

ASSEMBLY, No. 4043

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 24, 2018

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

SYNOPSIS

Clarifies definition of health care service firms and homemaker-home health aides.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/15/2018)

1 AN ACT concerning health care service firms and homemaker-home
2 health aides, and amending P.L.2002, c.126 and P.L.1947, c.262.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.2002, c.126 (C.34:8-45.1) is amended to
8 read as follows:

9 1. a. Notwithstanding any other law or regulation to the
10 contrary, an employment agency required to be licensed pursuant to
11 P.L.1989, c.331 (C.34:8-43 et al.), or any other firm, company,
12 business, agency, or other entity that is not a home health care
13 agency licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) or
14 a hospice licensed pursuant to P.L.1997, c.78 (C.26:2H-79 et seq.),
15 which employs, places **[or]** , arranges for the placement of
16 **[personnel]** , or in any way refers, an individual to provide
17 companion services, health care services, or personal care services
18 in the personal residence of a person with a disability or **[a senior**
19 **citizen]** who is age 60 or older, regardless of the title by which the
20 provider of the services is known, shall be registered as a Health
21 Care Service Firm **[pursuant to N.J.A.C.13:45B-13.1 et seq.]** and
22 shall be subject to the rules and regulations governing Health Care
23 Service Firms adopted by the Division of Consumer Affairs in the
24 Department of Law and Public Safety. The Division of Consumer
25 Affairs is authorized to enforce the health care service firm
26 registration requirement, and the provisions of P.L.1989, c.331
27 (C.34:8-43 et al.), upon any person whose operations are subject to
28 this section, whether the operations include the direct employment
29 of individuals, the use of an Internet website or application, or any
30 other process or business model.

31 As used in this section:

32 "Companion services" means non-medical, basic supervision and
33 socialization services which do not include assistance with activities
34 of daily living, and which are provided in the individual's home.
35 Companion services may include the performance of household
36 chores.

37 "Health care services" means any services rendered for the
38 purpose of maintaining or restoring an individual's physical or
39 mental health or any health-related services, and for which a license
40 or certification is required as a pre-condition to the rendering of
41 such services.

42 "Personal care services" means services performed by licensed or
43 certified personnel for the purpose of assisting an individual with
44 activities of daily living that may involve physical contact.
45 Services include, but are not limited to, bathing, toileting,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 transferring, dressing, grooming, and assistance with ambulation,
2 exercise, or other aspects of personal hygiene.

3 b. (Deleted by amendment, P.L.2014, c.29)

4 c. As a condition of being registered under P.L.1989, c.331
5 (C.34:8-43 et al.), a health care service firm shall obtain within 12
6 months of registration accreditation from an accrediting body that is
7 recognized by the Commissioner of Human Services as an
8 accrediting body for homemaker agencies participating in the
9 Medicaid program, as set forth at N.J.A.C.10:60-1.2. For purposes
10 of accreditation pursuant to this subsection, the accrediting body
11 shall apply the standards set forth in N.J.A.C.13:37-14.1 et seq. and
12 N.J.A.C.13:45B-13.1 et seq., as applicable.

13 d. As a condition of registration under P.L.1989, c.331 (C.34:8-
14 43 et al.), every health care service firm shall submit to the director
15 an audit the third calendar year after registration and every third
16 year thereafter. The audit shall be conducted by a certified public
17 accountant licensed by the State of New Jersey and shall encompass
18 an examination of the subject firm's financial records, financial
19 statements, the general management of its operations, and its
20 internal control systems. The audit shall include an audit report
21 with an unqualified opinion and shall be accompanied by any
22 management letters prepared by the auditor in connection with the
23 audit commenting on the internal controls or management practices
24 of the health care service firm. The audit shall be divided into two
25 components: compliance and financial. The compliance component
26 of the audit shall evaluate the firm's compliance with relevant laws
27 and regulations governing health care service firms. The financial
28 component shall include an audit of the financial statements and
29 accompanying notes, as specified in the Statements on Auditing
30 Standards issued by the American Institute of Certified Public
31 Accountants.

32 e. In addition to any other penalty provided by law, a person
33 shall be liable for a penalty of \$500 per day for each day that the
34 person continues to operate a firm without registering as required
35 under this section. The penalty shall be collected by the Director of
36 the Division of Consumer Affairs in a summary proceeding in
37 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
38 c.274 (C.2A:58-10 et seq.).
39 (cf: P.L.2014, c.29, s.1)

40

41 2. Section 1 of P.L.1947, c.262 (C.45:11-23) is amended to
42 read as follows:

43 1. As used in this act:

44 a. The words "the board" mean the New Jersey Board of
45 Nursing created by this act.

46 b. The practice of nursing as a registered professional nurse is
47 defined as diagnosing and treating human responses to actual or
48 potential physical and emotional health problems, through such

1 services as casefinding, health teaching, health counseling, and
2 provision of care supportive to or restorative of life and well-being,
3 and executing medical regimens as prescribed by a licensed or
4 otherwise legally authorized physician or dentist. Diagnosing in the
5 context of nursing practice means the identification of and
6 discrimination between physical and psychosocial signs and
7 symptoms essential to effective execution and management of the
8 nursing regimen within the scope of practice of the registered
9 professional nurse. Such diagnostic privilege is distinct from a
10 medical diagnosis. Treating means selection and performance of
11 those therapeutic measures essential to the effective management
12 and execution of the nursing regimen. Human responses means
13 those signs, symptoms, and processes which denote the individual's
14 health need or reaction to an actual or potential health problem.

15 The practice of nursing as a licensed practical nurse is defined as
16 performing tasks and responsibilities within the framework of
17 casefinding; reinforcing the patient and family teaching program
18 through health teaching, health counseling and provision of
19 supportive and restorative care, under the direction of a registered
20 nurse or licensed or otherwise legally authorized physician or
21 dentist.

22 The terms "nursing," "professional nursing," and "practical
23 nursing" as used in this act shall not be construed to include nursing
24 by students enrolled in a school of nursing accredited or approved
25 by the board performed in the prescribed course of study and
26 training, nor nursing performed in hospitals, institutions and
27 agencies approved by the board for this purpose by graduates of
28 such schools pending the results of the first licensing examination
29 scheduled by the board following completion of a course of study
30 and training and the attaining of age qualification for examination,
31 or thereafter with the approval of the board in the case of each
32 individual pending results of subsequent examinations; nor shall
33 any of said terms be construed to include nursing performed for a
34 period not exceeding 12 months unless the board shall approve a
35 longer period, in hospitals, institutions or agencies by a nurse
36 legally qualified under the laws of another state or country, pending
37 results of an application for licensing under this act, if such nurse
38 does not represent or hold himself or herself out as a nurse licensed
39 to practice under this act; nor shall any of said terms be construed to
40 include the practice of nursing in this State by any legally qualified
41 nurse of another state whose engagement made outside of this State
42 requires such nurse to accompany and care for the patient while in
43 this State during the period of such engagement, not to exceed six
44 months in this State, if such nurse does not represent or hold
45 himself or herself out as a nurse licensed to practice in this State;
46 nor shall any of said terms be construed to include nursing
47 performed by employees or officers of the United States
48 Government or any agency or service thereof while in the discharge

1 of his or her official duties; nor shall any of said terms be construed
2 to include services performed by nurses aides, attendants, orderlies
3 and ward helpers in hospitals, institutions and agencies or by
4 technicians, physiotherapists, or medical secretaries, and such
5 duties performed by said persons aforementioned shall not be
6 subject to rules or regulations which the board may prescribe
7 concerning nursing; nor shall any of said terms be construed to
8 include first aid nursing assistance, or gratuitous care by friends or
9 members of the family of a sick or infirm person, or incidental care
10 of the sick by a person employed primarily as a domestic or
11 housekeeper, notwithstanding that the occasion for such
12 employment may be sickness, if such incidental care does not
13 constitute professional nursing and such person does not claim or
14 purport to be a licensed nurse; nor shall any of said terms be
15 construed to include services rendered in accordance with the
16 practice of the religious tenets of any well-recognized church or
17 denomination which subscribes to the art of healing by prayer. A
18 person who is otherwise qualified shall not be denied licensure as a
19 professional nurse or practical nurse by reason of the circumstances
20 that such person is in religious life and has taken a vow of poverty.

21 c. "Homemaker-home health aide" means a person who is
22 employed by a home care services agency and who is performing
23 delegated nursing regimens or nursing tasks delegated through the
24 authority of a duly licensed registered professional nurse. No
25 homemaker-home health aide shall follow a delegated nursing
26 regimen or perform tasks which are delegated unless the
27 homemaker-home health aide is under the supervision of a duly
28 licensed registered professional nurse provided by the home care
29 services agency that directly employs the homemaker-home health
30 aide. "Home care services agency" means home health agencies,
31 assisted living residences, comprehensive personal care homes,
32 assisted living programs or alternate family care sponsor agencies
33 licensed by the Department of Health **and Senior Services**
34 pursuant to P.L.1971, c.136 (C.26:2H-1 et al.), nonprofit
35 homemaker-home health aide agencies, and health care service
36 firms regulated by the Director of the Division of Consumer Affairs
37 in the Department of Law and Public Safety and the Attorney
38 General pursuant to P.L.1989, c.331 (C.34:8-43 et seq.) and
39 P.L.1960, c.39 (C.56:8-1 et seq.) respectively, which are engaged in
40 the business of procuring or offering to procure employment for
41 homemaker-home health aides, where a fee may be exacted,
42 charged or received directly or indirectly for procuring or offering
43 to procure that employment.

44 d. "Advanced practice nurse" means a person who holds a
45 certification in accordance with section 8 or 9 of P.L.1991, c.377
46 (C.45:11-47 or 45:11-48).

47 e. "Collaborating physician" means a person licensed to
48 practice medicine and surgery pursuant to chapter 9 of Title 45 of

1 the Revised Statutes who agrees to work with an advanced practice
2 nurse.

3 Nothing in this act shall confer the authority to a person licensed
4 to practice nursing to practice another health profession as currently
5 defined in Title 45 of the Revised Statutes.

6 (cf: P.L.2004, c.122, s.1)

7

8 3. This act shall take effect immediately.

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STATEMENT

12

13 This bill clarifies the definition of health care service firms and
14 homemaker-home health aides.

15 Current law provides that firms that place or arrange for the
16 placement of personnel to provide companion services, health care
17 services, or personal care services must register as a health care
18 service firm with the Division of Consumer Affairs in the
19 Department of Law and Public Safety. However, there are firms
20 operating that indirectly, using an Internet website or other online
21 application, refer or arrange for individuals to provide companion
22 services, health care services, or personal care services in the homes
23 of patients, but are not registering as health care service firms.

24 This bill revises the current law to clarify that any firm that
25 employs, places, arranges the placement of, or in any way refers, an
26 individual to provide companion services, health care services, or
27 personal care services in the personal residence of a person with a
28 disability or who is age 60 or older must register as a health care
29 service firm. The bill further stipulates that the Division of
30 Consumer Affairs is authorized to take enforcement measures upon
31 any person who operates a firm that is subject to this health care
32 service firm registration requirement, whether the operations
33 include the direct employment of individuals, the use of an Internet
34 website or application, or any other process or business model.

35 The bill also provides that, in addition to any other penalty
36 provided by law, a person is liable for a penalty of \$500 per day for
37 each day that the person continues to operate a firm without
38 registering as a health care service firm as required.

39 Finally, the bill clarifies that certified homemaker-home health
40 aides must work under the supervision of a duly licensed registered
41 professional nurse, which is provided by the home care services
42 agency that directly employs the homemaker-home health aide
43 when following a delegated nursing regimen.