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, 70.127.080, 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 70.127.050, 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 direct care individuals.

(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;

(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;

(14) An entity providing hospice care without receiving compensation for delivery of any of its services that is a tax-exempt organization under section 501(c)(3) of the federal internal revenue code as in effect on January 1, 1993. For the purposes of this subsection, it is not relevant if the entity compensates its staff. For the purposes of this subsection the word "compensation" does not include donations.

Sec. 3. 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;

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(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 10 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. 4. 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. (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 fee, not to exceed one hundred dollars, for processing changes in ownership. The department may set different licensure fees for each licensure category.

Sec. 5. 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. 6. 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. 7. 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 ((qualifications for licensed
professionals other than those required for licensure)) 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. 8. 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.

Section 9. 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. 10. (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 license, both initial and renewal, 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 to provide home care services and that is surveyed by the department of social and health services shall be granted a license, both initial and renewal, 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 survey standards are substantially equivalent to those required by this chapter;

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

(c) The department includes in its survey a sample of private pay clients, if applicable; and

(d) The department receives directly from the department of social and health services 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.

(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. 11. The following acts or parts of acts are each repealed:

1. RCW 70.127.050 and 1988 c 245 s 6;
2. RCW 70.127.160 and 1988 c 245 s 17;
3. RCW 70.127.900 and 1988 c 245 s 37; and
4. RCW 70.127.901 and 1988 c 245 s 38.

NEW SECTION. Sec. 12. Sections 6 and 10 of this act are each added to chapter 70.127 RCW.
NEW SECTION. Sec. 13. 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. 14. (1) Sections 1 through 9 and 11 through 16 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 10 of this act shall take effect January 1, 1994.

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