

Virginia Department of Health
Office of Licensure and Certification

Surety Bond Code Requirement for Home Care Organizations

In what context does the term ‘surety bond’ relate to state licensure of home care organizations?

The Code of Virginia (32.1-162.11) directs the Board of health to establish liability insurance and surety bond requirements adequate to compensate patients or individuals for injuries and losses resulting from the negligent or criminal acts of home care organizations (HCOs) and their contact personnel.

A HCO’s liability insurance typically provides coverage in cases of negligent or criminal acts by employees and assures home care clients of liability protection. Surety bond consumer protection requirements apply of contractors provide care for the HCO.

In an employer/employee work situation, the legal basis of the relationship is one of *respondent superior*, or ‘let the superior/master be responsible’ for damages and injuries perpetrated by employees. This basis does not apply in contractual relationships. In a contractual relationship, the contract defines the full and only legal relationship between parties and each stands separate and apart for all other purposes then those expressly stated. As required by law, however, a surety bond protects HCO clients by guaranteeing redress for injury or losses perpetuated by a HCO’s contractors.

HCO’s must meet the Board of health’s liability insurance and surety bond requirements (12VAC5-381-210) to attain licensure. The surety bond must be in the amount of at least \$50,000.

What is a surety bond?

A surety bond is a risk transfer mechanism. When a contractor provides a surety bond, the public can be assured that the contractor has met the rigorous standards of an independent third party – the surety bond company. The surety bond is a guarantee from one party to another that a third party will perform a contracted service. In the case of a HCO, the surety company guarantees to the HCO that the contractor will perform the contracted services and assume liability for negligent or criminal acts. The surety bond is the agreement between the principal (the contractor), the surety (the insurance company), and the obligee (the HCO on behalf of the clients) wherein the contractor and the insurance company agree to compensate the clients for any losses.

The states’ licensure surety bond requirement is meant as a consumer safeguard that directly protects patients or individuals from injuries and losses resulting from the negligent or criminal

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acts of agents of eh HCO's that are not covered under the HCO's liability insurance. The surety agreement is among the HCO, its contractor(s), and its clients.

Surety bond is considered a line of insurance. Many businesses, from construction to cleaning companies, require individual surety bonds, and reputable contractors regard the bonding process as an important part of their business. Surety bond is the umbrella for many specific bonds that address various business bonding needs. Contract bonds, court bonds, license and permit bonds, public official bonds, and contract bonds are several categories of surety bonds.

How can a HCO require that their contractors have surety bond?

An HCO could:

1. Pay for the bonds for each of its contractors as part of the consideration in the contract which would give the HCO an interest in the performance of its contractors, or
2. Require the contractor to purchase a bond as part of the contract with the HCO in order to be a responsible contractor which would obligate the contractor to perform correctly since his or her performance dictates the bond premiums paid directly by the contractor.