

TITLE 175 HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 14 HOME HEALTH AGENCIES

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TITLE 175 HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 14 HOME HEALTH AGENCIES

14-001 SCOPE AND AUTHORITY: These regulations govern licensure of home health agencies. The regulations are authorized by and implement the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-462.

14-001.01 These regulations apply to all home health agencies. A home health agency must be primarily engaged in providing skilled nursing care or a minimum of one other therapeutic service, i.e., physical therapy, speech pathology, occupational therapy, respiratory care, home health aide service, social work service, intravenous therapy, or dialysis.

14-001.02 These regulations do not apply to in-home personal services agencies that provide attendant services to non-medically fragile persons, companion services, and homemaker services. In-home personal services agencies must not provide health care services as defined in 175 NAC 14-002. For purposes of providing in-home personal services:

1. A medically fragile person is one whose medical condition is unstable, requires medical or nursing judgment, and whose physical status may or may not be frail or fragile.
2. Attendant services means services provided to nonmedically fragile persons, including hands-on assistance with activities of daily living, transfer, grooming, medication reminders, and similar activities;
3. Companion services means the provision of companionship and assistance with letter writing, reading, and similar activities; and
4. Homemaker services means assistance with household tasks, including but not limited to housekeeping, personal laundry, shopping, incidental transportation, and meals.

14-001.03 A home health agency must accept a patient only when it reasonably expects that the agency can meet the patient's needs. When a physician orders home health care for a patient, that patient's care must follow a written plan devised by a registered nurse or qualified professional of the appropriate discipline after an initial visit to the patient's residence. This plan must be approved by the patient's physician, reviewed as often as needed, but at least every 62 days by a registered nurse or other qualified professional of the appropriate discipline.

1. If the home health agency provides more than one service to a single patient, the home health agency is responsible for coordination of those services to assure that the services effectively complement one another and support the objectives outlined in the plans of care;
2. For each patient receiving any of the services in the home health agency, the agency must send a written summary report to the attending physician as often as the severity of the patient's condition requires, but at least every 62 days;
3. Services provided under arrangement with another agency or with an individual must be subject to a written contract conforming to the requirements of 175 NAC 14-006.04;
4. A supervising registered nurse must be available or on call to the staff during all hours that skilled nursing care or home health aide services are provided; and
5. A home health agency providing respiratory care service must have a licensed physician to serve as the medical director required by Neb. Rev. Stat. § 71-1,229.

14-002 DEFINITIONS

Abuse means any knowing, intentional, or negligent act or omission on the part of a person which results in physical, sexual, verbal, or mental abuse; unreasonable confinement; cruel punishment; exploitation; or denial of essential care, treatment, or services to a patient.

Activities of daily living (see definition of "Care").

Administrator means the operating officer for the home health agency and may include titles such as administrator, chief executive officer, manager, superintendent, director, or similar designation.

Applicant means the individual, government, corporation, partnership, limited liability company, or other form of business organization who applies for a license.

Basic therapeutic care means basic health care procedures, including, but not limited to, measuring vital signs, applying hot and cold applications and nonsterile dressings, and assisting with, but not administering, internal and external medications which are normally self-administered. Basic therapeutic care does not include health care procedures which require the exercise of nursing or medical judgment.

Biological means any virus, therapeutic serum, toxin, antitoxin, or analogous product applicable to the prevention, treatment, or cure of disease or injuries of humans.

Branch office means a location or site from which a home health agency provides skilled nursing care or other therapeutic services within a portion of the total geographic area served by the parent agency. A branch office must be part of its parent home health agency and share administration, supervision, and services. It is not required to independently meet licensure requirements but must meet supervision regulations for branch offices.

Bylaws or equivalent means a set of rules adopted by a home health agency to govern the agency's operation.

Care means the exercise of concern or responsibility for the comfort, welfare, and habilitation of persons, including a minimum amount of supervision and assistance with or provision of personal care, activities of daily living, health maintenance activities, or other supportive services. For the purposes of this chapter:

1. Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administered medication, and similar activities;
2. Health maintenance activities means noncomplex interventions which can safely be performed according to exact directions, which do not require alteration of the standard procedure, and for which the results and patient responses are predictable; and
3. Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities.

Complaint means an expression of a concern or dissatisfaction.

Completed application means an application that contains all the information specified in 175 NAC 14-003 and includes all required attachments, documentation, and the licensure fee.

Department means the Division of Public Health of the Department of Health and Human Services.

Designee means a person who is authorized by law or the patient to act on his or her behalf, for example, a parent of a minor child, a legal guardian, a conservator, or an attorney in fact named in a durable power of attorney for health care.

Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is prescribed by a medical practitioner and dispensed by a pharmacist or other person authorized by law to do so.

Dialysis means the initiating and monitoring therapy related to artificial kidney treatment.

Direction and monitoring means, for the purpose of medication administration, the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions and contraindications associated with the medication. Direction and monitoring can be done by a:

1. Competent individual for himself or herself;
2. Caretaker; or
3. Licensed health care professional.

Director means the Director of Public Health of the Division of Public Health.

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Drug means substances as defined in Neb. Rev. Stat. § 71-1,142.

Exploitation means the taking of property of a patient by means of undue influence, breach of a fiduciary relationship, deception, extortion, or by any unlawful means.

Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time.

Foreign when applied to corporations means all those created by authority other than that of the State of Nebraska.

Full time basis means the provision of services for a continuous 24-hour period.

Governing authority means, depending on the organizational structure, an owner(s), a board of directors or other governing members of the licensee, or state, county, or city officials appointed by the licensee.

Grievance means a written expression of dissatisfaction which may or may not be the result of an unresolved complaint.

Health care service means an adult day service, a home health agency, a hospice or hospice service, or a respite care service.

Health maintenance activities (See definition of "Care".)

Home means a patient's permanent or temporary residence, other than a hospital or a nursing home.

Home care equipment & supplies means equipment or supplies needed by the individual to maintain his/her highest level of function

Home health agency means a person or any legal entity which provides skilled nursing care or minimum of one other therapeutic service as defined by the Department on a full-time, part-time, or intermittent basis to persons in a place of temporary or permanent residence used as the person's home.

Home health aide means a person who is employed by a home health agency to provide personal care, assistance with the activities of daily living, and basic therapeutic care to patients of the home health agency.

Home health aide services means the use of a trained, supervised paraprofessional to provide personal care and assistance with activities of daily living, and/or basic therapeutic care, to patients of a home health agency.

Intermittent basis means the provision of services for less than 4 hours in any 24-hour period.

Intravenous therapy means initiating and monitoring therapy related to substances that are administered intravenously.

Licensed health care professional means an individual for whom administration of medication is included in the scope of practice.

Licensed nurse means a person licensed as a registered nurse or as a practical nurse under the provisions of the Nurse Practice Act, Neb. Rev. Stat. §§ 71-1,132.04 to 71-1,143.53 and Title 172 NAC 99.

Licensed practical nurse means an individual who has graduated from an approved practical nursing program, passed the National Counsel Licensing Examination – Practical Nurse (NCLEX-PN) or State Board Test Pool Examination and holds a current license to practice as a practical nurse in Nebraska.

Licensee means the individual, government, corporation, partnership, limited liability company or other form of business organization legally responsible for the operation of the home health agency and to whom the Department has issued a license.

Medical practitioner means any licensed physician, osteopathic physician, dentist, podiatrist, optometrist, chiropractor, physician assistant, certified registered nurse anesthetist, advanced practice registered nurse, or certified nurse midwife.

Medication means any prescription or non-prescription drug intended for treatment or prevention of disease or to affect body functions in humans.

Medication administration includes, but is not limited to:

1. Providing medications for another person according to the five rights;
2. Recording medication provision; and
3. Observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the medication.

Medication aide means an individual who is listed on the medication aide registry operated by the Department as provided in 172 NAC 95 and 96.

Medication provision means the component of the administration of medication that includes giving or applying a dose of medication to an individual and includes helping an individual in giving or applying the medication to himself or herself.

Mental abuse means humiliation, harassment, threats of punishment, deprivation, or other actions causing mental anguish.

NAC means Nebraska Administrative Code.

Neglect means a failure to provide care, treatment, or services necessary to avoid physical harm or mental anguish of a patient.

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Occupational therapist means a person licensed to practice occupational therapy pursuant to the Occupational Therapy Practice Act and whose license is in good standing.

Occupational therapist assistant, certified means a person who is certified in accordance with guidelines established by the American Occupational Therapy Certification Board.

Occupational therapy means the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independence, prevent disability, and maintain health. Occupational therapy encompasses evaluation, treatment, and consultation. Occupational therapy may include teaching daily living skills; developing perceptual-motor skills and sensory integrative functioning; developing prevocational capacities; designing, fabricating, or applying selected orthotic and prosthetic devices or selective adaptive equipment; using specifically designed therapeutic media and exercises to enhance functional performance; administering and interpreting tests such as manual muscle and range of motion; and adapting environments for the handicapped.

Occupational therapy aide means an unlicensed person who assists in the practice of occupational therapy, under the direct supervision of an occupational therapist or occupational therapy assistant.

Parent home health agency means the health agency that is responsible for the services provided to patients, implementation of the plan of care, and ensures administrative and supervisory control of branch offices and subunits.

Part-time basis means the provision of services for less than 24 hours but more than 4 hours in any 24-hour period.

Patient's residence means the actual place of temporary or permanent residence of a person, used as that person's home, other than a hospital or nursing home.

Personal care (see definition of "Care").

Physical abuse means hitting, slapping, pinching, kicking, or other actions causing injury to the body.

Physical therapist means a person who is authorized to practice as a physical therapist in Nebraska.

Physical therapist assistant means any person who has graduated from a school for physical therapist assistants approved by the Department or who has been certified by the Board as a physical therapist assistant on or before February 25, 1981, based on equivalent training or knowledge.

Physical therapy means the treatment of any bodily condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, massage, and active or passive exercise. It does not include the use of roentgen rays and radium for diagnostic and therapeutic purposes, including cauterization.

Physical therapy aide means a non-licensed or non-certified worker whose primary function is to perform routine tasks related to the operation of a physical therapy service, but who may assist with physical therapy related activities.

Physician means any person licensed to practice medicine in this state as provided in Neb. Rev. Stat. §§ 71-102 to 71-110.

Premises means a facility, the facility's grounds and each building or grounds on contiguous property used for administering and operating a facility.

PRN means an administration scheme in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness.

Registered nurse means an individual who has graduated from an approved program with an associate degree, diploma, or baccalaureate degree in nursing, has passed the National Counsel Licensing Examination – (NCLEX-RN) or State Board Test Pool Examination and holds a current license to practice as a registered nurse in Nebraska.

Respiratory care means the health specialty responsible for the treatment, management, diagnostic testing, control, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. Respiratory care is not limited to a hospital setting and includes therapeutic and diagnostic use of medical gases, administering apparatus, humidification and aerosols, ventilatory assistance and ventilatory control, postural drainage, chest physiotherapy and breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, and maintenance of nasal or oral endotracheal tubes. It also includes the administration of aerosol and inhalant medications to the cardiorespiratory system and specific testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment, and research. These techniques include, but are not limited to, measurement of ventilatory volumes, pressures, and flows, measurement of physiologic partial pressures, pulmonary function testing, and hemodynamic and other related physiological monitoring of the cardiopulmonary system.

Respiratory care practitioner means any person employed in the practice of respiratory care who has the knowledge and skill necessary to administer respiratory care to patients of all ages with varied cardiopulmonary diseases and to patients in need of critical care and who is capable of serving as a resource to the physician and other health professionals in relation to the technical aspects of respiratory care including effective and safe methods for administering respiratory care and person capable of supervising, directing, or teaching less skilled personnel in the provision of respiratory care services.

Sexual abuse means sexual harassment, sexual coercion, or sexual assault.

Skilled nursing care means services that:

1. Are ordered by a physician and included in the plan of care approved by the physician for the patient; and

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2. Can be provided in this state only by or under the direct supervision of a registered nurse to assure the safety of the patient and to achieve the medically desired result.

Social work means the professional activity of helping individuals, groups, and families or larger systems such as organizations and communities to improve, restore, or enhance their capacities for personal and social functioning and the professional application of social work values, knowledge, principles, and methods.

Social worker, certified means a person who has received a baccalaureate or master's degree in social work from an approved educational program; holds a current certificate issued by the Department.

Social work practice or the practice of social work means the professional activity of helping individuals, groups, and families or larger systems such as organizations and communities to improve, restore, or enhance their capacities for personal and social functioning and the professional application of social work values, knowledge, principles, and methods.

Speech-language pathologist means an individual who is licensed as a speech language pathologist by the Department and who presents himself or herself to the public by any title or description of services incorporating the words speech-language pathologist, speech therapist, speech correctionist, speech clinician, language pathologist, language therapist, language clinician, logopedist, communicologist, aphasiologist, aphasia therapist, voice pathologist, voice therapist, voice clinician, phoniatriest, or any similar title, term, or description of service.

Speech pathology means the application of principles, methods, and procedures for the evaluation, monitoring, instruction, habilitation, or rehabilitation related to the development and disorders of speech, voice, swallowing, or language for the purpose of preventing, identifying, evaluating, and minimizing the effects of such disorders and conditions.

Subunit means a home health agency which provides skilled nursing care or other therapeutic services in a geographic area different from that of the parent agency and separately maintains administration, supervision, and services sufficient to independently meet licensure requirements.

Summary report means a compilation of the pertinent facts from the clinical notes and progress notes regarding a patient, which is submitted to the patient's physician.

Supervision means the authoritative guidance which is given by a qualified person of the appropriate discipline. Supervision includes initial direction and periodic indirect and direct monitoring of services.

Therapeutic services means any of the following services provided under a physician's plan of care at the patient's residence on a full-time, part-time, or intermittent basis: skilled nursing care; physical therapy; speech pathology; occupational therapy; respiratory care; home health aide service; social work service; intravenous therapy; and dialysis.

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Treatment means a therapy, modality, product, device, or other intervention used to maintain well being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease, or other similar condition.

Unlicensed direct care staff means personnel who are not licensed or certified under the Uniform Licensing Law or other state laws governing the practice of health care and whose primary responsibility is to manage, supervise, and/or provide direct care to patients. Unlicensed direct care staff includes home health aides, medication aides, and other personnel with this responsibility and with job titles designated by the home health agency.

Verbal abuse means the use of oral, written, or gestured language including disparaging and derogatory terms to patients or within their hearing distance.

14-003 LICENSING REQUIREMENTS AND PROCEDURES: Any person intending to establish, operate, or maintain a home health agency must first obtain a license from the Department. An entity must not hold itself out as a home health agency service or as providing health care services unless licensed under the Health Care Facility Licensure Act. An applicant for an initial or renewal license must demonstrate that the home health agency meets the care, treatment, and operational standards contained in 175 NAC 14.

14-003.01 Initial License: The initial license process occurs in two stages. The first stage consists of the applicant's submission of affirmative evidence of the ability to comply with the operational standards contained in 175 NAC 14-006. The application is not complete until the Department receives documents specified in 175 NAC 14-003.01.

The second stage consists of the Department's review of the completed application together with an inspection of the home health agency. The Department determines whether the applicant meets the standards contained in 175 NAC 14 and the Health Care Facility Licensure Act.

14-003.01A Applicant Responsibilities: An applicant for an initial home health agency license must:

1. Intend to provide home health agency services as defined;
2. Submit a written application to the Department as provided in 175 NAC 14-003.01B; and
3. Notify the Department at least 30 days prior to provision of services so the Department can conduct an on-site inspection.

14-003.01B Application Requirements: The applicant may construct an application or obtain an application form from the Department. The application must include:

1. Full name of the home health agency to be licensed, street and mailing address, telephone number, and facsimile number, if any;
2. The type of health care facility or service to be licensed, service(s) to be provided, and geographical area served; Name of the administrator;
3. Name(s) and address(es) of the home health agency owner(s);
4. Ownership type;

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5. Mailing address(es) for the owner(s);
6. Preferred mailing address for receipt of official notices from the Department;
7. List of names and addresses of all person in control of the home health agency. The list must include of all individual owners, partners, limited liability company members, parent companies, if any, and members of boards of directors owning or managing the operations and any other persons with financial interests or investments in the home health agency. In the case of publicly held corporations, only those stockholders who own 5% or more of the company's stock must be listed;
8. Legal name of the individual or business organization (government, corporation, partnership, limited liability company, or other type) to whom the license should be issued and a statement that such individual or organization accepts the legal responsibility for compliance with 175 NAC 14;
9. Applicant's federal employer identification number, if not an individual;
10. Applicant's social security number if the applicant is an individual. To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document;
11. Number of patient admissions;
12. Signature(s) of:
 - a. The owner, if the applicant is an individual or partnership;
 - b. Two of its members, if the applicant is a limited liability company;
 - c. Two of its officers, if the applicant is a corporation; or
 - d. The head of the governmental unit having jurisdiction over the home health agency to be licensed, if the applicant is a governmental unit;
13. Copy of the registration as a foreign corporation filed with the Nebraska Secretary of State, if applicant is a foreign corporation;
14. Planned provision of service date; and
15. The required licensure fee specified in 175 NAC 14-004.10.

14-003.01C Department Responsibilities: The Department will:

1. Review the application for completeness;
2. Provide notification to the applicant of any information needed to complete the application;
3. Upon receipt of the requested information, conduct an on-site inspection in accordance with 175 NAC 14-005; and
4. Issue or deny a license based on the results of the initial inspection.

14-003.01D Denial of License: See 175 NAC 14-008.01 and 14-008.02 for grounds and procedures for the Department's denial to issue an initial license.

14-003.02 Renewal Licenses

14-003.02A Licensee Responsibilities: The licensee must submit a written application to the Department. The licensee may construct an application or obtain an application form from the Department. The application must include:

1. Full name of the home health agency to be licensed, street and mailing address, telephone and facsimile number, if any;
2. Type of facility or service to be licensed, services to be provided, and geographical area served;
3. Name of the administrator;
4. Name(s) and address(es) of the home health agency owner(s);
5. Ownership type;
6. Mailing address for the owner(s);
7. Preferred mailing address for receipt of official notices from the Department;
8. List of names and addresses of all persons in control of the home health agency. The list must include all individual owners, partners, limited liability company members, parent companies, if any, and members of boards of directors owning or managing the operations and any other persons with financial interests or investments in the home health agency. In the case of publicly held corporations, only those stockholders who own 5% or more of the company's stock must be listed;
9. Legal name of the individual or business organization (government, corporation, partnership, limited liability company, or other type) to whom the license should be issued and a statement that such individual or organization accepts the legal responsibility for compliance with these regulations;
10. Applicant's federal employer identification number, if not an individual;
11. Applicant's social security number if the applicant is an individual. (To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document);
12. Number of patient admissions;
13. Signatures of:
 - a. The owner, if the applicant is an individual or partnership;
 - b. Two of its members, if the applicant is a limited liability company;
 - c. Two of its officers, if the applicant is a corporation; or
 - d. The head of the governmental unit having jurisdiction over the home health agency to be licensed, if the applicant is a governmental unit; and
14. The required licensure fee as specified in 175 NAC 14-004.10.

14-003.02B Department Responsibilities: The Department will:

1. Send a notice of expiration and an application for renewal to the licensee's preferred mailing address not later than 30 days prior to the expiration date. The licensure renewal notice specifies:
 - a. Date of expiration;

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- b. Fee for renewal;
- c. License number; and
- d. Name and address of the home health agency;
2. Issue a renewal license when it determines that the licensee has submitted a completed renewal application;
3. Send to each licensee that fails to renew its license a second notice, which is the final notice and specifies that:
 - a. The licensee failed to pay its renewal fees or submit an application or both;
 - b. The license has expired;
 - c. The Department will suspend action for 30 days following the date of expiration;
 - d. Upon receipt of the renewal fee and completed renewal application, the Department will issue the renewal license; and
 - e. Upon failure to receive the renewal fee and completed renewal application, the license will be lapsed; and
4. Place the license on lapsed status for nonpayment of fees if the licensee fails to renew the license. During this time, the home health agency may not operate. The license remains in lapsed status until it is reinstated.

14-003.02C Refusal to Renew: See 175 NAC 14-008.01 and 14-008.02 for grounds and procedures for the Department's refusal to renew a license.

14-003.03 Reinstatement from Lapsed Status: A home health agency requesting reinstatement of its lapsed status must submit to the Department an application for reinstatement and pay the required licensure fee specified in 175 NAC 14-005.10. The application must conform to the requirements specified in 175 NAC 14-003.02.

14-003.03A The Department will review the application for completeness and will decide if an onsite inspection is needed to determine compliance with the operation, care, and treatment requirements of 175 NAC 14-006. The decision is based upon the following factors:

1. The length of time that has transpired from the date the license was placed on lapsed status to the date of the reinstatement application; and
2. Whether the home health agency has provided care or treatment from the site under a license that is different than that of the lapsed license.

14-003.03B When the Department decides that a reinstatement inspection is warranted, it will conduct an inspection in accordance with 175 NAC 14-005.

14-003.03C When the Department decides that a reinstatement inspection is not warranted, it will reinstate the license.

14-003.03D Refusal to Reinstatement: See 175 NAC 14-008.01 and 14-008.02 for grounds and procedures for the Department's refusal to reinstate a license.

14-004 GENERAL REQUIREMENTS

14-004.01 Separate License: An applicant must obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. A single license may be issued for a home health agency operating in separate buildings or structures on the same premises under one management.

14-004.02 Single License Document: The Department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed.

14-004.03 Effective Date and Term of License: A home health agency license expires on January 31st of each year.

14-004.04 License Not Transferable: A license is issued only for the premises and persons named in the application and is not transferable or assignable. Change of ownership (sale, whether of stock, title, or assets, lease, discontinuance of operations) terminates the license. A change in premises does not terminate the license of a home health agency.

14-004.05 (Reserved)

14-004.06 Change of Ownership: The licensee must notify the Department in writing ten days before a home health agency is sold, leased, or discontinued.

14-004.07 Notification: An applicant or licensee must notify the Department in writing, by mail, electronic mail, or facsimile:

1. To request a single license document;
2. To request simultaneous facility or service licensure inspections for all types of licensure held or sought;–
3. To request a change to or addition of services provided;
4. Of changes in the geographical area served;
5. When the agency moves to a new location;
6. To request the addition and approval for a branch office; or
7. Within 24 hours if the home health agency has reason to believe that a patient death was due to abuse or neglect by staff.

14-004.08 Information Available to Public: The licensee must make available for public inspection, upon request, licenses, license record information, and inspection reports. This information may be displayed on the licensed premises.

14-004.09 Deemed Compliance

14-004.09A Accreditation: The Department may deem an applicant or licensee in compliance with 175 NAC 14-006 based on its accreditation as a home health agency by the:

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1. Joint Commission on Accreditation of Healthcare Organizations (JCAHO);
2. Community Health Accreditation program (CHAP);
3. Accreditation Commission for Healthcare; or
4. Medicare or Medicaid certification program.

14-004.09A1 An applicant or licensee must request the Department to deem its facility in compliance with 175 NAC 14-006 based upon its accreditation. The request must be:

1. Made in writing;
2. Submitted within 30 days of receipt of a report granting accreditation; and
3. Accompanied by a copy of the accreditation report.

14-004.09A2 Upon receipt of the request, the Department will deem the facility in compliance with 175 NAC 14-006 and will provide written notification of its decision to the facility within 10 working days of the receipt of the request.

14-004.09A3 The Department will exclude a facility that has been deemed in compliance with 175 NAC 14-006 from the random selection of up to 25% of facilities for compliance inspections under 175 NAC 14-005.04A. The facility may be selected for a compliance inspection under 175 NAC 14-005.04B.

14-004.09A4 To maintain deemed compliance, the licensee must maintain the accreditation on which its license was issued. If the accreditation has been sanctioned, modified, terminated or withdrawn, the licensee must notify the Department within 15 days of receipt of notification of the action. After notifying the Department, the facility may continue to operate unless the Department determines that the facility no longer meets the requirements for licensure under the Health Care Facility Licensure Act. If the Department determines the facility no longer qualifies for deemed compliance, the facility is subject to inspections under 175 NAC 14-005.

14-004.10 Fees: The home health agency must pay the fees for licensure and services as set forth below:

- | | | |
|----|---|-------|
| 1. | Initial Licensure fees: | \$650 |
| 2. | Renewal Licensure fees: | |
| | a. 1 to 50 unduplicated patient admissions in the past year | \$650 |
| | b. 51 to 200 unduplicated patient admissions in the past year | \$850 |
| | c. 201 or more unduplicated patient admissions in the past year | \$950 |
| 3. | Duplicate license: | \$10 |
| 4. | Refunds for denied applications: | |

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- a. If the Department did not conduct an inspection, the license fee is refunded except for an administrative fee of \$25.
- b. If the Department conducted an inspection, the license fee is not refunded.

14-005 INSPECTIONS: To determine compliance with operational, care, and treatment standards, the Department inspects home health agencies prior to and following licensure. The Department determines compliance through initial on-site inspections.

14-005.01 Initial Inspection: The Department will conduct an announced initial on-site inspection to determine compliance with 175 NAC 14-006. The inspection will occur within 30 working days, or later if requested by the applicant, of receipt of a completed application for an initial license. The Department will provide a copy of the inspection report to the home health agency within ten working days after completion of an inspection.

14-005.02 Results of Initial Inspection

14-005.02A When the Department finds that the applicant fully complies with the requirements of 175 NAC 14-006, the Department will issue a license.

14-005.02B When the Department finds that the applicant has complied substantially but has failed to comply fully with the requirements of 175 NAC 14-006 and the failure(s) would not pose an imminent danger of death or physical harm to persons served by the home health agency, the Department may issue a provisional license. The provisional license:

1. Is valid for up to one year; and
2. Is not renewable.

14-005.02C When the Department finds the applicant has one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the persons served by the home health agency, the Department may send a letter to the home health agency requesting a statement of compliance. The letter will include:

1. A description of each violation;
2. A request that the home health agency submit a statement of compliance within ten working days; and
3. A notice that the Department may take further steps if the statement of compliance is not submitted.

14-005.02D The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

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1. If the home health agency submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will issue either a regular license or a provisional license; or
2. If the home health agency fails to submit and implement a statement of compliance that indicates a good faith effort to correct the violations, the Department may deny the license.

14-005.02E When the Department finds the applicant fails to meet the requirements of 175 NAC 14-006 and the failure(s) would create an imminent danger of death or serious physical harm, the Department will deny the license.

14-005.03 (Reserved)

14-005.04 Compliance Inspections: The Department may, following the initial licensure of a home health agency, conduct an unannounced onsite inspection at any time it deems necessary to determine compliance with 175 NAC 14-006. The inspection may occur based on random selection or focused selection.

14-005.04A Random Selection: Each year the Department may inspect up to 25% of the home health agencies based on a random selection of licensed home health agencies.

14-005.04B Focused Selection: The Department may inspect a home health agency when it is informed of one or more of the following:

1. An occurrence resulting in patient death or serious physical harm;
2. An occurrence resulting in imminent danger to or the possibility of death or serious physical harm to patients;
3. The passage of five years without an inspection;
4. A complaint alleging violation of the Health Care Facility Licensure Act or 175 NAC 14;
5. Complaints that, because of their number, frequency, or type, raise concerns about the maintenance, operation, or management of the home health agency;
6. Financial instability of the licensee or of the licensee's parent company;
7. Outbreaks or recurrent incidents of physical health problems, such as dehydration, pressure sores, or other illnesses;
8. Change of services, management, or ownership;
9. Change of status of accreditation or certification on which licensure is based as provided in 175 NAC 14-004.09; or
10. Any other event that raises concerns about the maintenance, operation, or management of the home health agency.

14-005.05 Results of Compliance Inspections

14-005.05A When the inspection reveals violations that create imminent danger of death or serious physical harm or have a direct or immediate adverse effect on the health, safety, or security of persons served by the home health agency, the

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Department will review the inspection findings within 20 working days after the inspection. If the evidence from the inspection supports the findings, the Department will impose discipline in accordance with of 175 NAC 14-008.

14-005.05B When the inspection reveals one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse effect on the health, safety, or security of the persons served by the home health agency, the Department may request a statement of compliance from the home health agency. The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

1. If the home health agency submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will not take any disciplinary action against the license; or
2. If the home health agency fails to submit and implement a statement of compliance, the Department will initiate disciplinary action against the home health agency license, in accordance with 175 NAC 14-008.

14-005.06 Re-inspections

14-005.06A The Department may conduct re-inspections to determine if a home health agency fully complies with the requirements of 175 NAC 14-006.
Re-inspection occurs:

1. After the Department has issued a provisional license;
2. Before a provisional license is converted to a regular license;
3. Before a disciplinary action is modified or terminated; or
4. After the Department receives a statement of compliance or a plan of correction for cited violations.

14-005.06B Following a re-inspection, the Department may:

1. Convert a provisional license to a regular license;
2. Affirm that the provisional license is to remain effective;
3. Modify a disciplinary action in accordance with 175 NAC 14-008.02; or
4. Grant full reinstatement of the license.

14-006 STANDARDS OF OPERATION, CARE, AND TREATMENT: Each home health agency must be organized in a manner consistent with the size, resources, and type of services to ensure patient health and safety. The major organizational structure must include a governing authority, an administrator, and staff.

14-006.01 Governing Authority: Each home health agency must have a governing authority that assumes legal responsibility for the total operation and maintenance of the agency. The governing authority must approve written policies and procedures and ensure the policies and procedures are followed so as to provide quality health care. The

governing authority must maintain responsibility for all services furnished by the agency whether or not they are furnished under contract. Each home health agency must:

1. Have bylaws, rules, or equivalent which govern the operation of the agency and which must be updated as necessary;
2. Employ a qualified administrator as defined in 175 NAC 14-006.02;
3. Oversee the management and fiscal affairs of the agency;
4. Adopt, revise, and approve policies for the operation and administration of the agency as needed, including but not limited to;
 - a. Range of services to be provided;
 - b. Geographical areas to be served, which must encompass only counties that are located contiguously in the geographical area served;
 - c. Branch office(s), if any, which need not be located in a county that is continuous to the parent agency ;
 - d. Personnel qualifications, policies, and job descriptions;
 - e. Criteria for admission, discharge; and transfer of patients; and
 - f. Patient care policies.

14-006.02 Administration: The governing authority must select and employ an administrator to carry out the policies and directives of the governing authority. The governing authority must define the duties and responsibilities of the administrator in writing. Whether employed, elected, contracted, or appointed, the administrator must report and be directly responsible to the governing authority in all matters related to the maintenance, operation, and management of the home health agency.

The home health agency must organize, manage, and administer its resources to assure that each patient admitted for services receives the necessary level of care and treatment in a manner consistent with the patient's needs and desires.

14-006.02A The administrator must:

1. Be a physician; or
2. Be a registered nurse; or
3. Have training and experience in health service administration and at least one year of supervisory or administrative experience in home health care or related health program.

14-006.02B The administrator must be responsible for the management of the agency to the extent authority is delegated by the governing authority. A person must be designated in writing to act in the absence of the administrator. The administrator must have at least the following responsibilities:

1. Oversee and be responsible for the provision and coordination of patient services;
2. Organize and direct the agency's ongoing functions;
3. Maintain communication between the governing authority and staff;
4. Employ qualified personnel in accordance with job descriptions;

5. Provide written personnel policies, job descriptions, and current agency policies and procedures that are made available to all personnel;
6. Maintain appropriate personnel and administrative records;
7. Provide orientation for new staff, scheduled inservice education programs, and opportunities for continuing education of the staff;
8. Ensure the completion, maintenance, and submission of reports and records as required by the Department; and
9. Supervise branch offices. Onsite supervision of branch staff must be provided by the administrator's designated person(s) of the parent home health agency at least once a month. Documentation of these visits must be maintained in the parent agency.

14-006.03 Medical Director: A home health agency may choose to have a physician as the medical director. Any home health agency providing respiratory care services must have a licensed physician to serve as the medical director.

14-006.04 Staff Requirements: Each home health agency must maintain staff with the required training and skills to provide the services as approved on the agency license and as necessary to meet the needs of each patient accepted for care. Each home health agency must have job descriptions for each staff position, which includes minimum qualifications required for the position.

14-006.04A Employment Eligibility: Each home health agency must insure and maintain evidence that unlicensed staff assisting in the provision of care or treatment are supervised by the appropriate licensed health care professional.

14-006.04A1 Criminal Background and Registry Checks: The home health agency must complete and maintain documentation of pre-employment criminal background and registry checks on each unlicensed direct care staff.

14-006.04A1a Criminal Background Checks: The home health agency must complete a criminal background check on each unlicensed direct care staff through a governmental law enforcement agency or a private entity that maintains criminal background information.

14-006.04A1b Registry Checks: The home health agency must check for adverse findings with each of the following registries:

1. Nurse Aide Registry;
3. Adult Protective Services Central Registry;
4. Central Register of Child Protection Cases; and
5. Nebraska State Patrol Sex Offender Registry.

14-006.04A1c Each home health agency must:

1. Determine how to use the criminal background and registry information, except for the Nurse Aide Registry, in making hiring decisions;

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2. Decide whether employment can begin before receiving the criminal background and registry information; and
3. Document any decisions to hire a person with a criminal background or adverse registry findings, except for the Nurse Aide Registry. The documentation must include the basis for the decision and how it will not pose a threat to patient safety or patient property.

14-006.04A1d The home health agency must not employ a person with an adverse finding on the Nurse Aide Registry regarding patient abuse, neglect, or misappropriation of patient property.

14-006.04B Employment Record: Each home health agency must maintain a current employment record for each staff person which includes:

1. The title of that individual's position, qualifications, and description of the duties and functions assigned to that position;
2. Evidence of licensure, certification, or approval, if required;
3. Performance evaluations made within six months of employment and annually thereafter; and
4. Post hire/pre-employment health history screening. All employees must have a health history screening after accepting an offer of employment and prior to assuming job responsibilities. A physical examination is at the discretion of the employer based on results of the health history screening.

14-006.04C Initial Orientation: Each home health agency must provide and maintain evidence of an orientation program for all new staff and, as needed, for existing staff who are given new assignments. The orientation program includes, but is not limited to:

1. Job duties and responsibilities;
2. Organizational structure;
3. Patient rights;
4. Patient care policies and procedures;
5. Personnel policies and procedures; and
6. Reporting requirements for abuse, neglect, and exploitation in accordance with the Adult Protective Services Act, Neb. Rev. Stat. § 28-372, or in the case of a child in accordance with Neb. Rev. Stat. § 28-711 and with home health agency policies and procedures.

14-006.04D Training: Each home health agency must ensure staff receive training in order to perform job responsibilities.

14-006.04D1 Ongoing Training: Each home health agency must provide and maintain evidence of ongoing/continuous inservices or continuing education for staff. A record must be maintained including date, topic, and participants.

14-006.04D2 Specialized Training: Each home health agency must provide training of staff to permit performance of particular procedures or to provide specialized care, whether as part of a training program or as individualized instruction. This training must be documented in personnel records.

14-006.04E Individuals Under Hourly or Per Visit Contracts: If individuals under hourly or per visit contracts are utilized by the home health agency, there must be a written contract between the agency and the individual. The contract must include but is not limited to:

1. A statement that patients are accepted for care only by the parent home health agency;
2. A description of the services and the manner in which they are to be provided;
3. A statement that the contractor must conform to all applicable agency policies, including those related to qualifications;
4. A statement that the contractor is responsible for participating in the development of plans of care;
5. A statement that the services are controlled, coordinated, and evaluated by the parent agency;
6. The procedures for submitting clinical and progress notes, scheduling patient care, and continuing periodic patient evaluations; and
7. The procedures for determining charges and reimbursement.

14-006.04F Skilled Nursing

14-006.04F1 Skilled nursing services must be provided by registered and/or licensed practical nurses in accordance with the physician's approved written plan of care and/or acceptable standards of nursing practice. These services may be offered by the agency directly or under written contractual agreement. The home health agency must ensure a registered nurse is available or on call to the staff during all hours that skilled nursing services are provided.

14-006.04F2 Criteria for skilled nursing services and need for skilled services must include but not be limited to:

1. Services of such complexity that they can be safely and effectively performed only by or under the supervision of a registered nurse;
2. Services not normally requiring skilled nursing care, but which, because of special medical complications, become skilled nursing services because they must be performed or supervised by a registered nurse; and
3. The above services when needed to prevent a patient's further deterioration or preserve a patient's current capabilities even if recovery or medical improvement is not possible.

14-006.04F3 When skilled nursing care is ordered by a physician, the following specific services must be provided by a registered nurse:

1. Initial nursing assessment visit to a patient requiring skilled nursing care;
2. Reevaluation of the patient's nursing needs;
3. Provision of services requiring specialized nursing skill;
4. Initiation of appropriate preventive and rehabilitative nursing procedures;
5. Coordination of services; and
6. Supervision of other nursing personnel.

14-006.04F4 When skilled nursing care is ordered by a physician, the following specific services may be performed by a registered nurse or by a licensed practical nurse if s/he is under the supervision of a registered nurse:

1. Implementing the plan of care and necessary revisions to the plan of care. A registered nurse must review the plan of care as often as the severity of the patient's condition requires, but at least every 62 days;
2. Preparation of clinical and progress notes;
3. Informing the physician and other personnel of changes in the patient's conditions and needs;
4. Teaching other nursing personnel; and
5. Teaching the patient and caregiver for the purpose of meeting nursing and other related needs.

14-006.04G Home Health Aide & Medication Aide: Each home health agency that employs or contracts home health aides or medication aides must meet the following requirements for training and testing prior to providing care and services to patients. A home health agency must ensure the following requirements are met.

14-006.04G1 Employ Qualified Aides: A home health agency must employ only home health aides qualified to provide home health care pursuant to Neb. Rev. Stat. §§ 71-6601 to 71-6615. The Department will prescribe procedures for verification by home health agencies of successful completion of the requirements of Neb. Rev. Stat. § 71-6603.

14-006.04G2 Direction and Supervision: Each home health agency must provide direction (plan of care/assignment sheet) written by the registered nurse (RN) and RN supervision of home health aides. The home health agency must ensure a registered nurse is available or on call to the staff during all hours that home health aide services are provided.

14-006.04G3 Inservice Program: A home health agency must provide or make available to its home health aides four one-hour inservice programs per year on subjects relevant to home health care. The agency must maintain documentation of these programs.

14-006.04G4 Permitted Acts: Home health aides may perform only personal care, assistance with the activities of daily living, and basic therapeutic care. A home health aide must only provide medication in compliance with the Medication Aide Act. Home health aides must not perform acts which require the exercise of nursing or medical judgment.

14-006.04G5 Requirements: To act as a home health aide, a person must:

1. Be at least 18 years of age;
2. Be of good moral character;
3. Not have been convicted of a crime under the laws of this State or another jurisdiction, the penalty for which is imprisonment for a period of more than one year and which is rationally related to the person's fitness or capacity to act as a home health aide;
4. Be able to speak and understand the English language or language of the home health agency patient and the home health agency staff member who acts as the home health aide's supervisor;
5. Meet one of the following qualifications and provide proof of meeting the qualifications to the home health agency:
 - a. Has successfully completed a 75-hour home health aide training course which meets the standards described in Neb.Rev. Stat. § 71-6608.01;
 - b. Is a graduate of a practical or professional school of nursing;
 - c. Has been employed by a licensed home health agency as a home health aide II prior to September 6, 1991;
 - d. Has successfully completed a course in a practical or professional school of nursing which included practical clinical experience in fundamental nursing skills and has completed a competency evaluation as described in Neb. Rev. Stat. § 71-6608.02;
 - e. Has successfully completed a 75-hour basic course of training approved by the Department for nursing assistants as required by Neb. Rev. Stat. § 71-6039 and has completed a competency evaluation as described in Neb. Rev. Stat. § 71-6608.02;
 - f. Has been employed by a licensed home health agency as a home health aide I prior to September 6, 1991 and has completed a competency evaluation as described in Neb. Rev. Stat. § 71-6608.02; or
 - g. Has met the qualifications equal to one of those contained in 175 NAC 14-006.04G5, item 5 in another state or territory of the United States; and
6. Has been listed on the Medication Aide Registry operated by the Department, if identified as a medication aide.

14-006.04G6 Home Health Aide Training Course

14-006.04G6a A home health aide training course must meet the following standards with regard to content and duration of training, qualifications for instructors, and documentation of training. The course must address each of the following subject areas through classroom and supervised practical training totaling at least 75 hours, with at least 16 hours devoted to supervised practical training after the individual being trained has completed at least 16 hours of classroom training.

1. Communication skills;
2. Observation, reporting, and documentation of patient status and the care or service furnished;
3. Reading and recording temperature, pulse, and respiration;
4. Basic infection control procedures;
5. Basic elements of body functioning and changes in body functioning that must be reported to a home health aide's supervisor;
6. Maintenance of a clean, safe, and healthy environment;
7. Recognizing emergencies and knowledge of emergency procedures;
8. The physical, emotional, and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect of the patient, his or her privacy, and his or her property;
9. Appropriate and safe techniques in personal hygiene and grooming that include:
 - a. Bath: Sponge, bed bath, tub, and shower;
 - b. Shampoo: Sink, tub, and bed;
 - c. Nail and skin care;
 - d. Oral hygiene; and
 - e. Toileting and elimination;
10. Safe transfer techniques and ambulation;
11. Normal range of motion and positioning;
12. Adequate nutrition and fluid intake; and
13. Any other task that the home health agency may choose to have the home health aide perform.

14-006.04G6b The training and supervision of home health aides during the supervised practical portion of the training must be performed by or under the general supervision of a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which is in the provision of home health care, and who has supervised home health aide services for at least six months. Other individuals may be used to provide instruction under the supervision of a qualified registered nurse.

14-006.04G6c The home health agency must maintain sufficient documentation to demonstrate that the requirements of 175 NAC 14-006.04G6 are met.

14-006.04G6d A home health aide training course may be offered by any organization, except a home health agency that has had its license denied, suspended, or revoked or has admissions or re-admissions prohibited must not offer a home health aide training course for a period of 24 months after the occurrence of the action.

14-006.04G7 Verify Competency

14-006.04G7a Each home health agency must verify and maintain records of the competency of all home health aides employed by the agency, prior to the aide providing services in a patient's home.

14-006.04G7b Any home health aide not acting as such for a period of three years must repeat the 75-hour training course. The home health agency must determine and verify competency of the home health aide in the manner and method prescribed by the Department.

14-006.04G7c Home Health Aide Competency Evaluation Requirements

14-006.04G7c(1) Home health aide competency evaluation must address each of the subjects listed in 175 NAC 14-006.04G7c.

14-006.04G7c(2) The competency evaluation must be performed by a registered nurse.

14-006.04G7c(3) The subject areas in 175 NAC 14-006.04G7c must be evaluated by observation, and a written or oral examination.

14-006.04G7c(3)(a) Observations must be made with a live patient or other individual, and must include but are not limited to:

1. Reading and recording temperatures, pulse, and respiration;
2. Bath: Sponge, bedbath, tub, and shower;
3. Shampoos: Sink, tub, and bed;
1. Nail and skin care;
5. Oral hygiene;
6. Toileting and elimination;
7. Safe transfer techniques and ambulation;
8. Normal range of motion and positioning; and
9. Any other task that the home health agency may choose to have the home health aide perform.

14-006.04G7c(3)(b) The written or oral examination must include but is not limited to:

1. Communication skills;
2. Observation, reporting, and documentation;
3. Basic infection control procedures;
4. Basic elements of body functioning and changes in body functioning that must be reported to a home health aide's supervisor;
5. Maintenance of a clean, safe, and healthy environment;
6. Recognizing emergencies and knowledge of emergency procedures;
7. The physical, emotional, and developmental needs of and ways to work with the population served by the home health agency, including respect for the patient, his or her privacy and property; and
8. Adequate nutrition and fluid intake.

14-006.04G7c(4) A home health aide that receives an unsatisfactory on any task performed must not perform that task without direct supervision by a Nebraska-licensed nurse until after he/she receives training in that task, is evaluated, and subsequently is evaluated as satisfactory.

14-006.04G7d Home Health Aides, Care Plan, and Supervision

14-006.04G7d(1) RN supervision of the home health aide providing basic therapeutic care must include at a minimum an onsite visit to each patient by a registered nurse, with or without the home health aide present, once every two weeks. If the patient is receiving skilled nursing care, the registered nurse must perform the supervisory visit. If the patient is not receiving skilled nursing care, but is receiving another skilled service (that is, physical therapy, occupational therapy, or speech-language pathology services), supervision may be provided by the appropriate therapist.

14-006.04G7d(2) A licensed registered nurse must make an initial evaluation visit to each patient for whom the physician orders home health aide services, and must devise a written plan of care for the physician's approval. The registered nurse must review this plan of care as often as the patient's condition requires, but at least every 62 days.

14-006.04G7d(3) The home health aide must provide services in accordance with the physician's approved written plan of care under the supervision of the registered nurse or appropriate

therapist. The care plan must include patient specific written instructions, prepared by the supervising registered nurse or appropriate therapist, for each patient's care.

If home health aides provide only personal care and or activities of daily living, the clinical record does not need to contain a physician's order for the care.

Visits made by home health aides must be documented in accordance with the plan of care prepared by the RN or the appropriate therapist.

14-006.04G7d(4) RN supervision of the aide services consisting of personal care, assistance with activities of daily living, and measuring vital signs, if such measurements are taken at the request of the patient and are not required pursuant to the nursing care plan, must include, at a minimum, an onsite visit by the registered nurse to each patient with or without the home health aide present, once every 62 days and an onsite visit to observe each home health aide providing care and assistance, and measuring vital signs once every six months.

14-006.04H Physical Therapy

14-006.04H1 Physical therapy services must be provided by a physical therapist in accordance with the physician's approved written plan of care and prevailing standards of practice. These services may be offered by the agency directly or under written contractual agreement. A physical therapist must make an initial evaluation visit to each patient for whom the physician orders home physical therapy services, and must devise a written plan of care for the physician's approval. The physical therapist must review this plan of care as often as the severity of the patient's condition requires, but at least every 62 days. All physical therapy services performed by physical therapy assistants or physical therapy aides must be supervised by a licensed physical therapist according to Neb. Rev. Stat. §§ 71-2808 to 71-2822.

14-006.04H2 No physical therapist assistant may perform the services specified in Neb. Rev. Stat. § 71-2810 even when under the supervision of a physical therapist.

14-006.04H3 Supervision means a licensed physical therapist must be responsible and assumes legal liability for the services of physical therapist assistant. The supervising physical therapist must provide onsite supervision once every seven days or once every five visits, whichever comes first. Except in cases of emergency or when appropriate duties and protocols have been outlined in the initial application and approved by the board, supervision requires that the physical therapist be present on the premises of the practice

site for consultation and direction of the actions of the physical therapist assistant. These exceptions must also include, but not be limited to:

1. Ambulating patients;
2. Applying hot packs; and
3. Performing range of motion exercises.

14-006.04I Speech Pathology

14-006.04I1 Speech pathology services must be provided by a speech pathologist in accordance with the physician's approved written plan of care and prevailing standards of practice. These services may be offered by the agency directly or under written contractual agreement.

14-006.04I2 Speech pathology services do not include the practice of medical diagnosis, medical treatment, or surgery.

14-006.04I3 A speech pathologist must make an initial evaluation visit to each patient for whom the physician orders home speech pathology services, and must devise a written plan of care for the physician's approval. The speech pathologist must review this plan of care as often as the severity of the patient's condition requires, but at least every 62 days.

14-006.04J Occupational Therapy

14-006.04J1 Occupational therapy services must be provided by an occupational therapist in accordance with the physician's approved written plan of care and prevailing standards of practice. These services may be offered by the agency directly or under written contractual agreement.

14-006.04J2 Occupational therapy services may include:

1. Teaching daily living skills;
2. Developing perceptual-motor skills and sensory integrative functioning;
3. Developing pre-vocational capacities;
4. Designing, fabricating, or applying selected orthotic and prosthetic devices or selective adaptive equipment;
5. Using specifically designed therapeutic media and exercises to enhance functional performance;
6. Administering and interpreting tests, such as manual muscle and range of motion; and
7. Adapting environments for the handicapped.

14-006.04J3 An occupational therapist must make an initial evaluation visit to each patient for whom the physician orders home occupational therapy services, and must devise a written plan of care for the physician's approval.

The occupational therapist must review this plan of care as often as the severity of the patient's condition requires, but at least every 62 days.

14-006.04J4 All occupational therapy services performed by an occupational therapy assistant must be supervised by, or in consultation with, an occupational therapist. All occupational therapy services performed by an occupational therapy aide must be supervised by an occupational therapist. Supervision means the process by which the quantity and quality of work of an occupational therapy assistant is monitored. This supervision means the directing of the authorized activities of an occupational therapy assistant by a licensed occupational therapist and must not be construed to require the physical presence of the supervisor when carrying out assigned duties.

14-006.04K Respiratory Care

14-006.04K1 Respiratory care services provided by a respiratory care practitioner must be provided in accordance with the physician's approved written plan of care and prevailing standards of practice, including the directions of a medical director as required by Neb. Rev. Stat. §§ 71-1,229 to 71-1,230. These services may be offered by the agency directly or under written contractual agreement.

14-006.04K2 Respiratory care services include:

1. Therapeutic and diagnostic use of medical gases, administering apparatus, humidification, and aerosols;
2. Ventilatory assistance and control;
3. Postural drainage;
4. Chest physiotherapy and breathing exercises;
5. Respiratory rehabilitation;
6. Cardiopulmonary resuscitation;
7. Maintenance of nasal or oral endotracheal tubes;
8. Administration of aerosol and inhalant medications to the cardiorespiratory system; and
9. Use of specific testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment, and research. These techniques include, but are not limited to: measurement of ventilatory volumes; pressures, and flows; measurement of physiologic partial pressures; pulmonary function testing; and hemodynamic and other related physiological monitoring of the cardiopulmonary system.

14-006.04K3 A respiratory care practitioner must make an initial evaluation visit to each patient for whom the physician orders home respiratory care services, and must devise a written plan of care for the approval of the physician and the medical director. The respiratory care practitioner along with the medical director, must review this plan of care as often as the severity of the patient's condition requires, but at least every 62 days.

14-006.04L Social Work Services

14-006.04L1 All social work services must be provided by a qualified social worker who is certified or credentialed in accordance with the prevailing standards of practice. These services may be offered by the agency directly or under written contractual agreement.

14-006.04L2 Therapeutic social work services in a home health agency include:

1. Information, resource identification and development, and referral services;
2. Preparation and evaluation of psychosocial assessments and development of social work service plans; and
3. Clinical treatment and prevention of psychosocial dysfunction, disability, or impairment, including emotional and mental disorders.

14-006.04L3 Social work practice must not include:

1. Measuring and testing of personality or intelligence;
2. Accepting fees or compensation for the treatment of disease, injury, or deformity of persons by drugs, surgery, or any manual or mechanical treatment whatsoever;
3. Prescribing drugs or electroconvulsive therapy; or
4. Treating organic diseases or major psychiatric diseases, except when practiced in association with and under the general supervision of a physician.

14-006.04L4 A social worker must make an initial evaluation visit to each patient for whom the physician orders home social work services, and must devise a written plan of care for the physician's approval. The social worker must review this plan of care as often as the severity of the patient's condition requires, but at least every 62 days.

14-006.04M Dialysis

14-006.04M1 Home dialysis services must be provided by a registered nurse, trained in dialysis, under the direction of a physician, in accordance with the physician's approved written plan of care and prevailing standards of practice. These services may be offered by the agency directly or under written contractual agreement.

14-006.04M2 Home dialysis services include:

1. Hemodialysis;
2. Continuous ambulatory peritoneal dialysis;

3. Continuous cyclic peritoneal dialysis; and
4. Intermittent peritoneal dialysis.

14-006.04M3 A registered nurse, trained in dialysis, must make an initial evaluation visit to each patient for whom the physician orders dialysis, and must devise a written plan of care for the physician's approval. The registered nurse must review this plan of care as often as the severity of the patient's condition requires, but at least once every 62 days.

14-006.04N Intravenous Therapy

14-006.04N1 All intravenous therapy services must be provided by a registered nurse in accordance with the physician's written approved plan of care and prevailing standards of practice. These services may be offered by the agency directly or under written contractual agreement.

14-006.04N2 Home intravenous therapy includes, but is not limited to:

1. Total parenteral nutrition (TPN);
2. Hydration therapy;
3. Chemotherapy;
4. Antibiotic therapy; and
5. Blood and blood products.

14-006.04N3 A registered nurse must make an initial evaluation visit to each patient for whom the physician orders home intravenous therapy, and must devise a written plan of care for the physician's approval. The registered nurse must review the plan of care as often as the severity of the patient's condition requires, but at least every 62 days.

14-006.05 Patient Rights: The governing body must establish a bill of rights that will be equally applicable to all patients. The home health agency must provide the patient/designee 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. The agency must maintain documentation showing that the patient/designee has received and understands the intent of the patient's rights. The patient must have the right to:

1. Choose the home health agency that provides their care;
2. Participate in the planning of their care and to receive appropriate instructions and education regarding the plan, prior to the care being provided and as changes are made in the plan of care;
3. Request information about their diagnosis, prognosis, and treatment, including alternatives to care and risks involved, in terms that they and their families or designees can readily understand so that they can give their informed consent;
4. Refuse home health care and to be informed of possible health consequences of this action;

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5. Care given without discrimination as to race, color, creed, sex, age, or national origin;
6. Be admitted for service only if the agency has the ability to provide safe, professional care at the level of intensity needed and to reasonable continuity of care;
7. Confidentiality of all records, communications, and personal information;
8. Review all health records pertaining to them, unless, the physician has documented otherwise in the medical record;
9. Receive both an oral and written explanation regarding termination if services are terminated for any reason other than discharge and receive information regarding community resources. Patients must receive at least a two-week notice prior to termination of services. When a patient is discharged by the physician's written order, a two-week notice is not required. A two-week notice is not required when patient services are being terminated based on an unsafe care environment in the patient's home, patient non-compliance with the plan of care, or failure to pay for services rendered;
10. Voice complaints/grievances and suggest changes in service or staff without fear of reprisal or discrimination. Complaints made by the patient/designee received by the home health agency regarding care or treatment must be investigated. The agency must document both the existence and the resolution of the complaint. The patient/designee must be informed of the outcome/resolution of the complaint/grievance;
11. Be fully informed of agency policies and charges for services, including eligibility for third-party reimbursement, prior to receiving care;
12. Be free of verbal, physical, and psychological abuse and to be treated with dignity;
13. Have his or her property treated with respect; and
14. Receive information regarding advance directives.

All patients, designees, or guardians, prior to the commencement of services, must be given a copy of the patient's rights.

14-006.05A Copies of the Bill of Rights: The home health agency must give to all patients or designees a copy of the bill of rights upon the commencement of services. The home health agency must maintain documentation showing that it has complied with this requirement.

14-006.05B Advance Directives: The home health agency must comply with the requirements of Neb. Rev. Stat. §§ 30-3041 to 30-3432 (Health Care Power of Attorney Act) and §§ 20-401 to 20-416 (Rights of the Terminally Ill Act). The home health agency must inform and distribute written information to the patient/designee, in advance, concerning its policies on advance directives, including a description of applicable State law.

14-006.05C In-Home Assessment and Consent: Authorized agents of the Department have the right, with the consent of the patient/designee, to visit patient's homes during the provision of home health services in order to make an assessment of the quality of care being given to patients.

14-006.05C1 Consent: A patient/designee whose home is to be visited by an authorized representative of the Department must be notified by the home health agency or the Department before the visit, to ascertain a verbal consent for the visit. A written consent form clearly stating that the patient voluntarily agrees to the visit must be presented to and signed by the patient/designee prior to observation of care or treatment by the Department representative. The home health agency must arrange this visit.

14-006.05C2 Right to Refuse: All home health patients have the right to refuse to allow an authorized representative of the Department to enter their homes for the purposes of assessing the provision of home health services.

14-006.05D Competency of Patients

14-006.05D1 In the case of the patient adjudged incompetent under the laws of the State by a court of competent jurisdiction, the rights of the patient are exercised by the persons authorized under State law to act on the patient's behalf.

14-006.05D2 In the case of the patient who has not been adjudged incompetent by the State court, any person designated in accordance with State law may exercise the patient's rights to the extent provided by the law.

14-006.06 Complaints/Grievances: Each home health agency must establish and implement a process that promptly addresses complaints/grievances filed by patients/designees. The process includes but is not limited to:

1. A procedure for submission of complaints/grievances that is made available to patients or designees;
2. Time frames and procedures for review of complaints/grievances and provision of a response; and
3. How information from complaints/grievances and responses are utilized to improve the quality of patient care and treatment.

14-006.07 Quality Assurance/Improvement: A home health agency must have a quality assurance/improvement program to review services concurrently and retrospectively in accordance with a written quality assurance/improvement plan. The results must be recorded quarterly and reported to the governing authority annually.

14-006.07A The quality assurance/improvement program must be ongoing and consist of collection and assessment of important aspects of patient care. The program must provide a mechanism to:

1. Identify problems;
2. Recommend appropriate action; and
3. Implement recommendations.

14-006.07B There must be a written quality assurance/improvement plan which must include at least the following:

1. Agency objectives;
2. Involvement of all patient care disciplines, if more than one service is offered by the agency;
3. Description of how the agency's services will be administered and coordinated;
4. Methodology for monitoring, evaluating, and improving the quality of care;
5. Setting of priorities for resolving problems;
6. Monitoring to determine effectiveness of action;
7. Oversight responsibility; and
8. Mechanism for review of quality assurance plan.

14-006.08 Patient Care and Treatment: Each home health agency must establish and implement policies and procedures that encompass all care and treatment provided to patients. The policies and procedures are consistent with prevailing professional standards, and delineate the scope and services provided in the home health agency and encompass aspects to protect the health and safety of patients. Home health services must include but are not limited to:

1. A physician's order for home health services for a patient;
2. A patient's care must follow a written plan of care devised by a registered nurse or qualified professional of the appropriate discipline after an initial visit to the patient's residence;
 - a. The plan of care must be approved by the patient's physician;
 - b. The plan of care must be reviewed periodically by a registered nurse or other qualified professional of the appropriate discipline as often as the severity of the patient's condition requires, but at least every 62 days; and
 - c. Each home health agency must have policies and procedures describing the method to obtain and incorporate physician orders into the plan of care;
3. A home health agency that provides more than one service to a single patient must be responsible for coordination of those services to assure that the services effectively complement one another and support the objectives in the plan of care;
4. The home health agency must send a written summary of the care provided to the attending physician as often as the severity of the patient's condition requires, but at least every 62 days;
5. The home health agency that provides services under arrangement with another agency or individual must be subject to a written contract conforming to the requirements of 175 NAC 14-006.04E; and
6. A registered nurse can provide those independent nursing activities authorized within the Nebraska Nurse Practice Act without a physician's order.

14-006.09 Administration or Provision of Medications: The home health agency must establish and implement policies and procedures to ensure patients receive medications only as legally prescribed by a medical practitioner in accordance with the five rights and prevailing professional standards.

14-006.09A Methods of Administration: When the home health agency is responsible for the administration of medications, it must be accomplished by the following methods:

14-006.09A1 Self-Administration of Medications: Patients may be allowed to self-administer medications, with or without supervision, when the home health agency determines that the patient is competent and capable of doing so and has the capacity to make an informed decision about taking medications in a safe manner. The home health agency must develop and implement policies to address patient self-administration of medication, including:

1. Storage and handling of medications;
2. Inclusion of the determination that the patient may self-administer medication in the patient plan of care;
3. Monitoring the plan to assure continued safe administration of medications by the patient.

14-006.09A2 Licensed Health Care Professional: When the home health agency uses a licensed health care professional for whom medication administration is included in the scope of practice, the home health agency must ensure the medications are properly administered in accordance with prevailing professional standards.

14-006.09A3 Provision of Medication by a Person other than a Licensed Health Care Professional: When the home health agency uses a person other than a licensed health care professional in the provision of medications, the home health agency must follow 172 NAC 95 and 96. Each home health agency must establish and implement policies and procedures as follows:

1. To ensure that medication aides and other unlicensed persons who provide medications are trained and have demonstrated the minimum competency standards specified in 172 NAC 95-004;
2. To ensure that competency assessments and/or courses for medication aides and other unlicensed persons are provided in accordance with the provisions of 172 NAC 96-005;
3. That specify how direction and monitoring will occur when the home health agency allows medication aides to perform the routine/acceptable activities authorized by 172 NAC 95-005, and as follows:
 - a. Provide routine medication; and
 - b. Provision of medications by the following routes:
 - (1) Oral which includes any medication given by mouth including sublingual (placing under the tongue) and

- buccal (placing between the cheek and gum) routes and oral sprays;
- (2) Inhalation which includes inhalers and nebulizers, including oxygen given by inhalation;
 - (3) Topical application of sprays, creams, ointments, and lotions and transdermal patches; and
 - (4) Instillation by drops, ointments, and sprays into the eyes, ears and nose;
4. That specify how direction and monitoring will occur when the home health agency allows medication aides and other unlicensed persons to perform the additional activities authorized by 172 NAC 95-009.07, which includes but are not limited to:
 - a. Provision of PRN medications;
 - b. Provision of medications by additional routes including but not limited to gastrostomy tube, rectal, and vaginal; and/or
 - c. Participation in monitoring;
 5. That specify how competency determinations will be made for medication aides and other unlicensed persons to perform routine and additional activities pertaining to medication provision;
 6. That specify how written direction will be provided for medication aides and other unlicensed persons to perform the additional activities authorized by 172 NAC 95-009;
 7. That specify how records of medication provision by medication aides and other unlicensed persons will be recorded and maintained;
 8. That specify how medication errors made by medication aides and other unlicensed persons and adverse reactions to medications will be reported. The reporting must be:
 - a. Made to the identified person responsible for direction and monitoring;
 - b. Made immediately upon discovery; and
 - c. Documented in the patient's medical records;
 9. When the home health agency is not responsible for medication administration and provision, the agency must maintain responsibility for overall supervision, safety, and welfare of the patient;
 10. Each home health agency must have a policy for the disposal of controlled drugs maintained in the patient's home when those drugs are no longer needed by the patient.

14-006.09B Each home health agency must have and implement policies and procedures for reporting any errors in administration or provision of prescribed medications to the patient's licensed practitioner in a timely manner upon discovery and a written report of the error prepared. Errors must include any variance from the five rights.

14-006.09C Each home health agency must have policies and procedures for reporting any adverse reaction to a medication immediately upon discovery to the

patient's licensed practitioner and document the event in the patient's medical record.

14-006.09D Each home health agency must establish and implement appropriate policies and procedures for those staff authorized to receive telephone and verbal diagnostic, therapeutic, and medication orders.

14-006.10 Record Keeping Requirements: A home health agency must maintain clinical records for each patient and provide relevant information from these clinical records to the personnel providing services in the patient's home.

14-006.10A Content: The clinical record must contain sufficient information to identify the patient clearly, to justify the diagnosis and treatment, and to document the results of treatment accurately. All clinical records must contain at least the following general categories of data:

1. Identification data and consent forms;
2. The name and address of the patient's physician(s);
3. The physician's signed order for home health care and the approved plan of care, must include, when appropriate to the services being provided:
 - a. Medical diagnosis;
 - b. Medication orders;
 - c. Dietary orders;
 - d. Activity orders;
 - e. Safety orders;
4. Initial and periodic assessments and care plan by disciplines providing services;
 - a. The home health agency must provide pertinent current and past medical history to the licensed personnel providing services on its behalf;
5. Signed and dated admission, observation, progress, and supervisory notes;
6. Copies of summary reports sent to the physician;
7. Diagnostic and therapeutic orders signed by the physician;
8. Reports of treatment and clinical findings; and
9. Discharge summary.

14-006.10B All clinical information pertaining to the patient's care must be centralized in the patient's clinical record maintained by the parent or branch home health agency or by a subunit of a home health agency.

14-006.10C Clinical records of services provided for each patient must be kept in ink, typed, or on electronic data systems.

14-006.10D Entries into the clinical record for services rendered must be written within 24 hours and incorporated into the clinical record within seven working days.

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14-006.10E Entries must be made by the person providing services, must contain a statement of facts personally observed, and must be signed with full name. Initials may be used if identified in the clinical record.

14-006.10F All physician's verbal orders for care must be signed and incorporated into the clinical record within 30 days.

14-006.10G Clinical records must be secured in locked storage. Written policies and procedures must be developed regarding use and removal of records and the conditions for release of information. The patient's or legal designee's written consent must be required for release of information not authorized by law.

14-006.10H Retention: Clinical records must be retained in a retrievable form for at least five years after the last discharge of the patient. In case of a minor, records must be retained for at least five years after the patient becomes of age under Nebraska law. The records are subject to inspection by an authorized representative of the Department. Clinical records may be destroyed after five years following the last discharge date or date the patient becomes of age.

14-006.10H1 All records must be disposed of by shredding, mutilation, burning or by other similar protective measures in order to preserve the patients' rights of confidentiality. Records or documentation of the actual fact of clinical record destruction must be permanently maintained.

14-006.10H2 Protection of Information: The home health agency must safeguard the clinical record against loss, destruction and unauthorized use. The patient has the right to confidentiality of their records maintained by the home health agency. Patient information and/or records will be released only with consent of the patient or designee or as required by law.

14-006.10H3 Informed Consent: A home health agency must demonstrate respect for an individual's rights by ensuring that an informed consent form that specifies the type of care and services that may be provided as care during the course of the illness has been obtained for every individual, either from the individual or designee.

14-006.10I Home health agencies with branch offices and/or subunits must maintain in the parent home health agency for all patients receiving services from branch offices or subunits:

1. Patient identifying information;
2. Name, address, and telephone number of patient's physician;
3. Patient diagnosis; and
4. The service(s) being provided to the patient.

This information must be maintained until the complete clinical record is either stored at the parent agency or destroyed.

14-006.10J If a patient is transferred to another health care facility or agency, information necessary or useful in care and treatment of the patient must be promptly forwarded to the appropriate facility/agency with the consent of the patient or the patient's legal designee.

14-006.10K Other Agency Records: The home health agency must have and maintain the following records:

1. Written policies and procedures governing services provided by the agency. These must be available for visual review to staff, patients, family, and legal designee of the patient;
2. Policies and procedures governing admission to ensure only individuals whose needs can be met by the agency or by providers of services under contract to the agency will be admitted as patients;
3. Policies and procedures governing discharge;
4. Grievance/Complaint procedure: Policies and procedures describing the method used to receive grievances/complaints and recommendations from patients, family, or legal designee and to ensure agency response and which provide for maintenance of records for complaints received and action taken;
5. Records of each orientation and in-service or other training program, including the signature of staff attending, subject-matter of the training, the names and qualifications of instructors, dates of training, length of training sessions, and any written materials provided;
6. Contracts with outside resources to furnish agency services not provided directly by the home health agency;
7. Personnel records; and
8. Quality assurance records, as required by 175 NAC 14.

14-006.10L Accessibility/Availability of Records: Records required by 175 NAC 14 be available for inspection and copying by authorized representatives of the Department.

14-006.11 Infection Control: Each home health agency must have an infection control program to minimize sources and transmissions of infections and communicable diseases for services provided in the patient home setting as follows:

1. Use of good handwashing techniques;
2. Use of safe work practices and personal protective equipment;
3. Proper handling, cleaning, and disinfection of patient care equipment, supplies and linens; and
4. Patient teaching to include information concerning infections and modes of transmission, hygienic practices, methods of infection prevention, and methods for adapting available resources to maintain appropriate hygienic practices.

14-006.12 Disaster Preparedness: The home health agency must establish and implement disaster preparedness plans and procedures to ensure that:

1. Patients and families are educated on how to handle patient care and treatment, safety, and well-being during and following instances of natural (tornado, flood, etc.) and other disasters, or other similar situations; and
2. How staff is educated on disaster preparedness and staff safety is assured.

14-007 PHYSICAL PLANT: Not applicable for home health agencies.

14-008 DENIAL, REFUSAL TO RENEW, OR DISCIPLINARY ACTION

14-008.01 Grounds for Denial, Refusal to Renew, or Disciplinary Action:

14-008.01A The Department may deny or refuse to renew a home health agency license for failure to meet the requirements for licensure, including:

1. Failing an inspection specified in 175 NAC 14-005;
2. Having had a license revoked within the two-year period preceding an application; or
3. Any of the grounds specified in 175 NAC 14-008.01B.

14-008.01B The Department may take disciplinary action against a home health agency license for any of the following grounds:

1. Violation of any of the provisions of the Health Care Facility Licensure Act or 175 NAC 14;
2. Committing, permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of a home health agency patient or employee;
4. A report from an accreditation body or public agency sanctioning, modifying, terminating, or withdrawing the accreditation or certification of the home health agency;
5. Failure to allow an agent or employee of the Department of Health and Human Services access to the home health agency for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department;
6. Discrimination or retaliation against a home health agency patient or employee who has submitted a complaint or information to the Department of Health and Human Services;
7. Discrimination or retaliation against a home health agency patient or employee who has presented a grievance or information to the office of the state long-term care ombudsman;
8. Failure to allow a state long-term care ombudsman or an ombudsman advocate access to the home health agency for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in 15 NAC 3;
9. Violation of the Emergency Drug Box Act;

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10. Failure to file a report of payment made or action taken due to a liability claim or an alleged violation, as required by Neb. Rev. Stat. § 71-168.02;
11. Violation of the Medication Aide Act; or
12. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. §§ 28-372 and 28-711.

14-008.02 Procedures for Imposing Disciplinary Action

14-008.02A If the Department determines to deny, refuse renewal of, or take disciplinary action against a license, the Department will send a notice to the applicant or licensee by certified mail to the last address shown on its records. The notice will state the determination, including a specific description of the nature of the violation and the statute or regulation violated, and the type of disciplinary action pending.

14-008.02B The denial, refusal to renew, or disciplinary action becomes final 15 days after the mailing of the notice unless the applicant or licensee, within the 15-day period, makes a written request to the Director for an informal conference or an administrative hearing.

14-008.02C Informal Conference

14-008.02C1 At the request of the applicant or licensee, the Department will hold an informal conference within 30 days of the receipt of the request. The conference may be held in person or by other means, at the request of the applicant or licensee.

If the pending action is based on an inspection, the Department's representative at the informal conference will not be the individual who did the inspection.

14-008.02C2 Within 20 working days of the conference, the Department representative will state in writing the specific reasons for affirming, modifying, or dismissing the notice. The representative will send a copy of the statement to the applicant or licensee by certified mail to the last address shown in the Department's records and a copy to the Director.

14-008.02C3 If the applicant or licensee successfully demonstrates at the informal conference that the deficiencies should not have been cited in the notice, the Department will remove the deficiencies from the notice and rescind any sanction imposed solely as a result of those cited deficiencies.

14-008.02C4 If the applicant or licensee contests the affirmed or modified notice, the applicant or licensee must submit a request for hearing in writing to the Director within five working days after receipt of the statement.

14-008.02D Administrative Hearing

14-008.02D1 When an applicant or a licensee contests the notice and requests a hearing, the Department will hold a hearing in accordance with the Administrative Procedure Act (APA) and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

14-008.02D2 On the basis of evidence presented at the hearing, the Director will affirm, modify, or set aside the determination. The Director's decision will:

1. Be in writing;
2. Be sent by registered or certified mail to the applicant or licensee; and
3. Become final 30 days after mailing unless the applicant or licensee, within the 30-day period, appeals the decision.

14-008.02D3 An applicant or a licensee's appeal of the Director's decision must be in accordance with the APA.

14-008.03 Types of Disciplinary Action

14-008.03A The Department may impose any one or a combination of the following types of disciplinary action against the license:

1. A fine not to exceed \$10,000 per violation;
2. A prohibition on admissions or re-admissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;
3. A period of probation not to exceed two years during which the home health agency may continue to operate under terms and conditions fixed by the order of probation;
4. A period of suspension not to exceed three years during which the home health agency may not operate; and
5. Revocation which is a permanent termination of the license. The licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

14-008.03B In determining the type of disciplinary action to impose, the Department will consider:

1. The gravity of the violation, including the probability that death or serious physical or mental harm will result;
2. The severity of the actual or potential harm;
3. The extent to which the provisions of applicable statutes, rules, and regulations were violated;
4. The reasonableness of the diligence exercised by the home health agency in identifying or correcting the violation;
5. Any previous violations committed by the home health agency; and

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6. The financial benefit to the home health agency of committing or continuing the violation.

14-008.03C If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action as described in 175 NAC 14-008.03A.

14-008.03D Temporary Suspension or Temporary Limitation: If the Department determines that home health agency patients are in imminent danger of death or serious physical harm, the Director may:

1. Temporarily suspend or temporarily limit the home health agency license, effective when the order is served upon the home health agency. If the licensee is not involved in the daily operation of the home health agency, the Department will mail a copy of the order to the licensee, or if the licensee is a corporation, to the corporation's registered agent;
2. Order the immediate removal of patients; or
3. Order the temporary closure of the home health agency pending further action by the Department.

The Department will simultaneously institute proceedings for revocation, suspension, or limitation of the license, and will conduct an administrative hearing no later than ten days after the date of the temporary suspension or temporary limitation.

14-008.03D1 The Department will hold a hearing in accordance with the Administrative Procedure Act (APA) and the Department's rules and regulations adopted and promulgated under the APA.. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

14-008.03D2 If a written request for continuance of the hearing is made by the licensee, the Department will grant a continuance, which may not exceed 30 days.

14-008.03D3 On the basis of evidence presented at the hearing, the Director will:

1. Order the revocation, suspension, or limitation of the license; or
2. Set aside the temporary suspension or temporary limitation.

If the Director does not reach a decision within 90 days of the temporary suspension or temporary limitation, the temporary suspension or temporary limitation will expire.

14-008.03D4 Any appeal of the Department's decision after hearing must be in accordance with the APA.

14-008.04 Reinstatement from Disciplinary Probation, Suspension, and Re-licensure Following Revocation

14-008.04A Reinstatement at the End of Probation or Suspension

14-008.04A1 Reinstatement at the End of Probation: A license may be reinstated at the end of probation after the successful completion of an inspection, if the Department determines an inspection is warranted.

14-008.04A2 Reinstatement at the End of Suspension: A license may be reinstated at the end of suspension following:

1. Submission of an application to the Department for renewal that conforms to the requirements of 175 NAC 14-003.02;
2. Payment of the renewal fee as specified in 175 NAC 14-004.10; and
3. Successful completion of an inspection.

The Department will reinstate the license when it finds, based on an inspection as provided for in 175 NAC 14-005, that the home health agency is in compliance with the operation, care, and treatment requirements of 175 NAC 14-006.

14-008.04B Reinstatement Prior to Completion of Probation or Suspension

14-008.04B1 Reinstatement Prior to the Completion of Probation: A licensee may request reinstatement prior to the completion of probation and must meet the following conditions:

1. Submit a petition to the Department stating:
 - a. The reasons why the license should be reinstated prior to the probation completion date; and
 - b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the probation; and
2. Successfully complete any inspection the Department determines necessary.

14-008.04B2 Reinstatement Prior to Completion of Suspension: A licensee may request reinstatement prior to the completion of suspension and must meet the following conditions:

1. Submit a petition to the Department stating:
 - a. The reasons why the license should be reinstated prior to the suspension completion date; and
 - b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the suspension;

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2. Submit a written renewal application to the Department as specified in 175 NAC 14-003.02;
3. Pay the renewal fee as specified in 175 NAC 14-004.10; and
4. Successfully complete an inspection.

14-008.04B3 The Director will consider the petition submitted and the results of any inspection or investigation conducted by the Department and:

1. Grant full reinstatement of the license;
2. Modify the probation or suspension; or
3. Deny the petition for reinstatement.

14-008.04B4 The Director's decision is final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within the 30-day period. The requested hearing will be held according to rules and regulations of the Department for administrative hearings in contested cases.

14-008.04C Re-Licensure After Revocation: A home health agency license that has been revoked is not eligible for re-licensure until two years after the date of revocation.

14-008.04C1 A home health agency seeking re-licensure must apply for an initial license and meet the requirements for initial licensure in 175 NAC 14-003.01.

14-008.04C2 The Department will process the application for re-licensure in the same manner as specified in 175 NAC 14-003.01.

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