

Bobby Jindal
GOVERNOR



Bruce D. Greenstein
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

February 2, 2011

The Honorable Joel T. Chaisson, II, President
Louisiana State Senate
P.O. Box 94183, Capitol Station
Baton Rouge, LA 70804-9183

The Honorable Jim Tucker, Speaker
Louisiana State House of Representatives
P.O. Box 94062, Capitol Station
Baton Rouge, LA 70804-9062

The Honorable Kay Katz, Chairwoman
House Health and Welfare Committee
Louisiana State House of Representatives
P.O. Box 44486, Capitol Station
Baton Rouge, LA 70804-4486

The Honorable Willie L. Mount, Chairwoman
Senate Health and Welfare Committee
Louisiana State Senate
P.O. Box 94183, Capitol Station
Baton Rouge, LA 70804-9183

Dear President Chaisson, Speaker Tucker, and Honorable Chairs:

In response to House Concurrent Resolution No. 94 of the 2010 Regular Session, the Louisiana Department of Health and Hospitals (DHH) submits the enclosed report. The resolution requests that DHH eliminate duplicative regulations and streamline the Direct Service Worker Registry process. The resolution requires DHH to submit a written report to the House and Senate Committees on Health and Welfare which details its findings and conclusions regarding the Direct Service Worker Registry. R.S. 24:772 also requires that the report be submitted to the President of the Senate and the Speaker of the House.

DHH is available to discuss the enclosed report and recommendations with you at your convenience. Please contact Erin Rabalais, Health Standards section chief, at (225) 342-4997 with any questions or comments you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce D. Greenstein".

Bruce D. Greenstein
Secretary

Enclosures

Cc: The Honorable Members of the House Health and Welfare Committee
The Honorable Members of the Senate Health and Welfare Committee
David R. Poynter Legislative Research Library

DIRECT SERVICE WORKER REGISTRY

REPORT PREPARED IN RESPONSE TO HCR 94
OF THE 2010 REGULAR SESSION

JANUARY 2011

Contact:

Louisiana Department of Health and Hospitals
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EXECUTIVE SUMMARY

The current Direct Service Worker (DSW) registry model has proven to be cumbersome and less efficient than desired. Providers have voiced frustration due to the fact that findings of abuse, neglect and/or exploitation cannot be placed on the registry until the accused worker has been given their right to due process through informal dispute resolution (IDR) and formal administrative hearing. If the worker takes advantage of these rights, a finding cannot be placed until a determination has been made that affirms the allegations against them. This can be a lengthy process during which time, the worker is free to apply for employment with another provider and continue to work uninterrupted. In an attempt to address these problems, providers introduced and were successful in getting House Concurrent Resolution (HCR) 94 passed during the 2010 legislative session. The resolution suspended the DSW rule to give the department time to work with stakeholders to eliminate any regulations that might be duplicative and streamline the DSW registry process. This report gives history relative to the establishment of the DSW registry, the department's conclusion as to its effectiveness and recommendations to streamline the registry process.

LEGISLATIVE REPORT DIRECT SERVICE WORKER REGISTRY

HCR 94

Act 306 (SB 271) of the 2005 regular session established the direct service worker registry to reduce the risk of abuse, neglect and exploitation to the elderly and disabled. It also directed DHH to promulgate rules and regulations necessary for the maintenance of a direct service worker registry to include minimum mandatory qualifications and requirements for direct service workers (DSW). The provisions of the legislation are applicable to direct service workers compensated through state or federal funds.

Rules and regulations were promulgated in the Louisiana Register, Vol. 32, No. 11 on November 20, 2006. Compliance with these regulations is enforced by the DHH Health Standards Section. The DSW registry is managed for DHH under contract with the Louisiana Board of Examiners for Nursing Facility Administrators (LABENFA). LABENFA also manages a registry for certified nursing assistants (CNA) for DHH. The DSW registry is modeled after the CNA registry and tracks completion of minimum training requirements, employment and termination as well as those DSWs who have had findings of abuse, neglect or exploitation placed against them. All data is entered into the registry via paperwork submitted by providers on forms prescribed by DHH.

As per terms of the contract, LABENFA submits a monthly report to DHH. The following statistics on the DSW registry are from the December 2010 report:

Total DSWs in Registry

63579

Total DSWs Registered in Registry

42190

Total DSWs Not Registered in Registry

21280

Total DSWs with Findings in Registry

109

The DSW registry was implemented in 2007 following promulgation of rules and regulations. From the beginning, the registry experienced a backlog of forms awaiting data entry into the system. The reasons for this included:

- the large volume of providers (approximately 1600) submitting paperwork to the registry;
- paperwork that was completed incorrectly or missing necessary information which had to be returned to the provider ;
- duplicate forms submitted by providers and
- a DSW population that is very transient with workers changing employers frequently and often working for more than one employer at a time.

Based upon this experience with the DSW registry, the department has determined that the current registry model is cumbersome and less efficient than desired.

In addition, providers have voiced frustration due to the fact that findings of abuse, neglect and/or exploitation cannot be placed on the registry until the accused worker has been given their right to due process through informal dispute resolution (IDR) and formal administrative hearing. If the worker takes advantage of these rights, a finding cannot be placed until a determination has been made that affirms the allegations against them. This can be a lengthy process during which time, the worker is free to apply for employment with another provider and continue to work uninterrupted. In an attempt to address these problems, providers introduced and were successful in getting House Concurrent Resolution (HCR) 94 passed during the 2010 legislative session. The resolution suspended the DSW rule to give the department time to work with stakeholders to eliminate any regulations that might be duplicative and streamline the DSW registry process.

As encouraged by HCR 94, DHH has consulted with a small provider stakeholder work group. A meeting was held on 12/8/10 resulting in the following recommendations for a new DSW registry model:

- 1) The registry will become a “negative” registry, in that it will be used to register DSWs who have had findings of abuse, neglect and/or misappropriation substantiated. Employers would be required to check the registry prior to making an offer of employment and if it is found that a finding has been placed against the individual, employment would be prohibited. The requirement to report employment, termination and verification of training would be eliminated. Minimum training requirements are being included in state minimum licensing standards for home and community based providers which include intermediate care facilities for the developmentally disabled (ICF/DD), personal care attendant, supervised independent living, respite, adult day care and adult day health care. Compliance will be verified by state surveyors during on site licensing surveys and complaint investigations.
- 2) The stakeholder group will review Oklahoma’s registry for “community service workers” which allows placement of a pending notation on the registry at the time that an allegation is brought against a worker. Providers feel that if this information is on the registry for other potential employers to see, it would allow a potential employer to be aware of a pending finding against a DSW prior to making an offer of employment. If, it is determined that the allegation is unsubstantiated, the pending notation is removed within 24 hours of receipt of notice by the department

CONCLUSION

The current DSW registry model is cumbersome and less efficient than desired. The department will work with stakeholders to achieve the following goals:

- The registry will become a “negative” registry, in that it will be used to register DSWs who have had findings of abuse, neglect and/or misappropriation substantiated. Employers would be required to check the registry prior to making an offer of employment and if it is found that a finding has been placed against the individual, employment would be prohibited. The requirement to report employment, termination and verification of training would be eliminated. Minimum training requirements are being included in state minimum licensing standards for home and community based providers which include intermediate care facilities for the developmentally disabled (ICF/DD), personal care attendant, supervised independent living, respite, adult day care and adult day health care. Compliance will be verified by state surveyors during on site licensing surveys and complaint investigations.
- The stakeholder group will review Oklahoma’s registry for “community service workers” which allows placement of a pending notation on the registry at the time that an allegation is brought against a worker. Providers feel that if this information is on the registry for other potential employers to see, it would allow a potential employer to be aware of a pending finding against a DSW prior to making an offer of employment. If it is determined that the allegation is unsubstantiated, the pending notation is removed within 24 hours of receipt of notice by the department.

BIBLIOGRAPHY

HCR 94 of the 2010 Legislative Session

Regular Session, 2010

HOUSE CONCURRENT RESOLUTION NO. 94

BY REPRESENTATIVE RICHARD

A CONCURRENT RESOLUTION

To suspend until final adjournment of the 2011 Regular Session of the Legislature of Louisiana the provisions of R.S. 37:1033(A)(2) and (3), 1033(F), and 1034(3), relative to Direct Service Workers; to suspend the provisions of Sections 9201 through 9293 of Chapter 92 of Part I of Title 48 of the Louisiana Administrative Code, relative to the Direct Service Worker Registry; and to urge the Department of Health and Hospitals to establish a stakeholder workgroup.

WHEREAS, Act No. 306 of the 2005 Regular Session of the Legislature of Louisiana authorized the Department of Health and Hospitals (hereafter referred to as the department) to implement a Direct Service Worker Registry; and

WHEREAS, despite the department's best efforts with inadequate staffing, the registry has been plagued by delays in posting names to the registry, thereby compromising the main purpose of the registry which is to identify workers who are negligent, abusive, exploitive, or have extorted funds from the persons they serve; and

WHEREAS, the state budget crisis has resulted in repeated cuts to providers necessitating the elimination of costly duplicative regulatory provisions and cost-prohibitive medication attendant training; and

WHEREAS, while over forty-three thousand individuals have been placed on the registry, only fifty-seven persons have been flagged for allegations of neglect, abuse, exploitation, or extortion; and

WHEREAS, with an estimated cost to providers of all enrolled of over fifteen million dollars annually and a cost to the department of approximately two hundred thousand dollars annually, this registry is clearly not a cost-effective way to achieve the original legislative intent; and

WHEREAS, training and other costs providers incur to comply with the requirements of the registry are not reimbursed, thus reducing the financial and manpower resources available to provide services to the elderly and persons with developmental disabilities; and

WHEREAS, the registry as currently structured does not have the ability to protect individuals with a developmental disability and the elderly in a timely manner and does not list findings until the individual has exhausted all legal remedies available to them; and

WHEREAS, there exists a backlog of seven months at the state level in entering trained workers' records onto the registry after their forms have been submitted by providers, which could allow an unsatisfactory employee to remain continuously employed by staying with different employers for periods of less than seven months; and

WHEREAS, proposed medication administration regulations will add significant training costs to providers which are not reimbursable despite the fact that there are other medication administration models in other states which are working well, are less costly, and should be considered; and

WHEREAS, the department has indicated its intent to tie billing for services to the registry, and with the current prolonged backlog in getting an individual's record entered into the registry, a provider would thus be unable to receive payment for services timely and experience a significant cash flow problem as a result; and

WHEREAS, records included in the registry regarding required training, medication administration, billing, abuse and neglect reporting, minimum qualifications of Direct Service Workers, and the use of relatives as caregivers are duplicative of many existing policies and other regulations; and

WHEREAS, the purpose of this Resolution is to allow the Department of Health and Hospitals time to work with stakeholders to eliminate duplicative regulations and streamline the Direct Service Worker Registry process.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby suspend the provisions of R.S. 37:1033(A)(2) and (3), 1033(F), and 1034(3), relative to Direct Service Workers, and does hereby suspend the provisions of Sections 9201 through 9293 of Chapter 92 of Part I of Title 48 of the Louisiana Administrative Code, relative to the Direct Service Worker Registry.

BE IT FURTHER RESOLVED that the suspension of R.S. 37:1033(A)(2) and (3), 1033(F), and 1034(3), relative to Direct Service Workers, shall become effective upon adoption of this Resolution and shall extend through final adjournment of the 2011 Regular Session of the Legislature of Louisiana.

BE IT FURTHER RESOLVED that the suspension of Sections 9201 through 9293 of Chapter 92 of Part I of Title 48 of the Louisiana Administrative Code, relative to the Direct Service Worker Registry, shall become effective upon adoption of this Resolution and shall extend until the publication date of a new rule regarding the Direct Service Worker Registry.

BE IT FURTHER RESOLVED that the publication of such rule regarding the Direct Service Worker Registry shall occur on or before January 1, 2011.

BE IT FURTHER RESOLVED that on or before February 1, 2011, the Department of Health and Hospitals shall submit a written report to the House and Senate committees on health and welfare which details its findings and conclusions regarding the Direct Service Worker Registry.

BE IT FURTHER RESOLVED that the Department of Health and Hospitals is hereby urged to establish a stakeholder workgroup to consult with the department prior to publication of a new rule regarding the Direct Service Worker Registry.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the secretary of the Department of Health and Hospitals.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE