CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5386

Chapter 42, Laws of 1993

53rd Legislature
1993 Regular Session

HOME HEALTH, HOSPICE, AND HOME CARE AGENCY LICENSURE

EFFECTIVE DATE: 6/30/93 - Except Section 11 which becomes effective on 1/1/94

Passed by the Senate February 24, 1993
YEAS 46 NAYS 0

JOEL PRITCHARD
President of the Senate

Passed by the House April 8, 1993
YEAS 97 NAYS 0

BRIAN EBERSOLE
Speaker of the
House of Representatives

Approved April 19, 1993

MARTY BROWN
Secretary

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 5386 as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE LOWRY
Governor of the State of Washington

Secretary of State
State of Washington

Certified April 19, 1993
FILED
April 19, 1993 - 1:41 p.m.
AN ACT Relating to the licensure of home health, hospice, and home care agencies under chapter 70.127 RCW; amending RCW 70.127.010, 70.127.040, 70.127.050, 70.127.080, 70.127.090, 70.127.100, 70.127.120, 70.127.130, and 70.127.250; adding new sections to chapter 70.127 RCW; creating a new section; repealing RCW 70.127.160, 70.127.900, and 70.127.901; providing effective dates; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 70.127.010 and 1991 c 3 s 373 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Branch office" means a location or site from which a home health, hospice, or home care agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the agency and is located sufficiently close to share administration, supervision, and services.

(2) "Department" means the department of health.

(3) "Home care agency" means a private or public agency or organization that administers or provides home care services directly
or through a contract arrangement to ill, disabled, or infirm persons
in places of temporary or permanent residence.

(4) "Home care services" means personal care services, homemaker
services, respite care services, or any other nonmedical services
provided to ill, disabled, or infirm persons which services enable
these persons to remain in their own residences consistent with their
desires, abilities, and safety.

(5) "Home health agency" means a private or public agency or
organization that administers or provides home health aide services or
two or more home health services directly or through a contract
arrangement to ill, disabled, or infirm persons in places of temporary
or permanent residence. A private or public agency or organization
that administers or provides nursing services only may elect to be
designated a home health agency for purposes of licensure.

(6) "Home health services" means health or medical services
provided to ill, disabled, or infirm persons. These services may be of
an acute or maintenance care nature, and include but are not limited to
nursing services, home health aide services, physical therapy services,
occupational therapy services, speech therapy services, respiratory
therapy services, nutritional services, medical social services, and
medical supplies or equipment services.

(7) "Home health aide services" means services provided by a home
health agency or a hospice agency under the supervision of a registered
nurse, physical therapist, occupational therapist, or speech therapist.
Such care includes ambulation and exercise, assistance with self-
administered medications, reporting changes in patients’ conditions and
needs, completing appropriate records, and personal care or homemaker
services (needed to achieve medically desired results).

(8) "Homemaker services" means services that assist ill, disabled,
or infirm persons with household tasks essential to achieving adequate
household and family management.

(9) "Hospice agency" means a private or public agency or
organization administering or providing hospice care directly or
through a contract arrangement to terminally ill persons in places of
temporary or permanent residence by using an interdisciplinary team
composed of at least nursing, social work, physician, and pastoral or
spiritual counseling.

(10) "Hospice care" means: (a) Palliative care provided to a
terminally ill person in a place of temporary or permanent residence
that alleviates physical symptoms, including pain, as well as alleviates the emotional and spiritual discomfort associated with dying; and (b) bereavement care provided to the family of a terminally ill person that alleviates the emotional and spiritual discomfort associated with the death of a family member. Hospice care may include health and medical services and personal care, respite, or homemaker services. Family means individuals who are important to and designated by the patient, and who need not be relatives.

(11) "Ill, disabled, or infirm persons" means persons who need home health, hospice, or home care services in order to maintain themselves in their places of temporary or permanent residence.

(12) "Personal care services" means services that assist ill, disabled, or infirm persons with dressing, feeding, and personal hygiene to facilitate self-care.

(13) "Public or private agency or organization" means an entity that employs or contracts with two or more persons who provide care in the home.

(14) "Respite care services" means services that assist or support the primary care giver on a scheduled basis.

**Sec. 2.** RCW 70.127.040 and 1988 c 245 s 5 are each amended to read as follows:

The following are not subject to regulation for the purposes of this chapter:

(1) A family member;

(2) An organization that provides only meal services in a person’s residence;

(3) Entities furnishing durable medical equipment that does not involve the delivery of professional services beyond those necessary to set up and monitor the proper functioning of the equipment and educate the user on its proper use;

(4) A person who provides services through a contract with a licensed agency;

(5) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;

(6) Facilities and institutions, including but not limited to nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41 RCW, boarding homes under chapter 18.20 RCW, developmental disability residential programs under chapter 71.12 RCW, or other facilities and
institutions, only when providing services to persons residing within
the facility or institution if the delivery of the services is
regulated by the state;

(7) Persons providing care to disabled persons through a contract
with the department of social and health services;

(8) Nursing homes, hospitals, or other institutions, agencies,
organizations, or persons that contract with licensed home health,
hospice, or home care agencies for the delivery of services;

(9) In-home assessments of an ill, disabled, or infirm person’s
ability to adapt to the home environment that does not result in
regular ongoing care at home;

(10) Services conducted by and for the adherents of a church or
religious denomination that rely upon spiritual means alone through
prayer for healing in accordance with the tenets and practices of such
church or religious denomination and the bona fide religious beliefs
genuinely held by such adherents;

(11) A medicare-approved dialysis center operating a medicare-
approved home dialysis program;

(12) Case management services which do not include the direct
delivery of home health, hospice, or home care services;

(13) Pharmacies licensed under RCW 18.64.043 that deliver
prescription drugs and durable medical equipment that does not involve
the use of professional services beyond those authorized to be
performed by licensed pharmacists pursuant to chapter 18.64 RCW and
those necessary to set up and monitor the proper functioning of the
equipment and educate the person on its proper use.

Sec. 3. RCW 70.127.050 and 1988 c 245 s 6 are each amended to read
as follows:

((Notwithstanding RCW 70.127.020(2) and 70.127.030(2), a volunteer
organization that provides hospice care without receiving compensation
for delivery of services that does not meet the licensure requirements
of this chapter for a hospice agency may use the phrase "volunteer
hospice" if the volunteer organization was formed prior to January 1,
1988, and the organization notifies the department prior to July 1,
1989. This section shall not be considered an exemption from the home
health agency or home care agency license provisions of this chapter.))

(1) An entity that provides hospice care without receiving compensation
for delivery of any of its services is exempt from licensure pursuant
to RCW 70.127.020(2) if it notifies the department, on forms provided by the department, of its name, address, name of owner, and a statement affirming that it provides hospice care without receiving compensation for delivery of any of its services. This form must be filed with the department within sixty days after the effective date of this section, or within sixty days after being informed in writing by the department of this requirement for obtaining exemption from licensure under this chapter.

(2) For the purposes of this section, it is not relevant if the entity compensates its staff. For the purposes of this section, the word "compensation" does not include donations.

(3) Notwithstanding the provisions of RCW 70.127.030(2), an entity that provides hospice care without receiving compensation for delivery of any of its services is allowed to use the phrase "volunteer hospice."

(4) Nothing in this chapter precludes an entity providing hospice care without receiving compensation for delivery of any of its services from obtaining a hospice license if it so chooses, but that entity would be exempt from the requirements set forth in RCW 70.127.080(1)(d) and (e).

Sec. 4. RCW 70.127.080 and 1988 c 245 s 9 are each amended to read as follows:

(1) An applicant for a home health, hospice, or home care agency license shall:

(a) File a written application on a form provided by the department;

(b) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(c) Cooperate with on-site review conducted by the department prior to licensure or renewal except as provided in section 11 of this act;

(d) Provide evidence of and maintain professional liability insurance in the amount of one hundred thousand dollars per occurrence or adequate self-insurance as approved by the department. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(e) Provide evidence of and maintain public liability and property damage insurance coverage in the sum of fifty thousand dollars for injury or damage to property per occurrence and fifty thousand dollars...
for injury or damage, including death, to any one person and one
hundred thousand dollars for injury or damage, including death, to more
than one person, or evidence of adequate self-insurance for public
liability and property damage as approved by the department. This
subsection shall not apply to hospice agency applicants that provide
hospice care without receiving compensation for delivery of services;
(f) Provide such proof as the department may require concerning
organizational ((and governance)) structure, and the identity of the
applicant, officers, directors, partners, managing employees, or owners
of ten percent or more of the applicant’s assets;
(g) File with the department a list of the counties in which the
applicant will operate;
(h) File with the department a list of the services offered;
(i) Pay to the department a license fee as provided in RCW
70.127.090; and
(j) Provide any other information that the department may
reasonably require.
(2) A certificate of need under chapter 70.38 RCW is not required
for licensure.
(3) A license or renewal shall not be granted pursuant to this
chapter if the applicant, officers, directors, partners, managing
employees, or owners of ten percent or more of the applicant’s assets,
within the last five years have been found in a civil or criminal
proceeding to have committed any act which reasonably relates to the
person’s fitness to establish, maintain, or administer an agency or to
provide care in the home of another.
(4) A separate license is not required for a branch office.

Sec. 5. RCW 70.127.090 and 1988 c 245 s 10 are each amended to
read as follows:
An application for a license or any renewal shall be accompanied
by a fee as established by the department under RCW ((43.20B.110))
43.70.250. ((A surcharge no greater than fifty dollars per year may be
assessed for the period of time necessary to repay the cost of
implementing this chapter.)) Licensure fees shall be based on a sliding
scale using the number of agency full-time equivalents, with agencies
with the highest number of full-time equivalents paying the highest
fee. Full-time equivalent is a measurement based on a forty-hour work
week and is applicable to paid agency employees or contractors. For
agencies receiving a licensure survey that requires more than one on-site review by the department per licensure period, an additional fee of fifty percent of the base licensure fee shall be charged for each additional on-site review. The department shall charge a reasonable fee for processing changes in ownership. The department may set different licensure fees for each licensure category.

Sec. 6. RCW 70.127.100 and 1988 c 245 s 11 are each amended to read as follows:

Upon receipt of an application under RCW 70.127.080 for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. (All persons operating as home health, hospice, or home care agencies before July 1, 1989, shall submit their applications and application fees by July 1, 1989. In addition, issuance of a license is conditioned on the department conducting an on-site review.) A license issued under this chapter shall not be transferred or assigned without thirty days prior notice to the department and the department’s approval. A license, unless suspended or revoked, ((may be effective for a period of up to two years, at the discretion of the department)) is effective for a period of two years, however an initial license is only effective for twelve months. The department shall conduct an on-site review within each licensure period. The department may conduct a licensure survey after ownership transfer. The fee for this survey may not exceed fifty percent of the base licensure fee. The department may establish penalty fees for failure to apply for licensure or renewal as required by this chapter.

NEW SECTION. Sec. 7. The department is directed to continue to develop, with opportunity for comment from licensees, interpretive guidelines that are specific to each type of license and consistent with legislative intent.

Sec. 8. RCW 70.127.120 and 1988 c 245 s 13 are each amended to read as follows:

The department shall adopt rules consistent with RCW 70.127.005 necessary to implement this chapter under chapter 34.05 RCW. In order to ensure safe and adequate care, the rules shall address at a minimum the following:
(1) Maintenance and preservation of all records relating directly to the care and treatment of persons by licensees;

(2) Establishment of a procedure for the receipt, investigation, and disposition of complaints by the department regarding services provided by licensees;

(3) Establishment and implementation of a plan for on-going care of persons and preservation of records if the licensee ceases operations;

(4) Supervision of services;

(5) Maintenance of written policies regarding response to referrals and access to services at all times;

(6) Maintenance of written personnel policies and procedures and personnel records for paid staff that provide for prehire screening, minimum qualifications, regular performance evaluations, including observation in the home, participation in orientation and in-service training, and involvement in quality assurance activities. The department may not establish experience or other qualifications for agency personnel or contractors beyond that required by state law; ((and))

(7) Maintenance of written policies and procedures for volunteers that have direct patient contact and that provide for background and health screening, orientation, and supervision; and

(8) Maintenance of written policies on obtaining regular reports on patient satisfaction.

Sec. 9. RCW 70.127.130 and 1988 c 245 s 14 are each amended to read as follows:

Licensees shall conform to the standards of RCW 69.41.030 and 69.50.308. Rules adopted by the department concerning the use of legend drugs or controlled substances shall reference and be consistent with board of pharmacy rules.

Sec. 10. RCW 70.127.250 and 1988 c 245 s 25 are each amended to read as follows:

(1) In addition to the rules consistent with RCW 70.127.005 adopted under RCW 70.127.120, the department shall adopt rules for home health agencies which address the following:

(a) Establishment of case management guidelines for acute and maintenance care patients;
(b) Establishment of guidelines for periodic review of the home health care plan of care and plan of treatment by appropriate health care professionals; and

(c) Maintenance of written policies regarding the delivery and supervision of patient care and clinical consultation as necessary by appropriate health care professionals.

(2) As used in this section:

(a) "Acute care" means care provided by a home health agency for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a health care professional in order to maintain their health status.

(b) "Maintenance care" means care provided by home health agencies that is necessary to support an existing level of health and to preserve a patient from further failure or decline.

(c) "Home health plan of care" means a written plan of care established by a home health agency by appropriate health care professionals that describes maintenance care to be provided. A patient or his or her representative shall be allowed to participate in the development of the plan of care to the extent practicable.

(d) "Home health plan of treatment" means a written plan of care established by a physician licensed under chapter 18.57 or 18.71 RCW, a podiatric physician and surgeon licensed under chapter 18.22 RCW, or an advanced registered nurse practitioner as authorized by the board of nursing under chapter 18.88 RCW, in consultation with appropriate health care professionals within the agency that describes medically necessary acute care to be provided for treatment of illness or injury.

NEW SECTION. Sec. 11. (1) Notwithstanding the provisions of RCW 70.127.080(1)(c), a home health or hospice agency that is certified by the federal medicare program, or accredited by the community health accreditation program, or the joint commission on accreditation of health care organizations as a home health or hospice agency shall be granted the applicable renewal license, without necessity of a state licensure on-site survey if:
(a) The department determines that the applicable survey standards of the certification or accreditation program are substantially equivalent to those required by this chapter;

(b) An on-site survey has been conducted for the purposes of certification or accreditation during the previous twenty-four months; and

(c) The department receives directly from the certifying or accrediting entity or from the licensee applicant copies of the initial and subsequent survey reports and other relevant reports or findings that indicate compliance with licensure requirements.

(2) Notwithstanding the provisions of RCW 70.127.080(1)(c), a home care agency under contract with the department of social and health services or area agency on aging to provide home care services and that is monitored by the department of social and health services or area agency on aging shall be granted a renewal license, without necessity of an on-site survey by the department of health if:

(a) The department determines that the department of social and health services or area agency on aging monitoring standards are substantially equivalent to those required by this chapter;

(b) An on-site monitoring has been conducted by the department of social and health services or area agency on aging during the previous twenty-four months;

(c) The department of social and health services or area agency on aging includes in its monitoring a sample of private pay clients, if applicable; and

(d) The department receives directly from the department of social and health services copies of monitoring reports and other relevant reports or findings that indicate compliance with licensure requirements.

(3) In reviewing the federal, the joint commission on accreditation of health care organizations, the community health accreditation program, or the department of social and health services survey standards for substantial equivalency to those set forth in this chapter, the department is directed to provide the most liberal interpretation consistent with the intent of this chapter. In the event the department determines at any time that the survey standards are not substantially equivalent to those required by this chapter, the department is directed to notify the affected licensees. The notification shall contain a detailed description of the deficiencies
in the alternative survey process, as well as an explanation concerning
the risk to the consumer. The determination of substantial equivalency
for alternative survey process and lack of substantial equivalency are
agency actions and subject to RCW 34.05.210 through 34.05.395 and
34.05.510 through 34.05.680.

(4) Agencies receiving a license without necessity of an on-site
survey by the department under this chapter shall pay the same
licensure or transfer fee as other agencies in their licensure
category. It is the intent of this section that the licensure fees for
all agencies will be lowered by the elimination of the duplication that
currently exists.

(5) In order to avoid unnecessary costs, the department is not
authorized to perform a validation survey if it is also the agency
performing the certification or accreditation survey. Where this is
not the case, the department is authorized to perform a validation
survey on no greater than five percent of each type of certification or
accreditation survey.

(6) This section does not affect the department’s enforcement
authority for licensed agencies.

NEW SECTION. Sec. 12. The following acts or parts of acts are
each repealed:
(1) RCW 70.127.160 and 1988 c 245 s 17;
(2) RCW 70.127.900 and 1988 c 245 s 37; and
(3) RCW 70.127.901 and 1988 c 245 s 38.

NEW SECTION. Sec. 13. Sections 7 and 11 of this act are each
added to chapter 70.127 RCW.

NEW SECTION. Sec. 14. If any provision of this act or its
application to any person or circumstance is held invalid, the
remainder of the act or the application of the provision to other
persons or circumstances is not affected.

NEW SECTION. Sec. 15. (1) Sections 1 through 10 and 12 of this
act are necessary for the immediate preservation of the public peace,
health, or safety, or support of the state government and its existing
public institutions, and shall take effect June 30, 1993.
(2) Section 11 of this act shall take effect January 1, 1994.
Passed the Senate February 24, 1993.
Passed the House April 8, 1993.
Approved by the Governor April 19, 1993.
Filed in Office of Secretary of State April 19, 1993.