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Indicates New Matter

AS PASSED BY THE SENATE

June 3, 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 6/3/10--S.

Read the first time April 29, 2010.

**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.

Amend Title To Conform

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;

(c) an individual hired directly by the person receiving care or hired by his family;

(d) 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; or

(e) a church or another religious institution recognized as a 501(c)(3) organization by the Internal Revenue Service that provides in-home care services without compensation or for a nominal fee collected to cover incidental expenses directly related to such care.

(f) an entity or person who provides companion-sitting, transportation or cooking.

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. The department must use as a basis for these regulations the current standards for the appropriate levels of care as outlined in Medicaid Scope of Services for Personal Care 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 Section 44-7-2910 and submit to a drug test.

(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 and submit to a drug test.

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 44-70-80. A licensed in-home provider and an individual employed as an in-home caregiver by a licensed in-home care provider shall be subject to random drug testing.

Section 44-70-90. Non-Medicaid providers who provide the following services are exempt from licensure under this chapter: companion-sitting, transportation, meal preparation, medicinal reminders (to exclude sorting or dispensation), household chores, errands, bathing, dressing, pet care, or other non-medical services that a family member or friend could perform without medical supervision or training.”

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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