

Regulatory Changes Impacting Florida's Home Health Agencies Take Effect July 1

By Kathleen M. Premo and Olivia Seraphim

June 2018

Florida Governor Rick Scott recently signed into law CS/CS/SB 622 (“Bill”),¹ which effectuates a variety of changes to regulations impacting the operation of home health agencies (“HHAs”). Providers, HHA facility owners, and businesses frequently transacting with HHAs should prepare for the implementation of these regulatory changes in advance of their July 1, 2018, effective date.

For your convenience, relevant portions of the Bill are summarized in this Client Alert to provide an overview of the expected changes and how these changes may affect you.

New Licenses Must Specify the Services the HHA Is Authorized to Perform

All licenses issued on or after July 1, 2018, must specify the home health services that the HHA is authorized to perform. Moreover, the license must specify whether and which of those specified services are considered “skilled care.” (In Florida, “skilled care” includes nursing services or therapeutic services required by law to be delivered by an appropriately licensed health care professional who is employed or under contract with a licensed HHA or is referred by a licensed nurse registry.²) The provision or advertisement of services not specified on the face of the license will be considered to be “unlicensed” activities subject to the relevant fines and penalties.

No Grace Period for Ceasing Unlicensed HHA Services

The Bill eliminates the previously available 10-day grace period for ceasing unlicensed HHA services. As such, facilities that own, operate, or maintain an unlicensed HHA must *immediately* discontinue operations upon the receipt of a notification from the Florida Agency for Health Care Administration (“AHCA”) and apply for a license or be subject to the imposition of the relevant fines and penalties. Each day of continued unlicensed operation constitutes a separate offense.

¹ The text of the Bill is available at <https://www.flsenate.gov/Session/Bill/2018/622>.

² Fla. Stat. § 400.462(29).

HHAs Undergoing a Change of Ownership and/or Adding Skilled Care Services Must Submit Proof of Accreditation and “Satisfactory Proof” of Compliance

Although previously required only of initial applicants, HHAs applying for a change of ownership or for the addition of a skilled care service must now also include as part of their application proof of accreditation from an accrediting organization recognized by AHCA as having standards comparable to those required by Florida law. In addition, applicants for a change of ownership or for the addition of a skilled care service must submit “satisfactory proof” that they are in compliance with all applicable HHA requirements as part of their application. Satisfactory proof of compliance includes, but is not limited to, a listing of services to be provided to patients, the number and discipline of professional staff to be employed, income and expense statements, and cash flow statements.

Medicare or Medicaid Certification Is Not Explicitly Required for Licensure

Under the Bill, AHCA is no longer prohibited from issuing an HHA license (initial, change of ownership, and/or application for the addition of skilled care services) if the HHA fails to satisfy the requirements of a Medicaid or Medicare certification survey. Nevertheless, applicants are still required to comply with all AHCA HHA licensing regulations and must supply AHCA with proof of compliance and accreditation, as described above.

HHAs Must Provide the Services Specified in Their Written Agreements with Patients

The Bill clarified that AHCA must impose a \$5,000 fine against an HHA if it continuously fails to provide the services specified in the written agreements between the HHA and its patients. An exception is available only in limited emergency situations beyond an HHA’s control in which it is impossible for the HHA to provide the agreed-upon services. As such, HHAs should frequently review and monitor their written agreements throughout a patient’s course of care to ensure that they are rendering all services as expected.

HHAs Providing Skilled Nursing Care Must Have a Director of Nursing on Staff

HHAs that provide any type of skilled nursing care will now be required to employ a designated Director of Nursing as a member of its staff. This is a significant change since previously HHAs that were not Medicare- or Medicaid-certified and that did not provide skilled care (or that provided only physical, occupational, or speech therapy) were not required to have a Director of Nursing on staff.

Epstein Becker Green is available to assist organizations in complying with these regulatory changes.

* * *

*This Client Alert was authored by **Kathleen M. Premo** and **Olivia Seraphim**. For additional information about the issues discussed in this Client Alert, please contact **Kathleen M. Premo** or the Epstein Becker Green attorney who regularly handles your legal matters.*

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

About Epstein Becker Green

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973 as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in locations throughout the United States and supporting domestic and multinational clients, the firm's attorneys are committed to uncompromising client service and legal excellence. For more information, visit www.ebglaw.com.

If you would like to be added to our mailing list or need to update your contact information, please contact Lisa C. Blackburn at lblackburn@ebglaw.com or 202-861-1887.