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PROGRAM INSTRUCTION

EOEA-PI-07-03

To: Aging Services Access Points (ASAPs)
From: Jennifer Davis Carey
Date: January 31, 2007
Subject: Requirements of Prevention, Reporting and Investigation of Abuse by Homemakers and Home Health Aides under 105 CMR 155.000 *et seq.*

I. Summary and Background Information

The purpose of this Program Instruction (PI) is to highlight certain requirements relating to prevention, reporting, and investigation of abuse under the Department of Public Health ("DPH") regulations at 105 CMR 155.000 *et seq.*: Patient and Resident Abuse Prevention, Reporting, Investigation, Penalties and Registry Regulations (the "DPH Regulations"), as they relate to homemakers and home health aides.

Aging Services Access Points (ASAPs) must ensure that the homemaker agencies, home health agencies and hospice programs (for convenience, hereinafter "Homemaker Agencies" or "Vendors," as appropriate) with which they contract are following all regulatory requirements regarding hiring staff and reporting abuse. This PI does not address the application of the DPH Regulations to long term care facility residents or nurse aides.

In addition, the requirements of the DPH Regulations should be read in conjunction with those of the Elder Abuse Reporting and Protective Service Regulations at 651 CMR 5.00 *et seq.* Neither set of regulations replaces any remedies that may be available to elders or their families through the criminal justice system, and these reporting requirements should never be treated as a "required first step" for prosecution of a criminal case.

Please review the full text of the DPH Regulations, which are attached, and provide copies of this PI and the regulations to all of your Vendors.

Specifically, all ASAPs should be aware, and must make sure that their Vendors are aware that:

- Employers and supervisors at Homemaker Agencies are required to report abuse by homemakers and home health aides immediately to DPH; and,
- All Homemaker Agencies must contact the registry maintained by DPH (the “DPH Registry”) before hiring or employing any homemaker or home health aide.

2. Required Reporting to DPH

Each ASAP should also be aware of its Vendors’ obligations under the DPH Regulations for reporting abuse, neglect, or patient mistreatment, and the protection for good faith reports by others.

Initial Report. Under the DPH Regulations, an employer or supervisor at any Homemaker Agency must immediately report to DPH when he or she receives a report, whether from a mandatory or non-mandatory reporter, of suspected Patient abuse, neglect, or mistreatment or misappropriation of Patient property (a “Violation”) by a homemaker or home health aide. 105 CMR 155.004. *Note that the DPH Regulations define a “Patient” as an individual who receives health, homemaker or hospice services at his or her residence from an individual employed by a home health agency, homemaker agency, or a hospice program, and a “homemaker” as an individual hired or employed by a home health agency, homemaker agency, or a hospice program, who works under agency or program supervision, and is trained by an agency or program to provide a multiplicity of homemaking services, such as meal preparation, cleaning and laundry as well as other essential nutritional and environmental services, in a Patient’s residence, as needed by the Patient.* (See 105 CMR 155.003.)

Good-faith reports by non-mandatory reporters are protected under 105 CMR 155.006. There may be circumstances under which staff of an ASAP may be a mandated reporter. Each ASAP should discuss such circumstances with its own counsel.

The initial immediate report must be made by telephone, fax, or e-mail, as follows:

- To make an oral report: 1-800-462-5540.
- To make a written report by facsimile transmission or by U.S. Mail:

Complaint Specialist, Division of Health Care Quality,
Massachusetts Department of Public Health,
10 West Street, Boston, MA 02111
Fax Number: 617-753-8165

Additional Reporting Requirements.

- Within 48 hours after making the initial report to DPH, the homemaker’s employer or supervisor must send a written report to DPH, which must meet the requirements set out in 105 CMR 155.005.

- For reports of suspected misappropriation of Patient property, within 48 hours after making the initial report, the supervisor or employer must conduct an internal investigation and report findings of reasonable cause to DPH orally, by fax or email. (Note, however, that the misappropriation of controlled substances, which must be reported immediately to DPH).

Additional Required Actions.

Additionally, after making a report to DPH, each Homemaker Agency must:

- Immediately begin to conduct its own internal investigation into the allegation of a Violation, interview all witnesses, and obtain their written statements about the case;
- Immediately initiate steps to prevent further potential harm to Patients or residents while the investigation is in progress;
- Make available to DPH all information which may be relevant to DPH's investigation into such suspected cases; and,
- Make all reasonable efforts to facilitate DPH's attempts to interview potential witnesses who may have information relevant to DPH's investigation.

Homemaker Agencies also must immediately review any situation or incident in which a Patient suffers physical or psychological injury or harm for any reason, and report these incidents to DPH as required by the DPH Regulations. (See 105 CMR 155.010(C).)

3. Program Requirements

In order to prevent instances of abuse, each ASAP should verify that each of its Vendors also has:

- Implemented written policies and procedures for reporting and responding to Violations in accordance with 105 CMR 155.010(B);
- Posted a notice informing the public of the resident and Patient abuse statute, the DPH Regulations, and the procedures for reporting suspected Violations to DPH. (See 105 CMR 155.010(D).
- Offered staff training meeting the requirements of 105 CMR 155.010(F); and,
- Adopted the preventive measures set forth in 105 CMR 155.010(G).

4. Pre-Hiring Requirement

The DPH Registry contains: (1) the names of all individuals who have been certified as nurse aides; and (2) sanctions, findings or adjudicated findings of Patient or resident Violations made against certified nurse aides *and* against home health aides and homemakers. (See 105 CMR 155.016).

Each ASAP should be aware that:

- All Homemaker Agencies must contact the DPH Registry before hiring anyone who will provide direct care to Patients or have access to Patients or their property to ascertain if there is any sanction, finding or adjudicated finding of a Violation;

- With limited exceptions, a Homemaker Agency must not hire or employ anyone whose name appears in the DPH Registry with a finding or adjudicated finding of a Violation, or, if a sanction was imposed upon that individual, until the terms of such sanction have been fulfilled; and,
- A Homemaker Agency must not hire or employ anyone who has been found guilty of, pleaded guilty or *nolo contendere* to, or admitted to sufficient facts to support a guilty finding of a Violation in a court of law.

The DPH Regulations are available at:

<http://www.mass.gov/Eeohhs2/docs/dph/regs/105cmr155.pdf>