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NEW JERSEY ADMINISTRATIVE CODE

TITLE 13

LAW AND PUBLIC SAFETY

CHAPTER 45B

SUBCHAPTERS 13 & 14

HEALTH CARE SERVICE FIRMS

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SUBCHAPTER 13.
HEALTH CARE SERVICE FIRMS

13:45B-13.1 AUTHORITY, PURPOSE AND SCOPE

The authority for this subchapter is derived from N.J.S.A. 34:8-43 under the definition of "employment agency."

Firms providing health care services are licensed and/or registered under several categories pursuant to the CFA and the Act. In order to consolidate these firms into an appropriate category and subject all firms operating in a similar manner to uniform regulation, the Director is hereby identifying a new class of licensure: "health care service firm."

This subchapter applies to all persons operating a health care service firm, as defined by N.J.A.C. 13:45B-13.2, including persons whose residence or principal place of business is located outside of this State.

13:45B-13.2 DEFINITIONS

As used in this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

"Health care service firm" means any person who operates a firm that employs individuals directly or indirectly for the purpose of assigning the employed individuals to provide health care or personal care services either directly in the home or at a care-giving facility, and who, in addition to paying wages or salaries to the employed individuals while on assignment, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance; carries or is required to carry worker's compensation insurance; and sustains responsibility for the action of the employed individuals while they render health care services.

"Health care services" means:

1) Any services rendered to a patient for the purpose of maintaining or restoring the patient's physical or mental health; or

2) Any health related services rendered to a patient for which licensure, registration or certification is required as a pre-condition to the rendering of such services.

"Patient" means an individual who needs help with basic life functions, including those related to personal care services.

"Personal care services" include bathing, toileting, transferring, dressing, grooming, and assistance with ambulation, exercise, or other aspects of personal hygiene.

13:45B-13.3 INITIAL REGISTRATION REQUIREMENTS

a) Except as set forth in N.J.A.C. 13:45B-13.4, each health care service firm shall register with the Division by submitting the following, on forms provided by the Director:

1) A registration form, which shall include the following information:

i) The name of the health care service firm and any fictitious or trade name used in its operation and the names of health care companies related through joint ownership, boards of directors, officers or principals;

ii) Each primary location including street and street number of the building(s) and place(s) where its business is to be conducted and the addresses of all health care companies related through joint ownership, boards of directors, officers or principals;

iii) The name and residence address of each officer, director, and principal;

iv) The name, residence and business street address, and business telephone number of each person with an ownership interest of 10 percent or more in the agency and the percentage of ownership held; and

v) The name, residence and business street address and business telephone number of each person who is a managing agent of the agency; or, if the managing agent is a corporation, association or other company, its name, street address and telephone number and the names and addresses of its officers and directors;

2) A certification of each officer, director, principal or owner setting forth whether he or she has ever been convicted of a crime as set forth in N.J.S.A. 34:8-44;

3) A bond of $10,000 to secure compliance with the Act. The Director may waive the bond requirement for any corporation or entity having a net worth of $100,000 or more. In order to obtain a waiver, the health care service firm shall provide a copy of a certified financial report prepared by a certified public accountant or licensed accountant establishing a net worth of $100,000 or greater; and

4) A list of any licenses held in another state by the health care service firm, or by any officer, director, owner or principal of the health care service firm, to provide health care services in another state, a description of any actions taken by another state on those licenses, including violations of health or labor laws, and a description of any violations of Federal law by the health care service firm or any principal of the health care service firm.

b) A health care service firm shall provide the information set forth in (a)1iv and v above prior to any change in ownership or management.

c) If any information required to be included on the application changes, the health care service firm shall provide that information to the Section, in writing, within 30 calendar days of the change.

d) In the event an officer, director, principal or owner is convicted of a crime subsequent to filing the affidavit required by (a) above, the health care service firm shall obtain a new affidavit from that individual and shall file the affidavit with the Section within 30 days of the conviction.

13:45B-13.4 FIRMS REGISTERED PRIOR TO APRIL 3, 1995 AND MEETING THE DEFINITION OF HEALTH CARE SERVICE FIRM

A firm registered prior to April 3, 1995 and meeting the definition of a health care service firm shall not be required to comply with the initial registration requirements of N.J.A.C. 13:45B-13.3(a)1 and 2. Such entity shall, however, comply with the provisions of N.J.A.C. 13:45B-13.3(a)3 by ensuring that it has filed a $10,000 bond with the Director, unless the Director has waived the bond requirement for the reasons set forth therein.

13:45B-13.5 REGISTRATION RENEWAL

a) A health care service firm shall renew registration on or prior to July 1 of each year by submitting the following, on forms provided by the Director.

1) A renewal application that shall provide the information set forth in N.J.A.C. 13:45B-13.3(a)1; a certification that no new officers, directors, principals or owners have been added since the previous renewal; a list of primary locations; an updated description of

any action taken by another state upon a license held by the health care service firm or by any officer, director, owner or principal of the health care service firm; and an updated description of any violations of Federal or New Jersey State law by the health care service firm or any officer, director, owner or principal of the health care service firm.

2) A $10,000 bond, unless the health care service firm has a perpetual bond or the Director has waived the bond requirement for the reasons set forth in N.J.A.C. 13:45B-13.3(a)3.

13:45B-13.6 PROHIBITED ACTS

a) A health care service firm shall not:

1) Recruit or advertise for health care service staff, provide or offer to provide health care services to potential employees, or contract with a health care facility to provide health care services without first obtaining registration;

2) Charge a fee or a liquidated damage charge to any individual employed by the health care service firm or in connection with employment by the firm. If a fee or liquidated damage charge is imposed, the health care service firm shall obtain a license as an employment agency pursuant to N.J.A.C. 13:45B-2;

3) Prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person. If the health care service firm charges an individual pursuant to such contract a fee when the individual becomes employed by any other person, the health care service firm shall obtain a license as an employment agency pursuant to N.J.A.C. 13:45B-2; or

4) Knowingly send individuals it employs to, or knowingly continue to render services to, any health care facility not under the jurisdiction of the National Labor Relations Board where a strike or lockout is in progress, for the purpose of replacing individuals who are striking or who are locked out.

13:45B-13.7 INFORMATION FOR PATIENT/EMPLOYERS

a) Every certified home-maker home health aide or health care professional regulated by the Division shall wear an identification tag at all times while providing care to patient/employers receiving home-based services. The identification tag shall include the individual's first name or initial, the full surname, the term reflecting the individual's level of licensure or certification and a photograph of the individual. The letters on the tag shall be of equal size, in type not smaller than one-quarter inch. The size of the identification tag shall be equal to or greater than that of any other identification worn by the individual.

b) Every health care service firm shall provide patient/employers with a copy of the Consumer Guide to Homemaker-Home Health Aides published by the New Jersey Board of Nursing.

c) The information required by (b) above shall be provided to patient/employers at least 24 hours prior to the provision of services.

d) A patient/employer may waive the right to obtain the information required by (b) above within the time frame set forth in (c) above. Such waiver must be in writing and must be maintained for at least two years by the health care service firm. When a patient/employer has waived his or her right to obtain the information within the time frame set forth in (c) above, the information required by (b) above shall be provided to the patient/employer prior to the provision of services.

13:45B-13.8 UNCERTIFIED AND UNLICENSED INDIVIDUALS PROVIDING HOME-BASED SERVICES

a) When a health care service firm sends an individual who is not licensed or certified as a health care professional to a patient/employer's home to provide home-based services, the health care service firm shall provide to the patient/employer:

1) Written notification that the individual-is not a certified homemaker-home health aide or licensed or certified by the Division of Consumer Affairs as a health care professional;

2) A written statement, on the health care service firm's letterhead, indicating:

i) The name and address of the individual; and

ii) The title of any course the individual successfully completed that prepared the individual to provide services to the patient/employer, the date the course was completed and the place at which the course was taken;

3) Certification from the health care service firm that the individual is a United States citizen or legally-documented alien who can legally work in the United States; and

4) Certification from the health care service firm that it has verified the individual's employment history or has obtained two character references for the individual.

b) The information required by (a) above shall be provided to patient/employers at least 24 hours prior to the provision of services.

c) A patient/employer may waive the right to obtain the information required by (a) above within the time frame set forth in (b) above. Such waiver must be in writing and must be maintained for at least two years by the health care service firm. When a patient/employer has waived his or her right to obtain the information within the time frame set forth in (b) above, the information required by (a) above shall be provided to the patient/employer prior to the provision of services.

SUBCHAPTER 14.
PLACEMENT OF HEALTH CARE PRACTITIONERS

13:45B-14.1 DEFINITIONS

As used in this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

"Agency" means a health care service firm as defined in N.J.A.C. 13:45B-13.2 or an employment agency licensed pursuant to N.J.S.A. 34:8-47 and 48 and operating as a nurses' registry. Agency also means any holder of an employment agency license who places or employs a health care practitioner.

"Health care practitioner" means an individual placed or employed by an agency for the purpose of rendering health care services, as defined in N.J.A.C. 13:45B-13.2, to an individual. Health care practitioner shall include, but not be limited to, an acupuncturist, athletic trainer, chiropractor, dentist, marriage counsellor, optometrist, orthotist, prosthetist, pharmacist, physician assistant, physician or surgeon, physical, occupational or speech therapist, podiatrist, psychologist, registered nurse, licensed practical nurse, nurse practitioner, a home health aide, a nurse's aide, respiratory therapist or social worker. The term shall also include an individual placed by an agency for the purpose of rendering health care services where a license under State law is not required.

"Health care practitioner supervisor" means a New Jersey licensed physician, or a registered nurse in good standing holding a Bachelor of Science degree in nursing and two years combined public health nursing and progressive professional responsibilities in public health nursing; or a registered nurse in good standing having three years combined public health nursing and progressive professional responsibilities in public health nursing.

"Home care setting" means the personal residence of a patient receiving services of a health care practitioner.

"Licensed" means holding any certification, registration or license required by law as a precondition to the practice of a regulated profession or occupation.

13:45B-14.2 APPLICATION FORM; MINIMUM INFORMATION REQUIRED

a) An agency shall create an application form for each applicant seeking placement or employment by or through the agency. The application form shall require the following minimum information:

1) The applicant's name, address and telephone number;

2) The applicant's Social Security Number;

3) The type of license held (R.N., L.P.N., H.H.A., N.A.);

4) The license-issuing authority or board;

5) The license number;

6) The license expiration date;

7) The names and addresses of all institutions, patients and agencies worked for within the one year period preceding the date of application, a statement of reasons for leaving each employer and the name(s) of all supervisors having knowledge of the applicant's performance at each location. If the applicant has been employed by more than five employers within the stated one year period, the applicant shall be required to disclose only the five employers immediately preceding the date of application;

8) Areas of actual working experience and period of time during which experience was acquired (for example, I.C.U.—one year, med surg—one year, private residence—one year);

9) The applicant's education (diplomas/degrees held);

10) The applicant's malpractice insurance carrier (name and address), where applicable; and

11) The applicant's malpractice insurance policy number, where applicable.

b) An application form shall contain the following duly executed authorization:

I, ... (Applicant)..., hereby authorize ... (agency) ... to request and receive from all prior employers within one year of the date of this application, any and all pertinent information concerning my prior employment and its termination, including the reasons for such termination.

13:45B-14.3 GENERAL DUTIES

a) An agency shall comply with accepted professional standards and principles that apply to furnishing services to be provided by health care practitioners.

b) An agency shall comply with all Federal, State and local laws and shall not direct, request, condone or aid or abet any health care practitioner in the performance of an unlawful act.

c) An agency shall employ not less than one health care practitioner supervisor who shall be licensed as an employment agent, provided, however, that a health care service firm may employ a health care practitioner supervisor who need not be licensed as an employment agent.

d) The agency with the assistance of the health care practitioner supervisor shall be responsible for establishing such practices and procedures as may be necessary to assure the agency's compliance with this subchapter.

e) An agency shall not submit, record or convey to another agency, information that the agency knows or has reason to know is false, deceptive or misleading.

f) An agency shall make available for inspection by the Director, or by his or her designated agent, any book, record or account required by law, including these rules, to be made, maintained or kept.

g) An agency shall retain all records required to be maintained by this regulation for a period of seven years from the date on which the record is required to be made.

h) An agency shall either maintain, or ensure the existence of, a general liability insurance policy that shall insure against any placed health care practitioner's negligence, malpractice or any other unlawful conduct occurring within the scope of the health care practitioner's placement. The policy shall be in the amount of not less than $ 1,000,000.

i) An agency shall, upon receipt of a duly authorized release, provide to another agency a copy of all mandated testing and immunization results for the health care practitioner.

j) The agency and the health care practitioner supervisor shall immediately report any violation of this subchapter to the Executive Director.

k) The agency and the health care practitioner shall cooperate in providing information to any investigation conducted to determine whether a violation of this subchapter or any applicable statute has occurred.

l) An agency's failure to comply with this subchapter may be deemed good cause within the meaning of N.J.S.A. 34:8-53, upon notice to the agency and an opportunity to be heard, for the suspension or revocation of licensure or for such other relief or sanctions as may be authorized by law.

13:45B-14.4 DUTY TO REFER ONLY LICENSED INDIVIDUALS

a) When licensure to perform a health care service or function is required by law, an agency shall refer or place only those health care practitioners who are currently licensed or certified and in good standing with their respective New Jersey licensing or registration boards.

b) A nurses' registry shall not furnish broker services to anyone other than a registered nurse, a practical nurse, or a nurse practitioner/clinical nurse specialist licensed by the State Board of Nursing.

c) The agency shall, through its health care practitioner supervisor or other designated individual, verify the license status of each individual to be placed or referred prior to the referral or placement. Licensure shall be verified by obtaining a document, which verifies licensure from the Board or Committee that registers or licenses the individual and, within 45 days of obtaining the verification, by personally inspecting the current biennial registration or license or a copy of the current biennial registration or license.

d) The agency shall maintain a copy of the verification document that it has secured from the Board or Committee that registers or licenses the individual and a copy of the license or registration with the following notation conspicuously written across the entire face of the license: "COPY OF ORIGINAL NOT VALID FOR VERIFYING CURRENT LICENSURE STATUS."

e) The agency shall maintain a record of licensure verification in which the following information is recorded:

1) The registrant's name and address;

2) The New Jersey board or agency issuing license or registration;

3) The license or registration number;

4) The period for which licensure or registration was issued;

5) The date of license inspection; and

6) The name of the individual making the inspection on behalf of the licensee.

f) When the agency knows or has reason to know that the license of any health care practitioner placed or referred has been suspended, revoked or otherwise limited or restricted so as to preclude the rendering of the health care service for which employment or placement was intended, the agency shall verify the licensure status at the earliest possible time. Upon a determination that the license has been suspended, revoked or otherwise limited or restricted, the agency shall directly terminate the health care practitioner's employment and notify the individual or entity currently receiving services from the health care practitioner that the practitioner's authority to practice has been suspended or revoked.

13:45B-14.5 DUTY TO MATCH CREDENTIALS TO NEED

a) An agency shall make diligent inquiry of employers and applicants for employment in order to ascertain the relevant needs of the place of employment and the applicant's qualifications. An agency shall not place or refer an applicant whose qualifications do not reasonably match the needs and requirements of an employer.

b) An agency shall create a job order for every position, or type of position within a single institution, for which a referral or placement is to be made. The following minimum information shall be entered on the job order:

1) A description of setting (for example, pediatrics, I.C.U., C.C.U., med-surg, home/residence of client);

2) The hours to be worked;

3) The title of position (for example, supervising nurse, staff nurse, charge nurse, clinical specialist);

4) Duties;

5) Special skills or certifications required;

6) Special equipment to be operated; and

7) Special employer policies or limitations to be required.

13:45B-14.6 DUTY TO VERIFY WORK HISTORY

a) Prior to placing or referring an applicant, an agency shall:

1) Verify the applicant's work history by confirming employment at all disclosed employment locations for the one year period prior to the date of the application; and

2) Inquire of all employers disclosed on the application form the reason for any termination, resignation or cessation of employment.

b) The agency shall record the information required by (a) above and the name and title of the individual providing the information.

13:45B-14.7 HOMEMAKER-HOME HEALTH AIDES AND AGENCIES

a) In order to place certified homeowner-home health aides, an agency regulated by the Division shall be licensed as a health care service firm. If an agency regulated by the Division is not licensed as a health care service firm, it shall not place certified homemaker-home health aides.

b) A health care service firm shall only refer or place actively certified homemaker-home health aides that are employed by the agency.

c) A homemaker-home health aide employed by a health care service firm shall only perform tasks that have either been delegated to him or her by the health care practitioner supervisor or which the health care practitioner supervisor has directed the homemaker-home health aide to perform.

d) The health care practitioner supervisor shall ensure that the homemaker-home health aide demonstrates that he or she is competent to perform the client care the health care practitioner supervisor delegates.

e) The health care practitioner supervisor shall document in the patient's record every task that has been delegated to a homemaker-home health aide.

13:45B-14.8 (RESERVED)

13:45B-14.9 DUTIES RELATING TO PLACEMENTS IN HOME CARE SETTINGS

a) Prior to referring or placing a health care practitioner in a home care setting, an agency shall assure that an appropriately licensed person evaluates the patient's needs and establishes, in writing, a plan of care. The health care practitioner preparing the plan of care shall sign it and indicate thereon his or her license designation.

b) An agency shall make referrals or placements consistent with the level of care indicated in the plan of care.

c) Unless the circumstances of the patient's care or another specific regulatory standard requires otherwise, the health care practitioner supervisor shall, not less than once during each 30-day period during which the health care practitioner is rendering services in the home care setting:

1) Inquire of the health care practitioner and such other persons as may be necessary whether the plan of care is adequate to meet the patient's needs; and

2) Make reasonable inquiry to determine whether the plan of care is being discharged appropriately by the health care practitioner.

d) The health care practitioner supervisor shall record the responses received.

e) If the responses indicate that the plan of care needs to be reassessed or revised, the health care practitioner supervisor shall ensure that an appropriately licensed person immediately reassesses or revises the plan.

f) If the responses indicate that the health care practitioner is not discharging the plan of care appropriately, the agency shall immediately take necessary corrective action.

g) The health care practitioner supervisor shall make an on-site, in home evaluation of the plan of care not less than once during each 60 day period during which the agency has placed or referred a health care practitioner in the home care setting.

h) The agency shall maintain the original of the plan of care and any revised plan of care and shall give copies to the patient or the patient's representative.