

Home Health Agency Laws and Regulations

as of 9/12/03

LAWS

Health and Safety Code Division 2. Licensing Provisions Chapter 8. Home Health Agencies

1725. It is the purpose of this chapter to license home health agencies in order to protect the health and safety of the people of California. By passing a licensing act it is the intent of the Legislature to require all organizations which provide skilled nursing services to patients in the home to obtain a home health agency license. It is the further intent that the State Department of Health Services shall establish high standards of quality for home health agencies.

1726. No private or public organization, including, but not limited to, any partnership, corporation, political subdivision of the state, or other governmental agency within the state, shall provide, or arrange for the provision of, skilled nursing services in the home in this state without first obtaining a home health agency license.

In establishing a system of licensing for home health agencies, it is the purpose of the Legislature to distinguish between the functions of a home health agency and the functions of an employment agency or a licensed nurses' registry pursuant to Title 2.91 (commencing with Section 1812.500) of Part 4 of Division 3 of the Civil Code. It is not the intention of the Legislature to require that an employment agency or a licensed nurses' registry performing its functions as specified in Title 2.91 (commencing with Section 1812.500) of Part 4 of Division 3 of the Civil Code secure a home health agency license, unless it is performing the functions of a home health agency, as defined in this chapter.

It is not the intent of the Legislature to require a hospice to secure a home health agency license.

1727. (a) "Home health agency" means a private or public organization, including, but not limited to, any partnership, corporation, political subdivision of the state, or other government agency within the state, which provides, or arranges for the provision of, skilled nursing services, to persons in their temporary or permanent place of residence.

(b) "Skilled nursing services" means services provided by a registered nurse or licensed vocational nurse.

(c) "Home Health Aide" means an aide who has successfully completed a state-approved training program, is employed by a home health agency or hospice program, and provides personal care services in the patient's home.

(d) "Home health aide services" means personal care services provided under a plan of treatment prescribed by the patient's physician and surgeon who is licensed to practice medicine in the state. Home health aide services shall be provided by a person certified by the state department as a home health aide pursuant to this chapter. Services which do not involve personal care services provided under a plan of treatment prescribed by a physician and surgeon may be provided by a person who is not a certified home health aide. Home health aide services shall not include services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

1727.1. A licensed home health agency may also provide, or arrange for the provision of, other therapeutic services to persons in their temporary or permanent place of residence. Therapeutic services include, but are not limited to, physical, speech, or occupational therapy, medical social services, and home health aide services.

1727.5. Each home health agency providing home health agency services shall do all of the following:

(a) Provide for a plan of treatment for patients receiving skilled nursing services.

(b) Maintain clinical records on all patients.

(c) Provide for the supervision of licensed and unlicensed personnel by a registered nurse or physical, speech, or occupational therapist when within the therapist's scope of practice.

(d) Maintain policies regarding the delivery and supervision of patient care that are reviewed annually by a group of professional personnel including a physician and surgeon and a registered nurse and revised as needed.

(e) Meet all applicable federal, state, and local requirements.

(f) Maintain, and revise as needed, and implement policies regarding the purchase, storage, furnishing, and transportation of legend devices that are reviewed annually by a group of professional personnel, including a physician and surgeon, pharmacist, and a registered nurse. As used in this subdivision, "legend devices" means any device that bears the label "Caution: federal law restricts this device to sale by or on the order of a ____" or words of similar meaning.

(g) Meet other standards, rules, and regulations adopted by the state department in order to implement this chapter.

1727.7. (a) The Legislature finds and declares the following:

(1) Thousands of patients receive home health care each year, thus preventing, postponing, and limiting the need for unnecessary institutionalization.

(2) The adoption of emergency home health agency licensing regulations is necessary in order to conform existing home health agency licensing regulations to state law and the current scope and practice of home health care.

(3) The adoption of emergency home health agency regulations is necessary due to the increased provider and consumer demands for home care services and advances in health care technology.

(4) The adoption of emergency home health agency regulations is necessary due to the emerging influences of health care

reform and changing expectations of managed care programs and insurance providers.

(b) The director shall adopt revised home health agency licensure regulations. These revised regulations shall be adopted on an emergency basis. Until January 1, 1996, the adoption of any emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this section shall be deemed to be an emergency by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(c) It is the intent of the Legislature that the adoption of home health agency licensure regulations pursuant to this chapter shall in no way prohibit interested parties from participating in review of the revised regulations. It is also the intent of the Legislature that the adoption of the revised regulations shall in no way narrow the existing scope of practice of registered nurses or licensed vocational nurses or lessen the quality of nurse supervision or care in the home health care setting.

1728. Any person, organization, political subdivision of the state or governmental agency desiring a license under the provisions of this chapter or a hospital as defined in Section 1401 of this division which desires to establish, conduct, or maintain a home health agency shall file with the state department a verified application on a form prescribed, prepared and furnished by the state department, containing information as may be required by the state department for the proper administration and enforcement of this chapter.

1728.1. (a) To qualify for a home health agency license, the following requirements shall be met:

(1) Every applicant shall satisfy the following conditions:

(A) Be of good moral character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, all principal managing members thereof, and the person in charge of the agency for which application for license is made, shall satisfy this requirement. If the applicant is a political subdivision of the state or other governmental agency, the person in charge of the agency for which application for license is made, shall satisfy this requirement.

(B) Possess and demonstrate the ability to comply with this chapter and the rules and regulations adopted under this chapter by the state department.

(C) File his or her application pursuant to and in full compliance with this chapter.

(2) The following persons shall submit to the State Department of Health Services an application, including fingerprints, for the furnishing of the person's criminal record to the state department, at the person's expense as provided in subdivision (b), for the purpose of a criminal record review:

(A) The owner or owners of a private agency if the owners are individuals.

(B) If the owner of a private agency is a corporation, partnership, or association, any person having a 10 percent or greater interest in that corporation, partnership, or association.

(C) The administrator of a home health agency.

(b) The persons specified in paragraph (2) of subdivision (a) shall be responsible for any costs associated with rolling the fingerprint cards. The fee to cover the processing costs of the Department of Justice, not including the costs associated with rolling the fingerprint cards, shall not exceed thirty-two dollars (\$32) per card.

(c) If the criminal record review conducted pursuant to paragraph (2) of subdivision (a) discloses a conviction for a felony or any crime that evidences an unfitness to provide home health services, the application for a license shall be denied or the person shall be prohibited from providing service in the home health agency applying for a license. This subdivision shall not apply to deny a license or prohibit the provision of service if the person presents evidence satisfactory to the state department that the person has been rehabilitated and presently is of such good character as to justify the issuance of the license or the provision of service in the home health agency.

1728.2. (a) If a home health agency or an applicant for a license has not been previously licensed, the state department may only issue a provisional license to the agency as provided in this section.

(b) A provisional license to operate a home health agency shall terminate six months from the date of issuance.

(c) Within 30 days prior to the termination of a provisional license, the state department shall give the agency a full and complete inspection, and, if the agency meets all applicable requirements for licensure, a regular license shall be issued. If the home health agency does not meet the requirements for licensure but has made substantial progress towards meeting the requirements, as determined by the state department, the initial provisional license shall be renewed for six months.

(d) If the state department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the state department determines upon its inspection made within 30 days of the termination of a renewed provisional license that there is lack of full compliance with the requirements, no further license shall be issued.

(e) If an applicant for a provisional license to operate a home health agency has been denied provisional licensing by the state department, the applicant may contest the denial by filing a request for a hearing pursuant to Section 100171.

(f) The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

1728.3. Notwithstanding Sections 1728.1 and 1732, the state department may issue a provisional license to a home health agency if:

(a) The agency and the applicant for licensure substantially meet the standards specified by this chapter and regulations adopted pursuant to this chapter.

(b) No violation of this chapter or regulations adopted under this chapter exists in the agency which jeopardizes the health or safety of patients.

(c) The applicant has adopted a plan for correction of any existing violations which is satisfactory to the state department. A provisional license issued under this section shall expire not later than six months after the date of issuance, or at an earlier time as determined by the state department at the time of issuance, and may not be renewed.

The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

1728.7. (a) Notwithstanding any other provision of this chapter, the state department shall issue a license to a home health agency that applies to the state department for a home health agency license and meets all of the following requirements:

(1) Is accredited as a home health agency by either the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Community Health Accreditation Program (CHAP), and the accrediting organization forwards to the state department copies of all initial and subsequent survey and other accreditation reports or findings.

(2) Files an application with fees pursuant to this chapter.

(3) Meets any other additional licensure requirements of, or regulations adopted pursuant to, this chapter that the state department identifies, after consulting with either the JCAHO or the CHAP, as more stringent than the accreditation requirements of either JCAHO or CHAP.

(b) The state department may require a survey of an accredited home health agency to ensure the accreditation requirements are met. These surveys shall be conducted using a selective sample basis.

(c) The state department may require a survey of an accredited home health agency to investigate complaints against an accredited home health agency for substantial noncompliance, as determined by the state department, with these accreditation standards.

(d) Notwithstanding subdivisions (a), (b), and (c), the state department shall retain its full range of authority over accredited home health agencies to ensure the licensure and accreditation requirements are met. This authority shall include the entire scope of enforcement sanctions and options available for unaccredited home health agencies.

1729. Each application for a license under this chapter, except applications by political subdivisions, shall be accompanied by a fee for the headquarters or main office of the agency and for each additional branch office maintained and operated by the agency in the amount of five hundred twenty-six dollars (\$526). This fee shall be eight hundred ninety-eight dollars (\$898) commencing on July 1, 1983. If a license is denied by the state department, all but twenty-five dollars (\$25) of the fee shall be returned to the applicant.

1729.1. The fee specified in Section 1729 shall be adjusted annually in the manner specified in Section 100445. The adjustments shall be rounded off to the nearest whole dollar amount.

1730. Each license issued under this chapter shall expire 12 months from the date of its issuance. Application for renewal of license accompanied by the necessary fee shall be filed with the state department annually, not less than 10 days prior to expiration date. Failure to make a timely renewal shall result in expiration of the license.

1731. No person, public or private organization, political subdivision of the state, or other governmental agency within the state, shall continue to operate, conduct, or maintain an existing home health agency after September 30, 1966, without having applied for and obtained a license as provided in this chapter or in the case of a hospital as defined in Section 1401 of this division, having been approved by the state department to establish, conduct, or maintain a home health agency.

1732. Upon filing of the application for a license provided for in, and upon full compliance with, the provisions of this chapter and the rules and regulations promulgated under this chapter by the state department, the state department shall issue to the applicant the license applied for. However, any hospital, as defined in Section 1401 which is licensed under the provisions of Chapter 2.3 (commencing with Section 1400) is not required to obtain a license. In order for a hospital to establish, conduct, or maintain a home health agency, it shall comply with all the provisions of this chapter and be approved by the state department. The approval shall be deemed to be licensure and shall not extend past midnight on the 31st day of December of each calendar year. The fee set forth in Section 1729 shall be paid before approval is granted. Approval may be denied or withdrawn by the state department on the same grounds as provided for denial, suspension, or revocation of a home health agency license. The state department may take the same action against any approved hospital home health agency as it may against any licensed home health agency under this chapter.

1733. Every home health agency for which a license has been issued, except a facility that is certified to participate either in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, or the medicaid program under Title XIX (42 U.S.C. Sec. 1396 et seq.) of the federal Social Security Act, or both, shall be periodically inspected by a duly authorized representative of the state department no less than once a year. Reports of each such inspection shall be prepared by the representative conducting it upon forms prepared and furnished by the state department and filed with the state department. Such inspection shall be for the purpose of ensuring that the provisions of this chapter and the rules and regulations of the department are being followed. The state department is directed to ensure by such inspection that the home health agency is providing high quality care to its patients in accordance with the orders of the patient's physician.

1734. (a) The state department shall adopt, and may thereafter modify, amend, or rescind, reasonable rules and regulations to carry out the purposes of this chapter, including, the prohibition of specific conduct, determined by the state department to be inimical to the public health, morals, welfare or safety of the people of the State of California in the maintenance and operation of the home health agency for which a license is issued. In adopting, modifying, amending or rescinding the rules and regulations, the state department shall consult with, and receive recommendations from among other physicians and surgeons, pharmacists, public health nurses, and persons representing hospitals, nonprofit home health agencies, proprietary home health agencies and counties whose health department or hospital has a home health agency. The state department shall also comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The state department shall adopt rules and regulations regarding the purchase, storage, furnishing, and transportation of legend devices for a patient of a home health agency. As used in this subdivision, "legend devices" means any device that bears the label "Caution: federal law restricts this device to sale by or on the order of a ____" or words of similar meaning.

1735. The state department may deny any application for, or suspend or revoke any license issued under the provisions of this chapter upon any of the following grounds and in the manner hereinafter provided:

- (a) Violation by the licensee of any of the provisions of this chapter or of any other law of this state or of the rules and regulations promulgated under this chapter.
- (b) Aiding, abetting or permitting the commission of any illegal act.
- (c) Misrepresentation of a material fact in the application for a license.

1736. Proceedings for the denial, suspension or revocation of licenses or denial or withdrawal of approval under this chapter shall be conducted in accordance with Section 100171.

The suspension, expiration, or forfeiture by operation of law of a license issued by the state department; its suspension, forfeiture, or cancellation by order of the state department or by order of a court of law; or its surrender without the written consent of the state department, shall not deprive the state department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

1736.1. (a) An applicant for certification as a certified home health aide shall comply with each of the following requirements:

- (1) Have successfully completed a training program approved by the department pursuant to applicable federal and state regulations.
 - (2) Obtain a criminal record clearance pursuant to Section 1736.6.
- (b) Any person who violates this article is guilty of a misdemeanor and, upon a conviction thereof, shall be punished by imprisonment in the county jail for not more than 180 days, or by a fine of not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000), or by both fine and imprisonment.

1736.2. (a) Certificates issued for certified home health aides shall be renewed every two years and renewal shall be conditioned on the certificate holder obtaining a criminal record clearance pursuant to Section 1736.6.

(b) Certificates issued to certified home health aides shall expire on the certificate holder's birthday. If the certificate is renewed more than 30 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this article.

(c) To renew an unexpired certificate, the certificate holder shall, on or before the certificate expiration date, apply for renewal on a form provided by the state department and pay the renewal fee prescribed in Section 1736.3.

(d) The state department shall give written notice to a certificate holder 90 days in advance of the renewal date and 90 days in advance of the expiration of the fourth year that a renewal fee has not been paid, and shall give written notice informing the certificate holder in general terms of the provisions governing certificate renewal for certified home health aides. Nonreceipt of the renewal notice does not relieve the certificate holder of the obligation to make a timely renewal. Failure to make a timely renewal shall result in expiration of the certificate.

(e) Except as otherwise provided in this article, an expired certificate may be renewed at any time within four years after its expiration on the filing of an application for renewal on a form prescribed by the state department, and payment of the renewal fee in effect on the date the application is filed.

Renewal under this article shall be effective on the date on which the application is filed, on the date when the renewal fee is paid, or on the date on which the delinquency fee is paid, whichever occurs last. If renewed, the certificate shall continue in effect until the date provided for in this section, when it shall expire if it is not again renewed.

(f) If a certified home health aide applies for renewal more than 30 days after expiration but within four years after the expiration, and demonstrates in writing to the state department's satisfaction why the renewal application was late, then the state department shall issue a renewal, upon payment of the renewal fee. If the certified home health aide demonstrates in writing to the state department's satisfaction why he or she cannot pay the delinquency fee, then the state department on a case-by-case basis shall consider waiving the delinquency fee. A suspended certificate is subject to expiration and shall be renewed as provided in this article, but this renewal does not entitle the certificate holder, while the certificate remains suspended, and until it is reinstated, to engage in the certified activity, or in any other activity or conduct in violation of the order or judgment by which the certificate was suspended.

(g) A revoked certificate is subject to expiration as provided in this section, but it cannot be renewed. If reinstatement of the certificate is approved by the state department, the certificate holder, as a condition precedent to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the date the application for reinstatement is filed, plus the delinquency fee, if any, accrued at the time of its revocation. (h) A certificate that is not renewed within four years after its expiration cannot be renewed, restored, reissued, or reinstated except upon completion of a certification training program unless deemed otherwise by the state department if all of the following conditions are met:

- (1) No fact, circumstance, or condition exists that, if the certificate were issued, would justify its revocation or suspension.
 - (2) The person pays the application fee provided for by subdivision (a) of Section 1736.3.
 - (3) The person takes and passes any examination that may be required of an applicant for a new certificate at that time, that shall be given by an approved provider of a certification training program.
- (i) Certificate holders shall notify the state department within 60 days of any change of address. Any notice sent by the department shall be effective if mailed to the current address filed with the department.

(j) Certificate holders that have been certified as both nurse assistants pursuant to Article 9 (commencing with Section 1337) of Chapter 2 of Division 2 and home health aides pursuant to this chapter shall renew their certificates at the same time on one application.

1736.3. (a) Fees shall be submitted with home health aide training certificate renewal applications. The state department shall collect fees according to the following schedule:

- (1) The training application fee shall be fifteen dollars (\$15).
- (2) The renewal fee for certified home health aides shall be no more than twenty dollars (\$20).
- (3) The renewal fee for persons who are certified as both home health aides and nurse assistants shall be no more than

twenty dollars (\$20).

(4) The duplicate fee for lost certificates shall be five dollars (\$5).

(5) The delinquency fee for late renewals is ten dollars (\$10).

(b) The penalty for submitting insufficient funds or any fictitious check, draft, or order on any bank or depository for payment of any fee to the state department shall be ten dollars (\$10).

1736.4. (a) The state department shall investigate complaints concerning misconduct by certified home health aides and may take disciplinary action pursuant to Section 1736.5.

(b) The department shall maintain a registry that includes the certification status of all certified home health aides, including the status of any proposed or completed disciplinary actions.

(c) Home health agencies, as defined in subdivision (a) of Section 1727, and hospice providers, as defined in subdivision (b) of Section 1745, that hire certified home health aides after July 1, 1997, shall consult the state department's registry prior to hiring these individuals or placing them in direct contact with patients.

1736.5. (a) The state department shall deny a training application and deny, suspend, or revoke a certificate issued under this article if the applicant or certificate holder has been convicted of a violation or attempted violation of any of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 488, 496, 503, 518, or 666, unless any of the following apply:

(1) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of the Penal Code and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(2) The person was convicted of a misdemeanor and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(3) The certificate holder was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department, and the department has made a determination in accordance with law that the conviction does not disqualify the applicant from certification.

(b) An application or certificate shall be denied, suspended, or revoked upon conviction in another state of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in subdivision (a), unless evidence of rehabilitation comparable to the certificate of rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of subdivision (a) is provided.

(c) (1) The state department may deny an application or deny, suspend, or revoke a certificate issued under this article for any of the following:

(A) Unprofessional conduct, including, but not limited to, incompetence, gross negligence, physical, mental, or verbal abuse of patients, or misappropriation of property of patients or others.

(B) Conviction of a crime substantially related to the qualifications, functions, and duties of a home health aide, irrespective of a subsequent order under Section 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the state department determines that the applicant or certificate holder has not adequately demonstrated that he or she has been rehabilitated and will present a threat to the health, safety, or welfare of patients.

(C) Conviction for, or use of, any controlled substance as defined in Division 10 (commencing with Section 11000), or any dangerous drug, as defined in Section 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the home health aide, any other person, or the public, to the extent that this use would impair the ability to conduct, with safety to the public, the practice authorized by a certificate.

(D) Procuring a home health aide certificate by fraud, misrepresentation, or mistake.

(E) Making or giving any false statement or information in conjunction with the application for issuance of a home health aide certificate or training and examination application.

(F) Impersonating any applicant, or acting as proxy for an applicant, in any examination required under this article for the issuance of a certificate.

(G) Impersonating another home health aide, a licensed vocational nurse, or a registered nurse, or permitting or allowing another person to use a certificate for the purpose of providing nursing services.

(H) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of, this article.

(2) In determining whether or not to deny an application or deny, suspend, or revoke a certificate issued under this article pursuant to this subdivision, the department shall take into consideration the following factors as evidence of good character and rehabilitation:

(A) The nature and seriousness of the offense under consideration and its relationship to their employment duties and responsibilities.

(B) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.

(C) The time that has elapsed since the commission of the conduct or offense referred to in subparagraph (A) or (B) and the number of offenses.

(D) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person.

(E) Any rehabilitation evidence, including character references, submitted by the person.

(F) Employment history and current employer recommendations.

(G) Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition.

(H) Granting by the Governor of a full and unconditional pardon.

(I) A certificate of rehabilitation from a superior court.

(d) When the state department determines that a certificate shall be suspended, the state department shall specify the period of actual suspension. The state department may determine that the suspension shall be stayed, placing the certificate holder on probation with specified conditions for a period not to exceed two years. When the state department determines that probation is the appropriate action, the certificate holder shall be notified that in lieu of the state department proceeding with a formal action to suspend the certification and in lieu of an appeal pursuant to subdivision (g), the certificate holder may request to enter into a diversion program agreement. A diversion program agreement shall specify terms and conditions related to matters, including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs. If a certificate holder successfully completes a diversion program, no action shall be taken upon the allegations that were the basis for the diversion agreement. Upon failure of the certificate holder to comply with the terms and conditions of an agreement, the state department may proceed with a formal action to suspend or revoke the certification.

(e) A plea or verdict of guilty, or a conviction following a plea of nolo contendere, shall be deemed a conviction within the meaning of this article. The state department may deny an application or deny, suspend, or revoke a certification based on a conviction as provided in this article when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(f) Upon determination to deny an application or deny, revoke, or suspend a certificate, the state department shall notify the applicant or certificate holder in writing by certified mail of all of the following:

- (1) The reasons for the determination.
- (2) The applicant's or certificate holder's right to appeal the determination if the determination was made under subdivision (c).

(g) (1) Upon written notification that the state department has determined that an application shall be denied or a certificate shall be denied, suspended, or revoked under subdivision (c), the applicant or certificate holder may request an administrative hearing by submitting a written request to the state department within 20 business days of receipt of the written notification. Upon receipt of a written request, the state department shall hold an administrative hearing pursuant to the procedures specified in Section 100171, except where those procedures are inconsistent with this section.

(2) A hearing under this section shall be conducted by a hearing officer or administrative law judge designated by the director at a location other than the work facility convenient to the applicant or certificate holder. The hearing shall be tape recorded and a written decision shall be sent by certified mail to the applicant or certificate holder within 30 calendar days of the hearing. Except as specified in subdivision (h), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date shall be 21 business days from written notification of the department's determination to revoke or suspend.

(h) The state department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (f). If the certificate holder requests an administrative hearing pursuant to subdivision (g), the state department shall hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the certificate holder within 30 calendar days of the hearing.

(i) Upon the expiration of the term of suspension, he or she shall be reinstated by the state department and shall be entitled to resume practice unless it is established to the satisfaction of the state department that the person has practiced as a home health aide in California during the term of suspension. In this event, the state department shall revoke the person's certificate.

(j) Upon a determination to deny an application or deny, revoke, or suspend a certificate, the department shall notify the employer of the applicant or certificate holder in writing of that determination, and whether the determination is final, or whether a hearing is pending relating to this determination. If a licensee or facility is required to deny employment or terminate employment of the employee based upon notice from the state that the employee is determined to be unsuitable for employment under this section, the licensee or facility shall not incur criminal, civil, unemployment insurance, workers' compensation, or administrative liability as a result of that denial or termination.

1736.6. (a) (1) A criminal record clearance shall be conducted for all home health aides by the submission of fingerprint cards to the state department for processing at the Department of Justice. This criminal record clearance shall be completed prior to issuing or renewing a certificate. Applicants shall be responsible for any costs associated with rolling the fingerprint cards. The fee to cover the processing costs of the Department of Justice, not including the costs associated with rolling the fingerprint cards, shall not exceed thirty-two dollars (\$32) per card.

(2) (A) Upon enrollment in a training program for home health aide certification, and prior to direct contact with residents, a candidate for training shall submit a training and examination application and the fingerprint cards to the state department to receive a criminal record review through the Department of Justice. Submission of the fingerprints to the Federal Bureau of Investigation shall be at the discretion of the state department.

(B) New home health aide applicants who are unemployed and unable to pay the fee charged by the Department of Justice pursuant to paragraph (1) of subdivision (a) due to financial hardship may request a waiver for a period not to exceed six months. The request for waiver shall be made in writing at the time the fingerprint card is submitted for processing. The applicant shall agree to pay the fee within six months of employment. The failure to pay the fee within the six-month period shall result in the inactivation of the applicant's certificate until the fee is paid in full.

(b) Upon receipt of the fingerprints, the Department of Justice shall notify the state department of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the state department with a statement of that fact. If the fingerprints are illegible, the Department of Justice shall, within 15 calendar days from receipt of the fingerprints, notify the state department of that fact.

(c) The department shall respond to the applicant and employer within 30 days from the date of receipt of the fingerprint cards.

(d) A criminal record clearance, consistent with this section shall be implemented for home health aide applicants beginning July 1, 1998, and phased in for all certified home health aides by June 30, 2000.

(e) The use of fingerprint live scan technology implemented by the Department of Justice by the year 1999 shall be used by the Department of Justice to generate timely and accurate positive fingerprint identification prior to home health aide

certification.

(f) The department shall develop procedures to ensure that any licensee, direct care staff, or certificate holder for whom a criminal record has been obtained pursuant to this section or Section 1265.6 or 1338.5 shall not be required to obtain multiple criminal record clearances.

(g) If the department receives a fingerprint card from a certified home health aide 60 days prior to the expiration of the certified health aide's certification and the department has received no response from the Department of Justice, or if the department is experiencing a delay in processing the renewal of the certified home health aide's certification at the time of the expiration of the certified home health aide's certification, the department may extend the expiration of the certified home health aide's certification for 60 days. This provision shall expire August 1, 2001.

1736.7. (a) The state department may request and maintain employment information for home health aides.

(b) Within five working days of receipt of a criminal record or information from the Department of Justice pursuant to Section 1736.6, the state department shall notify the licensee and applicant of any criminal convictions.

(c) The state department shall conduct a feasibility study to assess the additional technology requirements necessary to include previous and current employment information on its registry and to make that information available to potential employers. The state department shall report to the Legislature by July 1, 2000, as to the results of the study.

1737. Any license revoked pursuant to this chapter may be reinstated pursuant to the provisions of Section 11522 of the Government Code.

1737.5. Any licensee may, with the approval of the state department, surrender his license for suspension or cancellation by the state department. Any license suspended or canceled pursuant to this section may be reinstated by the state department on receipt of an application showing compliance with the requirements of Section 1728.

1738. The provisions of this chapter do not apply to any home health agency conducted by and for the adherents of any well recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of such church or denomination.

1739. Any person who violates any of the provisions of this chapter or of the rules and regulations promulgated under this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed 180 days or by both such fine and imprisonment.

1740. The director may bring an action to enjoin the violation or threatened violation of Section 1726 in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under the provisions of this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or to show or tending to show irreparable damage or loss.

1741. Any officer, employee, or agent of the state department may enter and inspect any building, premises, record or file of a licensee at any reasonable time to secure compliance with, or to prevent a violation of, any provision of this chapter.

1742. The district attorney of every county shall, upon application by the state department or its authorized representative, institute and conduct the prosecution of any action for violation within his county or any provisions of this chapter.

REGULATIONS

Title 22. Social Security

Division 5. Licensing and Certification of Health Facilities, Home Health Agencies, Clinics, and Referral Agencies Chapter 6 Home Health Agencies

Article 1. Definitions

§74600 Home Health Agency

(a) "Home Health Agency" means a private or public organization, including but not limited to, any partnership, corporation, political subdivision of the state, or other government agency within the state, which provides, or arranges for the provision of, skilled nursing services, to persons in their temporary or permanent place of residence.

(b) "Home Health Agency" does not mean an employment agency or licensed nurses' registry pursuant to Title 2.91 (commencing with Section 1812.500) of Part 4 of Division 3 of the Civil Code. No employment agency or licensed nurses' registry shall by its name, advertisement, or any other representation, represent itself to be a home health agency.

(c) The provision of skilled nursing services in a facility in accordance with Chapter 2 or Chapter 8.6 of the Health and Safety Code shall not require a home health agency license.

(d) The provision of home health services by a person who is a physician, dentist, podiatrist, or other licensed and legally authorized practitioner within his or her scope of practice shall not require a home health agency license.

§74601 Public Agency

"Public agency" means a home health agency operated by a state or local government.

§74603 Private Agency

"Private agency" means a nonprofit agency or a proprietary agency, as defined in subsections (a) and (b) below.

(a) A "nonprofit agency" is a home health agency not operated by a state or local government and which is exempt from federal income taxation under 26 USC Section 501 (c) (3).

(b) A "proprietary agency" is a home health agency not operated by a state or local government and which is not exempt from federal income taxation under 26 USC Section 501 (c) (3).

§74605 Subdivision

"Subdivision" means a component of a health agency such as the home care department of a hospital or the nursing division of a health department which independently meets the home health agency licensing requirements of the Department.

§74607 Parent and Primary Home Health Agency

(a) "Parent home health agency" means the primary home health agency which establishes, maintains and assures administrative and supervisory control of branch offices. The service area of a parent home health agency may not extend beyond four hours surface travel time from the agency unless the agency serves a rural, scarcely populated area pursuant to Section 74663

(b) "Primary home health agency" means the agency that is responsible for the services furnished to patients and for implementation of the plan of treatment, plan of care, or plan for personal care services, where more than one home health agency provides services to a patient.

§74609 Branch Office

"Branch office" means a home health agency established and administered by a parent home health agency, providing services within a portion of the total service area served by the parent agency. Patients are accepted for service by the branch office at a separate location from the parent agency. The branch office is not required to be staffed with an administrator and a Director of Patient Care Services but must have a Nurse Supervisor available on the premises or immediately accessible by telecommunications during operating hours when patients are receiving services. The parent agency shall develop and implement a written plan for administration and supervision of a branch office. The administration at the parent agency shall be responsible for the staffing, patient census, and any issues affecting the operation of a given branch.

§74613 Administrator

"Administrator" means a person who is appointed in writing by the governing body of the home health agency to organize and direct the services and functions of the home health agency.

§74615 Audiologist

"Audiologist" means a person licensed as such by the California Board of Medical Quality Assurance.

§74617 Dentist

"Dentist" means a person licensed as a dentist by the California Board of Dental Examiners.

§74619 Department

"Department" means the State Department of Health Services.

§74621. Director.

"Director" means the Director of the State Department of Health Services.

§74623. Dietitian

"Dietitian" means a person registered or eligible for registration as such by the American Dietetic Association.

§74624. Home Health Aide

"Home health aide" means an aide who has successfully completed a training program approved by the Department of Health Services pursuant to applicable federal and state regulation, is employed by a home health agency or hospice program, provides personal care services in the patient's home, and is certified pursuant to Section 1736.1 of the Health and Safety Code.

§74625. Home Health Services

"Home health services" means those health services which are provided to a patient in a place of residence used as the patient's home.

§74627. License

"License" means the basic document issued by the Department permitting the operation of a home health agency. This document constitutes the authority to accept patients and to perform the services included within the scope of these regulations and as specified on the license.

§74629. Licensee

"Licensee" means the person, persons, firm, partnership, association, corporation, receiver, political subdivision of the State or other governmental agency to whom a license has been issued and shall include the officers, directors, partners and members thereof and other persons having or exercising responsibility or authority in the operation of the agency.

§74631. Licensed Vocational Nurse

"Licensed vocational nurse" means a person licensed as such by the California Board of Vocational Nurse and Psychiatric Technician Examiners.

§74633. Occupational Therapist

"Occupational therapist" means a person who is a graduate of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association; and is registered by the American Occupational Therapy Association.

§74635. Occupational Therapist Assistant

"Occupational therapist assistant" means a person certified as such by the American Occupational Therapy Association.

§74639. Patient

"Patient" means a person who is under observation, treatment or care for illness, disease or injury, or under care during and after a pregnancy, or a person accepted only for personal care services without a plan of treatment prescribed by a physician.

§74641. Physical Therapist

"Physical therapist" means a person licensed as such by the Physical Therapy Examining Committee of the California Board of Medical Quality Assurance.

§74643. Physical Therapist Assistant

"Physical therapist assistant" means a person who is approved as such by the Physical Therapy Examining Committee of the California Board of Medical Quality Assurance.

§74645. Physician

(a) "Physician" means a person licensed as a physician and surgeon by the California Board of Medical Quality Assurance or by the California Board of Osteopathic Examiners.

(b) Attending Physician. "Attending physician" means the physician responsible for the medical treatment of the patient.

§74647. Podiatrist

"Podiatrist" means a person licensed as a podiatrist by the California Board of Medical Quality Assurance.

§74649. Public Health Nurse

"Public health nurse" means a person licensed as a registered nurse who possesses a public health nursing certificate issued by the Department.

§74651. Registered Nurse

"Registered nurse" means a person licensed in the State of California by the Board of Registered Nursing.

§74652. Skilled Nursing Services Criteria for Licensure of Home Health Agencies

(a) For purposes of licensure as a home health agency, "skilled nursing services" means services which are provided by and within the scope of practice of a registered nurse or licensed vocational nurse. Entities providing or arranging for the provision of skilled nursing services shall obtain a home health agency license.

(b) For purposes of licensure as a home health agency, "providing or arranging for the provision of skilled nursing services" means that an entity does either one or both of the following:

(1) Employs a registered nurse or licensed vocational nurse to utilize his or her skills to promote the medical benefit of the patient in a temporary or permanent place of residence.

(2) Obtains the services of a registered nurse or licensed vocational nurse who is not an employee in order to fulfill its

contractual obligations to promote the medical benefit of the patient in the patient's temporary or permanent place of residence.

(c) For purposes of licensure as a home health agency, "providing or arranging for the provision of skilled nursing services" does not include:

(1) Any entity that utilizes qualified, licensed nursing personnel within their scope of practice to evaluate individuals only to determine their quality and/or level of care or nursing needs;

(2) Any entity that utilizes qualified, licensed nursing personnel within their scope of practice to facilitate access by referral to needed home care services (e.g., determining that an individual requires skilled nursing care, and referring the case to a licensed home health agency);

(3) Any entity that utilizes qualified, licensed nursing personnel within their scope of practice to provide only case management and/or supervision for personnel providing only personal care services (e.g., any business that only furnishes personal care or services that are not related to a patient's illness or injury).

§74653. Social Worker.

"Social worker" means a person who has a Master of Social Work degree from a school of social work accredited or approved by the Council on Social Work Education and having one year of social work experience in a health care setting.

§74655. Social Work Assistant.

"Social work assistant" means a person with a baccalaureate degree in the social sciences or related fields.

§74657. Speech Pathologist

"Speech pathologist" means a person licensed as such by the California Board of Medical Quality Assurance.

Article 2. License

§74659. License Required.

(a) No person, firm, partnership, association, corporation, receiver, political subdivision of the State or other governmental agency within the State shall establish, operate or maintain a home health agency or hold out, represent or advertise by any means that it operates a home health agency without first obtaining a license from the Department.

(b) A subdivision or department of any facility or other agency, such as a hospital, skilled nursing facility or health department may be approved to operate as a home health agency, provided a separate license is obtained. In such facilities or agencies, records shall be maintained in such a manner that activities and expenditures for services provided by the home health agency are separate and identifiable.

§74661. Application for License.

(a) Any person, firm, partnership, association, corporation, receiver, political subdivision of the State or other governmental agency desiring to obtain a license shall file with the Department an application. Applicants shall use the Department's forms: Application for Facility License HS 200 (March, 1996), Disclosure of Ownership HS 215 (March, 1996), and Administrative Organization/Organizational Structure HS 309 (September, 1995). These forms and instructions are herein incorporated by reference. The application shall contain the following:

(1) Name and address of applicant.

(A) If an individual, verification that the applicant has attained the age of 18 years.

(B) For all incorporated applicants, the date and state of incorporation, corporation number and, if a foreign corporation, evidence of authority to do business in the State of California

(2) The type of services for which approval is requested.

(3) The location of the home health agency and branch offices and basis upon which the applicant exercises control and possession thereof

(4) The name of the administrator in charge of the home health agency.

(5) The name and principal business address and the percentage of ownership interest of all officers, directors, stockholders owning 5 percent or more of stock, members, partners and all other persons having authority or responsibility for the operation of the agency and shall provide evidence that all such persons are of reputable and responsible character.

(6) Proof of sufficient financial responsibility as may be necessary to operate the agency.(7) A copy of the current organizational chart.

§74663. Special Conditions for License.

All home health agencies shall meet the requirements stated herein with the exception that upon finding by the Director that a specific area is a rural, scarcely populated area where no other licensed provider of service is available, and lack of service would constitute a hardship to the people of the area, a license may be granted to a home health agency which does not meet all of the requirements under conditions and for a period specified by the Director

§74664. Operation of a Home Health Agency Across State Lines.

Home health agencies, as defined in Section 1727 of the Health and Safety Code, that are based outside of California, and provide services across state lines in California, must have a parent office licensed in this state and meet all applicable requirements. Home health agencies crossing state lines in order to serve rural, scarcely populated areas may meet the special conditions for a license on a case-by-case basis pursuant to Section 74663.

§74665. Disclosure Clause.

The home health agency must disclose the following information to the Department at the time of the home health agency's initial request for licensure, at the time of each survey, and at the time of any change in ownership or management:

(a) The name and address of each person with an ownership or control interest of five percent or greater in the home health agency.

(b) The name and address of each person who is an officer, a director, an agent, or a managing employee of the home health agency.

(c) The name and address of the person, corporation, association, or other company that is responsible for the management of the home health agency, and the name and address of the chief executive officer and the chairman of the board of directors of the corporation, association or other company responsible for the management of the home health agency.

(d) If any person described in (a), (b), or (c) has served as or currently serves as an administrator, general partner, trustee or trust applicant, sole proprietor or any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of, or has had a beneficial ownership interest of 5 percent or more in any other home health agency, health facility, clinic, hospice, Pediatric Day Health and Respite Care Facility, Adult Day Health Care Center, or any facility licensed by the Department of Social Services, the applicant shall disclose the relationship to the Department, including the name and current or last address of the facility and the date such relationship commenced and, if applicable, the date it was terminated.

§74667. Report of Changes.

(a) Changes Requiring New Application. An application shall be submitted to the Department within 10 working days whenever a change of ownership occurs. A change of ownership shall be deemed to have occurred where, among other things, when compared with the information contained in the last approved license application of the licensee, there has occurred a transfer of 50 percent or more of the issued stock of a corporate licensee, a transfer of 50 percent or more of the assets of the licensee, a change in partners or partnership interests of 50 percent or greater in terms of capital or share of profits, or a relinquishment by the licensee of the management of the agency.

(b) Changes Requiring Written Notice. The licensee shall, within 10 days, notify the Department in writing of the following:

(1) Change of name of home health agency.

(2) Change of location and/or address of home health agency.

(3) Change in the licensing information required by subsection (a) of Section 74661.

(4) Change of the mailing address of the licensee.

(5) Change in the principal officer (chairman, president, general manager) of the governing board. Such written notice shall include the name and principal business address of each new principal officer.

(6) Change of the administrator including the name and mailing address of the administrator, the date the administrator assumed office and a brief description of qualifications and background of the administrator.

(7) Change of Director of Patient Care Services including the name and mailing address of the Director of Patient Care Services, the date the Director of Patient Care Services assumed office and a brief description of qualifications and background of the Director of Patient Care Services.

(8) Addition or deletion of services.

§74669. Fee.

(a) Each application for an initial or renewal license shall be accompanied by the prescribed fee specified by statute.

(b) Change of location of a parent or branch office and change of name shall be accompanied by a processing charge of \$25.

(c) An agency whose license renewal date occurs prior to the enrollment date of the Budget Act for that year, shall not be deemed to be operating without a license so long as the renewal application and the fee specified in the Budget Act are submitted to the Department within 20 days after the enrollment of the Budget Act.

(d) If the application is withdrawn or denied, the amount of the fee specified in Section 1729 of the Health and Safety Code shall be returned.

§74671. Issuance, Denial, Expiration and Renewal.

(a) The Department shall issue the license to the applicant upon verification of compliance with licensing requirements unless cause for denial under (b) below exists.

(b) The Department shall deny the application of any prospective licensee who:

(1) Is not in compliance with the laws and regulations pertaining to home health agencies

(2) Has had a home health agency license suspended or revoked within the previous 24 months.

(3) Has otherwise failed to establish that the premises, management, the bylaws, the equipment, the staffing, both professional and nonprofessional, and the standards of care and services are adequate and appropriate.

(c) Immediately upon the denial of any application for a license, the Department shall notify the applicant in writing. Within 20 days of the Department's notice, the applicant may present a written petition for a hearing to the Department. Upon receipt by the Department of the petition in proper form, such petition shall be set for hearing. The proceedings shall be conducted in accordance with Chapter 5 of Part I of Division 3 of Title 2 of the Government Code beginning with Section 11500.

(d) At least 45 days prior to expiration of a license the Department shall mail an application for renewal of license form to each licensee. Application for renewal accompanied by the necessary fees shall be filed with the Department not less than 30 days prior to the expiration date. Failure of the Department to mail the renewal notice does not relieve the licensee of the obligation to make timely renewal. Failure to make a timely renewal shall result in expiration of the license. (e) The licensee shall specify the types of services the home health agency is applying for approval to provide.

§74673. Transferability.

Licenses are not transferable. The licensee shall notify the Department in writing at least 30 days prior to the effective date of any change of ownership. A new application for licensure shall be submitted by the prospective new owner.

§74675. Separate Licenses.

(a) Separate licenses shall be required for each parent home health agency office. Licenses shall be posted in public view. All current branch office addresses shall be listed on the parent license.

(1) Each branch office shall receive a separate approval by the Department prior to operation and be reviewed as part of the parent agency. The approval may be based on survey of any home health agency requirements and may include on-site

inspection of the business location. At the Department's discretion, an abbreviated survey may be conducted which shall require from the home health agency, at a minimum:

(A) Submission of the written plan for administration and supervision of the branch office pursuant to Section 74609. The plan shall include the name, license number/qualifications of the nursing supervisor, and those individuals providing other branch office services approved for the home health agency license. The plan shall consist of policies and procedures consistent with criteria in the agency's Quality Management evaluation under Section 74742(c)(5).

(B) An update of disclosure information pursuant to Section 74665; and

(C) A license application form to update the address and other information for the branch office.

(2) The parent agency need not be inspected when a branch office gets a separate approval. The branch office shall post a copy of the parent office's license in public view. The branch office shall have the parent license number followed by a branch office identifier and the current branch office address to meet reporting requirements under Section 74729. The parent agency shall ensure that the Department is notified of any proposed change in the location of the branch office and must receive prior approval by the Department before the change in location. The prescribed fees specified by statute shall be paid prior to operation of a branch office.

(b) The Department may require a branch to become licensed as a parent agency when it has determined based on substantial deficiencies that the volume and complexity of services provided are such that the administration and supervision are unable to be shared daily with the parent agency.

§74677. Availability of License.

The license, or a true copy thereof, shall be conspicuously posted in a location accessible to public view in the main business area.

§74679. Voluntary Suspension of License.

(a) A licensee may request in writing that a license be put in suspense. The Department may approve the request for a period not to exceed 12 months.

(b) Any license which has been temporarily suspended by the Department pursuant to this section shall remain subject to all renewal requirements of an active license, including the payment of license renewal fees, during the period of temporary suspension.

(c) Any license suspended pursuant to this section may be reinstated by the Department within 12 months of the date of suspension, on receipt of an application and evidence showing compliance with licensing operational requirements in effect at the time of reinstatement. If license is not reinstated within the 12-month period, the license shall expire automatically and shall not be subject to reinstatement.

§74681. Voluntary Cancellation of License.

(a) Any licensee desiring to voluntarily surrender a license for cancellation shall notify the Department in writing as soon as possible.

(b) Any license voluntarily cancelled pursuant to this section may be reinstated by the Department within 12 months of the date of cancellation on receipt of an application and evidence showing compliance with licensing operational requirements.

§74683. Revocation or Involuntary Suspension of License.

(a) Pursuant to proceedings conducted under the provisions of Chapter 5 of Part I of Division 3 of Title 2 of the Government Code beginning with Section 11500, the Department may suspend or revoke the license of any agency upon any of the following grounds:

(1) Violation by the licensee of any of the provisions of Chapter 8 of Division 2 of the Health and Safety Code beginning with Section 1725 or of any of the regulations promulgated by the Department contained in Chapter 6 of Division 5 of Title 22 of the California Administrative Code.

(2) Aiding, abetting or permitting the commission of any illegal act.

(3) Misrepresentation of a material fact in the application for a license.

(4) Failure to report any changes required by Section 74661.

(5) Conduct inimical to the public health, morals, welfare or safety of the people of the State of California in the provision of services.

§74685. Pursuing Disciplinary Action to Completion

(a) The withdrawal of an application for a license after it has been filed with the Department shall not, unless the Department consents in writing to such withdrawal, deprive the Department of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground pursuant to Chapter 5 of Part I of Division 3 of Title 2 of the Government Code beginning with Section 11500.

(b) The suspension, expiration or forfeiture by operation of law of a license issued by the Department, or its suspension, forfeiture or cancellation by order of the Department or by order of a court of law, or its surrender without the written consent of the Department, shall not deprive the Department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

§74687. Reinstatement of Revoked or Suspended License.

A licensee whose license has been revoked or suspended, may petition the Department for reinstatement or reduction of the disciplinary action imposed after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition pursuant to Government Code Section 11522.

§74689. Program Flexibility.

(a) All home health agencies shall maintain compliance with the licensing requirements. These requirements do not prohibit

the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications or the conducting of pilot projects, provided such exceptions are carried out with provisions for safe and adequate care and with the prior written approval of the Department. Such approval shall provide for the terms and conditions under which the exception is granted. A written request and substantiating evidence supporting the request shall be submitted by the applicant or licensee to the Department.

(b) The Department shall approve or deny such request within 60 days of submission. Such approval shall be in writing and shall provide for the terms and conditions under which the exception is granted. A denial shall be in writing and shall specify the basis therefor.

(c) Any approval of the Department granted under this section, or a true copy thereof, shall be readily available in the agency and accessible upon request.

Article 3. Services

§74693. Preventive, Treatment and Rehabilitative Services.

(a) To the extent that services are provided and the patient's condition makes it appropriate, preventive, treatment, rehabilitative and maintenance services for patients for whom the agency accepts responsibility shall be provided by the agency or through it under arrangements with other qualified providers of service.

(b) The character and scope of advice, treatment and appliances provided by the agency shall be consistent with accepted standards of practice for the discipline involved.

(c) The professional personnel of the agency shall check that equipment, apparatus or appliances supplied by the agency for a service or furnished to a patient in the course of their treatment, are in good working order at the time of the visit.

(d) Each type of service provided by the agency for patients shall be approved by the Department and as a minimum shall:

(1) Be under the direction of a person registered, licensed or certified to provide such service if registration, licensure or certification is required, or be otherwise qualified as provided in these requirements.

(2) Have written policies and procedures and reference material readily available to guide and assist agency personnel.

(e) Services that may be provided and approved include but are not limited to the following:

(1) Diet Counseling.

(2) Home Health Aide Services.

(3) Nursing Services.

(4) Occupational Therapy.

(5) Physical Therapy.

(6) Speech Therapy.

(7) Medical Social Services.

(8) Medical Supplies and Appliances.

(f) Personnel shall be available to render rehabilitative treatment or other services prescribed for patients accepted for care by the agency.

§74695. Requirements for Acceptance of Patients.

(a) All persons accepted for service whose care requires medical orders shall be under the care of a physician, dentist, podiatrist or other licensed practitioner within his or her scope of practice.

(b) A home health agency shall only accept and retain patients for whom it can provide adequate care.

(c) Home health agencies participating in the Medicare and/or Medi-Cal program shall meet applicable federal requirements.

§74697. Plan of Treatment; Plan of Care; Plan for Personal Care Services.

(a) A written plan of treatment (or plan of care for home health agencies participating in the Medicare and/or Medi-Cal program) shall be established for each patient whose care requires medical orders. A plan of treatment or plan of care for patients requiring medical orders shall be:

(1) Approved and signed within 30 working days by the attending physician, dentist, podiatrist, or other licensed and legally authorized practitioner within his or her scope of practice.

(2) Developed in consultation with agency health professional staff.

(3) Modified and added to only with approval of the attending physician, dentist, podiatrist, or other licensed and legally authorized practitioner within his or her scope of practice.

(4) Reviewed and updated by the attending physician, dentist, podiatrist, or other licensed and legally authorized practitioner within his or her scope of practice in consultation with the agency health professional personnel as frequently as the patient's condition warrants and at least every 62 days.

(5) In compliance with applicable federal requirements for a plan of care when the home health agency participates in the Medicare and/or Medi-Cal program.

(b) The plan of treatment or plan of care for patients requiring medical orders shall include, but not be limited to, the following pertinent information:

(1) Diagnosis.

(2) Types of services and equipment required.

(3) Statement of treatment goals.

(4) Medications and treatment.

(5) Functional limitations.

(6) Mental status.

(7) Activities permitted.

(8) Nutritional requirements.

(9) Rehabilitation potential.

(10) Any safety measures required to protect against injury to the patient.

(11) Proposed frequency of services.

- (12) Discharge and referral plan.
- (13) Instructions to patient and family.
- (14) Food or drug allergies.

(c) If after the evaluation visit it is determined that the initial plan of treatment or plan of care for patients requiring medical orders does not meet the patient's needs, the attending physician, dentist, podiatrist or other licensed and legally authorized practitioner within his or her scope of practice shall be consulted to approve additions or modifications to the original plan.

(d) The professional person responsible for any specific treatment shall notify the attending physician, dentist, podiatrist or other health professionals and responsible agency staff of significant changes in the patient's condition. "Significant changes" means those changes that suggest the need to modify or develop a plan of treatment or plan of care. The agency shall develop and implement policies and procedures stating when notification is required for a significant change.

(e) All plans of treatment or plans of care and notification to the attending physician, dentist or podiatrist or other health professionals and responsible staff shall be made a part of the patient's health record.

(f) Personal care services may be provided without a plan of treatment prescribed by a physician, pursuant to a written plan for personal care services.

(g) Personal care services for home health agencies participating in the Medicare and/or Medi-Cal program shall be in compliance with applicable federal requirements.

§74701. Orders for Medication and Treatment.

(a) No medication or treatment shall be given except on signed order of a person lawfully authorized to give such order. Such order may be given by telephone and shall be signed by the patient's attending physician, dentist, podiatrist, or other licensed and legally authorized practitioner within his or her scope of practice within 30 working days.

(b) All initial orders and subsequent changes in orders for the administration of drugs shall be signed by the physician, dentist, podiatrist, or other licensed and legally authorized practitioner within his or her scope of practice and incorporated in the patient's record maintained by the agency.

(c) All other changes in orders shall be signed by the physician, dentist, podiatrist, or other licensed and legally authorized practitioner within his or her scope of practice. All telephone orders shall be received only by a licensed nurse or any other person lawfully authorized to receive such orders as appropriate to their specialty areas. Orders shall be recorded immediately in the patient's health record and shall be countersigned by the attending physician, dentist, podiatrist, or other licensed and legally authorized practitioner within his or her scope of practice.

(d) Orders for therapy services shall include the specific procedures to be used and the frequency and duration. Orders may only be within that scope of practice allowed by the licensure of the particular discipline involved.

(e) All orders shall be reviewed by the attending physician, dentist, podiatrist, or other licensed and legally authorized practitioner within his or her scope of practice at least every 62 days.

(f) Medications and treatments shall be administered as prescribed and shall be recorded in patient's health record, as administered.

§74703. Director of Patient Care Services.

(a) Patient care services provided by or arranged for by a home health agency shall be under the direction of a Director of Patient Care Services. The Director of Patient Care Services shall have overall responsibility for coordination of patient care services and shall be responsible for all activities relevant to the patient care services furnished including the development of personnel qualifications and the assignment of personnel. The Director of Patient Care Services or his or her registered nurse designee shall be available on the premises or immediately accessible by telecommunications during operating hours when patients are receiving services. The Director of Patient Care Services shall devote a sufficient number of hours to assure the quality and adequacy of services provided and supervision of staff.

(b) The Director of Patient Care Services shall qualify for the position by fulfilling the requirements under one of the following categories, unless the individual has been previously approved for such employment by a program flexibility issued for the individual's current position at the home health agency prior to April 1, 1995:

(1) A registered nurse with a baccalaureate or higher degree in nursing or other health related field with three years of experience within the last five years in a home health agency, primary care clinic or health facility, at least one year of which was in a supervisory or administrative capacity; or

(2) A registered nurse with four years experience within the last five years in a home health agency, primary care clinic or health facility, at least one year of which was in a supervisory or administrative capacity.

(c) The Director of Patient Care Services shall have sufficient background knowledge and expertise in clinical decision-making for the patient population of the home health agency to meet the needs of his or her patients, and to contribute to Quality Management review and evaluation.

§74705. Nurse Supervisor.

(a) A Nurse supervisor or his or her registered nurse designee shall be available on the premises or immediately accessible by telecommunications during operating hours when patients are receiving services.

(b) A nurse supervisor shall be a registered nurse with two years experience within the last five years in a home health agency, primary care clinic, or health facility, unless the individual has been previously approved for such employment by a program flexibility issued for the individual's current position at the home health agency prior to April 1, 1995.

(c) A nurse supervisor shall have sufficient background knowledge and expertise in clinical decision-making for the patient population assigned to him or her in the home health agency to meet the needs of his or her patients and to contribute to Quality Management review and evaluation.

§74707. Skilled Nursing Services.

(a) The responsibilities of registered nurse staff shall include, but not be limited to, the following duties:

(1) Provide those services requiring nursing skills in accordance with the plan of treatment or the plan of care.

(2) Provide the initial nursing assessment prior to the provision of care, provide the ongoing periodic assessment of the

patient and initiate preventative and rehabilitative nursing procedures.

(3) Notify the patient's attending physician, dentist, or podiatrist and other professional persons and responsible staff of significant changes in the patient's condition pursuant to Section 74697(d).

(4) Assist in coordinating all services provided.

(5) Prepare documentation and clinical notes.

(6) Educate and instruct the patient, patient's family, or staff as required. For licensed vocational nurses, this is limited to teaching patient information which is outlined in and consistent with the Licensed Vocational Nurse Practice Act.

(b) The responsibilities of licensed vocational nursing staff shall not include (a)(2) and (a)(4) of this section, but may include all other responsibilities identified in subsection (a).

(c) A registered nurse shall perform duties consistent with the Nursing Practice Act including the Standards of Competent Performance, Title 16, Chapter 14, Section 1443.5 of the California Code of Regulations. A registered nurse shall meet qualifications established by the home health agency for the services provided and any additional qualifications required by home health agency licensure regulations. Effective January 1, 1998, registered nurses providing services in a patient's temporary or permanent place of residence through a home health agency shall have one year prior professional nursing experience.

(d) A licensed vocational nurse shall perform duties consistent with the Vocational Nursing Practice Act. A licensed vocational nurse shall meet qualifications established by the home health agency for the services provided and any additional qualifications required by home health agency licensure regulations. Effective January 1, 1998, licensed vocational nurses providing services in a patient's temporary or permanent place of residence through a home health agency shall have one year prior professional nursing experience.

(e) The home health agency shall provide the services of registered nurses and licensed vocational nurses in sufficient quality and quantity to meet the needs of the patients accepted for care. The services of registered nurses and licensed vocational nurses shall be reviewed pursuant to the Quality Management requirements of Section 74742(b)(2).

§74709. Home Health Aide/Personal Care Services Supervision.

(a) When an agency provides or arranges for home health aide services for a patient in conjunction with skilled nursing services, the services shall be given in accordance with a written plan of treatment or plan of care and the case shall be supervised by a registered nurse.

(1) If the patient receives skilled nursing care, the registered nurse shall perform the supervisory visit described in (a)(2) of this section, unless the registered nurse, in the exercise of professional judgment, delegates this task to a licensed vocational nurse. The registered nurse shall provide the initial assessment of the patient and the care environment. If the patient is not receiving skilled nursing care, but is receiving another skilled service (e.g. physical therapy, occupational therapy, or speech-pathology services), the initial assessment or evaluation and supervision may be provided by the appropriate therapist, when within his or her scope of practice. The supervisor nurse shall be responsible for:

(A) Assigning home health aides to a case in accordance with the plan of treatment or plan of care as required in subsection (a).

(B) Providing written instructions for patient care.

(2) If the patient receives skilled care, the registered nurse (or another professional described in paragraph (a)(1) of this section) shall make an on-site visit to the patient's home no less frequently than every two weeks. The home health agency shall develop and implement policies and procedures for those circumstances when the home health agency requires on-site supervisory visits to be conducted jointly with the home health aide present (e.g. when joint visits are part of a performance evaluation).

(A) When a licensed vocational nurse is delegated supervision of home health aide services that are provided in conjunction with skilled nursing services, a registered nurse shall make the on-site supervisory visit to the patient's home at least every three months, to observe the patient and patient care environment.

(3) If the home health aide/personal care services are provided to a patient who is not receiving skilled nursing care, physical or occupational therapy or speech-language pathology services, the registered nurse or, when delegated, the licensed vocational nurse, shall make a supervisory visit to the patient's home no less frequently than every 62 days. Regular supervisory visits shall occur while the home health aide is providing patient care and shall include verification that the plan of treatment, plan of care, or plan for personal care services is being followed appropriately.

(A) When a licensed vocational nurse is delegated supervision of home health aide/personal care services (when the patient is only receiving these services), the registered nurse shall at least alternate on-site supervisory visits to the patient's home with the licensed vocational nurse, to observe the patient and the patient care environment.

(4) If home health aide/personal care services are provided by an individual who is not an employee of the primary home health agency, the primary home health agency shall be responsible for the overall quality of care provided by the aide, and provide for supervision of the aide, including referral of any concerns to the appropriate agency or organization when care problems are observed.

(b) When a licensed vocational nurse is delegated supervision of home health aide/personal care services, a registered nurse shall retain responsibility for supervision of licensed and unlicensed personnel providing such services.

(c) Registered nurses who are assigned to supervise the case when a licensed vocational nurse has been delegated supervision of home health aide patient care, or registered nurses who supervise home health aide care, may also be assigned to provide direct services for agency patients.

(d) Nothing in this section shall be construed as permitting a physical therapy aide, as defined in Title 16, Section 1399, California Code of Regulations, to perform the functions of a home health aide, unless the physical therapy aide meets the definition of a home health aide. Physical therapy aides who are not certified as home health aides may not substitute for home health aides when home health aides are required by a plan of treatment or plan of care. Nothing in this section shall require a physical therapist to supervise home health aides in the same manner as physical therapy aides. Home health aide services shall comply with applicable state law.

(e) Home health agencies participating in the Medicare and or Medi-Cal program shall meet applicable federal requirements.

§74710. Personal Care/Home Health Aide Services.

- (a) Personal care/home health aide services may include, but not be limited to, the following duties:
- (1) Assisting patients with personal hygiene such as skin, mouth, hair care and bathing.
 - (2) Assisting patients in and out of bed and assisting with ambulation.
 - (3) Assisting with prescribed exercises which patients and aides have been taught by appropriate health personnel.
 - (4) Preparing meals, including therapeutic diets, and assisting patients with eating.
 - (5) Assisting patients to the bathroom or in using commodes, bedpans or urinals.
 - (6) Performing household services which will facilitate the patient's self-care at home and are necessary to prevent or postpone institutionalization.
 - (7) Assisting patients with medications which are ordinarily self administered. The home health aide shall not administer medications of any kind.
 - (8) Performing other activities taught by a health professional for a specific patient. These may include such services as changing colostomy bags, changing of non-sterile dressings, taking of vital signs, and non-sterile bowel and bladder hygiene care.
 - (9) Reporting changes in the patient's condition and needs to the supervising nurse or therapist.
 - (10) Completing records regarding services performed.
- (b) The aide shall demonstrate competency in any service the aide is to perform prior to providing patient care.
- (c) Personal care services which are not provided under a plan of treatment prescribed a physician may be provided by a person who is not a certified home health aide.
- (d) Home health agencies participating in the Medicare and/or Medi-Cal program shall meet applicable federal requirements.

§74711. Therapy Services

- (a) Physical therapy, occupational therapy and speech therapy services offered by the agency directly or under arrangement shall be given by or under the supervision of a qualified therapist in accordance with a plan of treatment.
- (b) The qualified therapist duties include:
- (1) Providing treatment as ordered by the attending physician, dentist or podiatrist.
 - (2) Assisting the physician in evaluating level of function.
 - (3) Assisting in developing and updating the plan of treatment.
 - (4) Observing, recording and reporting information on the patient's condition to the attending physician and in the patient's health record.
 - (5) Advising, consulting and, when appropriate, instructing family and other agency personnel, in patient's therapy program.
 - (6) Teaching and supervising other health personnel when appropriate.
 - (7) Evaluating the home environment and making appropriate recommendation.
 - (8) Participating in in-service education programs.
- (c) When services cannot readily be made available to the individual in the place of residence, the home health agency may provide those therapy services in a location other than the patient's place of residence.

§74713. Medical Social Services

- (a) Medical social services shall be provided by a social worker or by a social work assistant under the supervision of a social worker and in accordance with a plan of treatment.
- (b) The social worker or the social work assistant's duties include:
- (1) Assisting the physician and other team members in understanding the significant social and emotional factors related to the health problems.
 - (2) Participating in the development of the plan of treatment.
 - (3) Observing, recording and reporting information on the patient's condition to the attending physician and in the patient's health record.
 - (4) Advising, counseling and when appropriate instructing family in patient's social needs.
 - (5) Utilizing appropriate community resources.
 - (6) Participating in discharge planning.
 - (7) Participating in in-service education programs. Participation will be carried out by the social worker.

§74715. Diet Counseling Services.

- (a) When an agency provides or arranges for diet counseling services, these services shall be given in accordance with the plan of treatment, and by or under the supervision of a dietitian.
- (b) Diet counseling personnel duties include:
- (1) Assisting the physician and other agency personnel in evaluating the dietary needs of the patient.
 - (2) Assisting the patient and family to understand, accept and follow dietary modifications ordered by the physician.
 - (3) Observing, recording and reporting to the physician and the nurse supervisor the patient's reaction to dietary treatment and any related changes in the patient's condition.
 - (4) Instructing, supervising or counseling other members of the health care team including, when appropriate, home health aides and family members regarding the dietary care of the patient.
 - (5) Participating in in-service education program.

Article 4. Administration

§74717. Governing Body

- (a) Each home health agency shall have a governing body. The governing body shall assume full legal authority and responsibility for the operation of the agency. The governing body shall:
- (1) Appoint a qualified administrator.

- (2) Assume responsibility for the management and fiscal affairs of the agency.
- (3) Ensure that the agency does not refuse service to or employment to or in any way discriminate against any person because of race, color, or national origin.

§74718. Administrator.

- (a) The administrator shall:
 - (1) Organize and direct the ongoing functions of the agency.
 - (2) Maintain ongoing liaison between the governing body and staff.
 - (3) Be responsible for ongoing oversight of the agency's quality management system.
 - (4) Employ qualified personnel and ensure adequate staff education and evaluation.
 - (5) Ensure the accuracy of public information materials and activities including advertisements and brochures that the agency uses to represent itself to the community-at-large.
 - (6) Implement an effective budgeting and accounting system.
- (b) A supervising physician or Director of Patient Care Services may also be the administrator. An administrator who is neither a physician or a registered nurse shall have training and experience in health service administration and at least one year of supervisory experience in home health care or health related programs.
- (c) The administrator shall have a similarly qualified designee available in the administrator's absence.
- (d) The administrator may have responsibilities over more than one parent agency provided that the administrator can demonstrate the adequacy of administrative and nursing supervision over each parent agency through ongoing Quality Management review.

§74719. Services Arranged by Agreement

- (a) When any service offered by the agency is not provided by employees, there shall be a written agreement meeting the requirements of this section.
- (b) The agreement shall include at least the following:
 - (1) The nature and scope of the services to be provided;
 - (2) The rights and responsibilities of the agency or individual providing services and of the contracting agency in the coordination, supervision, and evaluation of the care or services provided;
 - (3) The role, if any, of the agency and the contracted individual or agency in:
 - (A) The patient admission process,
 - (B) Patient assessment,
 - (C) The development, review, and revision of the plan of treatment or plan of care,
 - (D) Patient care conferences,
 - (E) The scheduling of visits or hours,
 - (F) Discharge planning;
 - (4) The submission to the agency of documentation of services provided;
 - (5) The responsibility of the contracted individual or agency to adhere to applicable agency policies, including personnel qualifications;
 - (6) The procedures for determining charges and reimbursement; and
 - (7) The term of the agreement and the conditions for its renewal or termination.
- (c) Agreements shall be reviewed and revised as necessary.

§74721. Written Administrative Policies.

- (a) Administrative policies shall be established and implemented by the agency.
- (b) These policies and procedures shall be reviewed and revised as necessary. The policies and procedures shall be made available upon request to patients or their representatives and to Department representatives.
- (c) These policies and procedures shall include, but not be limited to:
 - (1) A plan to handle medical emergencies.
 - (2) A statement that patients will be accepted for treatment or care on the basis of reasonable expectation that the patient's needs can be met by the agency.
 - (3) Reasons for termination of services.
 - (4) Policies designed to prevent, identify, and control infections.
 - (5) Clinical program policies.
 - (6) Provisions for a quality management program.
 - (7) Written personnel policies which shall include qualifications, responsibilities, and conditions of employment for each type of personnel. Such policies shall be available to all personnel.
 - (8) An emergency preparedness plan designed to provide continuing care/service in the event of an emergency that would result in the interruption of patient care services.

§74723. Employee's Health Examinations and Health Records

- (a) All agencies shall require health assessments and maintain health records for employees with direct patient contact.
- (b) A written health assessment of each employee who has direct patient contact shall:
 - (1) Be required as a prerequisite of employment.
 - (2) Be performed within six months prior to employment or within 15 days of assuming employment with the agency.
 - (3) Be performed and evaluated by a licensed and legally authorized practitioner within his or her scope of practice.
- (c) The written health assessment report shall:
 - (1) Be signed by the person who performed the assessment.
 - (2) Verify that the employee is free from health conditions which would interfere with the employee's ability to perform assigned duties.
 - (3) Contain verification that the employee is free from signs or symptoms of infectious disease.

(4) Provide for a tuberculosis screening which shall be administered to all new employees who have direct patient contact and annually thereafter using the 5 TU (Tuberculin Units) Protein Purified Derivative (PPD) tuberculin skin test.

(A) The test shall be administered by a licensed health care professional who is specifically trained for the procedure.

(B) Employees who present evidence of a previous positive tuberculin skin test or that he or she has previously been treated for tuberculosis infection or disease shall be excluded from the tuberculin testing program.

(d) An employee shall not be required to undergo the annual tuberculosis screening requirements of (c)(4) if the local health officer certifies in writing that less frequent testing may be conducted, and the rationale for less frequent testing is in accordance with applicable federal, state, and local requirements and established professional standards.

(e) All agencies shall implement a written policy regarding employees who develop or sustain symptoms of infectious diseases to determine when employees shall be removed from contact with patients.

(f) A health record for each employee who has direct patient contact shall:

(1) Be maintained by the agency.

(2) Include the records and pertinent documentation of health examinations.

(3) Be stored in such a manner as to be protected from loss, destruction or unauthorized disclosure or use.

(4) Be retained for a minimum of three years following termination of employment.

§74725. Reporting of Communicable Disease

All cases of reportable diseases shall be reported to the local health officer in accordance with Section 2500, Article 1, Subchapter 1, Title 17, California Administrative Code.

§74727. Reporting of Outbreaks.

All cases of any outbreak or undue prevalence of infections or parasitic disease or infestation shall be reported to the local health officer in accordance with Section 2502, Article 1, Subchapter 4, Title 17, California Administrative Code.

§74729. Annual Reports.

Each agency on or before the 15th day of March of each year shall file with the Department, upon forms furnished by the Department, a verified report for the preceding calendar year upon all matters requested by the Department. This report may include data pertaining to age of patients, diagnostic categories of patients and classification of visits by service provided.

§74731. Patients' Health Records Availability

(a) Each patient health record, either original or an accurate reproduction, shall be:

(1) Permanent, either typewritten or legibly written in ink, and be capable of being photocopied.

(2) Current and kept in sufficient detail to identify the patient's health status for health care providers.

(3) Be readily available for review upon request of the attending physician or other prescriber; any authorized employee, agent or officer of the agency; authorized representatives of the Department; or any other person authorized by law to make such a request.

(b) The agency shall safeguard the information in the record against loss, defacement, tampering or use by unauthorized persons.

(c) All health records of discharged patients shall be completed within 30 days after their discharge date.

(d) Health records of each discharged adult patient shall be kept for a minimum of seven years following discharge of the patient. The health record of a discharged minor shall be kept for at least one year after the minor has reached the age of 18 years and in all cases not less than seven years.

(e) The Department shall be informed immediately, in writing, whenever patient health records are defaced or destroyed before termination of the required retention period.

(f) If any agency ceases operation, the agency shall make arrangements to transfer the records to the new agency or make other arrangements for the safe preservation of the records. The Department shall be notified in writing of the location of the records.

(g) If the ownership of the agency changes, both the licensee and the applicant for the new license shall, prior to the change in ownership, provide the Department with written documentation that:

(1) The new licensee will have custody of the patient's health records upon transfer of the agency and the health records are available to both the new and former licensee and other authorized persons; or

(2) Other arrangements have been made for the safe preservation of patients' health records, and that the health records are available as set forth within this regulation.

(h) If the agency stores records in an off-site location, the following requirements shall apply:

(1) Timely accessibility of stored records on a 24 hour basis, seven days a week.

(2) Records are organized and systematically maintained.

(3) Protection of the clinical records from loss, destruction or unauthorized use.

(4) A current written agreement with the storage facility.

(5) Policies and procedures which address the retention, retrieval and security for off-site centralized storage of inactive patient records.

(i) If the agency utilizes computerized patient records, policies and procedures shall be established and implemented which address data security, privacy, and confidentiality in conformance with state law.

(1) The agency shall protect patients from unnecessary intrusion into their private lives by safeguarding the health information entrusted to them.

(2) The agency shall assure conformance with current acceptable professional standards and follow state laws that may be more prescriptive.

§74735. Patient Health Records

(a) The agency shall establish and maintain for each patient accepted for care a health record which shall include the following information:

- (1) Admission record. The admission record shall include:
 - (A) Name.
 - (B) Current address.
 - (C) Date of birth.
 - (D) Sex.
 - (E) Date of admission.
 - (F) Name, address and telephone number of the responsible party.
 - (G) Name, address, and telephone number of the attending physician, dentist, podiatrist, or other licensed and legally authorized person whose orders or recommendations are being implemented by the home health agency.
 - (H) Admission diagnosis or pertinent health information.
 - (I) Reason for admission.
- (2) Notation of the conditions and diagnoses which are relevant to the plan of treatment, plan of care, or plan for personal care services.
- (3) Plan of treatment, plan of care, or plan for personal care services in its entirety as specified in Section 74697.
- (4) Allergies and known untoward reactions to drugs and food. This information shall be given such prominence in the record that it is obvious to any health practitioner or agency personnel who have reasons to provide food or medication to the patient.
- (5) Clinical notes dictated or written at the time of service by personnel rendering the services. Clinical notes shall be signed and incorporated into the patient's health record at least every seven working days.
- (6) Laboratory and X-ray reports, if applicable.
- (7) Treatment consent or service authorization forms.
- (8) Documentation that a list of patient rights has been made available to each patient, patient's representative, or next of kin.
- (9) Discharge statement. The discharge statement shall include the date of discharge, reason for termination of services, and condition upon discharge.

§74742. Quality Management

- (a) Each agency shall have a system of reviewing and evaluating the appropriateness and effectiveness of patient services and the correction of deficiencies. At a minimum, the quality management system shall consist of a semi-annual review of a stratified sample of patient clinical records and an annual review of overall agency functioning. The sample of clinical records shall be representative of the diagnoses of patients treated and services provided.
- (b) The review of a patient's clinical records shall be based on a sample of five percent of the total patient census with a minimum of twenty records and a maximum of 100 records every six months. The review of the clinical record sample shall be:
 - (1) Both concurrent and retrospective.
 - (2) Performed against preset criteria of practice for each discipline providing care. Criteria of practice shall include:
 - (A) Appropriateness of the level of care provided to protect the health and safety of patients.
 - (B) Timeliness of the provision of care.
 - (C) Adequacy of the care to meet patients' needs.
 - (D) Appropriateness of the specific services provided.
 - (E) Compliance with the standards of practice for patient care.
 - (F) Accessibility to care.
 - (G) Continuity of care.
 - (H) Privacy and confidentiality of care.
 - (I) Safety of care environment.
 - (J) Participation in care by patient and family.
 - (3) Performed by a qualified health professional of equivalent or higher level of training than the care provider.
 - (4) Documented and maintained on file.
- (c) There shall be an organized, effective and documented evaluation of overall agency functioning at least annually. This evaluation shall include but need not be limited to the evaluation of:
 - (1) Administrative policies and procedures.
 - (2) Personnel policies.
 - (3) Infection control program.
 - (4) Clinical program policies.
 - (5) The adequacy of management and supervision, either on-site or by telecommunications, of support, paraprofessional, and professional personnel based at a minimum on the following considerations:
 - (A) The total patient census.
 - (B) The numbers, qualifications, experience and current competence of the individuals providing each service.
 - (C) The level of care/service required.
 - (D) Service areas covered by the home health agency including personnel supervised out of branch offices.
 - (E) The numbers and types of visits conducted.
 - (F) The primary condition/diagnosis of patients.
 - (G) Services provided which require specialized training.
 - (H) Dissatisfaction expressed by patients regarding the supervision of services.
- (d) The evaluation shall be undertaken by a group which shall include the administrator, the Director of Patient Care Services, another licensed health care professional employed by the agency, and at least one physician. Results shall be documented and a plan developed, implemented, and documented for correcting deficiencies within specified time frames.

§74743. Patient Rights

The patient has the right to be informed of his or her rights. The home health agency must protect and promote the exercise of these rights.

(a) Notice of rights.

(1) The home health agency must provide the patient with a written notice of the patient's rights in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of treatment.

(2) The home health agency must maintain documentation showing that it has complied with the requirements of this section.

(b) Exercise of rights and respect for property and person:

(1) The patient has the right to exercise his or her rights as a patient of the home health agency.

(2) If the patient lacks the ability to understand these rights and the nature and consequences of proposed treatment, the patient's representative shall have the rights specified in this section to the extent the right may devolve to another, unless the representative's authority is otherwise limited. The patient's incapacity shall be determined by the court in accordance with state law or by the patient's physician unless the physician's determination is disputed by the patient or patient's representative.

(3) The patient has a right to have his or her property treated with respect.

(4) The patient 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 agency and must not be subjected to discrimination or reprisal for doing so.

(5) The home health agency shall investigate complaints made by a patient or the patient'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 property by anyone furnishing services on behalf of the home health agency, 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 has the right to be informed, in advance about the care to be furnished, and of any changes in the care to be furnished.

(A) The home health agency shall advise the patient in advance of the disciplines that will furnish care, and the frequency of visits proposed to be furnished.

(B) The home health agency shall advise the patient in advance of any change in the plan of treatment or plan of care, or plan for personal care services, before the change is made.

(2) The patient has the right to participate in the planning of the care.

(A) The home health agency must advise the patient in advance of the right to participate in planning the care or treatment and in planning changes in the care or treatment.

(B) The home health agency shall maintain written policies and procedures regarding advance directives. The home health agency must distribute written information to the patient, in advance, concerning its policies on advance directives, including a description of applicable state law.

(d) Confidentiality of medical records.

(1) The patient has the right to confidentiality of the clinical records maintained by the home health agency.

(2) The home health agency must advise the patient of the agency's policies and procedures regarding disclosure of clinical records.

(e) Patient liability for payment.

(1) The patient has a right to be advised, before care is being initiated, of the extent to which payment for the home health agency services may be expected from Medicare or other sources, and the extent to which payment may be required from the patient.

(2) Before the care is initiated, the home health agency must inform the patient, orally and in writing, of:

(A) the extent to which payment may be expected from Medicare, Medicaid, or any other federally funded or aided program known to the home health agency;

(B) The charges for services that will not be covered by Medicare; and

(C) The charges that the individual may have to pay.

(f) The patient has the right to be advised orally and in writing of any changes in the information provided in accordance with paragraph (e)(1) of this section when they occur. The home health agency must advise the patient of these changes orally and in writing as soon as possible, but no later than 30 calendar days from the date that the home health becomes aware of the change.

(g) Home health hotline:

The patient has the right to be advised of the availability of the applicable toll-free home health agency hotline in the state. When the agency accepts the patient for treatment or care, the home health agency must advise the patient in writing of the telephone number of the home health hotline established by the state licensing and certification district office, the hours of its operation, and that the purpose of the hotline is to receive complaints or questions about local home health agencies.

§74744. Plans of Correction

(a) The home health agency shall be responsible for submitting a written plan of correction on HCFA form 2567 (09-92) furnished by the Department, whenever the Department issues a statement of deficiencies to the home health agency. This form is herein incorporated by reference.

(b) The plan of correction shall be developed by the home health agency for each deficiency, and the written plan of correction shall be provided to the Department within 10 calendar days of receipt of written deficiencies from the Department by the home health agency.

(c) The plan of correction must contain the following basic elements.

(1) How the correction will be accomplished.

(2) The title or position of the person responsible for the correction.

(3) Plan of continued compliance and description of the monitoring process to prevent recurrence of the deficiency.

(4) The date the correction will be accomplished.

(d) The administrator or licensee shall follow procedures specified by the department if there is a disagreement with a written deficiency.

Article 5. Qualifications for Home Health Aide Certification

§74745. Home Health Aide Certification.

- (a) Home health aides shall be certified by the Department. To qualify for certification the following shall be met:
- (1) Completion of a Department approved training program as outlined in Section 74747 or its equivalent.
 - (2) Submission by the home health agency to the Department of satisfactory evidence of completion of an equivalent home health aide training program on forms furnished by the Department. The Department may certify the home health aide as meeting the equivalent training requirement and shall maintain records on the aides certified through this method.

§74747. Home Health Aide Training.

- (a) The basic training program for certification shall be a minimum of 120 hours and consist of at least the following:
- (1) Introduction (4 hours).
 - (A) Definition, functions and responsibilities of a home health aide as a member of the health service team in a home health agency.
 - (B) Interpretation of the importance of understanding the employing agency's policies, including:
 1. Employment practices.
 2. Nursing policies and procedures.
 3. Supervision.
 4. Ethics and confidentiality.
 - (2) Interpretation of medical and social needs of people being served (20 hours).
 - (A) Basic simple description, in lay terms, of disease and its effects on the individual and the family.
 - (B) Personal adjustment of the individual and his family to illness and disability.
 - (3) Personal care services (70 hours). Personal care services include those supportive services which are required to help provide and maintain normal bodily and emotional comfort and to assist the patient toward independent living in a safe environment including at least:
 - (A) Assisting patients with personal hygiene.
 - (B) Assisting patient in self-care activities:
 1. Bathing--tub, shower, bed.
 2. Dressing and undressing.
 3. Feeding.
 - (C) Assisting with mobility.
 1. Getting in and out of bed, chair, wheelchair, toilet.
 2. Walking with or without devices.
 3. Assisting with exercises as ordered.
 4. Positioning.
 - (4) Cleaning and care tasks in the home (10 hours) which includes at least:
 - (A) Home safety measures.
 - (B) Economical cleaning materials and method of use.
 - (C) Maintenance of cleanliness where dishes and food are stored.
 - (D) Principles of general cleanliness of environment.
 - (E) Handling of laundry.
 - (5) Nutrition (16 hours) which includes at least:
 - (A) Basic principles of diet.
 - (B) Meal planning and serving.
 - (C) Food purchasing.
 - (D) Food preparation, sanitation and storage.
- (b) There shall be a minimum of 20 hours of clinical experience of which 15 hours are in personal services, 2 hours are in cleaning and care tasks and 3 hours are in nutrition.
- (c) There shall be no more than 75 hours of classroom lecture.
- (d) Training in personal care services shall be given by a registered nurse, preferably a public health nurse. Nutritionists, physical therapists, social workers and other health personnel may be involved in appropriate aspects of the training program.
- (e) Personal care services training may be given at an acute hospital but the emphasis of the program must be on home care.

§74749. Issuance, Denial, Revocation or Suspension of Home Health Aide Certificate

- (a) The Department shall issue a home health aide certificate to all persons who submit evidence of satisfactory qualifications as determined by the Department.
- (b) Notwithstanding the above, a home health aide certificate may be denied, revoked or suspended on any of the following grounds:
- (1) Failure to submit an application which sets forth information as the Department may deem necessary.
 - (2) Conviction of a felony, or any crime which evidences an unfitness to provide home health services, unless such person presents evidence satisfactory to the Department that such person has been rehabilitated and presently is of such good character as to justify the issuance or continuance of the home health aide certificate.
 - (3) Failure to submit evidence of satisfactory qualifications.
- (c) If the certificate is denied, the Department shall notify the applicant in writing. Within 20 days of receipt of the Department's notice, the applicant may present his written petition for a hearing to the Department. The Department shall set the matter for hearing within 30 days after receipt of the petition in proper form. The proceedings shall be conducted in accordance with Chapter 5 of Part I of Division 3 of Title 2 of the Government Code beginning with Section 11500.
- (d) If a certificate is considered for revocation or suspension, the Department shall proceed in accordance with Chapter 5 of Part I of Division 3 of Title 2 of the Government Code beginning with Section 11500.