

RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[?28 PA.?CODE CH. 53?]

Photo Identification Badges

[41 Pa.B. 6672]

[Saturday, December 10, 2011]

The Department of Health (Department) is adopting interim regulations to facilitate implementation of section 809.2 of the Health Care Facilities Act (act) (35 P.?S. § 448.809b), regarding photo identification badge regulations, enacted by the act of November 23, 2010 (P.?L. 1099, No. 110) (Act 110). Through these interim regulations, the Department is adding Chapter 53 (relating to photo identification badges) to read as set forth in Annex A. Chapter 53 contains the standards applicable to entities licensed as health care facilities under the act and to the private practice of a physician.

A. Scope and Purpose of the Interim Regulations

Act 110 requires that the Department adopt interim regulations within 90 days of the effective date to facilitate its implementation. Act 110 establishes a staggered implementation process wherein certain provisions of the act apply to employees that deliver direct care to a consumer outside of a health care facility or employment agency and to employees of the private practice of a physician with the publication of the interim regulations. Those same provisions do not apply to employees that deliver direct care to a consumer at a health care facility until June 1, 2015. Several provisions do not apply to employees until June 1, 2015, regardless of whether the direct care is provided at the health care facility, outside of the health care facility or at the private practice of a physician. The interim regulations only deal with those requirements that apply now to employees that deliver direct care to a consumer outside of a health care facility or employment agency and to employees of the private practice of a physician. Until adoption of regulations regarding employees that deliver direct care at a health care facility, § 51.6 (relating to identification of personnel) remains in effect and applies to those individuals.

Section (b) of Act 110 exempts the interim regulations from review under the Regulatory Review Act (71 P.?S. §§ 745.1—745.12) and sections 201 and 202 of the act of July 31, 1968 (P.?L. 769, No. 240) (45 P.?S. §§ 1201 and 1202), known as the Commonwealth Documents Law. Act 110 went into effect on January 22, 2011, and states that the interim regulations are to be adopted within 90 days thereafter following at least one public hearing.

Act 110 requires that the Department conduct a public hearing prior to the publication of interim regulations. The Department held a public meeting on Act 110 on January 14, 2011. The following groups were represented and provided testimony: Pennsylvania Medical Society, Hospital and Healthsystem Association of Pennsylvania, Montgomery Home Care and Hospice and Palliative Care, Pennsylvania

Academy of Dermatology and Dermatologic Surgery, SUN Home Health and Hospice, Pennsylvania Home Care Association, Pennsylvania Association of Non Profit Homes for the Aging, the Pennsylvania Health Care Association and the County Commissioners Association of Pennsylvania. Subsequently, letters were received from the Pennsylvania Athletic Trainer's Society and the Pennsylvania Association of Certified Nurse-Midwives. These groups were generally supportive of the requirements in Act 110.

Section 803(1) of the act (35 P.S. § 448.803(1)) requires that the Department consult with the Health Policy Board prior to the promulgation of regulations issued under the authority of the act.

Act 110 also requires that following the Department's adoption of interim regulations, the Department will adopt final regulations in accordance with customary rulemaking procedures by July 22, 2012. The Department will propose regulations before adopting final regulations by that date.

B. *Summary*

§ 53.1. Legal basis, scope and definitions

This section describes the purpose of Chapter 53, which is to implement section 809.2 of the act. This section also includes definitions used throughout Chapter 53. "Direct care" is defined as "the actual delivery of health care services or assistance with activities of daily living to a consumer or patient." This definition clarifies that Chapter 53 applies to individuals involved in face-to-face, hands on care of patients and consumers. "Outside of the health care facility or employment agency" is defined as "health care services that are provided to patients and consumers at a location other than a health care facility or employment agency, such as the patient or consumer's residence." This definition clarifies that most of the requirements in the interim regulations apply to individuals who are not working in or at a health care facility but are providing services to patients and consumers away from a health care facility. "Private practice of a physician" is defined as "a circumstance in which a health care practitioner or an employee under a health care practitioner's supervision provides direct care to a patient or consumer" and "this does not include a physician practice group which is owned and operated by a health care provider." This definition includes a "health care practitioner" which is defined in section 103 of the act (35 P.S. § 448.103) as "an individual who is authorized to practice some component of the healing arts by a license, permit, certificate or registration issued by a Commonwealth licensing agency or board." While the term "health care practitioner" captures most of the individuals who work in the private practice of a physician, the Department believes that it may not account for all of the individuals in this setting who may provide direct care to a patient or consumer. For example, medical technicians often provide direct care, but they do not necessarily receive a Commonwealth-issued license, permit, certificate or registration. By including those employees who work under a health care practitioner's supervision, these individuals will be encompassed by this definition. The second sentence of the definition was added to exclude those physician practice groups which are owned and operated by a health care provider. Act 110 does not apply to individuals who work "at a health care facility" until June 2015. Under regulations that have been in effect since 1999, individuals who work in a health care facility shall wear identification badges. Generally, these badges are encrypted with codes which provide access to secure units, medication storage units and other areas associated with a health care facility. It appears that the General Assembly believed it was appropriate to delay implementation of Act 110 to give these facilities time to transition to the photo identification badges requirement in Act 110. It is the Department's understanding that most of the individuals who work at physician practice groups owned and operated by health care providers possess these badges so that there is not a necessity to make the requirements in Act 110 instantly applicable. Act 110 will become applicable to these physician practice groups in 2015.

§ 53.2. Requirements

This section sets forth the applicability of Chapter 53. Act 110 establishes a staggered implementation mechanism. Subsection (a) states that this chapter applies to employees that deliver direct care outside of a health care facility, employees that deliver direct care in a health care facility and employees that deliver

direct care at the private practice of a physician. Subsection (b) states that employees that deliver direct care outside of a health care facility or at the private practice of a physician shall wear photo identification badges that meet the requirements in § 53.3 (relating to contents of photo identification badge). Subsection (c) states that employees that deliver direct care in a health care facility shall wear an identification badge that meet the requirements in § 51.6. Section 809.2(d) of the act does not apply to employees that deliver direct care in a health care facility until June 1, 2015.

§ 53.3. Contents of photo identification badge

This section lists the items that must be on the photo identification badge. Subsection (a)(1) requires that the badge contain a recent photograph of the employee. Subsection (c) requires that these photographs shall be updated every 4 years. This is consistent with the requirements for photographic driver's licenses issued by the Department of Transportation. See 67 Pa. Code § 73.4(a) (relating to expiration). Subsection (a)(2) and (3) requires that the employee's full name and title appear on the badge.

Subsection (b) requires that the badge issued by an employment agency for an employee who is providing direct care for a health care facility must include all of the items in subsection (a). Also, the health care facility where the employee of the employment agency is working shall issue the employee an identification badge that contains the name of the health care facility, the employee's title and the employment status of the employee at that facility, such as temporary contract employee. Under this process, the primary employer of the employee shall issue the photo identification badge that complies with the requirements in this section. As the badge issued by the health care facility will only have to contain the facility's name and the employee's title and employment status, this badge can be easily prepared and provided to the employee. In this way, patients at the health care facility shall be provided with the necessary information to verify identification of the individual and also verify that the individual is authorized to work in the health care facility.

§ 53.4. (Reserved)

Act 110 requires that titles must be in a specific size, type and location on the badge. Also, other than four designated professional titles set forth by the General Assembly, the Department is required to determine the titles to be used on the identification badges under section 809.2(a)(3)(v) of the act. However, these requirements do not take effect until June 1, 2015. The Department is reserving this section to address these requirements at a future date.

§ 53.5. Exceptions

This section provides exceptions to the general requirements that individuals who fall within the requirements of Act 110 shall wear photo identification badges. Subsections (a) and (b) discuss an individual whose religion or religious beliefs would be violated by the taking of a photograph of the individual. In the event that an employee raises this concern, the employer is required to obtain a signed and notarized statement from the employee that the taking of a photograph would violate the employee's religion or religious beliefs and to ensure that the employee does wear an identification badge that contains the remainder of the requirements in § 53.3. This requirement is also similar to that for individuals claiming exemption from a photographic driver's license. See 67 Pa. Code § 73.3(d)(4) (relating to application). In the absence of the employee's photograph, the identification badge must contain the employee's height and eye color. This information is contained on a nonphotographic driver's license and will provide assistance in verifying the employee's identity. Subsection (c) states that an individual may not be required to wear a photo identification badge while delivering direct care if it is not clinically feasible. This is consistent with section 809.2(c)(1) of the act. Subsection (d) states that the last name of an employee may be omitted or concealed when delivering direct care to a patient or consumer who exhibits symptom of irrationality or violence. This is consistent with section 809.2(c)(2) of the act. Subsection (e) requires that the employing health care facility, health care provider, employment agency or private practice of a physician shall establish a policy and procedure for employees who require

exceptions under subsection (d) which must, at a minimum, describe the process to be followed and describe how employees with the same first name will be differentiated.

C. Affected Persons

The interim regulations will affect employees who work for health care facilities, health care providers or employment agencies who provide direct care to a patient or consumer outside of the health care facility. The interim regulations will also affect health care practitioners and employees who provide direct care to a patient or consumer under the supervision of a health care practitioner. These individuals will be required to wear photo identification badges that comply with these interim regulations.

D. Cost and Paperwork Estimate

Commonwealth—There will not be additional costs to the Commonwealth resulting from these interim regulations associated with the Department's responsibility to enforce the interim regulations. The Department's surveyors perform the function of surveying and inspecting health care facilities and check for compliance with the regulations when at the facilities. The Department's surveyors will also respond and investigate complaints regarding employees of health care facilities. The Department of State has jurisdiction to inspect complaints regarding allegations pertaining to health care practitioners. Complaints concerning health care practitioners not employed by health care facilities will be referred to the Department of State for their review and action.

Local government—There will not be additional cost to local government.

Regulated community—There will be additional costs to some health care facilities and to all private practices of physicians. These interim regulations apply to employees that deliver direct care outside of a health care facility or employment agency. In the health care facility setting, this requirement will mainly apply to those individuals employed by home health care agencies, home care agencies and registries and hospices. Most of these individuals provide care to patients and consumers outside of the health care facility, usually in the patient or consumer's home. The Department licenses all of these health care facilities. The number of individuals employed by these facilities or employed by employment agencies and providing this type of care is estimated to be 81,700.

The Department does not have the ability to obtain an accurate number of the individuals who are employed at the private practice of a physician. However, the total number of licensed physicians with an address in this Commonwealth is 39,060 (33,439 medical physicians and 5,621 osteopathic physicians). The Department estimates each physician employs three individuals who provide direct care for a total number of 117,180.

As for the cost of a photo identification badge, this amount could vary depending on the type and quality of the badge. Testimony at the public hearing on January 14, 2011, indicated that forms for these badges were available on web sites for downloading. Inserting a digital photograph with the required information is all that would be necessary to comply with the interim regulations.

General public—There will not be additional costs to the general public. In fact, since the interim regulations require employees who provide direct care to patients and consumers to wear photo identification badges, there will be a benefit to the general public as they will be able to identify the name and title of the person who is providing their care and to match the photograph on the badge with that individual.

E. Statutory Authority

Section 803(2) of the act authorizes the Department to promulgate, after consultation with the Health Policy Board, regulations necessary to carry out the purposes and provision of the act. Section 809.2 of the act directs the Department to adopt interim regulations to implement the provisions of this addition to the

act.

F. *Effectiveness/Sunset Dates*

The interim regulations will become effective upon publication in the *Pennsylvania Bulletin*. Under section 809.2(b) of the act, the interim regulations will expire 18 months following the effective date or upon promulgation of final regulations by the Department, whichever occurs first.

G. *Regulatory Review*

Under section 809.2(b) of the act, after the conclusion of one public hearing and within 90 days of the effective date of Act 110, the Department is to publish interim regulations regarding implementation of Act 110. The interim regulations are not subject to the Regulatory Review Act. Under section 809.2(b) of the act, the Department is to adopt final regulations within 18 months of the effective date of Act 110.

In accordance with section 803(1) of the act, the Department consulted with the Health Policy Board on May 5, 2011.

The Office of Attorney General reviewed the interim regulations and approved these regulations on October 26, 2011.

H. *Contact Person*

Interested persons are invited to submit comments, suggestions or objections to the interim regulations to Susan Coble, Director, Bureau of Community Program Licensure and Certification, Department of Health, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665 within 30 days after publication of these interim regulations in the *Pennsylvania Bulletin*. Persons with a disability may submit questions in alternative format such as audio tape or Braille or by using V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT). Persons who require an alternative format of this document should contact Susan Coble at the previous address or telephone number so that necessary arrangements can be made. The Department will consider the comments it receives in developing proposed regulations that will be published in advance of the Department adopting final regulations by July 22, 2012.

I. *Findings*

The Department finds that:

- (1) Proposed rulemaking in advance of the interim regulations is not required under section 809.2(b) of the act.
- (2) A public hearing was held on January 14, 2011, prior to the adoption of the interim regulations as required under section 809.2(b) of the act and comments received by the Department were considered.
- (3) The adoption of the interim regulations in the manner provided for by this order is necessary and appropriate for the administration of the act.

J. *Order*

The Department, under the authorizing statute, orders that:

- (a) The regulations of the Department, 28 Pa. Code, are amended by adding §§ 53.1—53.3 and 53.5 and by reserving § 53.4 to read as set forth in Annex A.
- (b) The Secretary of Health shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(c) The Secretary of Health shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

Fiscal Note: 10-192. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART IV. HEALTH FACILITIES

Subpart A. GENERAL PROVISIONS

CHAPTER 53. PHOTO IDENTIFICATION BADGES

Sec.

- 53.1. Legal basis, scope and definitions.
- 53.2. Requirements.
- 53.3. Contents of photo identification badge.
- 53.4. (Reserved).
- 53.5. Exceptions.

§ 53.1. Legal basis, scope and definitions.

(a) This chapter implements section 809.2 of the act (35 P.S. § 448.809b).

(b) This chapter contains standards which are applicable to the following:

- (1) All entities licensed as health care facilities under the act.
- (2) The private practice of a physician.

(c) The following words and terms, when used in this chapter, have the following meanings:

Direct care—The actual delivery of health care services or assistance with activities of daily living to a consumer or patient.

Employee—An employee or a physician of any of the following who delivers direct care to a consumer:

- (i) A health care facility.
- (ii) A health care provider.
- (iii) The private practice of a physician.
- (iv) An employment agency.

Employment agency—A public or private organization that provides employment services for persons seeking employment and for potential employers seeking employees who provide direct care to consumers.

Employment status—Full-time, part-time, temporary, contractual or other classification of work that indicates the relationship between the employee and the health care facility, health care provider or employment agency.

Health care facility—A facility licensed by the Department under the act.

Health care provider—An individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), the Commonwealth or a political subdivision or instrumentality (including a municipal corporation or authority) thereof, that operates a health care facility.

Outside of the health care facility or employment agency—Health care services that are provided to patients and consumers at a location other than a health care facility or employment agency, such as at the patient or consumer's residence.

Private practice of a physician—

(i) A circumstance in which a health care practitioner or an employee under a health care practitioner's supervision provides direct care to a patient or consumer.

(ii) This does not include a physician practice group which is owned and operated by a health care provider.

Title—A license, certification or registration held by the employee.

§ 53.2. Requirements.

(a) This chapter applies to an employee who delivers direct care as follows:

(1) Outside of a health care facility or employment agency.

(2) In a health care facility.

(3) At the private practice of a physician.

(b) An employee who delivers direct care outside of a health care facility or employment agency or at the private practice of a physician shall wear a photo identification badge that meets the requirements in § 53.3 (relating to contents of photo identification badge).

(c) An employee who delivers direct care in a health care facility shall wear an identification badge that meets the requirements in § 51.6 (relating to identification of personnel).

§ 53.3. Contents of photo identification badge.

(a) An employee's photo identification badge must include the following:

(1) A recent photograph of the employee, updated as provided for in subsection (c).

(2) The employee's full name to include, at a minimum, the full first and last name.

(3) The employee's title.

(4) The name of the employee's health care facility or employment agency.

(b) The identification badge issued by an employment agency for an employee who is providing direct care for a health care facility must include the items in subsection (a). In addition, the health care facility where the employee of the employment agency is working shall issue the employee an identification badge that contains the name of the health care facility, the employment status of the employee at that facility and the employee's title.

(c) Photographs shall be updated at least every 4 years.

§ 53.4. (Reserved).

§ 53.5. Exceptions.

(a) *Photograph.* A health care facility, health care provider, employment agency or private practice of a physician may permit an employee to wear an identification badge without a photograph if having a photograph taken would violate the tenets of the employee's religion or religious beliefs.

(b) *Policies and procedures for exemption.* A health care facility, health care provider, employment agency or private practice of a physician shall establish policies and procedures in the event that an employee requests an exception under subsection (a), which, at a minimum:

(1) Require the employee to submit a signed and notarized statement that the taking of a photograph would violate the employee's religion or religious beliefs.

(2) Ensure that the employee wears an identification badge that contains the information in § 53.3(a)(2)—
(4) (relating to contents of photo identification badge).

(3) Contain the employee's height and eye color.

(c) *Use of identification badge not clinically feasible.* An employee may not be required to wear an identification badge while delivering direct care to a patient or consumer if not clinically feasible.

(d) *Employee safety.* The last name of the employee may be omitted or concealed when delivering direct care to a patient or consumer who exhibits symptoms of irrationality or violence.

(e) *Policies and procedures for exemption.* A health care facility, health care provider, employment agency or private practice of a physician shall establish policies and procedures in the event that an employee requires an exception under subsection (d), which, at a minimum describe:

(1) The process to be followed in the event that an employee requires an exception.

(2) How employees with the same first name will be differentiated.

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