

Contact Attorneys Regarding
This Matter:

Hedy S. Rubinger
404.873.8724 - direct
404.873.8725 - fax
hedy.rubinger@agg.com

Diana Rusk Cohen
404.873.8108 - direct
404.873.8109 - fax
diana.cohen@agg.com

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

Department of Community Health Adopts New Regulations for Memory Care in Personal Care Homes

The Georgia Department of Community Health (DCH) recently adopted new regulations for memory care in personal care homes (PCHs) that became effective on December 9, 2009. The rules establish basic standards for memory care in all PCHs that serve residents who have cognitive deficits that might cause them to wander offsite. The new rules also provide for considerable regulation of PCHs that qualify as “specialized memory care units.” These more extensive rules establish requirements for disclosure, physical plant, staffing levels, staff training, resident assessment, individual service plans and therapeutic activities. PCHs that qualify as “specialized memory care units” must come into full compliance with these more comprehensive rules by early March 2010.¹ This article summarizes the new memory care regulations and identifies the circumstances under which the new rules apply.

The New Regulations Define Memory Care Services and Specialized Memory Care Units

The new rules define memory care services and establish how PCHs qualify as specialized memory care homes or units:

- **Memory care services** are “the additional watchful oversight systems and devices that are required for residents who have cognitive deficits . . . which place the residents at risk of eloping, i.e. engaging in unsafe wandering activities outside the home.”²
- **Specialized memory care units** are PCHs that: (1) “hold themselves out as providing additional or specialized care to persons with . . . Alzheimer’s Disease or other dementia” or (2) charge “rates in excess of those charged other residents because of cognitive deficits which may place the residents at risk of eloping.”³

The New Rules Require PCHs with Residents at Risk of Unsafe Wandering Activities to Provide Basic Memory Care Services

All PCHs must provide basic memory care services if they serve residents who have cognitive deficits that place them at risk of engaging in unsafe wander-

¹ Ninety days after December 9, 2009, when the new rules took effect. See DCH Reg. 111-8-62-.20(2).

² DCH Reg. 111-8-62-.03(q).

³ *Id.* Section .03(r).

ing activities outside the home (referred to as “eloping”).⁴ The new rules outline basic memory care services in Section .19. The Section .19 rules apply as a safeguard in all PCHs that have residents who may elope due to dementia, even if the PCH in question does not specialize in dementia or Alzheimer’s care. Section .19 explains that basic memory care requires safety devices on external doors (such as electric locking systems) and a file of recent resident photographs. Additionally, Section .19 requires PCHs to “develop, train, and enforce” policies and procedures to “deal with residents who may elope from the facility.”

The New Rules Require PCHs that Qualify as Specialized “Memory Care Units” to Meet Additional Memory Care Requirements

PCHs that qualify as “specialized memory care units” must meet a more detailed set of requirements in addition to providing basic memory care services. The new rules list these detailed requirements at Section .20. A PCH will qualify as a specialized memory care unit under Section .20 if it: (1) “holds itself out as providing additional or specialized care to persons with . . . Alzheimer’s Disease or other dementia” or (2) “charges rates in excess of those charged other residents because of cognitive deficits which may place the residents at risk of eloping.”⁵ PCHs that meet this definition must comply with the basic memory care requirements from Section .19 described above and must also meet the following more detailed requirements from Section .20:

- **Written Descriptions:** PCHs must develop written descriptions of the memory care unit’s mission, philosophy, services, staffing levels, admissions procedures, assessment protocol, facilities, fee structure, family support programs and daily activities.
- **Disclosure of Description:** PCHs with specialized memory care units must “disclose the written description of the special care unit to any person on request” and to the resident’s family or representative before the resident is admitted.
- **Physical Design, Environment, and Safety:** A PCH’s specialized memory care unit must “be designed to accommodate residents with severe dementia or Alzheimer’s Disease in a home-like environment.” The new regulations state that the proper environment will include multipurpose rooms, secured outdoor spaces and walkways, adequate lighting, visual contrast between floors, walls and doors, bedrooms that accommodate no more than two residents, and automated alert systems. Additionally, if a PCH builds or renovates a new memory care unit, the unit’s design must comply with the current *Guidelines for Design and Construction of Healthcare Facilities*.
- **Staffing and Staff Orientation:** The regulations require specialized memory care units to have “sufficient numbers of trained staff on duty at all times.” Specialized memory care units must staff at least one licensed registered nurse who can administer medications to residents. Additionally, the unit must have at all times at least one awake staff member who can supervise the residents. All staff must successfully complete an orientation program before working independently with residents. The rules specify that orientation must include facility philosophy of care, policies, staff responsibilities for managing wandering residents, and “an introduction to common [resident] behavior prob-

⁴ *Id.* Section .19(2).

⁵ *Id.* Section .20(1); Definition of “Memory Care Unit” at Reg. 111-8-62-.03(r).

lems . . . and recommended behavior management techniques.”

- **Initial Staff Training:** PCHs must train all specialized memory care unit staff on a variety of specified topics within the first six months of employment. Required training topics include the nature of Alzheimer’s Disease and other dementias, communication skills with residents, skills for maintaining resident safety, therapeutic interventions and activities, and guidelines for developing and updating comprehensive individual service plans.
- **Special Admission Requirements:** Potential residents in specialized memory care units must present a physician’s report of physical examination that was completed within 30 days prior to admission on specialized DCH forms. The physical examination report must establish that the resident likely has dementia and needs special placement in a memory care facility.
- **Post-admission Assessment:** Specialized memory care units must assess each resident’s care needs. The assessment should include family supports, capabilities related to daily living activities, physical care needs, and level of behavior impairment.
- **Individual Service Plans:** PCHs must develop an individual service plan for each resident in the specialized memory care unit. The new rules require PCHs to have each resident’s plan in place within 14 days of admission. The rules also require the PCH to use a team approach to developing service plans for memory care unit residents. The team must include “at least one member of the direct care staff” and “input from [one member of] each shift.” Family involvement in plan development is also encouraged. The new rules specify that service plans must include the resident’s care and social needs, services required, and frequency of services. Service plans must also list “specific behaviors to be addressed.” Staff must update the plan on a quarterly basis.
- **Therapeutic Activities:** Memory care units must provide activities that meet individual resident needs. The new rules state that memory care units must also “adapt the activities, as necessary, to encourage” resident participation at least weekly “with at least some therapeutic activities occurring daily.” Therapeutic activities include exercise, self-care training, social games, crafts, and outdoor activities.

Conclusion

The new memory care regulations will affect many PCHs throughout Georgia. PCHs that do not specialize in memory care will still have to ensure that basic memory care services are in place for residents who are at risk of eloping because of dementia. PCHs with specialized memory care units will have to review the extensive new requirements and ensure that the unit is in full compliance by early March. The new rules will require many PCHs to adapt and to do so quickly.

Arnall Golden Gregory LLP serves the business needs of growing public and private companies, helping clients turn legal challenges into business opportunities. We don't just tell you if something is possible, we show you how to make it happen. Please visit our website for more information, www.agg.com.

This alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice.