

P.L. 2019, CHAPTER 48, *approved March 18, 2019*

Senate, No. 2773

1 **AN ACT** concerning health care service firms and homemaker-home
2 health aides, and amending P.L.2002, c.126 and P.L.1947, c.262.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. Section 1 of P.L.2002, c.126 (C.34:8-45.1) is amended to
8 read as follows:

9 1. a. Notwithstanding any other law or regulation to the
10 contrary, an employment agency required to be licensed pursuant to
11 P.L.1989, c.331 (C.34:8-43 et al.), or any other firm, company,
12 business, agency, or other entity that is not a home health care
13 agency licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) or
14 a hospice licensed pursuant to P.L.1997, c.78 (C.26:2H-79 et seq.),
15 which employs, places **【or】** , arranges for the placement of
16 **【personnel】** , or in any way refers, an individual to provide
17 companion services, health care services, or personal care services
18 in the personal residence of a person with a disability or **【a senior**
19 **citizen】** who is age 60 or older, regardless of the title by which the
20 provider of the services is known, shall be registered as a Health
21 Care Service Firm **【pursuant to N.J.A.C.13:45B-13.1 et seq.】** and
22 shall be subject to the rules and regulations governing Health Care
23 Service Firms adopted by the Division of Consumer Affairs in the
24 Department of Law and Public Safety. The Division of Consumer
25 Affairs is authorized to enforce the health care service firm
26 registration requirement, and the provisions of P.L.1989, c.331
27 (C.34:8-43 et al.), upon any person whose operations are subject to
28 this section, whether the operations include the direct employment
29 of individuals, the use of an Internet website or application, or any
30 other process or business model.

31 As used in this section:

32 "Companion services" means non-medical, basic supervision and
33 socialization services which do not include assistance with activities
34 of daily living, and which are provided in the individual's home.
35 Companion services may include the performance of household
36 chores.

37 "Health care services" means any services rendered for the
38 purpose of maintaining or restoring an individual's physical or
39 mental health or any health-related services, and for which a license
40 or certification is required as a pre-condition to the rendering of
41 such services.

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Personal care services" means services performed by licensed or
2 certified personnel for the purpose of assisting an individual with
3 activities of daily living that may involve physical contact.
4 Services include, but are not limited to, bathing, toileting,
5 transferring, dressing, grooming, and assistance with ambulation,
6 exercise, or other aspects of personal hygiene.

7 b. (Deleted by amendment, P.L.2014, c.29)

8 c. As a condition of being registered under P.L.1989, c.331
9 (C.34:8-43 et al.), a health care service firm shall obtain within 12
10 months of registration accreditation from an accrediting body that is
11 recognized by the Commissioner of Human Services as an
12 accrediting body for homemaker agencies participating in the
13 Medicaid program, as set forth at N.J.A.C.10:60-1.2. For purposes
14 of accreditation pursuant to this subsection, the accrediting body
15 shall apply the standards set forth in N.J.A.C.13:37-14.1 et seq. and
16 N.J.A.C.13:45B-13.1 et seq., as applicable.

17 d. As a condition of registration under P.L.1989, c.331 (C.34:8-
18 43 et al.), every health care service firm shall submit to the director
19 an audit the third calendar year after registration and every third
20 year thereafter. The audit shall be conducted by a certified public
21 accountant licensed by the State of New Jersey and shall encompass
22 an examination of the subject firm's financial records, financial
23 statements, the general management of its operations, and its
24 internal control systems. The audit shall include an audit report
25 with an unqualified opinion and shall be accompanied by any
26 management letters prepared by the auditor in connection with the
27 audit commenting on the internal controls or management practices
28 of the health care service firm. The audit shall be divided into two
29 components: compliance and financial. The compliance component
30 of the audit shall evaluate the firm's compliance with relevant laws
31 and regulations governing health care service firms. The financial
32 component shall include an audit of the financial statements and
33 accompanying notes, as specified in the Statements on Auditing
34 Standards issued by the American Institute of Certified Public
35 Accountants.

36 e. In addition to any other penalty provided by law, a person
37 shall be liable for a penalty of \$500 per day for each day that the
38 person continues to operate a firm without registering as required
39 under this section. The penalty shall be collected by the Director of
40 the Division of Consumer Affairs in a summary proceeding in
41 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
42 c.274 (C.2A:58-10 et seq.).

43 (cf: P.L.2014, c.29, s.1)

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45 2. Section 1 of P.L.1947, c.262 (C.45:11-23) is amended to
46 read as follows:

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1. As used in this act:

1 a. The words "the board" mean the New Jersey Board of
2 Nursing created by this act.

3 b. The practice of nursing as a registered professional nurse is
4 defined as diagnosing and treating human responses to actual or
5 potential physical and emotional health problems, through such
6 services as casefinding, health teaching, health counseling, and
7 provision of care supportive to or restorative of life and well-being,
8 and executing medical regimens as prescribed by a licensed or
9 otherwise legally authorized physician or dentist. Diagnosing in the
10 context of nursing practice means the identification of and
11 discrimination between physical and psychosocial signs and
12 symptoms essential to effective execution and management of the
13 nursing regimen within the scope of practice of the registered
14 professional nurse. Such diagnostic privilege is distinct from a
15 medical diagnosis. Treating means selection and performance of
16 those therapeutic measures essential to the effective management
17 and execution of the nursing regimen. Human responses means
18 those signs, symptoms, and processes which denote the individual's
19 health need or reaction to an actual or potential health problem.

20 The practice of nursing as a licensed practical nurse is defined as
21 performing tasks and responsibilities within the framework of
22 casefinding; reinforcing the patient and family teaching program
23 through health teaching, health counseling and provision of
24 supportive and restorative care, under the direction of a registered
25 nurse or licensed or otherwise legally authorized physician or
26 dentist.

27 The terms "nursing," "professional nursing," and "practical
28 nursing" as used in this act shall not be construed to include nursing
29 by students enrolled in a school of nursing accredited or approved
30 by the board performed in the prescribed course of study and
31 training, nor nursing performed in hospitals, institutions and
32 agencies approved by the board for this purpose by graduates of
33 such schools pending the results of the first licensing examination
34 scheduled by the board following completion of a course of study
35 and training and the attaining of age qualification for examination,
36 or thereafter with the approval of the board in the case of each
37 individual pending results of subsequent examinations; nor shall
38 any of said terms be construed to include nursing performed for a
39 period not exceeding 12 months unless the board shall approve a
40 longer period, in hospitals, institutions or agencies by a nurse
41 legally qualified under the laws of another state or country, pending
42 results of an application for licensing under this act, if such nurse
43 does not represent or hold himself or herself out as a nurse licensed
44 to practice under this act; nor shall any of said terms be construed to
45 include the practice of nursing in this State by any legally qualified
46 nurse of another state whose engagement made outside of this State
47 requires such nurse to accompany and care for the patient while in
48 this State during the period of such engagement, not to exceed six

1 months in this State, if such nurse does not represent or hold
2 himself or herself out as a nurse licensed to practice in this State;
3 nor shall any of said terms be construed to include nursing
4 performed by employees or officers of the United States
5 Government or any agency or service thereof while in the discharge
6 of his or her official duties; nor shall any of said terms be construed
7 to include services performed by nurses aides, attendants, orderlies
8 and ward helpers in hospitals, institutions and agencies or by
9 technicians, physiotherapists, or medical secretaries, and such
10 duties performed by said persons aforementioned shall not be
11 subject to rules or regulations which the board may prescribe
12 concerning nursing; nor shall any of said terms be construed to
13 include first aid nursing assistance, or gratuitous care by friends or
14 members of the family of a sick or infirm person, or incidental care
15 of the sick by a person employed primarily as a domestic or
16 housekeeper, notwithstanding that the occasion for such
17 employment may be sickness, if such incidental care does not
18 constitute professional nursing and such person does not claim or
19 purport to be a licensed nurse; nor shall any of said terms be
20 construed to include services rendered in accordance with the
21 practice of the religious tenets of any well-recognized church or
22 denomination which subscribes to the art of healing by prayer. A
23 person who is otherwise qualified shall not be denied licensure as a
24 professional nurse or practical nurse by reason of the circumstances
25 that such person is in religious life and has taken a vow of poverty.

26 c. "Homemaker-home health aide" means a person who is
27 employed by a home care services agency and who is performing
28 delegated nursing regimens or nursing tasks delegated through the
29 authority of a duly licensed registered professional nurse. No
30 homemaker-home health aide shall follow a delegated nursing
31 regimen or perform tasks which are delegated unless the
32 homemaker-home health aide is under the supervision of a duly
33 licensed registered professional nurse provided by the home care
34 services agency that directly employs the homemaker-home health
35 aide. "Home care services agency" means home health agencies,
36 assisted living residences, comprehensive personal care homes,
37 assisted living programs or alternate family care sponsor agencies
38 licensed by the Department of Health **[and Senior Services]**
39 pursuant to P.L.1971, c.136 (C.26:2H-1 et al.), nonprofit
40 homemaker-home health aide agencies, and health care service
41 firms regulated by the Director of the Division of Consumer Affairs
42 in the Department of Law and Public Safety and the Attorney
43 General pursuant to P.L.1989, c.331 (C.34:8-43 et seq.) and
44 P.L.1960, c.39 (C.56:8-1 et seq.) respectively, which are engaged in
45 the business of procuring or offering to procure employment for
46 homemaker-home health aides, where a fee may be exacted,
47 charged or received directly or indirectly for procuring or offering
48 to procure that employment.

1 d. "Advanced practice nurse" means a person who holds a
2 certification in accordance with section 8 or 9 of P.L.1991, c.377
3 (C.45:11-47 or 45:11-48).

4 e. "Collaborating physician" means a person licensed to
5 practice medicine and surgery pursuant to chapter 9 of Title 45 of
6 the Revised Statutes who agrees to work with an advanced practice
7 nurse.

8 Nothing in this act shall confer the authority to a person licensed
9 to practice nursing to practice another health profession as currently
10 defined in Title 45 of the Revised Statutes.

11 (cf: P.L.2004, c.122, s.1)

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13 3. This act shall take effect immediately.

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STATEMENT

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18 This bill clarifies the definition of health care service firms and
19 homemaker-home health aides.

20 Current law provides that firms that place or arrange for the
21 placement of personnel to provide companion services, health care
22 services, or personal care services must register as a health care
23 service firm with the Division of Consumer Affairs in the
24 Department of Law and Public Safety. However, there are firms
25 operating that indirectly, using an Internet website or other online
26 application, refer or arrange for individuals to provide companion
27 services, health care services, or personal care services in the homes
28 of patients, but are not registering as health care service firms.

29 This bill revises the current law to clarify that any firm that
30 employs, places, arranges the placement of, or in any way refers, an
31 individual to provide companion services, health care services, or
32 personal care services in the personal residence of a person with a
33 disability or who is age 60 or older must register as a health care
34 service firm. The bill further stipulates that the Division of
35 Consumer Affairs is authorized to take enforcement measures upon
36 any person who operates a firm that is subject to this health care
37 service firm registration requirement, whether the operations
38 include the direct employment of individuals, the use of an Internet
39 website or application, or any other process or business model.

40 The bill also provides that, in addition to any other penalty
41 provided by law, a person is liable for a penalty of \$500 per day for
42 each day that the person continues to operate a firm without
43 registering as a health care service firm as required.

44 Finally, the bill clarifies that certified homemaker-home health
45 aides must work under the supervision of a duly licensed registered
46 professional nurse, which is provided by the home care services
47 agency that directly employs the homemaker-home health aide
48 when following a delegated nursing regimen.

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Clarifies definition of health care service firms and homemaker-
home health aides.