

# SECTION 3605

## Licensure of home care services agencies

Public Health (PBH) CHAPTER 45, ARTICLE 36

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§ 3605. Licensure of home care services agencies. 1. After April first, nineteen hundred eighty-six, no home care services agency which is engaged in providing, directly or through contract arrangement, nursing services, home health aide services, or personal care services shall be operated without a license issued by the commissioner in accordance with the standards set forth in this section; provided however, an agency which provides personal care or home care services exclusively to individuals pursuant to a program administered, operated or regulated by another state agency or an organization licensed and operating exclusively as a nurses' registry pursuant to article eleven of the general business law shall be exempt from the licensure requirements of this chapter. The licensure requirements of this chapter shall not apply to sole practitioners licensed pursuant to sections six thousand nine hundred five and six thousand nine hundred six of the education law.

1-a. (a) Core public health services, as defined in section six hundred two of this chapter, when provided in the home by the local health department of a county or of the city of New York, shall not require licensure under this section if such core public services require only minimal patient contact. Patient contact shall be considered minimal if it is of limited duration for acute or non-chronic conditions, including but not limited to any health conditions posing a potential threat to public health, and treatment is generally expected to require no more than six patient visits; provided, however, that a local health department may exceed six visits in the interest of patient safety and public health.

(b) Core public health services that may be provided without a license pursuant to this subdivision include but are not limited to: immunizations; testing for tuberculosis and observation of tuberculosis self-directed therapy; verbal assessment, counseling and referral services; and such other services as may be determined by the

department, provided that such services shall not include home health aide services, personal care services, or nursing services that require more than minimal patient contact.

1-b. Core public health services, as defined in section six hundred two of this chapter, when provided by local health departments in the home as authorized under subdivision one-a of this section, may be eligible for reimbursement under title XIX of the federal Social Security Act, provided that the services meet federal and state requirements for such reimbursement.

2. The commissioner shall not issue a license to any home care services agency except with the written approval of the public health and health planning council issued pursuant to the provisions of this section.

3. An application for licensure as a home care services agency shall be filed with the public health and health planning council together with such other forms and information as shall be prescribed by, or acceptable to, the public health and health planning council.

Thereafter, the public health and health planning council shall forward for comment, if any, a copy of the application for licensure and accompanying documents to the health systems agency, if any, having geographical jurisdiction of the area where the services of the proposed agency are to be offered. The public health and health planning council shall act upon such application, after the health systems agency has had reasonable time to submit its comments, based solely upon criteria provided for in subdivision four of this section. If the public health and health planning council proposes to disapprove the application, it shall notify the applicant, provide reasons for disapproval and afford the applicant a hearing on the application, if requested, or on its own motion. Any hearing held pursuant to this subdivision may be conducted by the public health and health planning council or by any individual designated by the public health and health planning council.

4. The public health and health planning council shall not approve an application for licensure unless it is satisfied as to: (a) the public need for the existence of the licensed home health care service agency at the time and place and under the circumstances proposed; (b) the character, competence and standing in the community of the applicant's incorporators, directors, sponsors, stockholders or operators; (c) the financial resources of the proposed licensed home health care service

agency and its sources of financial revenues; and (d) such other matters as it shall deem pertinent.

5. A license shall not be issued by the commissioner unless he finds that the equipment, personnel, rules, standards of care, and home care services are fit and adequate, and that the home care services will be provided in the manner required by this article and the rules and regulations thereunder.

6. Neither tax status nor profit-making status shall be criteria for licensure.

7. An agency licensed pursuant to this section shall be authorized to provide nursing services, home health aide services or personal care services.

8. Agencies licensed pursuant to this section but not certified pursuant to section three thousand six hundred eight of this article, shall not be qualified to participate as a home health agency under the provisions of title XVIII or XIX of the federal Social Security Act provided, however, an agency which has a contract with a state agency or its locally designated office or, as specified by the commissioner, with a managed care organization participating in the managed care program established pursuant to section three hundred sixty-four-j of the social services law or with a managed long term care plan established pursuant to section forty-four hundred three-f of this chapter, may receive reimbursement under title XIX of the federal Social Security Act.

\* 9. An entity which seeks approval as a limited home care services agency must meet the requirements of this section, the rules and regulations of the department, and must be a certified operator of an adult home or enriched housing program pursuant to article seven of the social services law. The commissioner shall approve only those applicants that the commissioner of the department of social services has listed as eligible pursuant to the requirements of paragraph (a) of subdivision eleven of this section.

\* NB Expires June 30, 2027

\* 10. The department shall notify the department of social services of any action taken against a limited home care services agency pursuant to section thirty-six hundred five-a of this article.

\* NB Expires June 30, 2027

\* 11. For purposes of this subdivision, eligibility of limited home care services agencies licensed by the department shall be as follows:

(a) Only those certified operators of adult homes and enriched housing programs that provide services that are consistent with the needs of each resident, meet the standards governing the operation of such facilities in accordance with the provisions of article seven of the social services law, and provide quality care shall be considered by the department as eligible for licensure.

(b) An operator that has received current official written notice from the department of social services of any enforcement action pursuant to section four hundred sixty-d of the social services law shall not be eligible for such certification.

(c) Such current enforcement action, when resolved to the satisfaction of the commissioner of social services, shall not itself preclude an otherwise eligible applicant from licensure approval but shall be considered by the department in determining the character, competence, and standing in the community of the applicant pursuant to subdivision four of this section.

(d) If the department receives notice from the department of social services that a certified operator of an adult home or enriched housing program that is licensed as a limited home care services agency has received official written notice from the department of social services of a proposed enforcement action taken pursuant to section four hundred sixty-d of the social services law, the department shall review the delivery of home care services to determine whether such agency is meeting all applicable regulations and standards.

\* NB Expires June 30, 2027

\* 12. Notwithstanding any law to the contrary, the commissioner shall have the authority to limit the number of adult homes and enriched housing programs eligible for licensure under this section.

\* NB Expires June 30, 2027

13. The commissioner shall charge to applicants for the licensure of home care services agencies an application fee of two thousand dollars. All fees pursuant to this section shall be payable to the department of health for deposit into the special revenue funds - other, miscellaneous special revenue fund - 339, certificate of need account.

14. Notwithstanding any contrary provision of law and subject to the availability of federal financial participation, for periods on and after April first, two thousand fourteen, the commissioner is authorized to make temporary periodic lump-sum Medicaid payments to licensed home care service agencies ("LHCSA") principally engaged in providing home health services to Medicaid patients, in accordance with the following:

(a) Eligible LHCSA providers shall include:

(i) providers undergoing closure;

(ii) providers impacted by the closure of other health care providers;

(iii) providers subject to mergers, acquisitions, consolidations or restructuring;

(iv) providers impacted by the merger, acquisition, consolidation or restructuring of other health care providers; or

(v) providers seeking to ensure that access to care is maintained.

(b) Providers seeking Medicaid payments under this subdivision shall demonstrate through submission of a written proposal to the commissioner that the additional resources provided by such Medicaid payments will achieve one or more of the following:

(i) protect or enhance access to care;

(ii) protect or enhance quality of care;

(iii) improve the cost effectiveness of the delivery of health care services; or

(iv) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

(c) (i) Such written proposal shall be submitted to the commissioner at least sixty days prior to the requested commencement of such Medicaid payments and shall include a proposed budget to achieve the goals of the proposal. Any Medicaid payments issued pursuant to this subdivision shall be made over a specified period of time, as determined by the commissioner, of up to three years. At the end of the specified timeframe such payments shall cease. The commissioner may establish, as a condition of receiving such Medicaid payments, benchmarks and goals to be achieved in conformity with the provider's written proposal as approved by the commissioner and may also require that the provider submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the provider's Medicaid payments prior to the end of the specified timeframe.

(ii) The commissioner may require that applications submitted pursuant to this subdivision be submitted in response to and in accordance with a Request For Applications or a Request For Proposals issued by the commissioner.