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COMMITTEE REPORT

March 24, 2010

**H. 4413**

Introduced by Reps. Chalk, Gunn, Hardwick, Clemmons, Lowe, Crawford, Long, J.M. Neal, G.R. Smith, Harrison, A.D. Young, Horne, Brady, Erickson, Herbkersman, Millwood, Allison, Parker, Duncan, M.A. Pitts, Harvin, Williams, Neilson, Battle, Miller, Huggins, Spires, Willis, Hearn, Scott, Daning, J.E. Smith, Vick and H.B. Brown

S. Printed 3/24/10--H. [SEC 3/25/10 1:52 PM]

Read the first time January 26, 2010.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (H. 4413) to amend the Code of Laws of South Carolina, 1976, by adding Chapter 70 to Title 44 to enact the “Licensure of In‑Home Care Provider Act” so as to require, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, Section 44-70-40 beginning on page 2, line 39 by deleting lines 39 through 42 and inserting:

/Section 44‑70‑40. The department shall promulgate regulations for the licensure of in‑home care providers. The department must use as a basis for these regulations the current standards for the appropriate levels of care of as outlined in Medicaid Scope of Services for Personal Care II Services as/. So when amended Section 44-70-40 reads:

/Section 44‑70‑40. The department shall promulgate regulations for the licensure of in‑home care providers. The department must use as a basis for these regulations the current standards for the appropriate levels of care of as outlined in Medicaid Scope of Services for Personal Care II Services as outlined by the Department of Health and Human Services and in use on July 1, 2010, and must include:

(1) license application and renewal procedures;

(2) criminal background checks for licensure applicants, which may include criminal offenses that preclude licensure;

(3) responsibilities and duties of a licensee, including requirements for bonding, record keeping, and reporting;

(4) fees the department may charge to process an application for a license, the issuance of a license, the renewal of a license, and the reinstatement of a revoked or suspended license;

(5) criteria that a licensee’s employee, agent, independent contractor or referral must satisfy before providing in‑home care service. These criteria must include, but are not limited to, personal information, completion of a minimum education requirement, completion of minimum training and continuing education requirements, and screening for communicable diseases; and

(6) sanctions that the department may impose for a violation of this chapter, including the suspension or revocation of a license or the imposition of a monetary penalty. Sanctions imposed may be appealed pursuant to Section 44‑1‑60./

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

LEON HOWARD JOHN RICHARD C. KING

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

See Below

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

A Cost of Federal and/or Other Funds (See Below)

**EXPLANATION OF IMPACT:**

Department of Health & Environmental Control

The department reports that the costs associated with the development and implementation of regulations and procedures will be covered by license fees paid by in-home care providers. There would be no cost to the state general fund. The department estimates annual operating costs to be $211,622 (other funds) with an additional first-year (non-recurring) cost of $40,762 (other funds).

Department of Health & Human Services (DHHS)

DHHS reports it currently contracts with 200 provider companies that would need to be licensed under this Bill. License fees and associated costs incurred by providers, as a cost of providing services to Medicaid-eligible recipients, may be passed on to DHHS if the approved Medicaid reimbursement rates are modified to include these additional fees/costs. However, contracts would have to be amended for there to be a direct impact on DHHS.

Department of Mental Health, Department of Disabilities and Special Needs

The departments indicate enactment of this bill would have no impact on the General Fund of the State or federal and/or other funds.

State Law Enforcement Division

The division indicates that enactment of this bill will have a minimal impact on the General Fund of the State. Any additional administrative costs will be absorbed by the agency at their current level of funding. The actual cost of the record checks and transmission of results would be paid for from fees paid by in-home care providers.

**Recapitulation:**

The cost to the general fund, as indicated by the reporting agencies, would be zero or minimal. Any potential impact DHHS is not anticipated to be significant. The costs associated with operating the program and criminal record checks would be covered by fees.

**SPECIAL NOTES:**

The committee may wish to clarify the type(s) of criminal background check that DHEC should require. There are two types: state background checks are conducted by SLED; national background checks are conducted by the FBI. Each type of background check requires a separate fee.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 70 TO TITLE 44 TO ENACT THE “LICENSURE OF IN‑HOME CARE PROVIDER ACT” SO AS TO REQUIRE A BUSINESS TO BE LICENSED TO PROVIDE, OR TO MAKE PROVISIONS FOR, IN‑HOME CARE SERVICES THROUGH ITS EMPLOYEES OR AGENTS OR THROUGH CONTRACTUAL ARRANGEMENTS; TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL SHALL PROMULGATE REGULATIONS FOR LICENSURE IN ACCORDANCE WITH REQUIREMENTS PROVIDED FOR IN THIS ACT, INCLUDING, BUT NOT LIMITED TO, CRIMINAL BACKGROUND CHECKS; TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR IN‑HOME CAREGIVERS EMPLOYED BY IN‑HOME CARE PROVIDERS; AND TO PROVIDE THAT THE DEPARTMENT SHALL RETAIN ALL FEES COLLECTED PURSUANT TO THIS CHAPTER TO BE USED EXCLUSIVELY TO CARRY OUT THE DEPARTMENT’S RESPONSIBILITIES UNDER THIS CHAPTER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 44 of the 1976 Code is amended by adding:

“CHAPTER 70

Licensure of In‑Home Care Provider

Section 44‑70‑10. This chapter may be cited as the ‘Licensure of In‑Home Care Provider Act’.

Section 44‑70‑20. As used in this chapter:

(1) ‘Department’ means the South Carolina Department of Health and Environmental Control.

(2) ‘In‑home care’ means care:

(a) primarily intended to assist an individual with an activity of daily living or in meeting a personal rather than a medical need, but not including skilled care or specific therapy for an illness or injury;

(b) given to assist an individual in an activity of daily living, such as walking, getting in and out of bed, bathing, dressing, feeding, using the toilet, preparing special diets, and supervising self‑administered medication; and

(c) personal in nature but not mandating continuing attention or supervision from trained and licensed medical personnel.

(3) ‘In‑home care provider’ means a business entity, corporation, or association, whether operated for profit or not for profit, that for compensation directly provides or makes provision for in‑home care services through its own employees or agents or through contractual arrangements with independent contractors or through referral of other persons to render in‑home care services when the individual making the referral has a financial interest in the delivery of those services by those other persons who would deliver those services. An in‑home care provider does not include:

(a) a home health agency or hospice or an entity licensed under Section 44‑7‑260; or

(b) an individual or agency who provides only a house cleaning service; or

(c) a direct care entity defined by Section 44‑7‑2910 (B)(1)(e), a direct caregiver or caregiver defined by Section 44‑7‑2910 (B)(2)(e) or an individual who provides a service or services defined by Section 44‑21‑60.

Section 44‑70‑30. An in‑home care provider must apply for and obtain a license issued by the department that is effective for a specified time period following the date of issue as determined by the department.

Section 44‑70‑40. The department shall promulgate regulations for the licensure of in‑home care providers. These regulations must be at a minimum equivalent to current standards outlined in Medicaid Scope of Services for Personal Care II Services as outlined by the Department of Health and Human Services and in use on July 1, 2010, and must include:

(1) license application and renewal procedures;

(2) criminal background checks for licensure applicants, which may include criminal offenses that preclude licensure;

(3) responsibilities and duties of a licensee, including requirements for bonding, record keeping, and reporting;

(4) fees the department may charge to process an application for a license, the issuance of a license, the renewal of a license, and the reinstatement of a revoked or suspended license;

(5) criteria that a licensee’s employee, agent, independent contractor or referral must satisfy before providing in‑home care service. These criteria must include, but are not limited to, personal information, completion of a minimum education requirement, completion of minimum training and continuing education requirements, and screening for communicable diseases; and

(6) sanctions that the department may impose for a violation of this chapter, including the suspension or revocation of a license or the imposition of a monetary penalty. Sanctions imposed may be appealed pursuant to Section 44‑1‑60.

Section 44‑70‑50. A license to operate as an in‑home care provider is:

(1) not transferable or assignable; and

(2) subject to suspension or revocation for failure to comply with a provision of this chapter or regulations promulgated by the department.

Section 44‑70‑60. (A) Before becoming licensed as an in‑home care provider, a person must undergo a criminal background check as provided for in regulations promulgated by the department pursuant to Section 44‑70‑40.

(B) Before being employed as an in‑home caregiver by a licensed in‑home care provider, a person shall undergo a criminal background check as provided for in Section 44‑7‑2910.

Section 44‑70‑70. Fees collected pursuant to this chapter must be retained by the department and credited to a separate and distinct account to be used exclusively by the department to carry out its responsibilities under this chapter.”

SECTION 2. Section 44‑7‑2910(B) of the 1976 Code is amended by adding:

“(f) an in‑home care provider, as defined in Section 44‑70‑20 (3).”

SECTION 3. This act takes effect upon approval by the Governor, except the licensure requirements of Section 44‑70‑30 of the 1976 Code, as added by Section 1 of this act, become effective upon the effective date of regulations promulgated by the Department of Health and Environmental Control pursuant to Section 44‑70‑40, as added by Section 1 of this act.

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