

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1192

S. P. 399

In Senate, March 9, 1981

Referred to the Committee on Health and Institutional Services. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Gill of Cumberland.

Cosponsor: Representative Prescott of Hampden.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to License Home Health Agencies.

Be it enacted by the People of the State of Maine, as follows:

22 MRSA c. 165 is enacted to read:

CHAPTER 165

HOME HEALTH AGENCIES

§ 801. Intent

The Legislature finds that a comprehensive array of home health and health-related services is not sufficiently or consistently available as a practical matter to many persons in this State and that unwanted and unnecessary institutionalization may result. In addition, citizens who desire and need home health services have a right to know what home health services they might reasonably expect and by what standards the State holds home health agencies accountable for quality of in-home care.

The Legislature therefore declares that it is consistent with public policy to sanction a continuum of care including acute, restorative, rehabilitative, maintenance, preventive and health promotion services where they are needed throughout the State by requiring providers of these services in the home to be licensed. The Legislature further declares that while it is desirable that

competition be encouraged among all public and private provider sectors, the public must be assured that standards for safe, efficient and effective home health care are met by all providers and that the comprehensive array of services needed is available from all agencies so licensed.

§ 802. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. **Administrator.** “Administrator” means a person who:
 - A. Has a master’s degree in health care administration or business administration and at least 2 years of management or administrative experience in a health care setting;
 - B. Has a master’s degree in public health from a program accredited by the American Public Health Association, in nursing from a program accredited by the National League for Nursing or in another health profession and has a management or administrative education component and at least 2 years of management or administrative experience; or
 - C. Has a bachelor’s degree and has demonstrated managerial or administrative capabilities, or both, and has at least 5 years of management or administrative experience in a health care setting.
2. **Agency.** “Agency” means an agency defined in subsection 10.
3. **Branch office.** “Branch office” means a location or site from which an agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the agency and shares administration, supervision and services in a manner which renders it unnecessary for the branch to meet licensure standards as an independent home health agency.
4. **Bylaws.** “Bylaws” means a set of rules adopted by a home health agency for describing its purpose and composition and for governing its operation.
5. **Client or family record; clinical record.** “Client or family record; clinical record” means a tool to document in writing the assessment, planning, implementation and evaluation information which describes home health services rendered and their results. It contains a goal-oriented plan of care, baseline data and dated and signed notations, by each member of the health care team, of contact with or about a client or family. Notations describe health problems, treatment or drugs given, signs and symptoms, client or family reactions to any changes in physical and emotional condition and related coordinating information.
6. **Commissioner.** “Commissioner” means the Commissioner of Human Services.
7. **Community health nurse.** “Community health nurse” means a person

licensed as a registered professional nurse, who has successfully completed a baccalaureate program in nursing approved by the National League for Nursing, or a baccalaureate or post-baccalaureate program which includes content approved by the National League for Nursing for community or public health nursing preparation. Public health nurse may be an interchangeable term if the preparation in this subsection has been completed. The term public health nurse often connotes a registered professional nurse employed by a governmental agency.

8. **Community health services director.** "Community health services director" means a registered professional nurse who:

A. Has a master's degree in nursing from a program accredited by the National League for Nursing, or in public health from a program accredited by the American Public Health Association and a management or administrative education component and 2 years of community health nursing experience, at least one of which has been in a management or administrative position;

B. Has a bachelor's degree in nursing from a program accredited by the National League for Nursing and has demonstrated clinical and administrative capabilities and has 4 years of community health nursing experience, at least one of which has been in a management or administrative position; or

C. Has a bachelor's degree and has demonstrated clinical and administrative capabilities and has 5 years of community health nursing experience, at least one of which has been in a management or administrative position. This paragraph is repealed on January 1, 1990.

The community health services director may also be the agency administrator. When the agency administrator is not a registered professional nurse, then the position of community health services director, or any position title with the same qualifications, must be in existence.

9. **Community health services supervisor.** "Community health services supervisor" means a registered professional nurse who:

A. Has a bachelor's degree in nursing from a program accredited by the National League for Nursing and has demonstrated clinical and leadership capabilities and has 3 years of nursing experience, at least one of which has been a community health setting; or

B. Has demonstrated clinical and leadership capabilities and has 5 years of nursing experience, at least 2 of which has been in a community health setting. This paragraph is repealed on January 1, 1990.

10. **Community or home health agency.** "Community or home health agency" means a public or private agency, organization, facility, institution, association or person or persons, or subdivision thereof, which is engaged primarily in providing any health service which includes professional nursing service directly and physical therapy, occupational therapy, speech pathology, homemaker-home

health aides, medical social work and nutritionist services either directly or through contract agreement in a client's or family's place of residence.

Home health services are a component of comprehensive health care whereby an array of professional and supportive services are provided to individuals and families in their places of residence for the purpose of promoting, maintaining or restoring health or minimizing the effect of illness and disability. Services appropriate to the needs of the individual patient and family shall be planned coordinated and made available by an agency or institution organized for the delivery of health care through the use of employed staff, contractual arrangements or a combination of administrative patterns.

These services shall be provided under a single plan of care which is regularly reviewed and revised by a team which includes appropriate service components such as nursing, physical therapy, occupational therapy, speech therapy, social work, nutrition and homemaker-home health aide. Physician and dental services may also be provided by the agency or the plan of care may be established with a private physician or dentist where appropriate.

11. Continuity of care. "Continuity of care" applies to comprehensive services provided along a health status continuum. Coordination is the mechanism for ensuring that continuity is met.

12. Coordination; liaison. "Coordination and liaison" mean activities which link together the various participants in and resources for community health care and channels their activities toward the achievement of mutually-defined goals. The client or family shall be included in forming goals.

13. Dentist. "Dentist" means a person who is licensed by the Board of Dental Examiners, pursuant to Title 32, chapter 16.

14. Department. "Department" means the Department of Human Services."

15. Dietician or nutritionist. "Dietician or nutritionist" means a person who is either:

A. A graduate of a college or university program approved by the American Dietetic Association for preparation of dieticians, plus a dietetic internship or traineeship or a master's degree and 6 months' experience in hospital or community nutrition; or

B. A graduate from an accredited college or university with a concentration in foods or nutrition and 2 years full-time professional experience in nutrition. Successful completion of a dietetic internship or traineeship approved by the American Dietetic Association or completion of a master's degree in the subject area may be substituted for 2 years' experience.

16. Governing authority. "Governing authority" means the agency, person or persons, incorporated or functioning under Titles 13-A or 13-B, designated to assume full legal responsibility for the policy determination, management,

operation and financial viability of the home health agency. If the agency is incorporated under Title 13-B it shall hold a tax exemption under the United States Internal Revenue Code, Section 501.

Also included are those persons functioning under chapters 151 and 153 and providing health services in homes.

17. **Health-related services.** "Health-related services" means those in-home supportive services designed to prevent or delay institutionalization. These may include, but are not limited to, any of the following: Respiratory therapy, podiatry, dental hygiene or dentist, laboratory technician, audiology, prosthetics or orthotics, x rays, translator, medical supplies and equipment, transportation or escort, outreach, companion or primary care aide, housekeeping or homemaking, barber or cosmetologist, meals, chore service, pharmacy, personal shopping, telephone reassurance and information or referral services.

18. **Health services.** "Health services" means those services which require the body of knowledge and skills of a licensed health professional or the supervision, planning and evaluation by a licensed health professional to ensure safe care in the client or family's place of residence. The full array of these services is professional nursing, physical therapy, occupational therapy, speech pathology, social work, nutrition or dietetics and homemaker-home health aid.

19. **Homemaker-home health aide.** "Homemaker-home health aide" means a person who has completed a training program in personal care and home management services approved by the Board of Nursing and the department and holds a certificate issued by the training agency which states such approval.

20. **Homemaker-home health aide services.** "Homemaker-home health aide services" means those services rendered by a certified homemaker-home health aide as delegated in a written plan of care and supervised by a registered professional nurse or registered physical therapist.

21. **Independent subcontractor.** "Independent subcontractor" means a person who enters into a contract agreement with a community or home health agency to perform specific and part-time health-related services at his discretion. Independent subcontractors must meet any applicable licensing laws of Title 32.

22. **Liaison nurse.** "Liaison nurse" means a registered professional nurse who also meets the definition of a community health nurse and who carries out intra-agency coordination activities to facilitate continuity of care with or on behalf of clients or families.

23. **Licensed practical nurse.** "Licensed practical nurse" means a person who is licensed by the State as a practical nurse, pursuant to Title 32, chapter 31. A licensed practical nurse functions under the supervision and delegation of a registered professional nurse.

24. **Long-term home care program.** "Long-term home care program" means

a specific program of a community or home health agency designed to prevent or delay institutionalization by providing or arranging for a blend of comprehensive, coordinated and continuous health and health-related services in the amount and kind needed to support clients or families in the least restrictive setting.

25. Occupational therapist. "Occupational therapist" means a person:

A. Who:

- (1) Is a graduate of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Occupational Therapy Association; or
- (2) Is eligible for certification by the American Occupational Therapy Association as an occupational therapist, registered; and

B. Who has one year of experience as an occupational therapist.

Occupational therapy services are those rendered by an occupational therapist, registered or delegated to a certified occupational therapist assistant and supervised by an occupational therapist, registered, as defined in a written plan of care which has been developed in collaboration with a physician.

26. Parent community-home health agency. "Parent community-home health agency" means the agency that develops and maintains administrative controls of branch offices.

27. Physical therapist. "Physical therapist" means a person who holds current registration from the Board of Examiners in Physical Therapy pursuant to Title 32, chapter 45-A.

Physical therapy services are those provided by a registered physical therapist or as delegated to a physical therapist, as defined in a written plan of care developed in collaboration with a physician.

28. Physician. "Physician" means a person who is licensed or authorized by the Board of Registration in Medicine, pursuant to Title 32, section 3263 or Board of Osteopathic Examination and Registration, pursuant to Title 32, chapter 36.

29. Plan of care. "Plan of care" means a systematic, written plan, developed by community or home health agency professional staff with appropriate collaboration from pertinent others, describing those health and health-related services needed and to be provided. It includes but is not limited to those client or family health problems diagnosed or assessed, actions to be taken and by whom, therapeutic goals, prognosis and all conditions which are relevant to the health status and to the care needed or provided. Where applicable, the plan of care is signed by the physician or dentist authorizing care or treatment. All home health plans of care incorporate plans for health promotion and disease prevention, health maintenance and restorative care to the family unit. "Family" shall be interpreted in the broadest sense to include all significant others in the home.

30. Primary health care. “Primary health care” includes either or both of the following 2 components:

A. The care a client or family receives at the point of contact with the health care system; or

B. The continued care of the client or family, including identification, management, advocacy or referral of acute or chronic health problems when illness is apparent or threatened and the maintenance of health by means of health promotion, health education, disease prevention and referral during wellness. Primary health care is community based, comprehensive, continuous and generally provided apart from, prior to and following inpatient care; therefore, community-home health agencies provide primary health care by community health nurses.

31. Primary community or home health agency. “Primary community or home health agency” means the agency that is responsible legally and financially for the services rendered to clients or families at home, implemented via the plan of care. A primary community or home health agency may be either a parent agency or a subdivision of a multi-functional agency.

32. Primary nurse or case manager. “Primary nurse or case manager” means a person who is a registered professional nurse and who accepts responsibility for coordination and continuity of care. Because of his distinct body of knowledge, encompassing the biological, physical, social and behavioral sciences, the community health nurse is uniquely prepared to carry out this function for health and health-related services.

33. Progress notes. “Progress notes” means a written, signed and dated notation by the provider of care, summarizing information about the care provided and the client or family response to that care during a given period of time. A progress note serves to document progress toward health goals, communicate pertinent changes in client or family health status necessitating a permanent or temporary change in the plan of care to others involved and to demonstrate accountable practice.

34. Qualified surveyor. “Qualified surveyor” means a person who meets at least the requirements for community health services supervisor and preferably those for community health services director.

35. Registered dietician. “Registered dietician” means a dietician or nutritionist who has met current American Dietetic Association requirements for registration.

36. Registered professional nurse. “Registered professional nurse” means a person who is licensed by the Board of Nursing, pursuant to Title 32, chapter 31.

Professional nursing services are those services rendered by registered professional nurses and community health nurses defined in a written plan of care developed in collaboration, where appropriate, with a physician and providers of

other health services. Practical nursing and homemaker-home health aide services are selected technical nursing or personal care services delegated by professional nurses and supervised by them.

37. Social worker. "Social worker" means a person who is licensed by the Board of Social Work, pursuant to Title 32, chapter 83.

In community or home health agencies, the relationship of the social work needs to clients or family health problems is traditionally referred to as that care provided by a medical social worker.

Licensure as a social worker in Maine occurs on 3 levels.

A. A "certified social worker" means a person who is a graduate of a master's or doctoral program in social work accredited by the American College of Social Work and has completed at least 3 years of experience, 2 years of which is under qualified supervision, qualifying him for independent practice. Medical social work services in community or home health agencies are either provided directly or delegated and supervised by a certified social worker, eligible to practice independently in Maine.

B. A "registered social worker" means a person who has graduated from a baccalaureate program in social work from an accredited institution and has at least one year's experience under qualified supervision.

C. An "associate social worker" means a person with a baccalaureate degree and at least 2 years' experience under qualified supervision or no degree and 6 years supervised experience.

38. Speech pathologist or audiologist. "Speech pathologist" or "audiologist" means a person who meets the educational and experience requirements for a certificate of clinical competence in either speech pathology or audiology granted by the American Speech and Hearing Association and licensed by the Board of Education in Speech Pathology and Audiology, pursuant to Title 32, chapter 77.

Speech pathology services are those rendered by a qualified speech pathologist as part of a written plan of care developed in collaboration with a physician and appropriate others.

39. Subdivision. "Subdivision" means a component of a multi-functional health facility or community-based agency such as the home care department of a hospital, nursing home or ambulatory care center. Such a division is a primary community or home health agency. A subdivision which has branches is regarded as a parent agency.

40. Supervising therapist or coordinating therapist. "Supervising therapist" or "coordinating therapist" means a person who meets the qualifications of a physical therapist or occupational therapist and has at least 2 years full-time therapy experience, preferably one year of which is in a community or home health agency or demonstrates by experience and education preparation, mastery of supervisory principles.

41. **Supervision.** "Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity, consisting of initial direction and periodic observation and evaluation of the actual act of carrying out the function or activity.

§ 803. **Standards**

1. **Developments.** Standards for operations of community or home health agencies shall be developed by a Home Health Advisory Committee within one year from the date this chapter is enacted and shall be presented to the Joint Standing Committee on Health and Institutional Services of the Legislature to ascertain that the legislative intent of this chapter has been met prior to implementation. The Home Health Advisory Board shall consist of at least 9 members, 2 from the department appointed by the commissioner; 2 providers appointed by the Board of Directors, Maine Community Health Association; one consumer of home health services, one each proprietary and official health agency and 2 Legislators or their designees; the latter 5 members to be appointed by the chairmen of the Joint Standing Committee on Health and Institutional Services. Standards shall address at least the following areas:

- A. Objective measures for the need for community-home health agencies and services;
- B. General requirements;
- C. Governing authority;
- D. Administration;
- E. Organization and delivery of services;
- F. Continuity and coordination of services;
- G. Clinical records;
- H. Client care statistics;
- I. Financial data; and
- J. Evaluation.

2. **Interim standards.** Between the time of enactment of this chapter and the development of standards as described in this section, the department shall be guided by the Medicare conditions of participation for home health agencies, except as otherwise specified by this chapter.

§ 804. **Procedure**

1. **License required.** No community or home health agency, whether voluntary nonprofit, private for profit, governmental or quasi-governmental, may provide any health service to people in their place of residence prior to obtaining a current valid license issued by the State to operate as a community or home health agency, upon or after the effective date of this chapter. The full array of

health services must be provided or shown not to be needed, under the Maine Certificate of Need Act, chapter 103, in the geographical area served, in order to be licensed.

Any community or home health agency which was certified as a home health agency on the date this chapter takes effect, under the United States Social Security Act, Title XVIII, shall be considered to have met the requirements for licensure as a home health agency in Maine for the initial period and a license shall be issued automatically to these agencies on receipt of their application for same. By the end of the initial period the full array of health services must be provided or shown not to be needed, under the Maine Certificate of Need Act, chapter 103, in the geographical area served, in order to be relicensed.

2. Certificate of need required. In accordance with the Maine Certificate of Need Act, chapter 103, a new health service may not be offered or developed except upon application for and receipt of a certificate of need issued by the commissioner.

Application forms for a certificate of need and instructions for completion may be obtained from the Director, Division of Control, Bureau of Health Planning and Development.

The commissioner may, in accordance with the general purposes and intent of this document, waive review over the expansion of those health services required by this chapter for any community or home health agency, certified on the date this chapter takes effect and automatically licensed for the initial period, if that agency is unable to obtain a certificate of need for such expansion. Waivers may be granted for 6-month intervals and for no more than 2 consecutive waiver periods without evidence of reapplication for a certificate of need. If no certificate of need is then received, the waiver periods may start again.

The commissioner may also issue a waiver, under the same time limitations, to any licensed community or home health agency which is unable to recruit qualified staff for any one of the health services required by this chapter, upon receipt of written evidence of sufficient effort to recruit if, in the opinion of the commissioner, the waiver would not endanger the life, safety or health of the people in the area served.

Sufficient evidence to recruit shall include, but not be limited to, advertisement in newspapers, professional journals, state professional association newsletters, notice to New England schools which have accredited preparation programs and times available for interview appointments.

3. Newly constructed or expanded facilities. A temporary permit may be issued to a newly constructed community or home health agency for the first 6 months of operation if the following conditions are met:

A. An office conference has taken place between the Director, Division of Licensing and Certification of the Department of Human Services and the

agency owner, administrator and appropriate administrative personnel for a comprehensive review of the conditions for licensure and operation;

B. Office facilities comply with local, state and federal regulations applicable to their use; and

C. Professional personnel are employed in compliance with staffing standards established by the department.

No community or home health agency may accept clients until it has obtained a certificate of need and has received a license to operate issued by the department.

4. Application for licensure. Following acquisition of a certificate of need, any person, agency or subdivision thereof, desiring to operate a community or home health agency, shall make application to the commissioner for a license on forms prescribed by the department. The forms may be obtained by submitting a request to the Division of Licensing and Certification, Bureau of Medical Services.

Any individual considering application for a license to operate a community or home health agency shall make an appointment for a preliminary conference with the Director, Division of Licensing and Certification.

This provision shall not apply to those community or home health agencies certified under the United States Social Security Act, Title XVIII on the date this chapter takes effect.

5. Surveys. When the written application for licensure is approved and the building is said to be ready for occupancy, a survey shall be conducted by a qualified surveyor employed by the department. Thereafter, annual surveys for renewal of license shall be conducted as deemed necessary by the commissioner.

The findings of the survey with respect to adherence to the licensure standards shall be documented and a letter noting any deficiencies found shall be forwarded to the agency upon initial survey. The same procedure shall apply to renewal surveys, except no less than 60 days and no more than 6 months shall be allowed for correction of deficiencies.

Following receipt of the letter noting deficiencies, the community or home health agency shall notify the department when deficiencies have been corrected on initial survey. The same notification requirement applies for renewal survey, except that such notification shall occur within the specified time period.

A resurvey of the community or home health agency following correction of the deficiencies shall be scheduled by the department prior to operation on initial application, as deemed appropriate by the commissioner.

If, on the basis of the initial departmental survey, the community or home health agency meets the licensure standards, the agency shall be issued a temporary permit valid for 6 months.

Survey visits, including the review of all agency and clinical records and conferences with clients and families may be made to the community or home health agency at any time by authorized staff of the department.

6. Full license. A full license shall be issued on expiration of the temporary permit, if periodic surveys by the department have determined that the community or home health agency is operated in the manner required by chapter 103 and this chapter and by the rules and regulations pursuant thereto.

A license shall be granted for a period of one year as determined by the department and shall be posted conspicuously in the facility.

A license is not assignable or transferrable and shall be immediately void if the agency ceases to operate or if its ownership changes.

Unless sooner suspended or revoked, a license shall be renewed annually on, or within 30 days of, the original licensure date.

7. Surrender of license. The commissioner shall issue an order of suspension and request surrender of license of any community or home health agency if, within 30 days of the order, deficiencies duly noted have not been satisfactorily corrected.

An on-site survey by at least 2 qualified surveyors is required before an order of suspension may be issued.

The community or home health agency shall directly notify each client concerned or the client's responsible relative, the client's physician and any 3rd party payers concerned, at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation or suspension of license. The license shall be returned to the department.

8. Reinstatement. Any agency issued an order of revocation or suspension is entitled to due process and shall have its license reinstated by the commissioner if he is satisfied that deficiencies have been satisfactorily corrected or if the agency obtains a favorable ruling resulting from due process.

9. Exclusions. This chapter does not apply to the following:

- A. Any person, operating as a private practitioner, exclusively on an independent basis;
- B. Any person or organization which renders only health related services to clients or families in their place of residence; and
- C. Any person or organization whose volume of services rendered to clients or families in their place of residence equals less than 20% of the total volume of services rendered annually.

10. Exceptions. Any existing certified community or home health agency, prior to enactment of this chapter, which presently has on its staff an administrator, community health services director or community health services

supervisor who does not meet the qualifications for the position as stated in this chapter, shall be permitted to retain that staff member for the duration of his employment with the agency.

STATEMENT OF FACT

The purpose of this bill is to require the licensure of home health care providers. Hospitals, nursing homes, boarding homes and day care centers are already licensed by the State. The demands for alternatives to institutionalization for acute, chronic, rehabilitative and long-term maintenance care, as well as for health promotion and prevention of disease is increasing. Community-based home health services are a viable alternative to institutional health services. Licensure of home health agencies organized to provide comprehensive and coordinated community home health services will standardize the role of those providers in the continuum of health care and will assure their accountability alongside institutional counterparts.