902 KAR 20:370. Operations and services; private duty nursing agencies.

RELATES TO: KRS 2.015, 216B.020, 314.041, 314.051, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 - 1320d-8

STATUTORY AUTHORITY: KRS 216B.042(1)

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function and establish licensure standards to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of and services provided by private duty nursing agencies.

Section 1. Definitions.

(1) "Private duty nursing agency" means a public or private organization, including any partnership, corporation, or other legal entity, that provides or arranges for the provision of private duty nursing services.

(2) "Private duty nursing services" means the delivery of skilled nursing services as defined by subsection (3) of this section.

(3) "Skilled nursing services" means the delivery of nursing care to a patient of a private duty nursing agency that:

(a) Exceeds the level of routine health monitoring;

(b) Is clinically appropriate;

(c) Is provided on a continuous basis or as part-time or short-term nursing care;

(d) Is subject to:

1. A nursing reassessment no less than every ninety (90) days; and
2. Frequent changes in the plan of treatment;

(e) Is based on the expectation that the service will improve, restore, or maintain function, or slow the patient's decline of the disease or functional ability; and

(f) Includes skilled interventions provided directly by a licensed nurse. Examples of skilled interventions may include:

1. Bowel and bladder care;
2. Administering medications or oxygen;
3. Furnishing infusion therapy services;
4. Medication setups;
5. Treating decubitus ulcers, skin breakdown, or other types of wound care; or
6. Ventilation care.

Section 2. Scope.

(1) Private duty nursing services shall be:

(a) Ordered and directed by the treating, licensed practitioner or specialist after a face-to-face evaluation of the patient, which may be provided as a telehealth encounter;

(b) Provided by:

1. A registered nurse (RN) licensed in accordance with KRS 314.041; or
2. A licensed practical nurse (LPN) licensed in accordance with KRS 314.051; and

(c) Provided to a patient in his or her temporary or permanent place of residence or other community-based setting, including:

1. The patient's home; or
2. Outside of the patient's home, as necessitated by normal life activities.

(2) A private duty nursing agency shall not include:

(a) A registered nurse who provides nursing services as an independent practitioner; or

(b) An entity that seeks certification under Title XVIII of the Social Security Act.

Section 3. Administration.

(1) The licensee shall be legally responsible for:

(a) The operation of the private duty nursing agency; and

(b) Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the agency.

(2) The licensee shall:

(a) Establish lines of authority;

(b) Designate an administrator who shall be responsible for the daily operation of the agency;

(c) Establish and implement written administrative policies covering all aspects of operation, including:

1. A description of the agency's organizational structure, staffing, and allocation of responsibility and accountability;

2. Policies and procedures for the evaluation of personnel performance; and

3. A narrative describing in detail:

a. The services offered by the agency; and

b. Qualifications of personnel involved in the delivery of services;

(d) Establish procedures for the handling and administration of drugs and biologicals; and

(e) Maintain policies regarding the delivery and supervision of patient care that shall:

1. Be developed by a group of professional health providers, including at least one (1) physician or one (1) registered nurse; and

2. Include the following:

a. A description of the services provided;

b. A requirement for a written plan of treatment for each patient who receives private duty nursing services;

c. Guidelines to ensure coordination of treatment with other health facilities and practitioners that deliver services to patients of the agency;

d. Guidelines for the medical management of health problems, including conditions that require medical consultation or patient referral;

e. Procedures for the annual review and evaluation of the services provided;

f. Guidelines for patient and environment assessment; and

g. Guidelines to ensure that a patient is receiving adequate services for assistance with daily living activities.

Section 4. Personnel.

(1) Each private duty nursing agency shall have:

(a) A clinical director who is:

1. A Kentucky-licensed physician or advanced practice registered nurse with specialized training and experience in the range of services provided by the agency; and

2. Responsible for overseeing the clinical activities of the agency; and

(b) Adequate staffing to provide for effective patient care in accordance with the terms and conditions of the contract with the patient.

(2) Each private duty nursing agency's written personnel policies shall be:

(a) Available to each employee;

(b) Reviewed on an annual basis; and

(c) Revised as necessary.

(3) There shall be a written job description for each position that shall be reviewed and revised as necessary.

(4) There shall be an employee health and infection control program, including tuberculosis screening and testing in accordance with 902 KAR 20:205.

(5) The private duty nursing agency shall maintain a current personnel record for each employee, including:

(a) Evidence of each employee's current registration, certification, or licensure, if applicable;

(b) Documentation of the employee's training and experience;

(c) Evidence of an annual performance evaluation;

(d) Documentation of compliance with the agency's health and infection control program;

(e) A preemployment background check in which the agency shall not employ an individual in a position that involves providing direct services if the individual:

1. Is listed on the:

a. Nurse aide or home health aide abuse registry pursuant to 906 KAR 1:100;

b. Caregiver misconduct registry pursuant to 922 KAR 5:120; or

c. Child abuse and neglect central registry pursuant to 922 KAR 1:470; or

2. Has a conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:

a. A felony offense that is related to:

(i) Theft;

(ii) Abuse, possession, or sale of illegal drugs;

(iii) Abuse, neglect, or exploitation of a child or an adult; or

(iv) A sexual crime; or

b. A misdemeanor offense related to abuse, neglect, or exploitation of an adult or child; and

(f) Evidence of orientation and, if needed, on-the-job training related to the employee's job responsibilities.

(6) An employee with direct patient care responsibilities shall have current cardiopulmonary resuscitation (CPR) certification from the American Heart Association, American Red Cross, or equivalent.

(7) Each licensed nurse of a private duty nursing agency shall provide services that:

(a) Are commensurate with the nurse's educational preparation and clinical competence;

(b) Address the nursing needs of the patient; and

(c) Are delivered in accordance with the patient's plan of treatment.

Section 5. Patient Records.

(1) Each private duty nursing agency shall maintain a clinical record for each patient that includes:

(a) Pertinent past and current medical, nursing, and social history, including information obtained from other providers;

(b) Name of the referring physician, or other ordering practitioner, if any, acting within the statutory scope of practice;

(c) Orders of the referring physician, or other ordering practitioner, if any, acting within the statutory scope of practice;

(d) Description of each contact, including the:

1. Condition or reason necessitating contact;

2. Assessment;

3. Service provided;

4. Medication and treatment prescribed; and

5. Disposition made; and

(e) Documentation of referrals made, including:

1. Reason for referral;

2. To whom the patient was referred; and

3. Information obtained from a referral source.

(2) Ownership.

(a) Medical records shall be the property of the private duty nursing agency.

(b) The original medical record shall not be removed except by court order.

(c) Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.

(3) Confidentiality and Security: Use and Disclosure.

(a) The agency shall maintain the confidentiality and security of patient records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

(b) The private duty nursing agency may use and disclose patient records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

(c) A private duty nursing agency may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(d) Retention of records. After a patient's death or discharge, the completed medical record shall be placed in an inactive file and:

1. Retained for six (6) years; or

2. Three (3) years after the patient reaches the age of majority in accordance with KRS 2.015, whichever is longer.

(4) The agency shall:

(a) Designate a specific location for the maintenance and storage of the agency's medical records;

(b) Have provisions for storage of medical records in the event the agency ceases to operate; and

(c) Safeguard the record and its content against loss, defacement, or tampering.

Section 6. Private Duty Nursing Services.

(1) A private duty nursing agency shall develop a plan of treatment for each patient receiving private duty nursing services.

(2) The plan of treatment shall be developed in consultation with the:

(a) Prescribing practitioner;

(b) Agency personnel; and

(c) Patient, patient's family member, or patient's responsible party.

(3) The plan of treatment shall be reviewed:

(a) By the ordering practitioner in consultation with:

1. Agency personnel; and

2. The patient, patient's family member, or patient's responsible party; and

(b) At intervals as the severity of the patient's illness requires or at least once every two (2) months.

(4) Services shall be nonabusive and provided in a manner that ensures the greatest amount of safety and security for the patient.

(5) Private duty nursing agency personnel shall ensure that medical waste generated as a result of a service shall be removed from a patient's home and disposed of properly.

Section 7. Licensure. Within ninety (90) days from the most recent effective date of this administrative regulation, the cabinet shall:

(1) Convert any licensed home health agency that is not certified under Title XVIII of the Social Security Act to a licensed private duty nursing agency;

(2) Not require approval of a new certificate of need to convert an existing home health agency license to a private duty nursing license; and

(3) Require a home health agency that converts its license to a private duty nursing license to comply with the accreditation requirements of Section 8(1)(b) of this administrative regulation.

Section 8. Accreditation.

(1) A private duty nursing agency shall be accredited by the Joint Commission, Community Health Accreditation Program, Accreditation Commission for Health Care, or an accrediting body with equivalent standards within one (1) year from the date of:

(a) Initial, provisional licensure; or

(b) The most recent effective date of this administrative regulation.

(2)

(a) If a private duty nursing agency has not obtained accreditation in accordance with subsection (1) of this section, the agency may request an extension to complete the accreditation process.

(b) A request for extension shall:

1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to the:

a. Date of the licensee's first annual renewal; or

b. One (1) year anniversary from the most effective date of this administrative regulation;

2. Include evidence that the agency:

a. Has initiated the process of becoming accredited within sixty (60) days of the:

(i) Date of provisional licensure; or

(ii) Most recent effective date of this administrative regulation; and

b. Is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated, not to exceed two (2) years from the:

a. Date of provisional licensure; or

b. Most recent effective date of this administrative regulation.

(3) A licensee's provisional licensure status shall end on the date that the agency obtains accreditation.

(4) Proof of accreditation shall be provided to the Office of Inspector General:

(a) Upon receiving accreditation; and

(b) Yearly at the time of annual renewal.

(5) If a private duty nursing agency loses its accreditation or becomes accredited by a different accrediting organization, the licensee shall notify the Office of Inspector General no later than thirty (30) days from the date that:

(a) The licensee's accreditation was terminated; or

(b) Accreditation by a different organization that meets the requirements of subsection (1) of this section took effect.

(6) The cabinet shall revoke a license if a private duty nursing agency fails to meet one (1) of the following requirements:

(a) Become accredited in accordance with subsection (1) of this section;

(b) Request an extension in accordance with subsection (2) of this section;

(c) Achieve accreditation within two (2) years from the:

1. Date of provisional licensure, if a request for extension is submitted; or

2. Most recent effective date of this administrative regulation, if a request for extension is submitted; or

(d) Maintain accreditation.

(27 Ky.R. 3479; 28 Ky.R. 1150; eff. 10-17-2001; Crt eff. 4-30-2019; 46 Ky.R. 7105, 1523, 18573; eff. 12-9-2019; Crt eff. 9-24-2026.)