

Home Care Association of America Model Licensure Legislation

Last updated: September 7, 2022

Implementing Powers and Duties

This chapter is promulgated by the Department under the powers granted and the duties mandated under sections ____ of this bill.

The Department has the power, and its duty is to promulgate the regulations necessary to implement the provisions this bill and to assure that its regulations and the bill are enforced.

The purpose of this chapter is to protect and promote the public health and welfare through the establishment and enforcement of regulations setting minimum standards for the operation of home care agencies. The standards are intended by the Department to assure safe, adequate, and efficient home care agencies, and to promote the health, safety and adequate care of the consumers of services provided by home care agencies.

Definitions

As used in this bill, unless otherwise specified in the text, the terms defined in the following Sections have the meanings ascribed to them as follows:

“Agency Manager” means: The individual assigned by the Ownership to manage the daily operations of the home care agency including all staff and ensure compliance with Department regulations.

“Department” means: the Department of ____ (the agency designated to license and regulate home care).

"Home care aide" means an individual who is hired to perform home care services;

"Home care agency" means a public agency or private organization, or a subdivision of such an agency or organization which is licensed as a home care agency by the Department and that supplies, arranges or schedules employees to provide home care services, as directed by the consumer or the consumer's representative, in the consumer's place of residence or other independent living environment for which the home care agency receives payment;

"Home care services" means those services provided by a home care aide for assistance with Activities of Daily Living (ADLs) to allow the patient to remain in their chosen place of residence. Such services shall include but not be limited to the following:

- (a) Assistance with mouth, skin, and hair care but not medication ointments;
- (b) Assistance with toileting, bed pan and hygiene but not continence care;
- (c) Assisting with ambulation;
- (d) Assisting the patient with exercise but not range of motion therapy.
- (e) Performing incidental household services as are essential to the patient's ability to remain in their place of residence;
- (f) Reporting changes in the patient's condition or family situation to the professional nurse supervisor,
- (g) Medication assistance, and
- (h) Medication reminding.

"Medication assistance" means: helping the client who is able to self-direct with one or more steps in the process of taking medication. Examples of medication assistance include, but are not limited to, opening the medication container, helping the client self-administer his or her medication, and assisting the client with one or more steps of medication administration at the client's direction. Medication assistance does not include taking a medication from its original container and placing the medication into a closed secondary container designed and manufactured for this purpose.

"Medication reminding" means: providing a client with an audio, visual or oral reminder to take his or her medication when a client is able to self-direct.

"Ownership" means: the individual or entity that applies for and retains the home care agency license.

"Client" means: an elderly, handicapped, or convalescent individual who receives home care services in the individual's home or place of residence.

"Personal Representative" means: a person who, under applicable state law, has the authority to act on behalf of a patient with regard to an action to be taken.(this one probably needs some work)

Licensure

Unless otherwise provided in this chapter, no person shall operate a home care

agency in this state without first obtaining a provisional license issued by the Department, which shall specify the services the agency is authorized to provide. A license, provisional or otherwise shall not be transferrable.

In the event a home care agency can provide written proof of accreditation from an organization recognized by the Department, including the Joint Commission, the Community Health Accreditation Partner, or the Accreditation Commission for Health Care, the Department shall deem possession of such accreditation as having met the requirements of licensure under this chapter, and shall grant the agency a home care license within the state.

An applicant for provisional licensure as a home care agency shall complete and submit to the Department an application for License to Operate a Home Care Agency along with the provisional license fee.

An applicant for bi-annual renewal of licensure as a home care agency shall complete and submit to the Department an application for Bi-Annual Renewal of License to Operate a Home Care Agency along with the bi-annual license fee.

Provisional License. Upon receipt of an application for a license and appropriate licensure fee as established in Section ____, the Department shall:

(a) Review the application for completeness, including documentation related to:

1. Ownership;
 2. Personnel;
 3. Operations and administrative policies;
 4. The type of services to be provided applicable to the license requested;
- and

(b) Return the application and accompanying licensure fee if:

1. An individual having a significant financial interest in the home care agency has had, within the five (5) year period prior to the application date, a significant financial interest in a facility or service that was licensed or certified by the Department, and the license or certificate to operate was denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm; or
2. The Department finds that the applicant misrepresented or submitted false information on the application.

If an application is determined complete and no statutory or regulatory deficiencies are identified, the Department shall issue a provisional license to remain in effect until verification of compliance with each statute and administrative regulation applicable to the license requested, upon which date full licensure shall be granted.

Fees

Application for a license or for renewal of a license for a Home Care Agency shall be accompanied by a fee of six hundred dollars.

Ownership

The license application will be completed by the ownership interest. All members of the owner with at least 5% interest in the owner shall provide their name and address on the application.

The Department shall be notified in writing within 30 days whenever a change in the partners, officers, directors, principal stockholders, change of business address, or controlling interest in charge of a home care agency has taken place.

When death occurs to a person who was a sole owner of a home care agency, the executor or administrator of the estate may apply for, and the Department may, after review, transfer a license for the home care agency.

When a license is issued to a partnership and one or more of the partners dies, the executor or administrator of the deceased's estate, together with the surviving partners may apply for a license. After review, the Department may transfer the license.

Change of Ownership

A change of ownership shall require the submission of a change of ownership application on forms prescribed and provided by the Department; and a non-refundable fee of six hundred dollars.

Personnel

Agency Manager: The Ownership shall ensure that the Agency Manager possesses the experience, judgment and skill necessary to lead the agency and ensure compliance with Department regulation.

Service Supervisor: The Service Supervisor shall ensure that each home care aide demonstrates competency and understands the plan of care for each client served. The Manager or their designee may serve as Service Supervisor.

Supervision of Home Care Aides

An Agency Manager or his or her designee shall schedule a supervisory visit no less frequently than once every 60 days with each client and their home care aide to review the plan of care and satisfaction with services.

Training

The home care agency shall ensure that each home care aide successfully completes an aide training and competency evaluation program as required by the department.

(Training programs required by any other state credentials or licensing should be considered when developing the home care agency training requirements. Effort should be made align or mirror the requirements from those other programs as much as possible. This allows the home care aides the best chance to achieve compliance for multiple work sites).

Home Care Advisory Council

The Department shall appoint a Home Care Advisory Council composed of six persons to advise and consult with the Department in the administration of the bill.

Council members shall include two representatives from the home care agency community, two representatives from the Department, the author of the legislation requiring the regulations or their designee, and if neither is available, a designee of the Speaker of the House/Assembly and a home care aide.

The Council shall communicate and meet as needed prepare a report on the Department's proposed regulations during the comment period. The report shall be included in the rulemaking Administrative record.

The Council shall meet once annually thereafter to consider issues pertaining to the home care agency licensing programs and make recommendations to the Department as needed.

Background Checks

A home care agency shall require the Agency Manager and each controlling interest of the ownership and each applicant for employment or referral as a home care aide to submit a criminal history report obtained at the time of application or within 1 year immediately preceding the date of application. An applicant for employment as a member of the office staff for the home care agency and the owner or owners of the home care agency are also required to obtain a criminal history report in accordance with requirements contained in this section.

State Police criminal history record. If the individual required to submit or obtain a criminal history report has been a resident of this state for 2 years preceding the date of the request for a criminal history report, the individual shall request a State Police criminal history record.

Federal criminal history record. If the individual required to submit or obtain a criminal history report has not been a resident of this state for the 2 years immediately preceding the date of the request for a criminal history report, the individual shall obtain a Federal criminal history record from (possibly insert name of state's background checker)

Proof of residency. The home care agency may request an individual required to submit or obtain a criminal history record to furnish proof of residency through submission of any one of the following documents:

(1) Motor vehicle records, such as a valid driver's license or a State-issued identification.

(2) Housing records, such as mortgage records or rent receipts.

(3) Public utility records and receipts, such as electric bills.

(4) Local tax records.

(5) A completed and signed, Federal, State or local income tax return with the applicant's name and address preprinted on it. Employment records, including records of unemployment compensation.

(6) Employment records, including records of unemployment compensation.

Prohibition. The home care agency may not hire, roster or retain an individual if the State Police criminal history record reveals a prohibited conviction listed in _____.

Records maintained. The home care agency shall maintain secure paper or electronic files for home care aides and members of the office staff which include

copies of State Police criminal history records or Federal criminal history records. The files shall be available for Department inspection.

Confidentiality. The home care agency shall keep the information obtained from State Police criminal history records and Department of Aging letters of determination regarding Federal criminal history records confidential and use it solely to determine an applicant's eligibility to be hired, rostered or retained.

Exceptions. A home care aide who has complied with this section and who transfers to another agency owned and operated by same entity is not required to obtain another criminal history report. A direct care worker employed or rostered by an entity that undergoes a change of ownership is not required to obtain another criminal history report to submit to the new owner. (I'm not certain how that would be allowed without a central repository of live scan background checks that the prospective employer would check before hiring the candidate)

Procedure for Investigating Complaints

An agency must adopt and enforce a written policy relating to the agency's procedures for investigating complaints and reports of abuse, neglect, and exploitation (ANE) and that policy must meet the requirements of this section.

Reports of abuse, neglect, and exploitation.

Immediately upon witnessing the act or upon receipt of the allegation, an agency must initiate an investigation of known and alleged acts of ANE by agency employees, including volunteers and contractors.

An agency must complete a Provider Investigation Report form promulgated by the Department which shall include the following information:

- (A) incident date;
- (B) the name of the alleged victim;
- (C) the age of the alleged victim at the time of the incident;
- (D) the name of the alleged perpetrator;
- (E) any witnesses;
- (F) the allegation;
- (G) any injury or adverse effect;
- (H) any assessments made;
- (I) any treatment required;
- (J) the investigation summary; and

(K) any action taken.

An agency must send the completed Provider Investigation Report form to the Department no later than the 10th calendar day after witnessing the act or receipt of the allegation.

Agency complaint investigations.

An agency must investigate complaints made by a client, a client's family or guardian, or a client's health care provider, in accordance with this subsection, regarding:

- (A) treatment or care that was furnished by the agency;
- (B) treatment or care that the agency failed to furnish; or
- (C) a lack of respect for the client's property by anyone furnishing services on behalf of the agency.

An agency must:

document receipt of the complaint and initiate a complaint investigation within 10 days after the agency's receipt of the complaint; and
document all components of the investigation.

Completing agency investigations.

An agency must complete the investigation and documentation within 30 days after the agency receives a complaint or report of abuse, neglect, and exploitation, unless the agency has and documents reasonable cause for a delay.

Retaliation.

An agency may not retaliate against a person for filing a complaint, presenting a grievance, or providing, in good faith, information relating to home health, hospice, or personal assistance services provided by the agency.

An agency is not prohibited from terminating an employee for a reason other than retaliation.

Violations

The Department shall notify a home care agency in writing of a regulatory violation identified during an inspection.

The home care agency shall submit to the Department, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

The plan shall be signed by the home care agency's administrator, the licensee, or a person designated by the licensee and shall specify:

- a. The date by which the violation shall be corrected;
- b. The specific measures to be utilized to correct the violation; and
- c. The specific measures to be utilized to ensure the violation will not recur.

The Department shall review the plan and notify the home care agency in writing of the decision to accept the plan or not accept the plan.

The notice specified in the subparagraph above shall:

- a. State the specific reasons the plan is unacceptable; and
- b. Require an amended plan of correction within ten (10) days of receipt of the notice.

The Department shall review the amended plan of correction and notify the home care agency in writing of the decision to accept the amended plan, not accept the amended plan, or deny, suspend, or require the home care agency to submit an acceptable plan of correction.

A home care agency that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked.

License procedure - Hearings - Decisions of Department to be in writing and of record.

The Department may deny, revoke, modify, or suspend a license in any case in which it finds that there has been a substantial failure to comply with the provisions of this chapter or the administrative regulations promulgated hereunder. The denial, revocation, modification, or suspension shall be effected by mailing to the applicant or licensee, by certified mail or other method of delivery which may include electronic service, a notice setting forth the particular reasons for the action. The denial, revocation, modification, or suspension shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, shall file a request in writing for a hearing with the Department.

The hearing shall be before a person designated to serve as hearing officer by the secretary.

Within thirty (30) days from the conclusion of the hearing, the findings and recommendations of the hearing officer shall be transmitted to the Department, with a synopsis of the evidence contained in the record and a statement of the basis of the hearing officer's findings. The applicant or licensee shall be entitled to be represented at the hearing in person or by counsel, or both, and shall be entitled to introduce testimony by witnesses or, if the cabinet so permits, by depositions. A full and complete record shall be kept of all hearings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to this chapter.

The Department may adopt the hearing officer's findings and recommendations or prepare written findings of fact and state the basis for its decision which shall become part of the record of the proceedings.

All decisions revoking, suspending, modifying, or denying licenses shall be made by the Department in writing. The Department shall notify the applicant or licensee of the decision.

Effective Date

This bill becomes effective upon becoming law.