



City of Chicago



O2018-202

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	1/17/2018
Sponsor(s):	Burke (14) Sawyer (6) O'Connor (40)
Type:	Ordinance
Title:	Amendment of Municipal Code Chapter 4-6 by adding new Section 4-6-115 to establish requirements for Home Health Care Agencies
Committee(s) Assignment:	Joint Committee: Finance; License and Consumer Protection

ORDINANCE

WHEREAS, the City of Chicago is a home rule unit of government pursuant to the 1970 Illinois Constitution, Article VII, Section 6(a); and

WHEREAS, pursuant to its home rule power, the City of Chicago may exercise any power and perform any function relating to its government and affairs including the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, protecting the elderly, disabled, and otherwise ailing individuals is chief among this Council's concerns; and

WHEREAS, this same population is at the core of the home health care business, as these individuals and their families increasingly seek care in their own home as opposed to in an institutional setting; and

WHEREAS, home health care agency regulation in Illinois is unexpectedly relaxed; and

WHEREAS, this lack of oversight threatens the financial and physical health of some of the most vulnerable in our population; and

WHEREAS, for instance, a Chicago Tribune 2017 investigation titled in part "Illinois' home health care industry rife with fraud..." highlighted injurious care and exploitative financial practices in the home health care industry; and

WHEREAS, that investigation revealed that Illinois public health regulators gave out too many home health licenses in a short period of time, failing to provide proper oversight; and

WHEREAS, as the Tribune noted, "most anyone can own a home health care business for \$25 license fee" and no background check; and

WHEREAS, consequently, the Chicago metropolitan area is a hot spot for fraud and has been deemed among the most corrupt regions nationally; and

WHEREAS, federal investigators estimate over the last five years, area home-health agencies have improperly collected \$104 million of public dollars over the last five years through Medicare fraud; and

WHEREAS, the Tribune found that corrupt home health agencies and complicit physicians and nurses would secretly issue false diagnoses, subjecting tens of thousands of Chicago-area patients to unwarranted procedures, therapies, and tests, while others were prescribed unneeded and powerful drugs to increase profits; and

WHEREAS, most victims are unaware that their medical histories were hijacked for fraudulent gain because there is no legal requirement to notify or warn patients when their information is used to commit fraud or when providers are convicted of crimes; and

WHEREAS, the Illinois Department of Public Health reported that 759 private businesses that offer home health services held state licenses as of September 2017, including agencies that provide nurse staffing, housekeepers, and personal aides; and

WHEREAS, further, enforcement records show that even when companies are licensed as home health care agencies, regulatory oversight is lacking between federal and state agencies which often failed to share case information involving violations; and

WHEREAS, the Tribune also reported that at least 357 active home health companies in the Chicago area have been linked to potential financial fraud by federal investigators but never charged; and

WHEREAS, in addition to the problems regarding home health agencies, physician staffing companies are exempt from public health licensing and oversight, allowing traveling physicians to take advantage of vulnerable patients through health care fraud; and

WHEREAS, in one instance, a traveling physician falsely diagnosed a patient complaining of chest pains and declared her lungs “sounded fine” and months later, after the patient received a proper diagnosis of advanced-stage lung cancer, the patient died; and

WHEREAS, the federal Anti-Kickback Statute prohibits payments to induce or reward patient referrals under Medicare or Medicaid, however at least 15 Chicago-area physicians have been charged or convicted of accepting or paying kickbacks involving home health patients in the last seven years, according to a Tribune analysis of federal court records; and

WHEREAS, however, physician-staffing companies are exempt from the state licensing process because in Illinois businesses that dispatch physicians-for-hire to patients’ residences are not legally defined as a home health company; and

WHEREAS, the Tribune reported that since 2012, at least 10 physician-staffing companies have been federally convicted in some of Chicago’s largest home health care fraud cases and further, none of these companies were licensed by Illinois as a home health company; and

WHEREAS, most recently the Trump administration decreased federal regulations in another health field by scaling back the use of fines against nursing homes that harm residents or place them in grave risk of injury; and

WHEREAS, these new federal guidelines that relax penalties threaten to undo progress at deterring wrongdoing; and

WHEREAS, due to federal rollbacks in regulation and Illinois' relaxed policy, the city of Chicago must act to protect those already-vulnerable patients from financial fraud, false diagnoses and even greater future harm; and

WHEREAS, it is the duty of the Chicago City Council to protect our residents from profit-seeking swindlers who would give a false diagnoses and threaten a person's life for greed and profit; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated herein and made part hereof as though fully set forth herein.

SECTION 2. Section 4-6-115 of the Municipal Code of Chicago is hereby amended by inserting the language as follows:

4-6-115 Home Health Care Agencies.

(a) *Definitions.* For the purposes of this section, the following terms will have the following meanings:

“Board of health” means the board of health of the City of Chicago.

“Commissioner” means the commissioner of business affairs and consumer protection or the commissioner's designee.

“Commissioner of health” means the commissioner of health of the City of Chicago.

“Department” means the department of business affairs and consumer protection.

“Department of health” means the department of health of the City of Chicago.

“Home Health Care Agency” means a public agency or private organization that provides skilled nursing services and at least one other home health service as defined in Section 2.04 of the Illinois Home Health, Home Services, and Home Nursing Agency Act.

“Home Health Aide” means a person who provides nursing, medical, or personal care and emotional comfort to assist the patient toward independent living in a safe environment. A person may not be employed as a home health aide unless he or she meets the requirements set out in Section 245.70 of the Illinois Home Health, Home Services, and Home Nursing Agency Act.

“Home Health Services” means services provided to a person at his or her residence according to a plan of treatment for illness or infirmity prescribed by a physician or podiatrist. Such services include part-time and intermittent nursing services and other therapeutic services such as

physical therapy, occupational therapy, speech therapy, medical social services or services provided by a home health aide.

(b) *License – Required*

No person shall operate, open, manage, conduct, or maintain a home health care agency, or advertise himself or herself as a home health care agency or as offering services that would be included in the definition of home health care or a home health care agency, without a license issued by the commissioner of the department of business affairs and consumer protection.

(c) *License – Nontransferability.* No transfer of ownership shall be allowed on any license issued under this section.

(d) *Application – Additional information required.* In addition to the requirements set forth in Section 4-4-050, an application for, and, if requested, renewal of, a regulated business license to engage in the business of home health care agencies shall be accompanied by the following information:

- (1) the location of the establishment;
- (2) the level of care that will be provided at the establishment;
- (3) the name and address of the person(s) responsible for administering, supervising or managing the establishment;
- (4) proof that the applicant or licensee, as applicable, is properly licensed by the State of Illinois to engage in the business of providing home health care;
- (5) any other information required by rules and regulations duly promulgated by the board of health or department of health.

The applicant or licensee is required to undergo a criminal background check as a condition to the issuance or renewal of a license under Title 4 as set forth in 4-4-307.

(c) *Departmental duties*

(1) The commissioner of the department of business affairs and consumer protection shall have the following duties: (i) upon receipt by the department of any application for a regulated business license to engage in the business of home health care agencies, to forward such application to the department of health; and (ii) upon issuance of a regulated business license to engage in the business of home health care agencies, to so notify the alderman of the affected ward.

(2) The board of health or commissioner of health, as applicable, shall notify the commissioner of business affairs and consumer protection if such board or commissioner orders any home health care agency closed.

(3) The commissioner of the department of health shall establish a Home Health Care Fraud and Abuse Prevention Board. Said board shall be charged with establishing objectives and guidelines to detect and prevent financial fraud and abuse, issue findings and recommendations, and engage in community and departmental communication as needed to convey such findings

and recommendations. Such communications shall include, but not be limited to, license suspension and revocation recommendations to the commissioner of business affairs and consumer protection, reports to appropriate regulatory or law enforcement agencies, and public service announcements to affected groups.

(4) The department of health shall adopt rules as necessary to protect the health, safety, and well-being of clients through licensure of home health care agencies.

(d) *License issuance and renewal – Prohibited when.* No regulated business license to engage in the business of home health care agencies shall be issued to the following persons:

(1) any applicant or licensee, as applicable, that is not properly licensed by the State of Illinois to engage in the business of home health care agencies;

(e) *Legal duties.* Each licensee engaged in the business of home health care agencies shall have a duty to:

(1) comply with the minimum requirements and standards applicable to home health care agencies, as set forth in the Home Health, Home Services, and Home Nursing Agency Licensing Act, and all rules and regulations promulgated thereunder applicable to home health care agencies. The Home Health, Home Services and Home Nursing Agency Licensing Act, and all such applicable rules and regulations promulgated thereunder, shall be incorporated herein and shall hereby be made a part of this section;

(2) comply with any rules and regulations adopted by the board of health or department of health relating to the operation and conduct of any home health care agencies or required to be licensed under this chapter;

(3) submit any reports to the board of health or department of health as such board or department may from time to time require, as set forth in rules and regulations duly promulgated by such board or department. All such reports shall be made on forms provided by the board or department, as applicable, and shall be verified for truthfulness and accuracy and signed by the chief physician or administrator of such establishment.

(4) Any home health care agency licensee shall perform a criminal background check on each home health aide applicant as required under 4-4-307.

(f) *Enforcement – Rules.* The board of health and department of health are authorized to adopt and enforce reasonable rules and regulations relating to the operation and conduct of home health care agencies. Such rules and regulations (i) shall include all minimum requirements and standards for home health care agencies set forth in the Home Health, Home Services, and Home Nursing Licensing Act and all rules and regulations applicable to home health care agencies promulgated under such Act; and (ii) may include additional rules and regulations relating to the operation and conduct of home health care agencies, including, but not limited to, rules and regulations to address public health and safety issues, to the extent that such additional rules and regulation are permitted under the home rule powers of the city.

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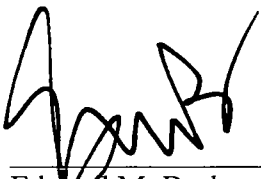
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(g) *Whistleblower Protections.*

- 1) A home health care agency shall not take any retaliatory action against a home health aide because he or she does any of the following:
 - a. Discloses or threatens to disclose to a supervisor or to a public body an activity, inaction, policy, or practice implemented by a home health care agency that the employee reasonably believes is in violation of a law, rule, or regulation; or
 - b. Provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any violation of a law, rule, or regulation by a home health agency; or
 - c. Assists or participates in a proceeding to enforce the provisions of this Section.
- 2) A violation of this Section may be established only upon a finding that: (1) the home health care agency engaged in conduct described in this Section, and (2) this conduct was a contributing factor in the retaliatory action alleged by the home health care agency. There is no violation of this Section, however, if the home health care agency demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of that conduct.
- 3) *Private Right of Action.* With respect to this subsection 4-6-115, an aggrieved employee may bring an action in a court of competent jurisdiction for violations of the rights set forth herein. The home health care aide may be awarded all remedies necessary to make the employee whole and to prevent future violations of this Section. Remedies imposed by the court may include, but are not limited to, all of the following: reinstatement of the employee to either the same position held before the retaliatory action or to an equivalent position; two times the amount of back pay; reinstatement of full fringe benefits and seniority rights; and payment of reasonable costs and attorney's fees.
- 4) The rights, obligations, and remedies set forth in this subsection 4-6-115 shall be cumulative and in addition to any others available at law or in equity.


(h) *Penalty.* In addition to any other penalty provided by law, any person who violates any requirement of this section or any rule or regulation promulgated thereunder shall be subject to a fine of not less than \$300.00 nor more than \$500.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

SECTION 3. This ordinance shall be in full force and effect immediately upon passage and publication.



Edward M. Burke
Alderman, 14th Ward


Alderman 40th Ward



Rodrick T. Sawyer
Alderman 6th Ward