~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

March 8, 2011

**H. 3012**

Introduced by Reps. Horne, H.B. Brown and Lowe

S. Printed 3/8/11--H.

Read the first time January 11, 2011.

**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 (DHEC)

The department reports that this bill would have no impact on the state general fund. The cost of developing regulations, implementing and enforcing the program would be covered by license fees (Other funds). The department estimates the annual operating costs to range from $154,000 and 4.50 FTEs (assuming 100 providers are licensed) to $258,000 and 6.50 FTEs (assuming 300 providers are licensed). Additionally, first-year non-recurring costs would range from $56,000 to $62,000.

Department of Health and Human Services (DHHS)

DHHS reports it currently contracts with 250 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 costs. However, contracts would have to be amended for there to be a direct impact on DHHS. The potential impact on the General Fund of the State is estimated at less than $10,000 annually.

Other Agencies

The Departments of Mental Health, Department of Disabilities and Special Needs, and State Law Enforcement Division each indicate this bill would have no impact on the General Fund of the State or federal and/or other funds.

*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 PURSUANT TO THIS CHAPTER; AND TO AMEND SECTION 44‑7‑2910, AS AMENDED, RELATING TO CRIMINAL RECORD CHECKS FOR CAREGIVERS, SO AS TO INCLUDE IN-HOME CARE PROVIDERS.

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 pursuant to 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;

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

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 include the following standards and procedures in developing regulations:

(1) license application and renewal procedures;

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

(3) drug testing of licensure applicants;

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

(5) 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;

(6) 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;

(7) standards for liability and other appropriate insurance coverage; and

(8) 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 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. A licensed in-home provider and an individual employed as an in-home caregiver by a licensed in-home care provider is subject to random drug testing.

Section 44-70-80. 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)(1) of the 1976 Code, as last amended by Act 207 of 2010, is further amended by adding:

“(h) 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.

‑‑‑‑XX‑‑‑‑