**10-144 DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**BUREAU OF MEDICAL SERVICES**

**Chapter 119: REGULATIONS GOVERNING THE LICENSING AND FUNCTIONING OF HOME HEALTH CARE SERVICES**

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**CHAPTER 1: GENERAL DEFINITIONS**

The following terms used in these regulations shall have the meanings specified.

1. **Activities of Daily Living (ADL)**: means the functions or tasks for self-care which are performed either independently or with supervision or assistance. Activities of Daily Living include at least mobility, transferring, ambulating, grooming, bathing, dressing, eating and toileting.

2. **Acute Care Services:** are services provided to address severe, significant or serious illness.

3. **Administrator:** is a person having the authority and responsibility for the operation of the home health care agency and for staff performance in accordance with applicable requirements and policies of the agency. The administrator is a licensed physician, registered nurse, or an individual who has training and experience in health services administration, with at least one (1) year of supervisory or administrative experience in home health care services or related health programs.

4. **Advanced Directive:** means a document signed by the client, guardian or durable power of attorney, specifying the scope of treatments and/or procedures that are not to be carried out by others in the event that the client becomes unable to provide that direction. This document must be in compliance with the Federal 1990 Patient Self Determination Act (Omnibus Budget Reconciliation Act, Section 4206) and the Maine Uniform Rights of the Terminally Ill Act (Title 18-A Maine Revised Statutes Annotated §5-801 *et seq*.).

5. **Agency Contracting or Arranging for Home Health Care Services:** means an agency whose employees do not directly provide home health care services in the home. These agencies develop contractual agreements with licensed or legally exempted home health care agencies for the provision of home health care services. Agencies that contract or arrange for home health care services to be delivered, but whose employees do not directly provide home health cue services, shall be exempt from the provisions of these regulations.

6. **Applicant:** means the individual who signs the application for a home health care service license. The applicant must be the individual who has the ultimate responsibility for ensuring that a facility operates in compliance with these regulations.

7. **Branch Office:** means a location or site from which a home health care services agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the home health care services agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the State Home Health Care Services Licensing Regulations.

8. **Bylaws:** means a set of rules adopted by the home health care services agency for governing the agency's operation.

9. **Certified Nursing Assistant (CNA):** means a person whose duties are assigned by a registered professional nurse and who:

a. Has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing, holds a certificate of training from that program or course and is listed on the Maine Registry of Certified Nursing Assistants, or

b. Was certified before September 29, 1987 and is listed on the Maine Registry of Certified Nursing Assistants.

10. **Clinical Note:** is a signed and dated clinical notation made at each patient visit by each health care staff person who renders a service to the patient. The clinical note shall be written or dictated on the day the service is rendered and shall be incorporated within a week into the patient's medical/health record according to the facility's policies and procedures The clinical note may include, but shall not be limited to:

a. A flow sheet, a written description of signs and symptoms, treatment and/or medication(s) administered, the patient's response and any changes in physical or mental status.

b. Progress note, a supplemental note concurrent with the plan of care whenever there is a change in the patient's condition or care which cannot dearly be documented on a flow sheet.

11. **Commissioner.** means the person who heads the Department of Health and Human Services.

12. **Deeming:** A Medicare certified home health agency is deemed to meet the State licensure requirements if it meets all Federal certification requirements.

13. **Department:** means the Maine Department of Health and Human Services.

14. **Dietitian:** is a person who is registered, or eligible for registration, by the Commission on Dietetic Registration of the American Dietetic Association and is licensed by the Maine State Board of Dietitians.

15. **Director of Nurses:** The Director of Nurses is a person having the authority and responsibility for the clinical services, in accordance with applicable requirements and policies of the agency. The Director of Nurses is a registered nurse currently licensed in the State of Maine, qualified by advanced education or management experience. The Director of Nurses must have one (1) year of clinical experience and at least two (2) years of supervisory or administrative experience in home health care services.

16. **Documented:** means written, signed and dated.

17. **Full Time Equivalent Employee:** is one or more individual(s) who is/are employed on the basis of at least 37 1/2 hours per week for the home health care service agency.

18. **Governing Board:** means the organization, person or persons designated to assume legal responsibility for the determination and implementation of policy and for the management, operation and financial viability of the facility.

19. **Health Promotion:** is any effort or combination of efforts designed to help bring about or further the development of the state of physical and mental well-being in individuals.

20. **Home Health Aide:** means a certified nursing assistant who meets both the requirements of this Chapter and the Code of Federal Regulations 42 CFR, Part 484.4.

21. **Home Health Care Services Provider:** is any business, entity or subdivision thereof, whether public or private, proprietary or not for profit, that is engaged in providing acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing or another therapeutic service, such as physical therapy, home health aides, nurse assistants, medical social work, nutritionist services, or personal care services, either directly or through contractual agreement, in a patient's/client's place of residence. This term does not apply to any sole practitioner providing private duty nursing services or other restorative, rehabilitative, maintenance, preventative or health promotion services in a patient's/client's place of residence or to municipal entities providing health promotion services in a patient's/client's place of residence. This term does not apply to a federally qualified health center or a rural health clinic as defined in 42 United States Code, Section 1395x, subsection (aa) (1993) that is delivering case management services or health education in a patient's/client's place of residence. Beginning October 1, 1991, "home health care provider" includes any business entity or subdivision there of, whether public or private, proprietary or nonprofit, that is engaged in providing speech pathology services.

A Home Health Care Services Provider shall also be referred to as a home health care agency.

22. **Home Health Care Services:** are the in-home provision of professional nursing services, physical and/or occupational therapy, speech pathology, medical social work, nutritionist services and the supervised services of licensed practical nurses, home health aides and/or certified nurse assistants providing treatment and rehabilitation for illness or disability, aimed at restoring or maintaining independent functioning. These services are provided directly or through contractual agreement in the patient's/client's home and must be provided in the State of Maine. All licensed providers of home health care services must be located in the State of Maine, with a commercial address. The only exceptions are licensed home health care service providers located on the borders of Maine/New Hampshire and Maine/Canada.

23. **Home Health Care Services Hotline:** is a toll free number, established within the State of Maine, to receive complaints and/or questions about home health care services.

24. **Home Health Paraprofessional Services:** are health care services rendered by home health aides and certified nurse assistants involving selected technical nursing or personal care services delegated by registered professional nurses and supervised by them.

25. **Instrumental Activities of Daily Living (IADL):** means the functions or tasks for self-care which are performed either independently or with supervision or assistance. IADLs include preparing light and full meals, light housekeeping, personal laundry, handling money and using a telephone.

26. **Job Description:** means written specifications developed for each personnel position in the facility, containing the qualifications, duties, competencies, responsibilities, and accountability required of employees.

27. **Licensed Health Care Professionals:** are health care providers including physicians, registered professional nurses, licensed practical nurses, occupational therapists, speech pathologists, physical therapists, dietitians and social workers that have been authorized to practice a health care profession in accordance with state law.

28. **Licensed Practical Nurse:** is an individual who possesses a current license and is authorized to perform tasks and responsibilities for compensation under the direction of a registered professional nurse, physician, or dentist, as authorized in Title 32 MRSA, Section 2101, *et seq*.

29. **Maintenance Services:** are activities designed to keep the patients/clients at their present level of functioning.

30. **Multidisciplinary Team:** is a group of health care professionals and paraprofessionals that may include, but are not limited to the following: physicians, registered professional nurses, care managers, physical and occupational therapists, dietitians, speech pathologists, medical social workers, licensed practical nurses, certified nursing assistants, and home health aides. These health care individuals work together in an attempt to meet the total health care needs of the patient/client in the home.

31. **Occupational Therapist:** is an individual who is currently registered with the American Occupational Therapist Association and possesses a current license authorized by Title 32 MRSA §2271 *et seq*.

32. **Patient/Client:** is a person who receives home health care services.

33. **Personal Care Services:** are those services provided in a patient’s/client’s residence by a home health aide or certified nursing assistant and which are delegated and supervised by a registered nurse (services provided by a personal care assistant (PCA), as defined in the Rules for the Home Based Care Program are not included in this definition).

34. **Physical Therapist:** is an individual who possesses a current license authorized by Title 32 MRSA §3111 *et seq*.

35. **Plan of Care:** is a systematic, individualized written plan developed by a home health cue services agency's professional staff in conjunction with the patient/client, family and/or significant others. This plan of care must be updated as the patient's needs change. These changes include at least those activities which shall be provided to the patient by the agency to meet their needs.

36. **Policies:** are written standards which govern the provisions of home health care services.

37. **Preventive Services:** are services provided in the home by health care professionals or paraprofessionals designed to promote the health of individuals so that illnesses will not occur.

38. **Procedures:** are specific, written directions to accomplish policies.

39. **Progress Note:** means a written notation, dated and signed by a member of the multidisciplinary team, that summarizes facts about care furnished and the patient's response during a given period of time.

40. **Proprietary Agency:** means a private profit making agency licensed by the state.

41. **Protocols:** are written guidelines that define the limits and extent of practice for health care in a home health care services agency.

42. **Registered Professional Nurse:** is an individual who possesses a current license authorized by the Maim State Board of Nursing pursuant to Tide 32 MRSA §2102(5), and 32 MRSA §§2101 *et seq*.

43. **Rehabilitative Services:** are services provided by home health care providers which are designed to assist patients/clients regain their former functional abilities.

44. **Restorative Services:** are services which provide treatment or therapy to improve patient/client health and functioning in order that he/she may achieve or maintain an optimum level of self care and independence.

45. **Signature:** means at least the first initial and full surname and title (for example, S. Jones, R.N.) of a person, legibly written, generated by computer with authorization safeguards, or communicated by a facsimile communications system (FAX).

46. **Social Worker:** is an individual who possesses a current license authorized by Title 32 MRSA §705 *et seq*. If the individual is not a Master's level licensed Social Worker, he/she must be supervised in accordance with the requirements of the Board of Social Work.

47. **Speech Pathologist:** is an individual who is currently licensed by the State of Maine Speech Pathology and Audiology Licensing Board to act as a speech pathologist pursuant to Tide 32 MRSA §6020 *et seq*.

48. **Staff Education Plan:** means a written plan, developed at least annually by agency professional staff and implemented throughout the year, which describes a coordinated program for staff education, including inservice programs and on the job training.

49. **Staff Orientation Plan:** means a written plan for the orientation of each new employee to the duties and responsibilities of the services to which he/she has been assigned, as well as to the personnel policies of the facility.

50. **Sub Unit:** means a semi-autonomous organization that:

a. Serves patients in a geographic area different from that of the parent agency; and

b. Must independently meet the Home Health Care Services Regulations because, geographically, the parent agency is unable to share administration, supervision and services on a daily basis.

51. **Supervision:** means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his/her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

52. **Therapeutic Service:** is a healing act based upon a knowledge of disease and of the remedies employed. Therapeutic services are provided by health care professionals and paraprofessionals in accordance with the plan of care developed by a licensed health care professional.

**CHAPTER 2: LICENSING APPLICATION PROCEDURES**

2.A. Requirements

2.A.1. No home health care agency may provide home health care services without receiving a license from the Department authorizing such services or operation.

2.A.2. The applicant shall comply with all applicable Maine Statutes and rules and regulations.

2.A.3. No home health care agency shall accept any remuneration for delivering home health care services without having first secured a license authorizing its operation in accordance with these regulations.

2.A.4. Any person, organization or corporation seeking home health licensure shall make an appointment for a preliminary conference at the Division of Licensing and Certification at least forty-five (45) days prior to the initial survey.

2.A.5. The following are exempt from the provisions of this chapter in accordance with 22 MRSA §2147:

a. Hospice organizations; volunteer services. Hospice organizations in which services are provided substantially by volunteers;

b. Families, friends and neighbors,

c. Sole practitioners. Sole practitioners otherwise licensed by the State;

d. Physicians. Services provided directly by physicians;

e. Elderly nutrition programs;

f. Chore services;

g. Pharmacy or medical supply company. Any pharmacy or medical supply company which furnishes no home health services to persons in their homes except supplies;

h. Persons or agencies contracting or arranging home health services. Anyone contracting or arranging for home health services provided by home health care providers licensed or excluded under this chapter,

i. Departments. Departments of State Government;

j. Facilities licensed pursuant to Chapter 405. Hospitals, nursing care facilities, skilled nursing facilities, or other facilities licensed pursuant to Chapter 405 when the services are provided either to clients residing in those facilities or to six (6) or fewer clients at any one time in their homes under a plan of care approved by the Department or its designee when it is documented in the patient's record that the licensed home health care agency or agencies serving the patient's area:

1. Have indicated that they are unable to provide those services; or

2. Agree that the plan of care is an acceptable plan.

The plan of care must meet standards for staff qualifications and supervision consistent with the standards required of licensed home health care providers;

k. Licensed Boarding Care Facilities. Boarding care facilities licensed pursuant to Chapters 1663 and 1665 when the services are provided to clients residing in those facilities;

l. Municipal Entities. Municipal departments or agencies or other municipal entities in their provision of nontherapeutic preventive and promotional health educational services where persons providing those services are employed by the municipality.

2.A.6. The following are exempt from the provisions of this chapter in accordance with Title 22 MRSA Section 2142, Sub-section 3:

Federally qualified health center or a rural health clinic as defined in 42 United States Code, Section 1395X Sub-section (aa) (1993) that is delivering case management services or health education in a client's place of residence.

2.B. Application Procedure

2.B.1. Film of Application

Any person, partnership, association or corporation desiring a license to engage in home health care services shall, prior to the commencement of such operation, file an application with the Department. Applications submitted on behalf of a corporation or association shall be made by any two officers thereof or by its administrator. All applicants shall comply with the rules and regulations adopted pursuant to Title 22 MRSA §2141 *et seq*.

2.B.2. Contents of Application

Each application shall contain:

a. The name by which the Home Health Care Services Provider is to be legally known and the name under which it shall be doing business;

b. A description of all facilities utilized by the Home Health Care Services Provider. This will include the address(es), telephone number(s) and name of owner(s) of all buildings utilized by the home health care agency. All branches and sub units must be identified by address(es), telephone number(s), and identifying names;

c. A listing of specific home health care services provided by the agency,

d. For proprietary corporations: the full name and address of each person, firm or corporation having (directly or indirectly) an ownership interest of 5% or more in the agency,

e. For business entities with one owner or business partnerships: the full name and address of each partner,

f. For not-for-profit organizations: the full name and address of the President of the Board of Directors or appropriate municipal government representative;

g. The name, home address, home telephone number and office telephone number of the individual designated by the applicant as the administrator of the Home Health Care Services Provider,

h. The name of the Director of Nursing;

i. The number of full time equivalent staff

2.B.3. Suitability of Applicant

In acting upon any application for license or relicensure, the Department shall determine the suitability of the applicant to operate the home health care services facility.

a. A determination of suitability shall require the applicant to demonstrate their willingness and ability to operate and manage the facility with compliance with these regulations and all relevant laws. In making this determination, the Department shall consider each of the following factors to the extent they are relevant to the proposed agency, ownership interest, and/or equipment:

1. Record and reputation for lawful conduct in business and personal affairs (including, but not limited to, a criminal conviction).

2. Financial ability and fiscal responsibility (such as a history of withholding taxes, a good credit rating from an appropriate agency and/or financial institution, capability of obtaining financing for working capital and repairs required by these rules).

3. Management and supervisory experience, including the capacity to manage the financial operations and staff of the agency for which the license is sought.

4. Experience in the field of health care, social services or areas related to the provision of home health services.

5. Conduct which demonstrates an understanding of, and compliance with, clients’ rights.

6. Information which relates to the ability in complying with all applicable laws and regulations.

7. Any information reasonably related to the ability to provide safe services at the level of care for which the license is sought.

2.C. Fees

2.C.1. Each application under this chapter shall be accompanied by an annual fee of $300.00.

2.C.2. All licenses shall be renewed annually upon payment of the appropriate fee and demonstration of continued compliance with these rules and regulations.

2.C.3. No fee shall be refunded.

2.D. Additional Information

2.D.1. Copy of the Lease

When a building(s) is/are leased to the person(s) to operate as a Home Health Care Services Provider, a copy of the lease shall be filed with the application for a license This lease agreement shall clearly demonstrate which party is to be held responsible for the maintenance and upkeep of the property. The Department shall be notified within seventy-two (72) hours if there are any changes in the lease agreement that may in any way affect the responsibility for maintenance and upkeep of the property.

2.D.2. Home Health Care Services Providers Operated by Same Management on Different Premises

Sub units of licensed Home Health Care Services Providers will require separate licenses. Home Health Care Services Providers operated by the same management on different grounds shall be required to have in effect a separate license for each sub unit.

2.D.3. Physician Ownership

The Division of Licensing and Certification will investigate whether the physician ordering the need for home health care services has a financial interest or ownership in an agency. A current listing of physicians associated with financial interests or ownership must be submitted to the Division of Licensing and Certification. See Chapter 7.A..5.

2.D.4. Change in Ownership of Home, Health Care Services Provider

a. No license shall be assigned or transferred.

Effective At least thirty (30) days advance written notice shall be given to

July 1, 2004 the Division of Licensing and Certification, Bureau of Medical Services, prior to the transfer of ownership of any home health care agency.

b. At least thirty (30) days advance written notice shall be give to the Division of Program Analysis and Development, Office of Health Planning and Development, and the Division of Licensing and Certification, Bureau of Medical Services, prior to the transfer of ownership of any home health care agency.

c. Each application for a license from a new owner shall be accompanied by a statement from the previous owner or his duly authorized representative concerning the change of ownership. In lieu of this statement, a copy of the deed or other validating document shall be submitted. In addition, an application fee, calculated in accordance with Section 2.C of this chapter, shall be submitted to the Department. When the ownership of a Home Health Care Services Provider changes, upon receipt of a completed application and fee, the Department may issue a provisional license for a period not to exceed ninety (90) days. The new owner's application must demonstrate that the agency will continue to comply with the requirements for licensure.

2.E. Certificate of Compliance with Fire Codes

Fire safety inspections are not required for home health care services licensure.

2.F. Compliance with All Local, State and Federal Regulations

2.F.1. The Home Health Care Services Provider and its staff must operate and furnish services in compliance with all applicable federal, state and local laws and regulations.

2.F.2. The applicant shall submit a letter from the appropriate municipal official(s) that demonstrates compliance with all local ordinances relative to zoning and building codes and a certificate of occupancy, if appropriate, which includes electrical and life safety code compliance.

2.F.3. The applicant will submit proof of a Clinical Laboratory number (if appropriate) under the Clinical Laboratory Improvement Amendments of 1988.

2.F.4. The applicant will submit proof of a Department of Environmental Protection number (if appropriate).

2.G. Posting of License

The license granted by the Department shall be conspicuously posted in an area where business is conducted/coordinated for the home health care services.

2.H. Waiver Provisions

2.H.1. The Department may upon written request waive or modify any provision contained herein which is not mandated by Maine Statutes. The applicant or licensee shall provide clear and convincing evidence that the alternative method will comply with the intent of the regulation for which a waiver is sought. Requests for a waiver shall be made on forms approved by the Department, and shall include:

a. A statement of the regulation for which a waiver is requested;

b. An explanation of the reasons why the provisions cannot be met and a waiver is being requested; and

c. A description of the alternative method proposed for meeting the intent of the provision sought to be waived. Waivers, when approved, shall be time limited. Prior to the expiration of the approval, if the waiver continues to be necessary, an extension of time may be granted by the Department on receipt of a new application.

2.H.2. Home Health Care Services Providers regulated by the State Government or the Federal Government may apply for consideration of a waiver to be granted by the Commissioner of the Department of Health and Human Services. Home Health Care Services Providers that are regulated by the State Government or the Federal Government that may apply for than waiver include:

a. Alcohol and substance abuse treatment agencies possessing a current license authorized by Title 22 MRSA §7801-7815.

b. Pre-school coordination sites which are regulated by the Department of Education.

c. Public schools and private educational agencies winch are regulated by the Department of Education.

d. Mental health services providers which are licensed and regulated by the Department of Behavioral and Developmental Services as authorized by Title 34B MRSA §3606.

2.H.3. These providers will be eligible for the waiver solely for those home health care services for which they are regulated by a Bureau of the Department of Health and Human Services or another Department within State Government.

2.H.4. The Commissioner of the Department of Health and Human Services may grant a full, provisional, or conditional license to those entities otherwise regulated by the State Government or the Federal Government, if he/she determines that those providers meet the purpose and intent of this chapter This shall be determined through submission of information in accordance with the waiver forms described in Chapter 2.I.1. of these regulations.

2.I. Changes in Licensed Home Health Care Services

Each Home Health Care Services Provider will notify the Bureau of Medical Services in writing of any changes in:

2.I.1. Ownership;

2.I.2. Scope and nature of services provided,

2.I.3. Relocation or change of business address and telephone;

2.I.4. Administrator,

2.I.5. Addition/deletion of a branch or sub unit, or

2.J.6. Deeming.

2.J. Types of Licenses Issued

The Department will issue the following types of licenses to Home Health Care Services Providers:

2.J.1. Full License-effective for the period of twelve (12) months to an applicant who complies with all applicable laws and rules.

2.J.2. Provisional License- effective for a minimum of three (3) months and not to exceed twelve (12) months, to an applicant who:

a. Has not previously operated as a Home Health Care Services Provider or is licensed but has not operated during the term of that license;

b. Complies with all applicable laws and rules, except those which can be complied with only once clients are served by the applicant; and

c. Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license term

2.J.3. Conditional License-effective for a specific period not to exceed one (1) year to an applicant who has not fully complied with all applicable laws and rules, and in the judgment of the Commissioner, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections shall be made during the term of the conditional license.

2.K. Specifications of License

Each license issued by the Department shall identify:

2.K. 1. The name of the Home Health Care Services Provider,

2.K.2. The name of the administrator,

2.K.3. The geographical location of each unit or subunits, if so designated;

2.K.4. The type of home health care services provided;

2.K.5. Any waiver(s) that have been granted;

2.K.6. The period of licensure and date of licensure expiration; and

2.K.7. The date issued, and type of license.

**CHAPTER 3: LOSS OF, RENEWAL, PROVISIONAL AND CONDITIONAL LICENSES**

3.A. Refusal to Issue a License

The Department shall refuse to issue a license to the applicant if it finds that any or all of the following conditions exist:

3.A.1. The Department finds that the information submitted in the application is incorrect or incomplete,

3.A.2. The applicant does not meet all requirements of these laws and regulations;

3.A.3. The applicant has violated applicable laws and rules and regulations and the Department finds that these practices of the agency are detrimental to the welfare of persons to whom home health care services are provided.

3.B. Right of Entry and Inspection

3.B.1. Any duly designated employee of the Department shall have the right to enter upon and into the premises of any Home Health Care Services Provider who has applied for a license or who is licensed pursuant to these rules and regulations. These employees can inspect relevant agency documents to determine whether the agency is in compliance with these rules and regulations. The right of entry and inspection shall extend to any premises and documents of providers whom the Department has reason to believe are providing home health care services without a license. Such entries or inspections shall be made with permission of the owner or person in charge unless a warrant is first obtained from the District Court authorizing that entry or inspection (22 MRSA §2148). Surveyors, with the permission of the patient/client, may also make patient/client home visits at their discretion.

3.B.2. The Department and any duly designated representative thereof shall have the right to enter upon and into the premises of any facility licensed pursuant to these rules and regulations at any time, without threat of injury, verbal abuse or harassment and in the spirit of mutual cooperation, in order to determine the state of compliance with the provisions of rules and regulations in force pursuant thereto. Such right of entry and inspection shall extend to any premises which the Department has reason to believe are being operated or maintained as a home health care services agency without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the court of jurisdiction authorizing the same. Any application for a license made pursuant to these rules and regulations shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought in order to facilitate, verification of the information submitted on or in connection with such application. (Title 22, §2148). Application for licensure, whether initial or renewal, shall constitute permission for entry into, and survey of, a home health care services provider by authorized licensing authority representatives at reasonable times during pendency of the application and, if licensed, during the licensure period.

3.B.3. Surveys may be announced or unannounced at the sole discretion of the licensing authority. All complaint investigations will be unannounced.

3.B.4. Upon receipt of a notice of deficiency from the licensing authority, the licensee or his/her representative will be required to submit a written plan of correction to the licensing authority within ten (10) working days of the date of the statement of deficiencies stating how the agency intends to correct each violation noted and the expected date of completion.

3.B.5. The licensing authority may, at its sole discretion, accept the plan of correction as written or request modification of the plan by the licensee.

Effective 3.B.6. Regardless of the term of the license, the Department shall monitor for

January 1, 2005 continued compliance with applicable laws and rules on at least a biennial basis.

3.B.7. Licensing Survey Frequency

The Department shall survey the Home Health Care Services Provider on at least a biennial basis, except that State licensing surveys need not be performed during a year when a Medicare certification survey is performed.

# State licensure surveys will be performed on at least an annual basis If any of the following conditions exist:

a. Change of ownership since the previous licensure or Medicare certification survey; or

b. Complaint survey with deficiency citations since the last licensure or Medicare certification survey, or

c. Conditional State license issued at the last regular licensure survey; or

d. Failure to meet any of the Medicare Conditions of Participation within the past twenty-four (24) months.

3.B.8. Complaints

a. Any person may file a complaint with the administrator or any member of the home health care services staff.

b. A procedure must be established for the review, within two business days, of each complaint received, by the administrator and/or any designated member of the staff. A report of findings and action taken shall. be prepared and submitted to the Quality Assurance Committee or other appropriate committee, and be available for review upon request of the Department.

3.B.9. Reporting of Abuse, Neglect or Misappropriation of Client and/or Client's Property

a. The Home Health Care Services Provider must ensure that all staff are knowledgeable of the Adult Protective Services Act and that all alleged violations involving mistreatment, neglect and abuse, including injuries of unknown source and/or misappropriation of client/patient property, are reported immediately, through established procedures, to the administrator of the home health care services provider and to other officials in accordance with the State law (Title 22, §3470 *et seq*.).

b. The Home Health Care Services Provider must have evidence that all alleged employee violations are thoroughly investigated in a timely manner. Policies must address administrative procedures to be implemented to prevent further potential abuse while the investigation is in progress.

c. The results of all investigations conducted in house must be reported to the administrator or his/her designated representative and to other officials in accordance with State law. If the alleged violation is verified, appropriate corrective action must be taken. All reports must be made available to the Department upon request.

d. Results of investigations must be reported to the Department if the allegations involve a certified nursing assistant.

3.B.10. The Home Health Care Services Provider must develop and implement written policy and procedures that prohibit abuse, neglect or misappropriation of client’s property.

3.C. Renewal of License

3.C.1. The Department will send the Home Health Care Services Provider a renewal application at least fifty (50) days prior to the expiration of the license. This application shall be completed and submitted to the Department at least twenty (20) days prior to the expiration of the license. The Department shall review this renewal application to ensure that it is consistent with these rules and regulations.

3.C.2. Based upon its review, Department staff will inform the Home Health Care Services Provider of its decision to:

a. Renew the license for a period of one year;

b. Grant the Home Health Care Services Provider a conditional license, or

c. Refuse to issue the applicant a new license.

3.D. Provisional License

3.D.1. A provisional license shall be issued by the Department to an applicant who:

a. Has not previously been licensed as a Home Health Care Services Provider or is licensed but has not operated during the term of that license;

b. Complies with all applicable laws and rules, except those which can be complied with only once clients are served by the applicant; and

c. Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license. Department staff will make a site monitoring visit to the home health cam services agency to accumulate the information necessary to make this determination.

3.E. Conditional License

3.E.1. The Department may issue a conditional license when an agency fails to comply with applicable laws and rules, and in the judgment of the Commissioner, the best interest of the public would be served by issuing a conditional license.

3.E.2. The decision to grant a conditional license can be made by the Commissioner at the time of application for an initial license, at the expiration of a full or provisional license or during the term of a full license.

3.E.3. The conditional license shall specify when and what corrections shall be made during the term of the conditional license.

3.F. Suspension or Revocation of License

3.F.1. The Department may recommend suspension or revocation of any license issued pursuant to 22 MRSA §2141 *et seq*., for violation of applicable laws and rules committing, permitting, aiding or abetting any illegal practices in the operation of the provider or conduct or practices detrimental to the welfare of persons to whom home health care services are provided.

3.F.2. When the Department believes that a license should be suspended or revoked, it shall file a complaint with the Administrative Court in accordance with Title 4 MRSA §1153 or the Maine Administrative Procedure Act, Title 5 MRSA §10051 *et seq*.

3.F.3. Upon suspension or revocation of a license, the license shall be immediately surrendered to the Department.

3.G. Emergency Revocation, Suspension or Refusal to Renew License

Whenever the Department determines that the health or physical safety of a person is in immediate jeopardy, and action in accordance with 5 MRSA §9051-9064 or 5 MRSA § 10051 would fail to respond to a known risk, the Department may revoke, suspend or refuse to renew a home health care services license, provided that the revocation, suspension or refusal to renew shall not continue for more than 30 days.

3.H. Receivership

Pursuant to 22 MRSA, Section 7931 *et seq*. the Department may petition the Superior Court to appoint a receiver to operate a home health care service in the following circumstances:

1. When the home health care service intends to close, but has not arranged at least thirty (30) days prior to closure for the orderly transfer of its patients/clients;

2. When an emergency exists in a home health care service which threatens the health, security or welfare of its patients/clients;

3. When the home health care services is in substantial or habitual violation of the standards of health, safety or patient/client care established under State or Federal regulations to the detriment of the welfare of the patient/client.

3.I. Appeals

Any person aggrieved by the Department's decision to take any of the following actions may request an administrative hearing as provided by the Maine Administrative Procedure Act, Title 5 MRSA §9051 *et seq*.

3.I.1. Issue a conditional license,

3.I.2. Amend or modify a license;

3.I.3. Refusal to issue, or renew a full license; or

3.I.4. Refusal to issue a provisional license.

3.J. Public Notice

If an annual license is revoked, suspended or not renewed, the Department will advise the public of such action. This public notice will be in the form of a paid legal notice in the local newspaper(s), published within fifteen (15) days following the suspension or revocation of the license.

**CHAPTER 4: GENERAL REQUIREMENTS**

4.A. General Requirements

4.A.1. Home Health Care Services Providers

A Home Health Care Services Provider is any business, entity or subdivision thereof, whether public or private, proprietary or not for profit, that is engaged in providing acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing or another therapeutic service, such as physical therapy, home health aides, nurse assistants, medical social work, nutritionist services or personal care services, either directly or through contractual agreement, in a client’s place of residence. This term does not apply to any sole practitioner providing private duty nursing services or other restorative, rehabilitative, maintenance, prevention or health promotion services in a patient's/client’s place of residence or to municipal entities providing health promotion services in a patient's/client's place of residence. This term does not apply to federally qualified health center or a rural health clinic as defined in 42 United States Code, Section 1395X, Subsection (aa) (1993) that is delivering case management services or health education in a patient's/client's place of residence. Beginning October 1, 1991, "home health care provider" includes any business, entity or subdivision thereof, whether public or private, proprietary or nonprofit, that is engaged in providing speech pathology services.

A home health care provider shall also be referred to as a home health care agency.

a. Home Health Care Services Providers include, but are not limited to:

1. District, municipal, and city health agencies, or health councils which deliver home health care services, and

2. Business entities and/or program which send professional and/or paraprofessional personnel into the home for delivery of home health care services.

b. Exclusions:

22 MRSA §§2147, exempts several organizations and/or individuals from the provisions of this legislation.

4.A.2. Deficiencies and Plans of Correction

a. The licensing agency shall notify the governing body or other legal authority of a facility of violations of individual standards through a statement of deficiencies which shall be forwarded to the facility within fifteen (15) days of inspection of the facility unless the director determines that immediate action is necessary to protect the health, welfare, or safety of the public or any member thereof through the issuance of an immediate compliance order in accordance with Chapters 4 and 4.A. of the Regulations Governing the Licensing and Functioning of Home Health Care Services.

b. Upon receipt of a statement of deficiencies from the licensing authority, the licensee or his/her representative will be required to submit a written plan of correction to the licensing authority within ten (10) working days of the date of receipt of the statement of deficiencies. The plan of correction shall detail any requests for waivers, as well as document the reasons therefore.

c. If the licensing agency rejects the plan of correction, or if the facility does not provide a plan of correction within the ten (10) day period stipulated or if a facility whose plan of correction has been approved by the licensing agency fail to execute its plan within a reasonable time, the license may be modified or revoked according to Chapter 3.

4.B. Identification Badges

All health care provider employees providing direct patient care must wear an identification badge that includes at least the following information:

1. Name of the health care provider;

2. Employee's first name with the employee's last name being an optional item according to provider policy;

3. Initials identifying the employee's registration/ licensure/certification;

4. Employee's job title.

Health care providers will develop policies and procedures which will define the situations and criteria when the wearing of an identification badge will be waived.

**CHAPTER 5: ADMINISTRATION**

5.A. Organizational Structure and Lines of Authority

All Home Health Care Services Providers will identify in writing the services provided, administrative control, and lines of authority for the delegation of responsibility down to the patient/client care level. A policy and procedure manual(s), including patient care protocols, for the organization and operation of the facility shall be established implemented and reviewed at least annually. Each review of the manual(s) shall be documented and dated. This written material shall be maintained at the home health care agency's main office so that Department staff can examine it during monitoring visits. This material will include:

5.A.1. A statement describing the organizational goal(s) of the home health care agency, its philosophy and objectives and the services provided by the agency,

5.A.2. An organizational diagram clearly outlining the relationship between personnel having responsibility and accountability within the organization including any sub units of the provider,

5.A.3. Job description of the Administrator. The administrator is a person having the authority and responsibility for the operation of the home health care services agency and for staff performance in accordance with applicable requirements and policies of the agency. The administrator is a licensed physician, registered nurse, or a individual who has training and experience in a health services administration, with at least one (1) year of supervisory or administrative experience in home health care services or related health programs.

5.A.4. Job descriptions of employees. These job descriptions shall include the qualifications necessary for the position, an outline of the scope of duties, competencies, responsibilities and accountability required of employees in that position;

5.A.5. A description of the orientation programs provided for employees directly employed by the home haft care agency. This orientation information shall indicate:

a. The organization goals of the agency,

b. The review of the agency's policies and procedures;

c. Ongoing inservice programs and staff training;

d. Other community resources related to the delivery of home health care services;

e. Job duties to be performed by the employees;

f Job duties to be performed by other Home Health Care Services Provider personnel and a description of the relationship of these duties to patient/client care

g. Patient/chat care protocols; and

h. A review of the agency's written protocols for the identification and reporting of abuse, neglect, or misappropriation of client's/patient's property.

5.A.6. If the organization has an advisory or governing body a set of by-laws specifying the following will be required:

a. Membership;

b. Authority;

c. Administration's role,

d. Frequency of meetings, and

e. Recorded minutes.

The by-laws shall be adopted and updated as deemed necessary by the advisory or governing body.

5.B. Business Records

5.B.1. Business records of the Home Health Care Services Provider shall be kept and retained in a manner consistent with all applicable city, state and federal laws, ordinances and regulations with proper audit trails available. Business records, contracts, and newspaper advertisements will be retained for a minimum of five (5) years.

5.B.2. If a Home Health Care Services Provider has sub units, relevant administrative records shall be maintained for each sub unit.

5.B.3. Copies of the current licenses of all licensed health professionals employed directly or through a contractual relationship with the agency shall be maintained by the agency. Certificates verifying completion of applicable training courses for all certified nursing assistants ad home health aides employed directly or through a contractual relationship by the agency shall also be maintained by the agency.

5.B.4. The Home Health Care Services Provider shall keep a personnel file for each health care professional and paraprofessional employed or contracted which shall include, but not be limited to:

a. An application;

b. Evidence of current qualifications;

c. Evidence of orientation and inservice training;

d. Periodic evaluations.

5.C. Qualifications for Professional Personnel

The following health care professionals employed directly or through a contractual relationship with a home health care agency may provide home health care services by virtue of possession of a current license to practice their health care discipline in the State of Maine:

5.C.1. Registered professional nurses;

5.C.2. Physical therapists;

5.C.3. Speech pathologists;

5.C.4. Occupational therapists,

5.C.5. Social workers;

5.C.6. Licensed practical nurses; and

5.C.7. Dietitians.

5.D. Quality Assurance

The Home Health Care Services Provider shall establish a quality assurance program. The program will reflect ongoing objective assessment of important aspects of patient/client care and the correction of identified problems. It will consist of a clinical record review at least quarterly and an overall agency review at least annually, The results of the review/evaluation are reported to, and acted upon, by those responsible for operation of the agency.

**CHAPTER 6: QUALIFICATIONS FOR HOME HEALTH PARAPROFESSIONAL PERSONNEL**

6.A. Qualifications for Home Health Care Paraprofessional Personnel

6.A.1. Paraprofessional personnel for the purpose of these regulations, are home health aides and/or certified nursing assistants who are listed on the Maine Registry of Certified Nursing Assistants. The Home Health Care Services Provider must have proof that the home health aide and/or certified nursing assistant is on the Registry prior to hiring.

6.A.2. In addition to basic certified nursing assistant training and orientation, the home health aide and/or certified nursing assistant shall receive on-the-job instruction and at least twelve (12) hours of inservice training on an annual basis. Home Health Care Services Providers may fulfill the annual twelve (12) hour inservice training requirement on a prorated basis for the home health aide and/or certified nursing assistant's first year of employment and on a calendar year basis thereafter. Documentation of on the job instruction may be applied to the twelve (12) hours of inservice training.

6.A.3. A home health aide orientation program shall be taught by a registered professional nurse. Physicians, dietitians, physical therapists, medical social workers and other health personnel may be involved in appropriate aspects of the orientation program.

6.A.4. The home health aide orientation program shall consist of at least the following components:

a. An introductory section of the program which will define the functions and responsibilities of a home health aide as a member of the multi-disciplinary teams for a Home Health Care Services Provider.

b. Information about:

1. Nursing policies and procedures of the Home Health Care Services Provider,

2. Employment practices of the Home Health Care Services Provider,

3. The importance of developing an appropriate relationship between the Home Health Care Services Provider and the patient/client. This section shall discuss patient/client employee confidentiality and ethics issues and issues related to the medical and social needs of patients/clients being provided home haft care services.

4. Universal Precautions: The Home Health Care Services Provider shall have documentation of Universal Precautions.

6.B. Duties of Home Health Paraprofessional Personnel

Duties of home health aides and certified nursing assistants shall be assigned in accordance with the rules and regulations of the Maine State Board of Nursing, Chapter 5, Section 1.A.1., and may include, but shall not be limited, to the following:

6.B.1. Helping patient/client with bath, care of mouth, skin, hair,

6.B.2. Helping patient/client in and out of bed and assisting with ambulation;

6.B.3. Helping with health care treatment as determined in patient's/client's plan of care;

6.B.4. Preparing meals and helping patient/client with eating;

6.B.5. Helping patient/client to bathroom or with use of bedpan;

6.B.6. Performing household services which support the patient’s/client’s self-care program at home to prevent or postpone institutionalization,

6.B.7. Reporting changes in the patient's/client's condition and needs and assisting in emergency situations; and

6.B.8. Completing appropriate records and signing full name, title and date.

6.C. Paraprofessional Staff Hiring

Effective 6.C.1. Prior to hiring a certified nursing assistant or home health aide, the home

January 1, 2005 health agency must:

a. Obtain criminal history information; and

b. Verify with the Maine Registry of Certified Nursing Assistants that the individual is listed on the Registry.

Effective 6.C.2. The agency may not employ an individual who:

January 1, 2005

a. Has been found by the State Survey Agency to have abused, neglected or misappropriated the property of an individual, corporation or entity in a health care setting, and annotated on the Maine Registry of Certified Nursing Assistants; or

b. Has been convicted in a court of law of a crime involving abuse, neglect or misappropriation of the property of an individual, corporation or entity in a health care setting, or

c. Has a prior criminal conviction within the last ten (10) years of:

(1) A crime for which incarceration of three (3) years or more may be imposed under the laws of the State in which the conviction occurred; or

(2) A crime for which incarceration of less than three (3) years may be imposed under the laws of the State in which the conviction occurred involving sexual misconduct or involving abuse, neglect, or exploitation in a setting other than a health care setting.

**CHAPTER 7: SERVICES**

7.A. Physician Services

7.A.1. For those patients/clients whose reimbursement source requires physician supervision, the health care shall be under the supervision of a licensed physician who will see the patient/client as needed and shall furnish necessary medical care in case of emergency.

7.A.2. All treatment provided by physical therapists will be supervised by a physician, in accordance with the regulations of the Board of Physical Therapy, in order to be consistent with Title 32 MRSA §3002. All treatment provided by physical therapists will be provided under the orders of a licensed physician.

7.A.3. For those patients/clients whose reimbursement source requires physician orders, all treatment will be provided by appropriate health care personnel under the orders of a licensed physician.

7.A.4. All verbal orders must be signed by the physician within thirty (30) days. A facsimile order (fax) is acceptableif signed by a physician known to the staff.

7.A.5. Physicians who have significant ownership interest in, or significant financial or contractual relationship with a home health care services agency, may not establish or review a plan of care or certify or recertify the need for the home health care services.

7.B. Nursing Services

7.B.1. Nursing services will be directed by a registered professional nurse, who must have one (1) year of clinical experience and at least two (2) years of supervisory or administrative experience in home health care services.

7.B.2. Professional nursing services will be provided by a registered professional nurse who has had at least one (1) year of professional clinical nursing experience in home health care, or who has had at least one (1) year of professional nursing experience within the past three (3) years.

a. In accordance with Maine State Board of Nursing rules and regulations, duties of a registered professional nurse include, but are not limited to:

1. Making an initial evaluation visit;

2. Regularly evaluating the patient’s/client’s nursing needs;

3. Initiating and evaluating a plan of care and necessary revisions;

4. Providing those services requiring substantial and specialized nursing skills;

5. Initiating appropriate preventive and rehabilitative nursing procedures;

6. Preparing clinical and progress notes;

7. Coordinating services;

8. Informing the physician and other personnel if warranted, of changes in the patient’s/client’s condition and needs;

9. Counseling/teaching the patient/client, family and/or primary care giver in meeting nursing and related needs;

10. Participating in in-service programs;

11. Supervising and teaching other nursing personnel;

12. Assisting/teaching the patient/client family and/or significant other in learning appropriate self-care techniques.

7.B.3. Licensed practical nursing services, if available, will be provided by a licensed practical nurse who has had at least one (1) year of experience in home care or who has had at least one (1) year of practical nursing experience in the past three (3) years. Licensed practical nursing services will be provided under the supervision of a registered professional nurse.

Duties of a licensed practical nurse may include the following and must be provided in accordance with 32 MRSA, 2102(3).

1. Providing service in accordance with agency policies, under the direction of the registered professional nurse,

2. Preparing clinical and progress notes; and

3. Assisting the patient/client in learning appropriate self-care techniques.

7.C. Other Health Care Professional Services

7.C.1. Physical therapy, occupational therapy, speech pathology, or social worker services will be provided by currently licensed physical therapists occupational therapists, speech pathologists or social workers.

Therapy Services: Therapy services provided by the Home Health Care Services provider, directly or under arrangement must be given by a qualified therapist or by a qualified therapist assistant under the supervision of a qualified therapist in accordance with the plan of care.

a. Duties of a qualified therapist include, but are not limited to:

1. Making an initial evaluation visit;

2. Regularly re-evaluating the patient's/client's therapy needs,

3. Initiating a plan of care and necessary revisions;

4. Providing those services requiring substantial and specialized therapy skills;

5. Initiating appropriate preventive and rehabilitative therapeutic procedures;

6. Preparing clinical and progress notes;

7. Coordinating services,

8. Informing the physician and other personnel of the patient's/client's condition and needs,

9. Counseling/teaching the patient/client, family and/or primary care giver in meeting therapeutic and related needs;

10. Participating in in-service programs,

11. Supervising therapist assistants,

12. Teaching therapist assistants and other personnel.

7.C.2. These therapy services may be provided by Home Health Care Services Provider employees or contracted by arrangement.

7.C.3. Written Agreement The facility shall have a written agreement, or its equivalent, for services provided by contact or sub-contract. The written agreement or its equivalent shall:

a. Be dated and signed by a representative of the Home Health Care Services Provider and by the person or agency providing the service,

b. Specify each party's responsibilities, functions and objectives, during the time which services are to be provided, the financial arrangements and charges, and the duration of the written agreement or its equivalent;

c. Specify that the Home Health Care Services Provider retain a administrative responsibility for services rendered, including subcontracted services;

d. Require that services are provided in accordance with these rules and that personnel providing services meet licensing training and experience requirements and are supervised in accordance with these rules; and

e. Require the provision of written documentation to the Home Health Care Services Provider including, but not limited to, documentation of services rendered by the person or agency providing the service.

7.C.4. Documentation of these therapy services provided shall be made in accordance with Chapter 7.F. of these regulations.

7.D. Health Care Services

7.D.1. All referrals will be responded to by the Home Health Care Services Provider within twenty four (24) hours.

7.D.2. An agency that has home health care services provided by licensed practical nurses, home health aides, or certified nursing assistants shall also have a registered professional nurse assigned to the patient/client.

7.D.3. Supervision for licensed practical nurses will be consistent with Title 32 MRSA §2102, sub-§3.

7.D.4. Home health aides and certified nursing assistants will be supervised by a

Effective registered professional nurse not less than once every fourteen (24)

January 1, 2005 calendar days. A registered professional nurse shall provide direct supervision as necessary and be readily available at other times by telephone The registered professional nurse shall be constantly evaluating the certified nursing assistant and/or home health aide in terms of that individual's ability to carry out assigned duties, to relate to the patient/client, and to work effectively as a member of the health care team.

Effective The registered professional nurse shall make a supervisory visit to the

January 1, 2005 patient's/client's residence at least every thirty days (30), to observe and

assist, assess relationships determine whether goals are being met, evaluate the appropriateness of the plan of care and make changes as

Effective appropriate. Alternate supervisory visits may be accomplished by

January 1, 2005 telephone.

7.D.5. The decision to assign a home health aide or a certified nursing assistant to a particular patient/client shall be made by a registered professional nurse

Effective in accordance with the plan of care. If the patient is not receiving skilled

July 1, 2004 nursing care, but is receiving another skilled service (that is, physical therapy, occupational therapy, or speech/language pathology services), supervision of the home health aide may be provided by the appropriate therapist.

7.D.6. The Home Health Care Services Provider offering a home health aide and/or certified nursing assistant service shall provide at least one (1) registered professional nurse to be available for twenty-five (25) full-time equivalent home health aides or certified nursing assistants. In addition to their supervisory capacity, supervisors of certified nursing assistants or home health aides may also provide direct services to the same or other patients/clients. The registered professional nurse must be available the same hours during which care is being provided in the home by the health care paraprofessionals or be on call during that time for consultation and/or supervision of the health care paraprofessionals. Providers will be responsible for monitoring to determine that adequate supervision of paraprofessionals is carried out and documented.

7.D.7. The Home Health Care Services Provider must have equipment and supplies necessary to provide the services offered by the Provider.

7.D.8. The Home Health Care Services Provider must have policies and procedures relating to the assignment and supervision of students providing any services to patients/clients, if appropriate.

7.E. Plan of Care

7.E.1. All plans of care for patients/clients requiring nursing services shall be written, coordinated and completed by a registered professional nurse who has made an initial visit to the residence of the patient/client. At this initial visit, the registered professional nurse shall assess and evaluate the necessary care and/or services, required. The registered professional nurse will consult with the patient/client and/or the patient/client's family when developing the plan of care. For those patient's/client's with physician supervision, the plan of care will conform to the physician's orders.

Effective Visit ranges are permitted and may not begin with zero (0) with the

July 1, 2004 exception of PRN visit orders.

7.E.2. All plans of care for patients/clients requiring only the services of physical therapists, occupational therapists, speech pathologists or medical social workers shall be written, coordinated and completed by these licensed health care professionals who have made an initial visit to the residence of the patient/client. At this initial visit, the physical therapist, occupational therapist, speech pathologist, dietitian or medical social worker shall assess and evaluate the necessary care and/or services required. The licensed health care professional will consult with the patient/client, and/or the patient's/client's family when developing the plan of care. For those patients/clients with physician supervision the plan of care will conform to

Effective the physician's orders. Visit ranges are permitted and may not begin with

July 1, 2004 zero (0) with the exception of PRN visit orders.

7.E.3. Each patient's/client's plan of care will be initiated within three (3) business days after admission to the Home Health Care Services Provider.

7.E.4. For those patients/clients with physician supervision, no alteration of the scope and limitations of services set forth in the plan of care will be made by a contracted provider of a home health care agency without the consent of the attending physician and notification of the agency.

7.E.5. Patients/clients are accepted for treatment on the basis of a reasonable expectation that the patient's/client's medical, nursing and social needs can be met adequately by the agency in the patient's/client's place of residence.

7.F. Patient/Client Records

7.F.1. Each Home Health Care Services Provider's patient/client shall have an identifiable clinical record initiated and maintained by the Home Health Care Services Provider in accordance with accepted professional standards. Patient/client records shall contain but not be limited to:

a. Appropriate identifying information about the patient/client, household members and caretakers, medical history and current findings, psychosocial history,

b. For those patients/clients with physician supervision, evidence that the health care of the patient/client is under the supervision of a physician who sees the patient/client as needed and would furnish necessary medical care in case of emergency;

c. A care plan for the patient/client developed by a registered professional nurse or, where appropriated, the physical therapist, occupational therapist. speech pathologist, dietitian medical social worker. For those patients/clients with physician supervision, this plan of care must be signed by the patient’s/client’s physician and reviewed at least every ninety (90) days;

d. A medication list with all medications listed with start and stop dates, side effects, contraindications, dated countersignatures by patient's/client's physician, and documentation that this information has been given to the patient/client;

e. Initial and periodic assessments for those patients/clients provided nursing services by the registered professional nurse. These assessments should include documentation of the patient's/client's functional status;

f. Initial and periodic assessments for those patients/clients provided only physical therapy, occupational therapy, speech pathology, nutritional or medical social worker services. These assessments should include documentation of the patient's/client's functional status;

g. Assessments made by other members of the Home Health Care Services Provider's multidisciplinary team;

h. Signed and dated clinical notes for each contact. These notes should be written on the day of service and incorporated at least weekly into the patient's/client's clinical record,

i. Reports of all patient/client home health care conferences;

j. For those patients/clients with physician supervision, reports of contacts by the home health care agency's off with the patient's/client's physician;

k. Written summary reports containing home health care services provided, the patient's/client's status, recommendations for revision of the plan of treatment, and the need for initiation, continuation or termination of services. For those patients/clients with physician supervision, these summary reports shall be sent to the patient's/client's physician as required by reimbursement sources and/or stipulated by the patient's/client's physician. At a minimum, these summary reports shall be sent to the patient's/client's physician every ninety (90) days;

l. For those patients/clients with physician supervision written, signed, and dated confirmation of the physicians verbal orders within thirty (30) days to the agency's licensed health care professionals regarding the patient/client;

m. Where appropriate, a dated and signed discharge summary giving a brief review of service, patient/client status, reason(s) for discharge, and plans for post-discharge needs of the patient/client;

n. A copy of appropriate patient/client transfer information, if the patient/client is transferred to a health facility or other health care agency,

o. Evidence of contingency provisions made in cooperation with the patient's/client's family or significant other to provide for a continuum of care in the event of the temporary unavailability of services provided by the home health care agency;

p. Evidence that the patient/client has been provided with a summary of the Home Health Care Services Provider's policies on advanced directives;

q. Documentation showing that the patient/client has been provided with a written notice of his/her rights before initiation of treatment;

r. Documentation showing that the patient/client was informed of the toll-free number of the Home Health Care Services Hotline for any complaints against Home Health Care Services Providers (7.H.6.).

Effective s. A physician’s rubber stamp signature for clinical record

January 1, 2005 documentation is permitted if authorized by the Home Health Care Provider’s policy. A signed statement from the physician is required attesting that he/she is the only one who has the stamp and may use it. This statement must be on file and available in the administrative offices of the Home Health Care Services agency.

7.F.2. Each How Health Care Services Provider shall have a written policy on patient/client records. These records shall be retained at the agency's main business or subunit office(s) for a minimum of five (5) years or for a period of time conforming to state and federal laws beyond the last date of service provided

7.F.3. Each Home Health Care Services Provider shall have a written policy and procedure fee the security and confidentiality of patient/client records. The policies/procedures will cover the storage, use of records, removal of records, and release of patient/client information

7.G. Patient/Client Transfer and Discharge

7.G.1 Each Home Health Care Services Provider must have written criteria for the transfer, referral and/or discharge of patients/clients. At the time of transfer, referral and/or discharge, the patient/client must meet at least one of the following criteria. Criteria must, but are not limited to:

a. The patient's/client's welfare and/or medical needs cannot be met by the Home Health Care Services Provider,

b. The patient's/client's health and/or functional abilities have improved so that the patient/client no longer needs the services provided by the Home Health Care Services Provider, as ordered by the patient's/client’s physician, with agreement from all parties involved;

c. The health and safety of individuals providing services is endangered.

7.G.2. A written notice of discharge or transfer must be sent to patients/clients at least fourteen(14)days before services are terminated. A written notification of patients/clients' appeal rights must be included in this notice and must follow State and Federal requirements. The only written exceptions to this regulation are Chapter 7.G.1.b. and Chapter 7.G.1.c.

7.G.3. Each patient's/client's clinical record must contain documentation describing the criteria that necessitated the transfer, referral and/or discharge. Documentation must include, but is not limited to:

a. Signed and dated physician's orders for transfer, referral or discharge,

b. Multidisciplinary interventions that have been tried and failed to meet the patient's needs if applicable;

c. Notation of the cessation of operation of the Home Health Care Services Provider, if applicable, and

d. Incidents and/or circumstances where agency staffs' health and safety are endangered if applicable.

7.G.4. Patient/Client Rights

The patient/client has the right to be informed of his/her rights. The Home Health Care Services provider must protect and promote the exercise of these rights.

a. Notice of Rights

1. The Home Health Care Services Provider must provide the patient/client with a written notice of the patient’s/client’s rights in advance of furnishing care to the patient/client or during the initial evaluation visit before the initiation of treatment.

2. The Home Health Care Services Provider must provide the patient/client with a written notice of the toll-free number of the Long Term Care Ombudsman Program in advance of furnishing care to the patient/client or during the initial evaluation before the initiation of treatment. When the Provider accepts the patient/client for treatment or care, the Home Health Care Services Provider must advise the patient/client in writing that the purpose of the Ombudsman Program is to advocate for consumer rights and to receive complaints or questions about the home heath care services.

b. Exercise of Rights and Respect for Property and Person

1. The patient/client has the right to exercise his/her rights as a patient/client of the Home Health Care Services Provider.

2. In the case of a patient/client adjudicated incompetent under the laws of the State by a court of competent jurisdiction, the rights of the patient/client are exercised by the person appointed under State law to act on the patient's/client's behalf

3. The patient/client has the right to have his/her property treated with respect.

4. The patient/client has the right to voice grievances regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the Home Health Care Services Provider and must not be subjected to discrimination or reprisal for doing so.

5. The Home Health Care Services Provider must investigate complaints made by a patient/client or the patient's/client's family or guardian regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for the patient's/client's property by anyone furnishing services on behalf of the Home Health Care Services Provider and must document both the existence of the complaint and the resolution of the complaint.

c. Right to be Informed and to participate in planning Care and Treatment

1. The patient/client has the right to participate in the planning of the care. The Home Health Care Services Provider must advise the patient/client in advance of the right to participate in planning the care or treatment and in planning changes in the care or treatment.

a. The Home Health Care Services Provider must advise the patient/client in advance of the disciplines that will furnish care and the frequency of visits proposed to be furnished.

b. The Home Health Care, Services Provider must advise the patient/client, in advance of any change in the plan of care before the change is made.

d. Confidentiality of Medical Records

The patient/client has the right to confidentiality of their clinical records maintained by the Home Health Care Services Provider The Home Health Care Services Provider must advise the patient/client of the agency's policies and procedures regarding disclosure of clinical records.

e. Patient/Client Liability for Payment

1. The patient/client has the right to be advised, before care is initiated, of the extent to which payment for the Home Health Care Services Provided may be expected and the extent to which payment may be expected from the patient/client. Before the care is initiated, the Home Health Care Services Provider must inform. the patient/client, orally and in writing, of

a. The extent to which payment may be expected from Medicare, Medicaid or any other Federally funded program known to the Home Health care Services Provider,

b. The charges for services that will not be covered; and

c. The charges that the patient/client may have to pay.

2. The patient/client has the right to be advised orally and in writing of any changes in this section when they occur. The Home Health Care Services Provider must advise the patient/client of these changes orally and in writing as soon as possible, but no later than thirty (30) calendar days from the date that the Home Health Care Services Provider becomes aware of a change.

f Home Health Care Services Hotline

The patient/client has the right to be advised of the availability of the toll-free Home Health Care Services Hotline in the State of Maine. When the Provider accepts the patient/client for treatment or care, the Home Health Care Services Provider must advise the patient/client in writing of the telephone number of the Home Health Care Services Hotline established by the State of Maine, the hours of its operation and that the purpose of the hotline is to receive complaints or questions about home health care services.

g. Complaints

The patient/client has the right to be advised that they may file a complaint with the Division of Licensing and Certification, the Bureau of Elder and Adult Services or the Long Term Care Ombudsman Program concerning patient/client abuse, neglect and misappropriation of patient/client property and other violations of his/her rights.

7.H. Records and Review

The Department shall be afforded full access to, and the right to examine and copy, either manually or by photocopy, all records, documents and reports required to be kept under licensure regulations, at no expense to the Department.

7.I. Behavioral Services (Community Support Services)

Effective

July 1, 2004 Home Health Care Services that provide Community Support Services must

comply with the requirements in the *Mental Health Agency Licensing Standards under Community Support Service Standards* and *The Rights of Recipients of Mental Health Services Who Are Children in Need of Treatment*.

The *Mental Health Agency Licensing Standards under Community Support Services Standards* and *The Rights of Recipients of Mental Health Services Who Are Children in Need of Treatment* rules shall have the same force and effect as if fully set out herein, and full compliance with those rules shall be a condition of full licensure. Copies of *The Rights of Recipients of Mental Health Services Who are Children in Need of Treatment* regulations may be obtained from the Maine

Effective Department of Health and Human Services, formerly known as the Maine

July 1, 2004 Department of Behavioral and Developmental Services.

ADDENDUM

References

I. Statutory authority for these regulations is found under the following titles in t Maine Revised Statutes Annotated:

Title 22 Section 42

Sections 2141-2148

Section 7931 *et seq*.

2. Additional references of use are:

The Department of Health and Human Services, Bureau of Medical Services, Maine Medical Assistance Manual - Chapters 18, 19, 40 and 96.

EFFECTIVE DATE:

November 26, 1984

AMENDED:

October 14, 1990

April 1, 1991

April 1, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 5, 1996

AMENDED:

May 1, 1997

June 1, 1999 - Ch. 1 item 45, Ch. 7(F)(1)(l)

NON-SUBSTANTIVE CORRECTIONS:

March 12, 2000

AMENDED:

April 1, 2000 - Sec. 4.B. added

April 1, 2001 - Sec. 7.A.4. amended, Sec. 7.I. added

June 1, 2002 - Sec. 7.G.4.a.2 amended.

NON-SUBSTANTIVE CORRECTIONS:

March 29, 2004

AMENDED:

July 13, 2004 - filing 2004-260

January 10, 2005 - filing 2005-2