

TITLE 39
HEALTH AND SAFETY

CHAPTER 24
HOME HEALTH AGENCIES

39-2401. PURPOSE AND AUTHORITY. (1) The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the care and treatment of individuals by agencies as provided by this chapter.

(2) For the purposes of this chapter, the board of health and welfare, in consultation with provider representatives, shall have the authority to define the services necessary to the operation of an agency, and to adopt rules, regulations and standards for the licensing of an agency.

[39-2401, added 1992, ch. 56, sec. 2, p. 163.]

39-2402. DEFINITIONS. As used in this chapter:

- (1) "Board" means the board of health and welfare.
- (2) "Business entity" means a public or private organization owned or operated by one or more persons.
- (3) "Department" means the department of health and welfare.
- (4) "Health care services" mean any of the following services that are provided at the residence of an individual:
 - (a) Skilled nursing services;
 - (b) Homemaker/home health aide services;
 - (c) Physical therapy services;
 - (d) Occupational therapy services;
 - (e) Speech therapy services;
 - (f) Nutritional services;
 - (g) Respiratory therapy services;
 - (h) Medical/social services; and
 - (i) Such other related services as may be authorized by regulation of the board of health and welfare.
- (5) "Home health agency" means any business entity that primarily provides skilled nursing services by licensed nurses and at least one (1) other health care service to an individual in that individual's place of residence.
- (6) "Individual" means a natural person who is a recipient of provided health care services.
- (7) "Skilled nursing services" mean those services provided by a state licensed nurse for the purpose of promoting, maintaining, or restoring the health of an individual or to minimize the effects of injury, illness, or disability.

[39-2402, added 1992, ch. 56, sec. 2, p. 164.]

39-2403. LICENSURE REQUIRED. After January 1, 1993, no private or public agency or organization may advertise, operate, manage, conduct, open, maintain, or hold itself out to the public to be a home health agency unless licensed by the department of health and welfare. The department may grant licenses without conducting a licensure survey to medicare certified agencies or agencies currently accredited by an accrediting body recognized by the health care financing administration pursuant to rules and regulations

developed by the board prescribing the conditions under which these actions are made.

[39-2403, added 1992, ch. 56, sec. 2, p. 164.]

39-2404. APPLICATION -- ISSUANCE -- RENEWAL -- DENIAL. (1) An application for a license shall be made to the department upon forms provided by it and shall contain such information as it reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully adopted by the board of health and welfare.

(2) Upon receipt of an application for license, the department shall issue a license if the applicant meets the requirements established under this chapter. A license, unless suspended or revoked, shall be renewable each and every year upon filing by the licensee, and approval by the department, of an annual report upon such uniform dates and containing such information in such form as the board prescribes by regulation. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

(3) The department may deny any application or revoke any license when persuaded by evidence that such conditions exist as to endanger the health or safety of any patient, or which will violate the patients' bill of rights, or the home health agency does not meet requirements for licensure to the extent that it hinders its ability to provide quality services that comply with rules and regulations for home health agencies, or the home health agency has a history of repeat deficiencies. Before denial or revocation is final, the department shall provide opportunity for a hearing at which time the owner or sponsor of an agency may appear and show cause why the license should not be denied or revoked. The board shall provide by rule and regulation a procedure whereby a waiver of a specific rule, regulation or standard may be granted in the event that good cause is shown for such a waiver and providing that said waiver does not endanger the health, safety or rights of any patient. The decision to grant a waiver shall not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the department. Hearings for licensure, including denial and revocation, shall be conducted by the department pursuant to [chapter 52, title 67](#), Idaho Code, and appeal shall be as provided therein.

[39-2404, added 1992, ch. 56, sec. 2, p. 164.]

39-2405. RULES, REGULATIONS, AND ENFORCEMENT. The board of health and welfare, with the advice of the advisory board of home health providers, shall have the authority to adopt, amend, and enforce such rules, regulations and standards with respect to all home health agencies to be licensed under the provision of this chapter as are designed to further the accomplishment of the purposes of this chapter in promoting safe and adequate treatment of individuals by home health agencies in the interest of public health, safety and welfare.

Provided that nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or

patients in any home, facility or agency, conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination.

[39-2405, added 1992, ch. 56, sec. 2, p. 165.]

39-2406. INSPECTIONS AND CONSULTATIONS. The licensing agency shall make or cause to be made such inspections and investigations of home health agencies as it deems necessary, and may provide for consultations and conferences between agencies and the licensing agency.

[39-2406, added 1992, ch. 56, sec. 2, p. 165.]

39-2407. INFORMATION CONFIDENTIAL. Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such a manner as to identify individual patients of agencies, except in a proceeding involving the question of licensure. Public disclosure of information obtained by the department for the purposes of this chapter shall be governed by rules and regulations adopted by the board. Nothing in this chapter, however, shall be construed, nor shall any rule or regulation be promulgated under this section, as to impair, restrict or alter the confidentiality and privilege afforded the physician and patient communications, including without limitation, documentation thereof in records of agencies, or communications to and with nurses or other assisting persons or entities, nor shall this chapter be construed to amend by implication such physician-patient communication privilege as provided elsewhere in this code, including without limitation, section [9-203](#) (4), Idaho Code, which shall remain inviolate.

[39-2407, added 1992, ch. 56, sec. 2, p. 165.]

39-2408. INJUNCTION TO PREVENT OPERATION WITHOUT LICENSE. Notwithstanding the existence or pursuit of any other remedy, the department may in the manner provided by law maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an agency without a license required under this chapter.

The department shall be represented by the county prosecutor of the county in which the violation occurs or by the office of the attorney general.

[39-2408, added 1992, ch. 56, sec. 2, p. 166.]

39-2409. BILL OF RIGHTS. A licensee shall provide each person or designated representative with a written bill of rights which shall be in substantially the same form as the currently effective version of regulations affecting patients' rights utilized for the medicare and medicaid programs.

[34-2409, added 1992, ch. 56, sec. 2, p. 166.]

39-2410. USE OF TERMS LIMITED. No person may use any words in its corporate or business name, or advertise using such words to indicate that it is licensed under the provisions of this chapter or provides the type of ser-

vices provided by an agency licensed under the provisions of this chapter unless it is in fact licensed as a home health agency under this chapter.

[39-2410, added 1992, ch. 56, sec. 2, p. 166.]

39-2411. PERSONS, ACTIVITIES OR ENTITIES NOT SUBJECT TO REGULATION UNDER THIS CHAPTER. The following are not subject to regulation for the purposes of this chapter:

- (1) A family member;
- (2) An organization that provides only meal service in a person's residence;
- (3) Entities furnishing durable medical equipment that does not involve the delivery of professional services beyond those necessary to set up and monitor the proper functioning of the equipment and educate the user on its proper use;
- (4) A professional licensed person who independently provides services in the home;
- (5) An employee or volunteer of an agency who provides nonprofessional services only as an employee or volunteer;
- (6) Facilities and institutions including, but not limited to, nursing homes, hospitals, boarding homes, developmental disability residential programs, or other facilities and institutions, only when providing services to persons residing within the facility or institution if the delivery of the services is regulated by the state;
- (7) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;
- (8) In-home assessments by licensed professionals of an ill, disabled, or infirm person's ability to adapt to the home environment that does not result in regular ongoing care at home by that licensed professional;
- (9) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets' beliefs genuinely held by such adherents;
- (10) A medicare approved dialysis center operating a medicare approved home dialysis program;
- (11) Case management services which do not include the direct delivery of home health, hospice, or home care services;
- (12) A medicare certified hospice agency; and
- (13) A state authorized personal assistance agency or personal assistant as defined in [chapter 56, title 39](#), Idaho Code.

[39-2411, added 1992, ch. 56, sec. 2, p. 166; am. 2000, ch. 274, sec. 8, p. 808.]