Code of Virginia
Title 32.1. Health
Chapter 5. Regulation of Medical Care Facilities and Services

Article 7.1. Home Care Organization Licensing

§ 32.1-162.7. Definitions

As used in this article:

"Health care professional" means any professional who is licensed, certified or registered to practice by a board within the Department of Health Professions under Title 54.1 or is licensed, certified or registered by a nationally recognized professional organization specified in Board regulations.

"Home care organization" means a public or private organization, whether operated for profit or not for profit, that provides, at the residence of a patient or individual in the Commonwealth of Virginia, one or more of the following services:

1. Home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling condition and require short-term or long-term interventions;

2. Personal care services, including assistance in personal care to include activities of daily living provided in an individual's residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury or disabling condition; or

3. Pharmaceutical services, including services provided in a patient's residence, which include the dispensing and administration of a drug or drugs, and parenteral nutritional support, associated patient instruction, and such other services as identified by the Board of Health by regulation.

"Person" includes any partnership, corporation, association or other legal entity, public or private.

"Residence" means the place where the individual or patient makes his home such as his own apartment or house, a relative's home or an assisted living facility, but shall not include a hospital, nursing facility or nursing home or other extended care facility.

1986, c. 633; 1991, c. 695; 1993, cc. 957, 993.

§ 32.1-162.8. Exemptions from article

The provisions of this article shall not be applicable to:

1. A natural person who provides services to a patient or individual on an individual basis if such person is (i) acting alone under a medical plan of care and is licensed to provide such services pursuant to Title 54.1 or (ii) retained by the individual or by another individual acting on the individual's behalf.

2. Any organization providing only housekeeping, chore or beautician services.

3. Any home care organization located in the Commonwealth that after initial licensure is:

a. Certified by the Department of Health under provisions of Title XVIII or Title XIX of the Social Security Act;

b. Accredited by any organization recognized by the Centers for Medicare and Medicaid Services for the purposes of Medicare certification; or

c. Licensed for hospice services under Article 7 (§ 32.1-162.1 et seq.) of this chapter.

1986, c. 633; 1991, c. 695; 1995, c. 455;2001, c. 515;2010, c. 790.

§ 32.1-162.9. Licenses required; renewal thereof

A. No person shall establish or operate a home care organization without a license issued pursuant to this article unless he is exempt from licensure pursuant to § 32.1-162.8. No license to establish or operate a home care organization shall be issued to any person who has been sanctioned pursuant to 42 U.S.C. § 1320a-7b.

B. The Commissioner shall issue or renew a license to establish or operate a home care organization upon application therefor on a form and accompanied by a fee prescribed by the Board if the Commissioner finds that the home care organization is in compliance with the provisions of this article and regulations of the Board, unless the Commissioner determines that no reciprocal agreement for the licensing of home care organizations has been entered into by the Commonwealth with the state in which the applicant resides or with the state in which the applicant's home care organization is licensed to operate. The Commissioner shall not issue or renew a license to establish or operate a home care organization to any applicant who has been sanctioned pursuant to 42 U.S.C. § 1320a-7b.

C. Any licensed home care organization may establish one or more branch offices serving portions of the total geographic area served by the licensee, provided that each branch office operates under the supervision and administrative control of the licensee. The address of each branch office at which services are provided by the licensee shall be submitted to the Department and included on any license issued to the licensee. Branch offices shall be operated under the initial license issued to the home care organization and shall not be required to obtain an additional license. Upon receipt of notice that a home care organization has established a branch office that meets the criteria set forth in this subsection, the Department shall issue an updated license including the address of the newly established branch office to the home care organization within 10 business days.

D. Every applicant for an initial license to establish or operate a home care organization shall include as part of his application proof of initial reserve operating funds in an amount determined by the Board, which shall be sufficient to ensure operation of the home care organization for the three-month period after a license to operate has been issued. Such funds may include cash, cash equivalents that are readily convertible to known amounts of cash and that present insignificant risk of change in value, borrowed funds that are immediately available to the applicant, or a line of credit that is immediately available to the applicant. Proof of funds sufficient to meet the requirements of this subsection shall include a current balance sheet demonstrating availability of cash or cash equivalents, including all borrowed funds, sufficient to meet the requirement for initial reserve operating funds together with a letter from the officer of the bank or other financial institution where the funds are held or a letter of credit from a lender demonstrating the current availability of a line of credit and the amount thereof.

E. Every such license shall expire on the third anniversary of its issuance or renewal.

F. The activities and services of each applicant for issuance or renewal of a home care organization license shall be subject to an inspection or examination by the Commissioner to determine if the home care organization is in compliance with the provisions of this article and regulations of the Board.

G. No license issued pursuant to this article may be transferred or assigned.

H. Upon renewal of a license, the Department shall not require a home care organization to submit financial documents other than those required for initial licensure.

1986, c. 633; 1991, c. 695; 1994, c. 902;2012, c. 139;2013, cc. 184, 505;2018, c. 105;2022, c. 172.

§ 32.1-162.9:1. Employment for compensation of persons convicted of barrier crimes prohibited; criminal records check required; drug testing; suspension or revocation of license

A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

However, a home care organization or hospice may hire an applicant who has been convicted of one such offense punishable as a misdemeanor that does not involve abuse or neglect if five years have elapsed since the conviction.

Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or outside the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense is guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such home care organization or hospice shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. However, no employee shall be permitted to work in a position that involves direct contact with a patient until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. Notwithstanding any other provision of law, a licensed home care agency, a home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8, or any licensed

hospice as defined in § 32.1-162.1 that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been performed on an employee of the home care agency in accordance with this section and (ii) whether such person is eligible for employment.

C. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 shall establish policies for maintaining a drug-free workplace, which may include drug testing when the employer has cause to believe that the person has engaged in the use of illegal drugs and periodically during the course of employment. All positive results from drug testing administered pursuant to this section shall be reported to the health regulatory boards responsible for licensing, certifying, or registering the person to practice, if any.

D. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

E. A licensed home care organization or hospice shall notify and provide all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such home care organization or hospice.

1992, c. 844; 1993, cc. 17, 657; 1999, c. 637;2003, c. 517;2006, cc. 701, 764;2010, cc. 415, 790; 2012, c. 383;2014, c. 129;2017, c. 809;2019, c. 89.

§ 32.1-162.10. Inspections; fees

State agencies shall make or cause to be made only such inspections of home care organizations as are necessary to carry out the various obligations imposed on each agency by applicable state and federal laws and regulations. However, no home care organization shall receive additional inspections until all other home care organizations in the Commonwealth have also been inspected, unless the additional inspections are (i) necessary to follow up on a preoperational inspection or one or more violations, (ii) required by a uniformly applied risk-based schedule established by the Department, (iii) necessary to investigate a complaint regarding the home care organization, or (iv) otherwise deemed necessary by the Commissioner or his designee to protect the health and safety of the public.

Any on-site inspection by a state agency or a division or unit thereof that substantially complies with the inspection requirements of any other state agency or any other division or unit of the inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection in lieu of an on-site inspection by said agency or by a division or unit of the inspecting agency. A state agency shall coordinate its inspections of home care organizations both internally and with those required by other state agencies so as to ensure that the requirements of this section are met.

Notwithstanding any provision of law to the contrary, all home care organizations licensed by the Department of Health that have been certified under the provisions of Title XVIII of the Social Security Act for home care services or have obtained accreditation by any organization recognized by the Centers for Medicare and Medicaid Services for the purposes of Medicare certification may be subject to inspection so long as such accreditation or certification is maintained but only to the extent necessary to ensure the public health and safety. If any such

home care organization fails to comply with the provisions of this article or with the regulations of the Board relating to public health and safety, the Commissioner is authorized to revoke the exemption from licensure and require such organization to be relicensed before it can again qualify for an exemption pursuant to § 32.1-162.8.

1986, c. 633; 1991, c. 695; 2010, c. 790;2014, c. 324;2017, c. 465.

§ 32.1-162.11. Liability insurance required

Every licensed home care organization shall obtain and maintain a liability insurance policy and third-party crime insurance policy or blanket fidelity bond in accordance with regulations of the Board. Such insurance policy or bond shall provide coverage in an amount sufficient to compensate patients or individuals for injuries and losses resulting from the negligent or criminal acts of the licensee. Failure to maintain these requirements shall result in revocation of the home care organization's license.

1986, c. 633; 1991, c. 695; 2013, c. 184.

§ 32.1-162.12. Regulations

The Board shall prescribe such regulations governing the activities and services provided by home care organizations as may be necessary to protect the public health, safety, and welfare. Such regulations shall include, but not be limited to, an informed consent contract, the qualifications and supervision of licensed and nonlicensed personnel, a complaint procedure for consumers, the provision and coordination of treatment and services provided by the organization, clinical records kept by the organization, utilization and quality control review procedures, and arrangements for the continuing evaluation of the quality of care provided. Regulations shall be appropriate for the categories of service defined in § 32.1-162.7. Regulations governing the delivery of personal care services shall provide for supervision of home care attendants providing personal care services by a licensed nurse through use of interactive audio or video technology.

1986, c. 633; 1991, c. 695; 2021, Sp. Sess. I, c. 470.

§ 32.1-162.13. Revocation or suspension of license

A. The Commissioner is authorized to revoke or suspend any license issued hereunder if the holder of the license fails to comply with the provisions of this article or with the regulations of the Board.

B. If a license is revoked as herein provided, the Commissioner may issue a new license upon application therefor if, when, and after the conditions upon which revocation was based have been corrected and all provisions of this article and applicable regulations have been complied with.

C. Whenever a license is revoked or suspended the Commissioner may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the home care organization is located for an injunction to cause such home care organization to cease providing services.

D. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation.

E. The Commissioner shall notify the Department of Medical Assistance Services whenever any license is revoked, suspended, or expired for the purpose of terminating or suspending the licensee Medicaid provider agreement.

1986, c. 633; 1991, c. 695; 2010, c. 790.

§ 32.1-162.14. Repealed

Repealed by Acts 2003, c. 449.

§ 32.1-162.15. Violation; penalties

Any person owning, establishing, conducting, maintaining, managing or operating a home care organization which is not licensed as required by this article shall be guilty of a Class 6 felony. The Commissioner may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the nonlicensed home care organization is located for an injunction to cause such nonlicensed home care organization to cease providing services.

1991, c. 695; 2010, c. 790.

§ 32.1-162.15:1. Unlawful advertising as a home care organization

It shall be unlawful for any person not licensed as a home care organization pursuant to this article or exempt from licensure pursuant to subsection 3 of § 32.1-162.8, or whose license as a home care organization has been suspended or revoked, or whose license as a home care organization has lapsed and has not been renewed to knowingly advertise or market himself as or otherwise hold himself out to be a home care organization under § 32.1-162.7 or to otherwise assert or imply that he is licensed to provide home health, personal care, or pharmaceutical services. For the purposes of this section, a person who solely offers referrals of independent providers of home care or personal care services, and who advertises or markets himself as such, shall not be deemed to be holding himself out as, or asserting or implying that he is, a home care organization or otherwise licensed to provide home health or personal care services.

2015, c. 304.