

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 22 REQUIREMENTS FOR HOME HEALTH AGENCIES

8.370.22.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.22.1 NMAC - N, 7/1/2024]

8.370.22.2 SCOPE: These regulations apply to:
A. public, profit or nonprofit home health agencies providing services as outlined by these regulations;
B. any facility providing services as outlined by these regulations which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.
[8.370.22.2 NMAC - N, 7/1/2024]

8.370.22.3 STATUTORY AUTHORITY: The regulations set forth herein which govern the licensing of home health agencies have been pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978, and Subsection D of Section 24-1-2, Subsection I of Section 24-1-3 and Section 24-1-5 of the Public Health Act NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.22.3 NMAC - N, 7/1/2024]

8.370.22.4 DURATION: Permanent.
[8.370.22.4 NMAC - N, 7/1/2024]

8.370.22.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.22.5 NMAC - N, 7/1/2024]

8.370.22.6 OBJECTIVE:
A. Establish minimum standards for licensing of home health agencies who provide medically directed therapeutic or supportive services to a patient/client in their place of residence.
B. Monitor home health agencies' compliance with these regulations through surveys to identify any areas which could be dangerous or harmful to a patient/client or staff.
C. Encourage the establishment and maintenance of home health agencies to provide medically directed therapeutic or supportive services, to a patient/client in their place of residence, that maintain or improve the health and quality of life to patients/clients who are in New Mexico.
[8.370.22.6 NMAC - N, 7/1/2024]

8.370.22.7 DEFINITIONS: For purposes of these regulations the following shall apply:
A. "Abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a patient/client, including:
(1) physical contact that harms or is likely to harm a patient/client of a home health agency;
(2) inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a patient/client;
(3) inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order;
(4) medically inappropriate conduct that causes or is likely to cause physical harm to a patient/client;
(5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a patient/client;
(6) an unlawful act, a threat or menacing conduct directed toward a patient/client that results and might reasonably be expected to result in fear or emotional or mental distress to a patient/client.
B. "Administrator/director" means a qualified individual, on-site, appointed by the governing body who organizes and directs the agency's on-going functions, maintains liaison among the governing body, the group of professional personnel and other staff, employs qualified personnel, ensures adequate staff education, ensures the

accuracy of public information materials and activities, and implements an effective budgeting and accounting system. A branch office must have a qualified on-site branch manager who receives direction and supervision from the parent home health agency's administrator/director.

C. "Applicant" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization must have authority from the organization. The applicant must be the owner.

D. "Auxiliary work station" means a non-licensed, non-staffed convenience work station away from the licensed location of the home health agency's office.

E. "Branch office" means a licensed location or site from which a home health agency provides services and is located sufficiently close that it is not impractical for it to receive direction and supervision from the parent home health agency on a day-by-day basis.

F. "Bylaws" means a set of rules adopted by a home health agency for governing the agency's operation.

G. "Clinical/service note" means a written notation dated and signed by a member of the health team that summarizes facts about care furnished and the patient/client's response during a given period of time.

H. "Exploitation" of a patient/client consists of the act or process, performed intentionally, knowingly or recklessly, of using any patient/clients money or property, for another person's profit, advantage or benefit. Exploitation includes but is not limited to:

(1) manipulating the patient/client by whatever mechanism to give money or property to any agency staff or management member;

(2) misappropriation or misuse of monies belonging to a patient/client or the unauthorized sale, transfer or use of a patient/clients property;

(3) loans of any kind from patient/clients to agency staff or management;

(4) accepting monetary or other gifts from a patient/client or their family with a value in excess of \$25 or gifts which exceed a total value of \$300 in one year. All gifts received by agency operators, their families or staff of the agency must be documented and acknowledged by the person giving the gift and the recipient. Exception: Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

I. "Governing body" means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a home health agency licensed pursuant to these regulations.

J. "Great psychological harm" means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care.

K. "Home health agency" means any business, entity or organization primarily engaged in providing medically directed acute, restorative, rehabilitative, maintenance, preventive or supportive services through professional or paraprofessional personnel to a patient/client in the patient/client's residence. This term does not apply to any individual, licensed practitioner providing services within the scope of their practice or to any business, entity or organization providing non-medically directed services in a patient/client's place of residence.

L. "Home health aide" means a person who has successfully completed a course of training or demonstrated competency in assisting patient/clients to meet basic personal care needs. A home health aide provides medically directed personal care to patient/clients such as, but not limited to, taking and recording vital signs, bathing, grooming, feeding, ambulation, exercise, oral hygiene and skin care.

M. "Home health services" means those medically directed therapeutic or supportive services provided by a home health agency to a patient/client in their place of residence.

N. "Homemaker" means a person who has successfully demonstrated competency to provide household services such as cleaning, meal preparation, laundry, shopping and to assist a patient/client with activities of daily living.

O. "Level of care" means the long term care assessment abstract which medically qualifies a patient/client for medicaid waiver services.

P. "Licensed practical nurse" means a person licensed as a practical nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

Q. "Licensee" means the person(s) who, or organization which, has an ownership or similar interest in the home health agency and in whose name a license for a home health agency has been issued and who is legally responsible for compliance with these regulations.

R. "Licensing authority" means the New Mexico health care authority.

- S.** “**Medically directed services**” means in-home services that are provided in accordance with a patient/client’s plan or level of care which is reviewed and approved by a physician at least annually.
- T.** “**Neglect**” means subject to the patient/client’s right to refuse treatment and subject to the caregiver’s right to exercise sound medical discretion, the grossly negligent:
- (1) failure to provide any treatment, services, care, medication or item that is necessary to maintain the health or safety of a patient/client;
 - (2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a patient/client;
 - (3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a patient/client.
- U.** “**Occupational therapist**” is a person who is licensed by the state of New Mexico as an occupational therapist, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.
- V.** “**Occupational therapist assistant**” is a person who is licensed by the state of New Mexico as a certified occupational therapist assistant, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.
- W.** “**Parent home health agency**” means an agency that develops and maintains responsibility for the operation and administrative control of branch office(s).
- X.** “**Patient/client**” means a person who is receiving home health care services.
- Y.** “**Personal care attendant/provider**” means a person who has successfully demonstrated competency to provide assistance with personal care such as bathing, grooming, bowel and bladder needs.
- Z.** “**Physical therapist**” is a person who is licensed by the state of New Mexico as a physical therapist, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.
- AA.** “**Physical therapist assistant**” is a person who is licensed by the state of New Mexico as a physical therapist assistant, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.
- BB.** “**Plan of care**” means a written plan of treatment which sets forth each service that the home health agency agrees to provide to a patient/client.
- CC.** “**Plan of correction**” means a plan written and signed by the licensee or representative addressing how and when the licensing authority’s identified deficiencies will be corrected.
- DD.** “**Physician**” is a person who is a doctor of medicine, osteopathy or podiatry licensed to practice medicine.
- EE.** “**Policy**” means a statement of principle that guides and determines present and future decisions and actions.
- FF.** “**Procedure**” means the action(s) that must be taken in order to implement a policy.
- GG.** “**Professional personnel**” means the staff of the agency or personnel under contract or agreement with the agency who require a license, registration or certification by the state of New Mexico.
- HH.** “**Quality improvement**” means an on-going assessment program which addresses clinical care and program evaluation.
- II.** “**Registered nurse**” means a person who holds a certificate of registration as a registered nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.
- JJ.** “**Residence**” means the place in New Mexico where a patient/client is residing at the time home health services are provided.
- KK.** “**Social worker**” is a person who is licensed by the state of New Mexico as a social worker, pursuant to Sections 61-31-1 to 61-31-25 NMSA 1978.
- LL.** “**Speech language pathologist**” is a person licensed by the state of New Mexico to practice speech language pathology, pursuant to Sections 61-14B-1 to 61-14B-25 NMSA 1978.
- MM.** “**Supervision**” means direction, guidance and oversight by a qualified person, within their sphere of competence, of an individual providing services in accordance with a patient/client’s plan of care.
- NN.** “**Supportive services**” means medically or non-medically directed assistance to patient/clients to meet basic activities of daily living.
- OO.** “**Therapeutic services**” means a medically directed activity or activities to patients/clients based upon a knowledge of disease processes provided by a home health agency.
- PP.** “**Waive/waiver**” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time in which the health, safety, or welfare of the patient/clients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.
- [8.370.22.7 NMAC - N, 7/1/2024]

8.370.22.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory. “May” means permissive. The use of the words “adequate”, “proper”, and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide services of home health agencies as outlined in these regulations.
[8.370.22.8 NMAC - N, 7/1/2024]

8.370.22.9 HOME HEALTH AGENCY AND SCOPE OF SERVICES: An agency or organization meeting the following criteria must be licensed as a home health agency:

- A. Provides at least one medically directed service, such as, but not limited to:
 - (1) skilled nursing;
 - (2) physical therapy;
 - (3) occupational therapy;
 - (4) inhalation therapy;
 - (5) infusion therapy;
 - (6) speech language pathology;
 - (7) social work;
 - (8) home health aide;
 - (9) personal care attendant;
 - (10) homemaker.
- B. A home health agency must provide at least one of the above services, in its entirety, directly through employees, but may provide other services under arrangements with another agency or organization or provider.
- C. A licensed home health agency may also provide non-medically directed services.
- D. **Home health agency excludes:**
 - (1) independent or sole practitioners providing in-home services under their respective professional practice acts;
 - (2) medical suppliers who do not provide services listed above;
 - (3) family, friends, volunteers and paid individuals not under the direct control of a home health agency.
- E. **Branch office:** Means a licensed location from which a home health agency provides services to patient/clients. A home health agency may not apply for a license to open a branch office unless the parent agency has been in operation for at least one year, had an annual survey conducted by the licensing authority, and is found to be in substantial compliance with these regulations.
 - (1) A branch office must be located within 100 miles distance from the licensed location of the parent home health agency.
 - (2) A branch office must have a qualified on-site administrator who receives direction and supervision from the parent home health agency’s administrator/director.
 - (3) A branch office must be able to provide the same services as the parent home health agency.
 - (4) Original patient/client records, if stored at the parent home health agency, shall be made available upon request of the licensing authority within two hours.
- F. **Service area:** A home health agency may only provide services to patient/clients who reside within one hundred (100) miles distance from the licensed location of the agency.
 - (1) The licensing authority may grant a temporary exception to the 100 mile distance limitation when the following conditions exist:
 - (a) no other home health agency service for the patient/client is available;
 - (b) no home health agency in the area within the 100 miles distance limitation is able or willing to provide services to the patient/client.
 - (2) Home health agencies not previously required to be licensed by the licensing authority shall have twelve months from the date these regulations are adopted to comply.
- G. **Auxiliary work station:** A non-licensed, non-staffed convenience work station away from the licensed location of the home health agency’s office for the limited purposes of storage of supplies and a work area for documentation by staff where a telephone and fax may be available for communication. The auxiliary work station shall not function as a branch office and the following requirements are intended to insure that the work station does not become a branch office:

- (1) must not be utilized to increase the geographical service area of a home health agency or as a substitute for a branch operation of the agency;
 - (2) the name of the agency must not be identified by signage at the work station;
 - (3) the telephone number for the work station shall not be advertised or otherwise made available to persons or individuals other than staff of the agency;
 - (4) patient/clients shall only be admitted by and through the licensed location of the agency;
 - (5) no orders for patient/client care from physicians shall be accepted by agency staff at its auxiliary work station;
 - (6) no original patient/client records, copies of patient/client records or personnel records shall be maintained by the agency at the auxiliary work station.
- [8.370.22.9 NMAC - N, 7/1/2024]

8.370.22.10 INITIAL LICENSURE PROCEDURES: The authority to determine if a person(s) or organization is subject to regulation under the statute is inherent in the responsibility to regulate agencies that are within the definitions of the statute and these regulations. To obtain an initial license for a home health agency pursuant to these regulations, the following procedures must be followed by the applicant:

- A. These regulations should be thoroughly understood by the applicant and used as reference prior to applying for initial licensure.
 - B. The following documents must be submitted to the licensing authority:
 - (1) Letter of intent: Submit to the licensing authority a letter of intention to open a home health agency pursuant to these regulations.
 - (2) Application for initial license: All information requested by the licensing authority must be provided. All applications for an initial license must be accompanied by the required non-refundable fee.
 - (3) Functional program outline: Each application for initial licensure must be accompanied by a functional program outline that provides the following information:
 - (a) scope of Services to be provided by the proposed home health agency;
 - (b) estimated number of patient/clients to be served monthly;
 - (c) services that will be contracted or arranged with another health provider, i.e., homemaker, I.V. therapy, etc.;
 - (d) hours and days of operation.
 - (4) Home health agency policies: Submit for review and approval by the licensing authority, a copy of the home health agency policies and a copy of these licensing regulations annotated to the agency's policies and procedures. Note: Each regulation must be referenced to the appropriate policy by writing the page or policy number by the corresponding regulation.
 - C. Upon the licensing authority's approval of documents listed above, a temporary license will be issued. Upon receipt of the temporary license, the home health agency may admit patients/clients.
 - D. Upon becoming fully operational and accepting a patient/client, a home health agency must submit a written request to the licensing authority for the initial survey.
 - E. Upon completion of the initial survey and determination that the facility is in compliance with these regulations, the licensing authority will issue an annual license.
- [8.370.22.10 NMAC - N, 7/1/2024]

8.370.22.11 LICENSES:

- A. Annual license: An annual license is issued for a one year period to a home health agency which has met all requirements of these regulations.
- B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations, or for administrative purposes.
 - (1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.
 - (2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.
- C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility.
 - (1) application must be on a form provided by the licensing authority.
 - (2) application must be accompanied by the required fee for an amended license.

(3) application must be submitted within 10 working days of the change.
[8.370.22.11 NMAC - N, 7/1/2024]

8.370.22.12 LICENSE RENEWAL:

A. The licensee must submit renewal application on forms provided by the licensing authority, along with the required fee at least 30 days prior to expiration of the current license.

B. Upon receipt of renewal application, required fee and an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the agency is in substantial compliance with these regulations.

C. If the licensee fails to submit a renewal application with the required fee and the current license expires, the agency shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license.

[8.370.22.12 NMAC - N, 7/1/2024]

8.370.22.13 POSTING OF LICENSE: The agency's current, original license must be posted in a conspicuous place at the licensed location, as identified in the application for licensure.

[8.370.22.13 NMAC - N, 7/1/2024]

8.370.22.14 NON-TRANSFERABLE RESTRICTION ON LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

- A. ownership of the agency changes;
- B. the agency changes location of its office;
- C. licensee of the agency changes;
- D. the agency discontinues operation;
- E. an agency wishing to continue operation as a licensed home health agency under circumstances

listed above must submit an application for initial licensure in accordance with Section 10 of these regulations, at least 30 days prior to the anticipated change.

[8.370.22.14 NMAC - N, 7/1/2024]

8.370.22.15 AUTOMATIC EXPIRATION OF LICENSE: A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, revoked, or:

- A. on the day an agency discontinues operation;
- B. on the day an agency is sold, leased, or otherwise changes ownership or licensee;
- C. on the day an agency changes location of its office.

[8.370.22.15 NMAC - N, 7/1/2024]

8.370.22.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, as amended, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

[8.370.22.16 NMAC - N, 7/1/2024]

8.370.22.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

A. failure to comply with any provision of these regulations;

B. failure to allow survey by authorized representatives of the licensing authority;

C. any person active in the operation of an agency licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;

D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;

E. discovery of repeat violations of these regulations during surveys;

F. failure to provide the required care and services as outlined by these regulations for the patients/clients receiving care from the agency.
[8.370.22.17 NMAC - N, 7/1/2024]

8.370.22.18 EARING PROCEDURES:

A. Hearing procedures for adverse action taken by the licensing authority against an agency's license as outlined in Section 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the above regulations may be requested at any time by contacting the licensing authority.
[8.370.22.18 NMAC - N, 7/1/2024]

8.370.22.19 AGENCY SURVEYS:

A. Application for licensure, whether initial or renewal shall constitute permission for entry into and survey of a home health agency by authorized licensing authority representatives during pendency of the application, and if licensed, during the licensure period.

B. The licensing authority shall perform, as it deems necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility. The licensing authority may include patient/client home visits as part of any survey or investigation.

C. Upon receipt of the official deficiency statement from the licensing authority, the licensee or their representative will be required to submit a plan of correction to the licensing authority within 10 working days, stating how the agency intends to correct each violation noted and the expected date of completion.

D. The licensing authority may, at its sole discretion, accept the plan of correction as written or require modifications of the plan by the licensee.
[8.370.22.19 NMAC - N, 7/1/2024]

8.370.22.20 ACCEPTANCE OF PATIENTS/CLIENTS: Patients/clients must be accepted for treatment by the agency when there is a reasonable expectation that the patient/client's health care or supportive service needs can be met adequately in the patient/client's place of residence.
[8.370.22.20 NMAC - N, 7/1/2024]

8.370.22.21 OFFICE REQUIREMENTS:

A. An agency licensed pursuant to these regulations shall establish and maintain an official office for the conduct of its business with posted hours of operation.

B. The office space must be able to maintain, store and safeguard agency records.
[8.370.22.21 NMAC - N, 7/1/2024]

8.370.22.22 HEALTH AND AGE REQUIREMENTS:

A. All staff or contracted personnel involved in the care of patients/clients shall be at least 18 years of age.

B. All staff, contracted personnel, or volunteers having patient/client contact must have a TB test in accordance with the requirements of the infectious disease bureau, of the public health division, health care authority.
[8.370.22.22 NMAC - N, 7/1/2024]

8.370.22.23 REQUIREMENTS FOR LICENSURE OF PROFESSIONALS: Any health professional employed or contracted by the home health agency, such as, but not limited to, physicians, physician's assistants, nurse practitioners, physical or occupational therapists, speech language pathologists, registered professional nurses, licensed practical nurses, licensed or certified social workers, physical therapy assistants or certified occupational therapy assistants, must have a current license, registration or certification from the state of New Mexico. Proof of licensure must be maintained on file by the agency.
[8.370.22.23 NMAC - N, 7/1/2024]

8.370.22.24 GOVERNING BODY: Each agency licensed pursuant to these regulations must have a governing body who adopts and reviews, at least annually, written by-laws or policies and procedures which govern

the day to day operation of the agency.

- A. The governing body may include the licensee of the agency.
 - B. The governing body must have full legal authority and responsibility for the operation of the agency.
 - C. The governing body must appoint a qualified administrator.
 - D. The governing body must oversee the management and fiscal affairs of the agency.
 - E. The governing body must meet at least annually. These meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.
- [8.370.22.24 NMAC - N, 7/1/2024]

8.370.22.25 ADVISORY GROUP: Each agency licensed pursuant to these shall have an advisory group.

- A. The advisory group shall consist of:
 - (1) at least three individuals;
 - (2) an individual representing at least one of the services offered by the agency;
 - (3) at least one member of the group must be neither an owner or an employee of the agency;
 - (4) governing body members may also be part of the advisory group.
 - B. The advisory group shall meet at least semi-annually to perform the following functions:
 - (1) to review the agency's required policies and procedures and on-going quality improvement program and make recommendations to the governing body, at least annually;
 - (2) to participate in the agency's program evaluation, at least annually;
 - (3) to advise the agency on professional issues;
 - (4) to assist the agency in maintaining liaison with other health care providers in the community and in its community information efforts.
 - C. The advisory group meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.
- [8.370.22.25 NMAC - N, 7/1/2024]

8.370.22.26 ADMINISTRATOR: Each agency licensed pursuant to these regulations must have an administrator appointed by the governing body who:

- A. is a licensed physician; or
 - B. is a registered nurse; or
 - C. has at a minimum, a high school diploma or general equivalency diploma, training and experience in health services administration, and at least one year of supervisory or administrative experience in home health care.
 - D. may also be the supervising physician or registered nurse.
 - E. is responsible for implementing the directions of the governing body and organizing and directing the on-going functions of the agency in compliance with these regulations.
 - F. A qualified person is authorized in writing to act in the absence of the administrator.
- [8.370.22.26 NMAC - N, 7/1/2024]

8.370.22.27 RESPONSIBILITIES OF AGENCY PERSONNEL: Home health agencies utilizing any of the following personnel for provision of home care services must assure the responsibilities listed below are met.

- A. **Primary service personnel:** including, but not limited to, registered nurses, physical therapists, occupational therapists, speech therapists, social workers, shall:
 - (1) provide necessary professional care and guidance within the scope of their licensure;
 - (2) evaluate the home for its suitability for the patient/client's care;
 - (3) teach the patient/client and caregivers how to provide care;
 - (4) develop, evaluate and coordinate the patient/client's plan of care on a continuing basis;
 - (5) inform the physician and other personnel of changes in the patient/client's condition and needs;
 - (6) perform an evaluation visit and follow-up visits as needed;
 - (7) prepare clinical notes.
- B. **Secondary service personnel:** Other licensed personnel, including, but not limited to, respiratory therapists, licensed practical nurses, physical therapy assistants, certified occupational therapist assistants, shall:
 - (1) provide services in accordance with an established plan of care and agency policies;
 - (2) provide necessary professional care and guidance within the scope of their licensure;

- (3) prepare clinical notes;
- (4) evaluate the home for its suitability for the patient/client's care;
- (5) teach the patient/client and caregiver how to provide care;
- (6) inform the physician and other personnel of changes in the patient/client's condition and

needs.

C. Non-licensed personnel: Individuals, including, but not limited to, home health aides, homemakers, personal care attendants, shall:

- (1) provide personal care including assistance in the activities of daily living;
- (2) assist to maintain a safe and clean environment;
- (3) perform household services and other activities as assigned;
- (4) communicate with appropriate supervisor about changes or variations in the patient/client or home situation;
- (5) teach the patient/client and caregivers how to provide care, within the level of their competency;
- (6) prepare patient/client notes.

[8.370.22.27 NMAC - N, 7/1/2024]

8.370.22.28 SUPERVISING PERSONNEL:

A. The medically directed services provided by the agency must be supervised by a licensed professional or an appropriately qualified staff member.

B. The supervising staff member or their alternate who is similarly qualified must be available at all times during operating hours of the agency.

C. The supervising staff member or alternate who is similarly qualified must participate in all activities relevant to the services provided, including developing qualifications for assignments of personnel.

[8.370.22.28 NMAC - N, 7/1/2024]

8.370.22.29 SUPERVISION OF SECONDARY AND NON-LICENSED PERSONNEL:

A. Licensed practical nurses: Services and care provided by a licensed practical nurse will be furnished under the supervision of a registered nurse who has a minimum of one year home health experience or a minimum of two (2) years nursing experience. Such supervision will include, at a minimum:

- (1) Identify appropriate tasks to be performed by the licensed practical nurse.
- (2) Conduct and document a supervisory visit to at least one patient/client residence at least every sixty (60) days, or more often as indicated.

B. Physical therapy assistants: Services and care provided by a physical therapy assistant will be furnished under the supervision of a physical therapist, with a minimum of one year experience. Such supervision will include, at a minimum:

- (1) Identify appropriate tasks to be performed by the physical therapy assistant.
- (2) Conduct and document a supervisory visit to the patient/client residence at least every thirty (30) days or as indicated.

(3) Be on-call and readily available and within a 100 mile radius, or have appointed another physical therapist in their absence.

- (4) Supervise no more than two physical therapy assistants.

C. Certified occupational therapy assistants: Services and care provided by a certified occupational therapy assistant will be furnished under the supervision of an occupational therapist, with a minimum of one (1) year experience. Such supervision will include, at a minimum:

- (1) Identify appropriate tasks to be performed by the certified occupational therapy assistant.
- (2) Conduct and document a supervisory visit to the patient/client residence:

(a) at a minimum of every two weeks for intermediate-level certified occupational therapy assistants;

- (b) at a minimum of every 30 days for advanced-level certified occupational therapy

assistants.

D. Home health aides: Services and care provided by a home health aide will be furnished under the supervision of an appropriately licensed professional, such as, registered nurse, physical therapist, occupational therapist, or a speech language pathologist with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client instructions which identify appropriate tasks to be performed by the home health aide.

(2) Conduct and document a supervisory visit to the patient/client residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple home health aides require only one supervisory visit. This home health aide need not be present in the patient/client's residence at the time of the supervisory visit.

E. Personal care attendants or equivalent: Services and care provided by a personal care attendant or equivalent will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the personal care attendant or equivalent.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every sixty-two (62) days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple personal care attendants or equivalent require only one supervisory visit. The personal care attendant need not be present in the patient/client's residence at the time of the supervisory visit.

F. Homemakers: Services and care provided by a homemaker will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the homemaker.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every sixty-two (62) days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple homemakers require only one supervisory visit. The homemaker need not be present in the patient/client's residence at the time of the supervisory visit.

[8.370.22.29 NMAC - N, 7/1/2024]

8.370.22.30 HOME HEALTH AIDE TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a home health aide on a full-time, part-time, temporary, per diem, or other basis unless:

(1) that individual is competent to provide services as a home health aide;

(2) that individual has completed a training program or a competency evaluation program as outlined in these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct home health aide training and the training curriculum to the licensing authority. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of home health aides and document that each is determined competent.

(3) The licensing authority may deny a home health agency the right to conduct home health aide training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial non-compliance with these regulations.

C. Course requirements: Home health aides: The home health aide training program must address each of the subject areas listed below through classroom and supervised practical training totaling at least 75 hours, with at least 16 hours devoted to supervised practical training. "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse.

(1) The individual being trained must complete at least 16 hours of classroom training before beginning the supervised practical training;

(2) communications skills;

(3) observation, reporting and documentation of patient status and the care or service furnished;

(4) reading and recording of vital signs;

(5) basic infection control procedures;

(6) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(7) maintenance of a clean, safe and healthy environment;

(8) recognizing emergencies and knowledge of emergency procedures (including CPR and first aid);

(9) 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 for the patient, their privacy and their property;

(10) appropriate and safe techniques in personal hygiene and grooming that include, but are not limited to, bathing, shampooing, nail and skin care, oral hygiene and toileting;

(11) safe transfer techniques and ambulation;

(12) normal range of motion and positioning;

(13) nutrition and hydration;

(14) patient/client rights, including respect for cultural diversity;

(15) any other task that the home health agency may choose to have the home health aide perform.

D. Instructor personnel:

(1) The training of home health aides must be performed by, or under the supervision of, a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health services.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide home health aide training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. Competency evaluation includes both a written test and a skills demonstration. Skills demonstration must be observed and documented by a registered nurse or licensed practical nurse.

(2) Documentation must include at least the following information:

(a) Training:

- (i) name of individual taking training;
- (ii) title, purpose and objectives of class;
- (iii) name of instructor and qualifications;
- (iv) number of hours of instruction;
- (v) date instruction was given.

(b) Competency:

- (i) name of individual being evaluated for competency;
- (ii) date and method used to determine competency.

F. Annual in-service training: Each home health aide must participate in at least 12 documented hours of in-service training during each 12 month period. This requirement may be fulfilled on a prorated basis during the home health aide's first year of employment at the home health agency.

G. Annual performance review: A performance review, including written evaluation and skills demonstration must be completed on each home health aide no less frequently than every 12 months.

[8.370.22.30 NMAC - N, 7/1/2024]

8.370.22.31 HOMEMAKER/PERSONAL CARE ATTENDANT OR EQUIVALENT TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a homemaker/personal care attendant or equivalent on a full-time, part time, temporary, per diem or other basis unless:

(1) That individual is competent to provide assigned tasks as a homemaker/personal care attendant or equivalent.

(2) That individual has completed a training program or a competency evaluation program as outlined in these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct homemaker/personal care attendant or equivalent training and the source of training material. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of homemaker/personal care attendant or equivalent and document that each is determined to be competent.

(3) The licensing authority may deny a home health agency the right to conduct homemaker/personal care attendant or equivalent training or competency evaluation, for a specified period of time, not to exceed two (2) years, if the licensing authority finds the agency in substantial noncompliance with these regulations.

C. Course requirements: The home health agency's homemaker/personal care attendant or equivalent training program must consist of no less than 40 hours of training, to be completed by the homemaker/personal care attendant or equivalent in the first year of employment. Ten hours of training must be completed prior to placing the homemaker/personal care employee in a patient/client home. Two of the 10 hours may include agency orientation. Eight of the 10 hours training must be patient/client service specific. The training must address, at a minimum, the following areas:

- (1) communication skills;
- (2) patient/client rights, including respect for cultural diversity;
- (3) recording of information for patient/client records;
- (4) nutrition and meal preparation;
- (5) housekeeping skills;
- (6) care of the ill and disabled, including the special needs populations;
- (7) emergency response (including CPR and first aid);
- (8) basic infection control;
- (9) home safety.

D. Instructor personnel:

(1) The training of homemaker/personal care attendant or equivalent must be performed by or under the direction of a licensed professional or an appropriately qualified person.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide homemaker/personal care attendant or equivalent training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. The training or competency evaluation must be observed and documented by a licensed professional or an appropriately qualified person.

(2) Documentation must include at least the following information:

(a) Training:

- (i) name of individual taking training;
- (ii) title, purpose, and objectives of class;
- (iii) name of instructor;
- (iv) number of hours of instruction;
- (v) date instruction was given.

(b) Competency:

- (i) name of individual being evaluated for competency;
- (ii) date and method used to determine competency.

(3) Annual in-service training: Each homemaker/personal care attendant or equivalent shall participate in at least 10 documented hours of in-service training during each 12-month period.
[8.370.22.31 NMAC - N, 7/1/2024]

8.370.22.32 PATIENT/CLIENT RIGHTS: A home health agency licensed pursuant to these regulations must protect and promote the rights of each individual under its care, including each of the following rights:

A. the right to be fully informed in advance about the care and treatment to be provided by the agency;

B. the right to refuse or terminate treatment;

C. the right to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being;

D. the right to participate in planning care and treatment or changes in care or treatment, except for those individuals adjudged incompetent;

E. the right to be treated with dignity and respect and to be free from abuse, neglect, and exploitation. No home health agency to whom a patient/client's money or valuables have been entrusted shall mingle the patient/client's monies, valuables or property, with that of the licensee, staff or management;

F. the right to voice grievances, with respect to treatment or care that is or fails to be furnished, without discrimination or reprisal for voicing such grievances;

G. the right to confidentiality of medical care and patient/client records;

H. the right to have one's property treated with respect;

I. the right to be fully informed, orally and in writing, of all charges for services to be performed by the agency and of any changes in these charges;

J. the right to be informed of the New Mexico home health agency hotline number (1-800-752-8649), hours of operation (8:00 am-5:00 pm, Monday-Friday), and purpose of the hotline, which is to receive complaints, questions about local home health agencies, or to lodge complaints concerning the implementation of the advance directives requirements;

K. the right to be fully informed regarding advance directives, prior to care being given. This information must include agency policies on advance directives and a description of applicable state law;

L. the right to be fully informed, in writing, of the patient/client's rights pursuant to these regulations. [8.370.22.32 NMAC - N, 7/1/2024]

8.370.22.33 PLAN OF CARE: Care of a patient/client by the agency must follow a written plan of care which is reviewed at least annually.

A. Medically directed care: An agency must follow a written plan of care established and periodically reviewed by a physician, and care continues under the supervision of a physician.

(1) The plan of care shall be developed in consultation with appropriate agency staff and cover all pertinent diagnoses, including but not limited to:

- (a)** mental status;
- (b)** types of services and equipment required;
- (c)** frequency and duration of visits;
- (d)** functional limitations;
- (e)** activities permitted;
- (f)** nutritional requirements;
- (g)** medications and treatments;
- (h)** safety measures to protect against injury;
- (i)** plans or goals for care;
- (j)** any other appropriate items.

(2) If a physician refers a patient/client under a plan of care which cannot be completed until after an evaluation visit, the physician must be consulted to approve additions or modifications to the original plan.

(3) The plan of care must be reviewed by the attending physician and home health agency personnel at least annually or as often as the condition of the patient/client requires.

(4) Agency professional staff must promptly alert the physician to any changes that suggest a need to alter the plan of care.

(5) Conformance with physician's orders:

(a) Drugs and treatments shall be administered by agency staff only as ordered by the physician.

(b) Licensed professionals must immediately record and sign oral orders and obtain the physician's countersignature.

(c) For a patient/client receiving nursing services, all medications a patient/client may be taking must be checked to identify possible ineffective drug therapy, adverse reactions, significant side effects, drug allergies and contraindicated medications. Medication problems must be promptly reported to the physician.

B. Non-medically directed care: An agency must follow a written plan of care, which includes goals and objectives appropriate to the patient/client being served, and which is established and reviewed at least annually by agency staff.

[8.370.22.33 NMAC - N, 7/1/2024]

8.370.22.34 PATIENT/CLIENT RECORDS: Each agency licensed pursuant to these regulations must maintain the original record for each patient/client receiving services. Patient/client records shall be made available

for review upon request of the licensing authority. Every record must be accurate, legible, promptly completed and consistently organized. A patient/client record must meet the following criteria:

- A.** Content of patient/client record:
- (1) Medically directed patient/client record must include:
- (a) past and current medical findings in accordance with accepted professional standard;
 - (b) plan of care;
 - (c) identifying information;
 - (d) name of physician;
 - (e) medications, diet, treatment/services, and activity orders;
 - (f) signed and dated notes on the day service(s) provided;
 - (g) copies of summary reports sent to the physician;
 - (h) evidence of patient/client being informed of rights;
 - (i) evidence of coordination of care provided by all personnel providing patient/client services;
 - (j) discharge summary.
- (2) Non-medically directed patient/client records must include:
- (a) plan of care;
 - (b) identifying information;
 - (c) signed and dated notes on the day service(s) provided;
 - (d) evidence of patient/client being informed of rights;
 - (e) evidence of coordination of care of all personnel providing patient/client services;
 - (f) evidence of discharge.
- B.** If the patient/client is discharged or transferred to another provider of health care, upon receipt of a signed request from the patient/client, a copy of the original record or an abstract of the same must be made available to the receiving facility, within 24 hours.
- C. Protection of patient/client records:**
- (1) The agency must insure that the original patient/client records and information is safeguarded against loss or unauthorized use.
- (2) The agency must have written policies and procedures governing the use and removal of patient/client records and conditions for release of information.
- (3) Patient/client's written consent is required for release of information not authorized by law.
- D. Retention of patient/client records:**
- (1) Original patient/client records shall be retained for at least 10 years after the patient/client is discharged.
- (2) Original patient/client records shall be maintained for the requisite period even if the agency has discontinued operations.
- (3) The licensing authority must be notified, in writing, prior to discontinuing operation of the storage location of patient/client records.

[8.370.22.34 NMAC - N, 7/1/2024]

8.370.22.35 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE AGENCY:

- A.** a copy of the last survey conducted by the licensing authority;
- B.** licensing regulations: A copy of these regulations, 8.370.22 NMAC;
- C.** agreements or contracts to provide services or care;
- D.** patient/client records;
- E.** staff records;
- F.** training and in-service records as applicable;
- G.** minutes of advisory group and governing board meetings;
- H.** quality improvement program records;
- I.** grievances and resolutions;
- J.** state board of pharmacy certificates as applicable.

[8.370.22.35 NMAC - N, 7/1/2024]

8.370.22.36 CONTRACTED SERVICES: Services that are provided under arrangement by an individual or entity and the home health agency, shall include a written contract between those individuals or entities and the agency, that specifies the following:

- A. that patients are accepted for care only by the primary (admitting) home health agency;
- B. the services to be furnished under the contract.
- C. the necessity to conform to all applicable agency policies including personnel qualifications;
- D. the responsibility for participating in developing plans of care;
- E. the manner in which services will be controlled, coordinated and evaluated by the primary agency;
- F. the procedures for submitting clinical notes, scheduling of visits and conducting periodic patient evaluation;
- G. the procedures for payment for services furnished under the contract.

[8.370.22.36 NMAC - N, 7/1/2024]

8.370.22.37 STAFF RECORDS: Each agency licensed pursuant to these regulations must maintain a complete record on file for each staff member and for all volunteers with in-home contact or working more than half-time. Staff records shall be made available for review upon request of the licensing authority within four hours. Staff records must contain at least the following:

- A. name;
- B. address;
- C. position for which employed;
- D. date of employment;
- E. health certificate for all staff having contact with patient/clients stating that the employee is free from tuberculosis in a transmissible form as required by the infectious disease bureau, of the public health division, health care authority;
- F. a copy or proof of the current license, registration or certificate for each staff member for whom a license, registration, or certification is required by the State of New Mexico.

[8.370.22.37 NMAC - N, 7/1/2024]

8.370.22.38 POLICIES AND PROCEDURES: Each agency licensed pursuant to these regulations must have written policies and procedures for at least the following:

- A. scope of services offered;
- B. providing of services through arrangement or contract with individuals or agencies;
- C. admission and discharge;
- D. written job descriptions for all categories of personnel;
- E. personnel policies;
- F. staff training;
- G. emergency and after normal business hour care policies/procedures;
- H. preparation, safeguarding, and release of information from patient/client records;
- I. quality improvement program;
- J. complaints and grievances, including timely resolution.

[8.370.22.38 NMAC - N, 7/1/2024]

8.370.22.39 QUALITY IMPROVEMENT: Each agency must establish an on-going quality improvement program to ensure an adequate and effective operation. To be considered on-going, the quality improvement program must document quarterly activity that addresses, but is not limited to:

- A. Clinical care: Assessment of patient/client goals and outcome, such as, diagnosis(es), plan of care, services provided, and standards of patient/client care.
- B. Operational activities: Assessment of the total operation of the agency, such as, policies and procedures, statistical data (i.e., admissions, discharges, total visits by discipline, etc.), summary of quality improvement activities, summary of patient/client complaints and resolutions, and staff utilization.
- C. Quality improvement action plan: Written responses to address existing or potential problems which have been identified.
- D. Documentation of activities: The results of the quality improvement activities shall be compiled annually in report format and formally reviewed and approved by the governing body and advisory group of the home health agency. No more than one year may lapse between evaluations of the same part.

E. The licensing authority may, at its sole discretion, request quarterly activity summaries of an agency's on-going quality improvement activities or may direct the agency to conduct specific quality improvement studies.

[8.370.22.39 NMAC - N, 7/1/2024]

8.370.22.40 COMPLAINTS: The home health agency must investigate complaints made by a patient/client, caregiver, or guardian regarding treatment or care, or regarding the lack of respect for the patient/client's property and must document both the existence of the complaint and the resolution of the complaint. The agency's investigation of a complaint(s) must be initiated within three working days.

[8.370.22.40 NMAC - N, 7/1/2024]

8.370.22.41 INCIDENTS:

A. Reporting: All home health agencies licensed pursuant to these regulations must report to the licensing authority any of the following which has, or could threaten the health, safety and welfare of the patient/clients or staff:

- (1) any serious incident or unusual occurrence;
- (2) injuries of unknown origin or known, suspected or alleged incidents of patient/client abuse, neglect, exploitation, or mistreatment by staff or person(s) contracted by the home health agency.

B. Documentation: The agency is responsible for documenting all incidents, within five days of the incident, and having on file the following:

- (1) a narrative description of the incident;
- (2) evidence contact was made to the licensing authority;
- (3) results of the facility's investigation;
- (4) the facility action, if any.

[8.370.22.41 NMAC - N, 7/1/2024]

8.370.22.42 RELATED REGULATIONS AND CODES: Facilities subject to these regulations are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

A. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, New Mexico health care authority, 8.370.4 NMAC.

C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

[8.370.22.42 NMAC - N, 7/1/2024]

HISTORY OF 8.370.22 NMAC: RESERVED