

Publications

Licensure Deadline Fast Approaching for Agencies Offering Home Health Care and Non-Medical Home Health Care

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As you may be aware, all agencies that offer home health care (skilled or nonmedical) will need to be licensed by the Ohio Department of Health (ODH), as will non-agency providers of nonmedical home health care, by October 1, 2022.¹ Last month, ODH posted the applications for both skilled home health services and nonmedical home health services providers on the ODH website.² All providers need to be sure that they understand the scope of these licensure requirements, which may be broader than what they initially expected.

Agencies providing skilled home health services

Under the new laws, any person³ or governmental entity that has the primary function of providing any skilled home health services, including skilled nursing, physical therapy, occupational therapy, speech-language pathology, medical social services, and home health aide services needs a skilled home health license from ODH.⁴ According to ODH though, agencies that provide any skilled services must be licensed as a skilled home health provider, even if they have a different “primary function.”

Agencies that provide skilled home health services must be certified by CMS, the Joint Commission, or the Department of Aging (or otherwise meet the Medicare Conditions of Participation even where not certified), among other requirements. Source of payment is not an issue for licensure. ODH expects agencies providing any skilled services to still meet the Medicare Conditions of Participation, even if not certified. This requirement may be problematic for some providers, especially those agencies that are solely private pay and/or provide a minimal amount of skilled services.

If the provider has applied for a skilled home health license, ODH will conduct an onsite investigation to determine whether providers meet the Medicare Conditions of Participation. This does not include the non-medical services side of the provider. According to ODH, if a provider does not meet the Conditions of Participation, it must stop providing skilled home health services. If it is known that the provider

cannot meet the Conditions of Participation, the provider should cease providing those skilled services and apply for a non-medical home health service license (as discussed below).

Importantly, these rules do not apply to nursing homes, residential care/assisted living providers, hospice care providers, pediatric respite care programs, informal respite care providers, providers certified by the Ohio Department of Developmental Disabilities under Chapter 5123. of the Revised Code, residential facilities, shared living providers, immediate family members, and childcare providers. These types of providers are not required to obtain a home health or nonmedical home health services license.

If a provider becomes licensed as a skilled home health services provider, then it can also provide non-medical services without obtaining a separate nonmedical home health services license.

Agencies providing nonmedical home health services

Agencies and individuals providing nonmedical home health services such as personal care services, homemaking services, bathing, dressing, meal preparation, and respite care also need to be licensed on or before October 1st. The nonmedical home health licensure requirements are less stringent, although they still require fingerprinting for the primary owner, providing ODH with a copy of the criminal records check policy, a description of services offered, a copy of policies and procedures as they relate to the services offered, and evidence that the applicant was providing direct care on or immediately prior to July 1, 2022. Otherwise, if the applicant was not providing services prior to July 1, 2022, a surety bond issued by a company licensed to do business Ohio in the amount of twenty thousand dollars is required.⁵

Personal care services do not include skilled care.

Enforcement and penalties

Pursuant to these licensure rules, ODH may take disciplinary actions, including refusal to issue a license, refusal to renew or reinstate the holder's license, imposition of limitations on the holder's license, revocation or suspension of the holder's license, placement of the license holder on probation with regard to the holder's license, or otherwise reprimand the license holder.⁶

Violating the licensure requirements will constitute a misdemeanor of the second degree on a first offense. For each subsequent offense, the violation will be a misdemeanor of the first degree.⁷

The Licensure and Certification Unit within the Bureau of Regulatory Operations is processing applications and supporting documentation. Application questions can be directed to LICCERT@odh.ohio.gov or 614-466-7713.

Please also feel free to reach out to your Vorys attorney(s) if you have additional questions.

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¹ See HB 110, 134 Gen. Assemb., Reg. Sess. (Ohio 2021), codified at O.R.C. § 3740.01 et seq., and O.A.C. Ch. 3701-60.

² See <https://odh.ohio.gov/know-our-programs/home-health-agencies/home-health-agency-licensure>

³ The term “person” is defined in O.R.C. § 1.59 and includes an individual, corporation, business trust, estate, trust, partnership, and association.

⁴ O.A.C 3701-60-01 (H).

⁵ O.R.C. § 3740.03(B)(1)(h).

⁶ O.R.C. § 3740.07.

⁷ O.R.C. § 3740.99.