for Health Care Administration.</li> </ul>		✓	F.S.A. 400.461 et. seq. F.S.A. 408.801 et. seq. Florida Administrative Code 59A-18

State	Description of regulation	Regulation		Statute or Administrative Code Reference
		Registry	License	
Illinois	<ul style="list-style-type: none"> <li>Home care placement agencies are regulated through the Illinois Department of Public Health and the Department of Labor and are required to be licensed by both.</li> <li>A placement agency is defined as any person engaged for gain or profit in the business of securing or attempting to secure work for hire for persons seeking work.</li> <li>In order to obtain a license, a home care placement agency must provide: <ul style="list-style-type: none"> <li>a description of the services to be provided by independent contractors;</li> <li>a description or map of the geographical service area in which services are provided;</li> <li>the charges for services by type of services provided;</li> <li>copies of any affiliation agreement with other health care providers; and</li> <li>documentation that independent contractors have passed a criminal background check and proof of eight hours of in-service training.</li> </ul> </li> <li>Other requirements for home care placement agencies include developing a Client Consent to Receive Services form that describes billing and payment arrangements, specifies the duration of the contract, contains a statement on how clients can report abuse, and an description of the agency's complaint resolution process.</li> <li>The Illinois Department of Public Health maintains a Health Care Worker registry which displays training information for certified nursing assistants and other health care workers. The registry also displays administrative findings of abuse, neglect, or misappropriations of property. Any individual working with a home care placement agency must register. A home care placement agency must verify the status of an individual contractor on the health care worker registry prior to employment.</li> <li>The annual license fee for home care placement agencies is \$500.</li> <li>Home care placement agencies must obtain liability insurance in order to operate lawfully.</li> </ul>		✓	225 ILCS 46 77 Illinois Administrative Code 955 77 Illinois Administrative Code 245

State	Description of regulation	Regulation		Statute or Administrative Code Reference
		Registry	License	
<b>Maryland</b>	<ul style="list-style-type: none"> <li>Home care placement agencies are regulated by the Department of Health and are required to be licensed. Individuals working for a placement agency must also register with the department.</li> <li>Maryland refers to home care placement agencies as nursing referral service agencies.</li> <li>In order to obtain a license, nurse referral service agencies must: <ul style="list-style-type: none"> <li>develop and implement procedures to screen care providers which include criminal background checks;</li> <li>institute an internal client complaint investigation process;</li> <li>provide notice to clients of the department's complaint hotline; and</li> <li>allow clients to reject or accept any care provider.</li> </ul> </li> <li>The licensure fee for nurse referral services agencies are \$1,000 and the licensed is issued for 3-years.</li> <li>Individuals who violate the state law by not obtaining a license face a misdemeanor conviction and a fine not exceeding \$1,000 for a first offense.</li> </ul>		✓	Maryland statute 19-4B
<b>Massachusetts</b>	<ul style="list-style-type: none"> <li>In Massachusetts, home care placement agencies are regulated through the Employment Agency Program within the Massachusetts Division of Occupational Safety and are required to be licensed.</li> <li>Home care placement agencies are referred to as domestic agencies.</li> <li>In order to obtain a license, domestic agencies must: <ul style="list-style-type: none"> <li>maintain a register of all job applicants;</li> <li>maintain a register of all clients;</li> <li>conduct criminal background checks on independent contractors; and</li> <li>keep written records of all income received from the operation of the agency.</li> </ul> </li> <li>The annual licensure fee for domestic agencies are \$300.</li> <li>Home care placement agencies are required to carry worker's compensation liability insurance.</li> </ul>		✓	M.G.L. ch. 140, Section 46A-46R

State	Description of regulation	Regulation		Statute or Administrative Code Reference
		Registry	License	
Oregon	<ul style="list-style-type: none"> <li>• Oregon passed a law in 2009 that regulates home care placement agencies through the Oregon Department of Human Services and requires them to be licensed in order to operate as a business.</li> <li>• The Oregon Department of Human Services is required to implement rules regulating home care placement agencies referred to as caregiver registries.</li> <li>• State law defines a caregiver registry as an agency that prequalifies, establishes, and maintains a list of qualified private contractor caregivers that are provided to a client for caregiver services within the client's place of residence.</li> <li>• Under the law, the Department of Human Services is authorized to promulgate rules regarding: <ul style="list-style-type: none"> <li>• the minimum qualifications of individuals whose services are offered through a caregiver registry;</li> <li>• standards for patient care;</li> <li>• procedures for maintaining records;</li> <li>• requirements for contractual arrangements for professional and ancillary services;</li> <li>• requirements for criminal background checks for individuals listed on a caregiver registry;</li> <li>• procedures for complaints against a caregiver registry; and</li> <li>• procedures for inspection of caregiver registries.</li> </ul> </li> <li>• The initial licensure fee for a care giver registry is \$1,500, and the annual renewal license fee is \$750.</li> </ul>		✓	Senate Bill 09-158-B

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Pennsylvania	<ul style="list-style-type: none"> <li>Governor Rendell signed Act 69 of 2006 on July 2, 2006, which amends the Health Care Facilities Act to include Health Care Agencies (HCAs) and Health Care Registries (HCRs). The act requires the Department of Health to promulgate regulations governing licensure of HCAs &amp; HCRs. Regulations are still being reviewed as of the date of this memorandum. A spokesperson from the department indicated that the final regulations are scheduled for final review on October 1, 2009, which will be followed by a period of public comment. The department indicated that the regulations would be approved and in place by the end of the year. Below is a description of the regulations which have not been approved, but are up for final review.</li> <li>A home care registries is defined as a business that supplies, arranges, or refers independent contractors to provide assistance with activities of daily living in the consumer's place of residence.</li> <li>Under the proposed regulation, in order to obtain a license, HCRs must: <ul style="list-style-type: none"> <li>conduct criminal background checks on all independent contractors;</li> <li>ensure that independent contractors are free from tuberculosis;</li> <li>pass an on-site inspection;</li> <li>maintain records of independent contractors;</li> <li>ensure the competency of independent contractors by requiring them to: <ul style="list-style-type: none"> <li>possess a valid nurses license; or</li> <li>have successfully completed at least one of the following: <ul style="list-style-type: none"> <li>a nurse aide training program approved by the state;</li> <li>a personal care training program approved by the state; or</li> <li>a competency examination for persons only providing activities of daily living.</li> </ul> </li> </ul> </li> <li>HCRs must provide information to consumers regarding the consumer's right to be involved in the service planning process, the right to receive services with reasonable accommodations, and the right to receive ten days advance notice of termination of service.</li> <li>HCRs must also provide information to the consumer concerning the services that will be provided, the hours when services will be provided, fees, and total cost of the services.</li> <li>HCRs must inform the consumer whether the direct care worker is an employee or independent contractor.</li> </ul> </li></ul>		✓	28 PA Code Ch. 611 P.L. 334, No. 69