

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 3605(7) of the Public Health Law, sections 766.9 and 766.12 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended to be effective upon publication of a Notice of Adoption in the New York State Register.

Subdivision (n) of § 766.9 is amended to read as follows:

(n) ensure that any franchise agreement complies with the following:

* * *

(4) An agreement which contains elements of both a franchise agreement and a management contract shall be subject to the applicable provisions of this subdivision and subdivision (m) of this section[.]; and

A new subdivision (o) is added to § 766.9 to read as follows and existing subdivision (o) re-lettered (p):

(o) ensure registration of the licensed home care services agency with the commissioner through submission of annual registration forms included in the annual statistical report;

(1) no licensed home care services agency shall be operated, provide nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered for the current period;

(2) a licensed home care services agency that fails to submit a complete and accurate set of all required registration materials by the annual deadline of November 16th is required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is not registered;

(3) a licensed home care services agency that fails to register in the prior year by the deadline of the current year shall not be permitted to register for the upcoming registration period unless it submits any and all unpaid late fees;

(4) the department shall publish a listing of all licensed home care services agencies and their current registration status on its public website;

(5) the department shall institute proceedings to revoke the license of any licensed home care services agency that fails to register for two annual registration periods, whether or not such periods are consecutive; and

(6) the department shall pursue revocation of the license of a licensed home care services agency if it evidences a pattern of late registration over the course of multiple years without justification acceptable to the commissioner.

Subdivision (c) of § 766.12 is amended to read as follows:

(c) The home care services agency shall furnish annually to the department a copy of:

(1) statistical summaries of all health care services, including the type, frequency and reimbursement for services provided, including reimbursement from federal and state governmental agencies, on forms provided by the department;

(2) if a for-profit corporation, a list of the principal stockholders and the number and percent of the total issued and outstanding shares of the corporation held by each, duly certified by the

secretary of the corporation as to completeness and accuracy;

(3) if a not-for-profit corporation, a list of directors, officers and corporate members, if such members number 10 or fewer;

(4) the agency's registration in a manner prescribed by the department; and

(5) other such records and reports as may be legally required by the department.

* * *

REGULATORY IMPACT STATEMENT

Statutory Authority:

This proposal will implement amendments to Public Health Law (PHL) §§ 3605-a and 3605-b requiring registration of licensed home care services agencies pursuant to Article 36.

Legislative Objective:

Public Health Law Article 36 was intended to promote the quality of home care services provided to residents of New York State and to assure adequate availability as a viable alternative to institutional care. The proposed regulation furthers this objective by developing a system for the Department of Health (Department) to identify agencies that are non-operational and aligns state regulations with the Department's strategic plan.

Needs and Benefits:

The proposed changes to 10 NYCRR §§ 766.9 and 766.12(c)(4) implement amendments to PHL §§ 3605-a and 3605-b made by Chapter 57 of the Laws of 2018, Part B, §§ 9-c and 9-d, requiring registration of licensed home care services agencies pursuant to PHL.

Annual registration of licensed home care services agencies will allow the Department, on an annual basis, to confirm operational entities in all regions of the state. The registration will confirm the number of agencies providing services in the defined services area and the types of services provided. The information will assist the Department in identifying potential gaps in provider capacity and consumer access to services, and is important as the Department develops a need methodology for licensed home care services agencies. It will also be useful to the Department's oversight and surveillance functions.

This will be integral in improving the overall quality of services provided to individuals who are receiving home care services.

Just as important, the information obtained from the licensed home care services agency registration will improve consumer access to information about licensed home care services agency availability. The information collected from the registration process will improve the currency and accuracy of provider-related information on the DOH public website, giving consumers meaningful information that can help them identify available options for home care services. Additionally, the public website will identify those agencies who are registered with the Department and those agencies who are not registered with the department, indicating their compliance with 10 NYCRR § 766.9.

To comply with the registration requirement, licensed home care services agencies will need to complete a section that will be added to the existing annual statistical report. These must be submitted during the annual data collection period, which commences in August of the preceding year of the registration deadline and ends by November 16th.

The proposed changes will provide a benefit to current licensed home care services agencies who complete the registration as required, as they will be listed on the public website as being currently registered and active.

Costs to Regulated Parties:

The regulated parties (providers) are not expected to incur any additional costs as a result of the proposed rule change. There are no additional costs to local governments for the implementation of and continuing compliance with this amendment. There are no additional costs to the Department of Health as a result of the proposed rule change.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require county operated agencies to complete one additional form.

Paperwork:

The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require one additional form to be completed.

Duplication:

The proposed rule is not duplicative of any known rules or regulations.

Alternatives:

There are no alternatives to this proposal, which is necessary to implement a legislative enactment requiring licensed home care services agencies to register annually with the Department.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

There are no significant actions which are required by the affected providers to comply with the amendments, as the amendments ensure conformance with expectations that were already in effect. Those licensed home care services agencies who are operational should already be in compliance with the required annual statistical reports and should be readily able to comply. The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require one additional form to be completed. A licensed home care services agency that fails to submit a complete and accurate set of all required registration materials by the annual deadline of November 16th, established by the Commissioner of Health, is required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is not registered. No licensed home care services agency shall be operated, provide nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered for the current period. The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

Licensed home care services agencies, including those operated by county health departments, provide health services in the home pursuant to Public Health Law Article 36. There are currently 1,083 licensed operators providing home care services at 1,475 licensed sites. Local governments will not be affected by this rule except to the extent that they operate licensed home care services agencies; nor will small businesses be impacted in their routine cost of conducting business.

Compliance Requirements:

Regulated parties are expected to be in compliance beginning on and after January 1, 2019. The proposed regulations will implement the new registration requirement for licensed home care services agencies, which will be carried out through existing reporting mechanisms. The registration process is a new requirement; however, the registration process will be incorporated with existing statistical data collection requirements for licensed home care services agencies which are required annually. Therefore, compliance requirements are minimal.

The Department does not intend to publish a small business regulation guide in connection with this regulation. Although a number of licensed home care services agencies are small businesses, the impact is expected to be minimal. Additional guidance will be posted on the web as needed after the regulation is promulgated.

Professional Services:

No additional professional staff are expected to be needed as a result of the regulations. Record keeping and compliance requirements could be handled by existing staff, as it is the expectation that the administrator complete the registration.

Compliance Costs:

There are no capital costs associated with these proposed rules. Any costs are already incurred by agencies under the existing regulations.

Economic and Technological Feasibility:

The Department has considered feasibility and believes there will be minimal, if any, economic and technological impact. The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation should not affect the routine cost of doing business, unless agencies have been non-compliant with existing requirements.

Minimizing Adverse Impact:

While the Department has considered the options of State Administrative Procedure Act (SAPA) § 202-b(1) in developing this rule, flexibility does not exist for any particular entity since the new requirements are consistent with requirements that are already in effect.

Small Business and Local Government Participations:

The Department will meet the requirements of SAPA § 202-b(6) in part by publishing a

notice of proposed rulemaking in the State register with a comment period. The Department has not solicited input prior to publication as the proposed amendments are required by statute, do not change existing procedures in any substantive manner and will, therefore, have no deleterious effect on small businesses and local governments.

Rules that Either Establish or Modify a Violation or Penalties Associated with a Violation:

A licensed home care services agency which fails to submit a complete and accurate set of all required registration materials by the deadline established by the Commissioner shall be required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is in default. The statute allows for the LHCSA to register at any time, however, the fines will continue to be incurred.

A licensed home care services agency that failed to register in the prior year by the deadline of the current year shall not be permitted to register for the upcoming registration period unless it submits any unpaid late fees.

A licensed home care services agency is prohibited from providing nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered with the Department.

The Department shall institute proceedings to revoke the license of any licensed home care services agency that fails to register for two annual registration periods, whether or not such periods are consecutive. The Department shall have the discretion to pursue revocation of the license of a licensed home care services agency on grounds that it evidences a pattern of late registration over the course of multiple years.

The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require one additional form to be completed. A licensed home care services agency that fails to submit a complete and accurate set of all required registration materials by the annual deadline of November 16th is required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is not registered. No licensed home care services agency shall be operated, provide nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered for the current period.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

All counties in New York State (NYS) have rural areas with the exception of seven (7) downstate counties. Approximately 80% of licensed home care services agencies are licensed to serve counties with rural areas. No rural area flexibility analysis is required pursuant to § 202-bb(4)(a) of SAPA. The proposed amendment does not impose an adverse impact on facilities in rural areas and it does not impose additional reporting, record keeping or other compliance requirements on facilities in rural areas. The proposed amendment to require licensed home care agencies to complete registration seeks information regarding operational agencies and to assure home care availability in rural areas as an alternative to institutional care.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.