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CHAPTER 69.

 LICENSURE OF HOME HEALTH AGENCIES

**SECTION 44‑69‑10.** Short title.

This chapter may be cited as the “Licensure of Home Health Agencies Act”.

**SECTION 44‑69‑20.** Definitions.

As used in this chapter:

(1) “Board” shall mean the South Carolina Board of Health and Environmental Control.

(2) “Branch office” shall mean a location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as a home health agency.

(3) “Department” shall mean South Carolina Department of Health and Environmental Control.

(4) “Home health agency” shall mean public, nonprofit, or proprietary organization, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services.

(5) “Home health services” shall mean those items and services furnished to an individual by a home health agency, or by others under arrangement with the home health agency, on a visiting basis, and except for subsection “e” below, in a place of temporary or permanent residence used as the individual’s home as follows:

(a) Part‑time or intermittent skilled nursing care as ordered by a physician and provided by or under the supervision of a registered nurse and at least one other service listed below;

(b) Physical, occupational or speech therapy;

(c) Medical social services, home health aide services and other therapeutic services;

(d) Medical supplies and the use of medical appliances;

(e) Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home health agency with a hospital, nursing care facility, or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot be readily made available to the individual in his home, or which are furnished at such facility while the patient is there to receive such items or service, but not including transportation of the individual in connection with any such items or services.

(6) “License” shall mean a license issued by the Department.

(7) “Licensee” shall mean the individual, corporation, or public entity with whom rests the ultimate responsibility for maintaining approved standards for the home health agency.

(8) “Parent Home Health Agency” shall mean the agency that develops and maintains administrative controls of subunits or branch offices.

(9) “Physician” shall mean an individual currently licensed to practice medicine, surgery, or osteopathy in this State.

(10) “Registered Nurse” shall mean an individual who is currently licensed as such in this State.

(11) “Subunit” shall mean a semiautonomous organization, which serves patients in a geographic area different from that of the parent agency. The subunit by virtue of the distance between it and the parent agency is judged incapable of sharing administration, supervision, and services on a daily basis with the parent agency and must, therefore, independently meet the conditions of participation for home health agencies.

**SECTION 44‑69‑30.** License for operation of home health agency.

No person, private or public organization, political subdivision, or other governmental agency shall establish, conduct, or maintain a home health agency or represent itself as providing home health services without first obtaining a license from the Department of Health and Environmental Control. This license is effective for a twelve‑month period following the date of issue. A license issued under this chapter is not assignable or transferable and is subject to suspension or revocation at any time for failure to comply with this act. Subunits of parent home health agencies must be separately licensed.

The department may enter into public and private joint partnerships or enter into other appropriate cooperative agreements or arrangements or negotiate and effect these partnerships and agreements to include the sale of the entity and/or the transfer of licenses held by the department or its subdivisions to other qualified providers, if appropriate, when doing so would result in continued high quality patient care, continued provision of services to indigent patients, assurance of the employment of the department’s home health employees, and provision of home care services adequate to meet the needs of the State. The department may facilitate the negotiation, contracting, or transfer of these activities through licensure and without requirement of a Certificate of Need as set out in Section 44‑69‑75 and without regard to the Procurement Code, Section 11‑35‑10, et. seq. However, a sale of the entity is subject to the provisions of the Procurement Code.

At least thirty days before entering any negotiations regarding a contractual agreement or a public/private partnership concerning the provision of home health services, the department shall place a public notice in a newspaper of general circulation for a period of no less than three consecutive days within the area where the services will be performed.

The department may establish requirements and conditions upon those entities joined in partnership or receiving transfer of the home care services, licensing, and Certificate of Need including, but not limited to, transfer of employees, coverage of indigent patients, and payments or contributions to the department to continue the provision of basic public health services as determined by the department. All agreements must be reviewed and approved by the board of the department. The department may monitor and enforce the contract or partnership provisions and/or conditions of transfer or any other conditions or requirements of agreements entered into pursuant to this section.

All funds paid to or received by the department pursuant to this section must be deposited in an account separate and distinct from the general fund entitled the Public Health Fund (PHF). The funds deposited in this fund must be used solely by the department to support basic public health services determined to be necessary by the department. The appropriation of the funds must be through the General Appropriations Act.

Notwithstanding any of the provisions of this section, the department may continue to provide public health services in the clinic, the home, and the community necessary to ensure the protection and promotion of the public’s health.

**SECTION 44‑69‑40.** Application for license.

A person desiring to obtain a license shall file with the Department an application on a form prescribed, prepared and furnished by the Department.

**SECTION 44‑69‑50.** Fees.

Reasonable fees shall be established by the Board. Such fees shall be paid into the State Treasury or refunded to the applicant if the license is denied. Governmental home health agencies are exempt from payment of license fees.

**SECTION 44‑69‑60.** Regulations.

The Department shall promulgate regulations which define standards for the care, treatment, health, safety, welfare and comfort of patients served by home health agencies and for the maintenance and operation of home health agencies which will promote safe and adequate care and treatment of the patients. These regulations shall include, but not be limited to, provisions for the geographical area to be served, giving consideration to underserved areas, provisions requiring the agency to have policies established by a professional group, including at least one physician and one registered nurse; provisions governing the services the agency provides; provisions for the supervision of services by a physician or registered nurse as appropriate and maintenance of clinical records on all patients, including a plan of treatment prescribed by a physician. The Department is authorized to issue, deny, suspend or revoke licenses in accordance with regulations promulgated pursuant to this section. Such regulations shall also include hearing procedures related to denial, suspension, or revocation of licenses.

**SECTION 44‑69‑70.** Annual inspections.

Each home health agency for which a license has been issued shall be inspected by an authorized representative of the department at least once a year. Such inspections shall be for the purpose of ensuring that the provisions of this chapter are being followed. The department is directed to ensure by inspection that the licensee is providing quality care to its patients in accordance with the orders of the patient’s physician.

**SECTION 44‑69‑75.** Certificate of need; exemption of home health services providers.

(A) A home health agency shall obtain a certificate of need before licensure. Procedures for applying for a certificate must be in accordance with the “State Certification of Need and Health Facility Licensure Act”. No certificate is required for home health agencies providing home health services before July 1, 1980.

(B) A continuing care retirement community licensed pursuant to Title 37, Chapter 11, may provide home health services and is exempt from subsection (A) if:

(1) the continuing care retirement community furnishes or offers to furnish home health services only to residents who reside in living units provided by the continuing care retirement community pursuant to a continuing care contract;

(2) the continuing care retirement community maintains a current license and meets applicable home health agency licensing standards;

(3) residents of the continuing care retirement community may choose to obtain home health services from other licensed home health agencies.

Staff from other areas of the continuing care retirement community may deliver the home health services, but at no time may staffing levels in any area of the continuing care retirement community fall below minimum licensing standards or impair the services provided.

If the continuing care retirement community includes charges for home health services in its base contract, it is prohibited from billing additional fees for those services. Continuing care retirement communities certified for Medicare or Medicaid, or both, must comply with governmental reimbursement requirements concerning charges for home health services.

For purposes of this subsection “resident”, “living unit”, and “continuing care contract” have the same meanings as provided in Section 37‑11‑20.

(C) Subsection (B) applies only to multi‑level continuing care retirement communities which incorporate a skilled nursing facility.

(D) The continuing care retirement community shall not bill in excess of its costs. These costs will be determined on nonfacility‑based Medicare and/or Medicaid standards.

**SECTION 44‑69‑77.** Sharing of administration, supervision, and services.

If a continuing care retirement community licensed pursuant to Title 37, Chapter 11 operates a home health agency licensed pursuant to this chapter and a nursing home licensed pursuant to Title 44, Chapter 7, Article 3, the department shall:

(1) allow the home health agency and nursing home to share administration, supervision, and services to the extent the department determines that sharing does not or will not reduce the care, treatment, health, safety, welfare, and comfort of patients served by the home health agency and the nursing home; and

(2) coordinate, to the extent feasible, annual licensing inspections.

**SECTION 44‑69‑80.** Discrimination prohibited.

Home health agencies shall not discriminate based on age, sex, race, color, or source of payment in the recruitment, location of patient, acceptance or provision of goods and services to patients or potential patients, provided that payment offered is not less than the cost of providing services.

**SECTION 44‑69‑90.** Rebates, kickbacks and fee‑splitting prohibited.

Home health agencies shall not participate in, or offer, or imply an offer to participate in the practice known generally as rebate, kickbacks, or fee‑splitting arrangements.

**SECTION 44‑69‑100.** Penalties.

Any person who violates the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not to exceed five hundred dollars or imprisoned for a period not to exceed six months or both.