

**Virginia Department of Health
Office of Licensure and Certification**

Extract of the Code of Virginia

**Chapter 5 of Title 32.1 of the Code of Virginia
Hospice and Home Care Licensing**

**Article 7
Hospice Program Licensing**

§ 32.1-162.1. Definitions. - As used in this article unless a different meaning or construction is clearly required by the context or otherwise:

"Hospice" means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration providing palliative and supportive medical and other health services to terminally ill patients and their families. A hospice utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual and other special needs which are experienced during the final stages of illness, and during dying and bereavement. Hospice care shall be available twenty-four hours a day, seven days a week.

"Hospice facility" means an institution, place, or building owned or operated by a hospice provider and licensed by the Department to provide room, board, and appropriate hospice care on a 24-hour basis, including respite and symptom management, to individuals requiring such care pursuant to the orders of a physician. Such facilities with 16 or fewer beds are exempt from Certificate of Public Need laws and regulations. Such facilities with more than 16 beds shall be licensed as a nursing facility or hospital and shall be subject to Certificate of Public Need laws and regulations.

"Hospice patient" means a diagnosed terminally ill patient, with an anticipated life expectancy of six months or less, who, alone or in conjunction with designated family members, has voluntarily requested admission and been accepted into a licensed hospice program.

"Hospice patient's family" shall mean the hospice patient's immediate kin, including a spouse, brother, sister, child or parent. Other relations and individuals with significant personal ties to the hospice patient may be designated as members of the hospice patient's family by mutual agreement among the hospice patient, the relation or individual, and the hospice team.

"Identifiable hospice administration" means an administrative group, individual or legal entity that has a distinct organizational structure, accountable to the governing authority directly or through a chief executive officer. This administration shall be responsible for the management of all aspects of the program.

"Inpatient" means the provision of services, such as food, laundry, housekeeping, and staff to provide health or health-related services, including respite and symptom management, to hospice patients, whether in a hospital, nursing facility, or hospice facility.

"Interdisciplinary team" means the patient and the patient's family, the attending physician, and the following hospice personnel: physician, nurse, social worker, and trained volunteer. Providers of special services, such as clergy, mental health, pharmacy, and any other appropriate allied health services may also be included on the team as the needs of the patient dictate.

"Palliative care" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the patient and family as they experience the stress of the dying process, rather than the treatment aimed at investigation and intervention for the purpose of cure or prolongation of life. (1981, c. 346; 2007, c. 397.)

§ 32.1-162.2. Exemptions from article. - The provisions of this article shall not be applicable to:

1. A hospice established or operated for the practice of religious tenets of any recognized church or denomination which provides care and treatment for the sick by spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation. Such a hospice shall comply with the statutes and regulations governing environmental protection and life safety.

2. Any hospice located in the Commonwealth that after initial licensure is accredited by any organization recognized by the Centers for Medicare and Medicaid Services for the purposes of Medicare certification. (1981, c. 346; 2010, c. 790.)

§ 32.1-162.3. License required for hospice programs; notice of denial of license; renewal thereof. - A. No person shall establish or operate a hospice or a hospice facility without a license issued pursuant to this article unless he is exempt from licensure pursuant to § 32.1-162.2.

B. The Commissioner shall issue or renew a license to establish or operate a hospice or a hospice facility upon application therefor on a form and accompanied by a fee prescribed by the Board if the Commissioner finds that the hospice or hospice facility is in compliance with the provisions of this article and regulations of the Board. The Commissioner shall notify by certified mail any applicant denied a license of the reasons for such denial.

C. Every such license shall expire at midnight December 31 of the year issued, or as otherwise specified by the Board, and shall be required to be renewed annually.

D. The activities and services of each applicant for issuance or renewal of a hospice license shall be subject to an inspection and examination by the Commissioner to determine if the hospice is in compliance with the provisions of this article and regulations of the Board.

E. No license issued pursuant to this article may be transferred or assigned. (1981, c. 346; 2003, c. 526; 2007, c. 397; 2010, c. 790.)

§ 32.1-162.4. Inspections. - The Commissioner may cause each hospice licensed under this article to be periodically inspected at reasonable times. - Notwithstanding the foregoing or any other provision of this article, any hospice organization that has obtained accreditation as provided in subdivision 2 of § 32.1-162.2, may be subject to inspection so long as such accreditation is maintained but only to the extent necessary to ensure the public health and safety. If any such hospice fails to comply with the provisions of this article or with the regulations of the Board relating to public health and safety, the Commissioner may revoke the exemption from licensure and require such hospice to be relicensed before it can again qualify for an exemption pursuant to § 32.1-162.2. (1981, c. 346; 2010, c. 790.)

§ 32.1-162.5. Regulations. - The Board shall prescribe such regulations governing the activities and services provided by hospices as may be necessary to protect the public health, safety and welfare. Such regulations shall include, but not be limited to, the requirements for: the qualifications and supervision of licensed and nonlicensed personnel; the standards for the care, treatment, health, safety, welfare, and comfort of patients and their families served by the program; the management, operation, staffing and equipping of the hospice program or hospice facility; clinical and business records kept by the hospice or hospice facility; and procedures for the review of utilization and quality of care. To avoid duplication in regulations, the Board shall incorporate regulations applicable to facilities licensed as hospitals or nursing homes under § 32.1-123 et seq. and to organizations licensed as home health agencies under Article 7.1 (§ 32.1-162.7 et seq.) of Chapter 5 of this title which are also applicable to hospice programs in the regulations to govern hospices. A person who seeks a license to establish or operate a hospice and who has a preexisting valid license to operate a hospital, nursing home or home health agency shall be considered in compliance with those regulations which are applicable to both a hospice and the facility for which it has a license.

Notwithstanding any law or regulation to the contrary, regulations for hospice facilities shall include minimum standards for design and construction consistent with the Hospice Care section of the current edition of the Guidelines for Design and Construction of Health Care Facilities issued by the American Institute of Architects Academy of Architecture for Health. (1981, c. 346; 2007, c. 397.)

§ 32.1-162.6. Revocation or suspension of license. - A. The Commissioner is authorized to revoke or suspend any license issued hereunder if the holder of the license fails to comply with the provisions of this article or with the regulations of the Board.

B. If a license is revoked as herein provided, the Commissioner may issue a new license upon application therefor if, when, and after the conditions upon which revocation was based have been corrected and all provisions of this article and applicable regulations have been complied with.

C. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation. (1981, c. 346.)

Article 7.1

Home Care Organization Licensing

§ 32.1-162.7. Definitions. - As used in this article:

"Health care professional" means any professional who is licensed, certified or registered to practice by a board within the Department of Health Professions under Title 54.1 or is licensed, certified or registered by a nationally recognized professional organization specified in Board regulations.

"Home care organization" means a public or private organization, whether operated for profit or not for profit, that provides, at the residence of a patient or individual in the Commonwealth of Virginia, one or more of the following services:

1. Home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling condition and require short-term or long-term interventions;

2. Personal care services, including assistance in personal care to include activities of daily living provided in an individual's residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury or disabling condition; or

3. Pharmaceutical services, including services provided in a patient's residence, which include the dispensing and administration of a drug or drugs, and parenteral nutritional support, associated patient instruction, and such other services as identified by the Board of Health by regulation.

"Person" includes any partnership, corporation, association or other legal entity, public or private.

"Residence" means the place where the individual or patient makes his home such as his own apartment or house, a relative's home or an assisted living facility, but shall not include a hospital, nursing facility or nursing home or other extended care facility. (1986, c. 633; 1991, c. 695; 1993, cc. 957, 993.)

§ 32.1-162.8. Exemptions from article. - The provisions of this article shall not be applicable to:

1. A natural person who provides services to a patient or individual on an individual basis if such person is (i) acting alone under a medical plan of care and is licensed to provide such services pursuant to Title 54.1 or (ii) retained by the individual or by another individual acting on the individual's behalf.

2. Any organization providing only housekeeping, chore or beautician services.

3. Any home care organization located in the Commonwealth that after initial licensure is:

a. Certified by the Department of Health under provisions of Title XVIII or Title XIX of the Social Security Act;

b. Accredited by any organization recognized by the Centers for Medicare and Medicaid Services for the purposes of Medicare certification; or

c. Licensed for hospice services under Article 7 (§ 32.1-162.1 et seq.) of this chapter. (1986, c. 633; 1991, c. 695; 1995, c. 455; 2001, c. 515; 2010, c. 790.)

§ 32.1-162.9. Licenses required; renewal thereof. - A. No person shall establish or operate a home care organization without a license issued pursuant to this article unless he is exempt from licensure pursuant to § 32.1-162.8. No license to establish or operate a home care organization shall be issued to any person who has been sanctioned pursuant to 42 U.S.C. § 1320a-7b.

B. The Commissioner shall issue or renew a license to establish or operate a home care organization upon application therefor on a form and accompanied by a fee prescribed by the Board if the Commissioner finds that the home care organization is in compliance with the provisions of this article and regulations of the Board, unless the Commissioner determines that no reciprocal agreement for the licensing of home care organizations has been entered into by the Commonwealth with the state in which the applicant resides or with the state in which the applicant's home care organization is licensed to operate. The Commissioner shall not issue or

renew a license to establish or operate a home care organization to any applicant who has been sanctioned pursuant to 42 U.S.C. § 1320a-7b.

C. The Commissioner may issue a license to a home care organization authorizing the licensee to provide services at one or more branch offices serving portions of the total geographic area served by the licensee, provided each branch office operates under the supervision and administrative control of the licensee. The address of each branch office at which services are provided by the licensee shall be included on any license issued to the licensee.

D. Every applicant for an initial license to establish or operate a home care organization shall include as part of his application proof of initial reserve operating funds in an amount determined by the Board, which shall be sufficient to ensure operation of the home care organization for the three-month period after a license to operate has been issued. Such funds may include cash, cash equivalents that are readily convertible to known amounts of cash and that present insignificant risk of change in value, borrowed funds that are immediately available to the applicant, or a line of credit that is immediately available to the applicant. Proof of funds sufficient to meet the requirements of this subsection shall include a current balance sheet demonstrating availability of cash or cash equivalents, including all borrowed funds, sufficient to meet the requirement for initial reserve operating funds together with a letter from the officer of the bank or other financial institution where the funds are held or a letter of credit from a lender demonstrating the current availability of a line of credit and the amount thereof.

E. Every such license shall expire on the anniversary of its issuance or renewal.

F. The activities and services of each applicant for issuance or renewal of a home care organization license shall be subject to an inspection or examination by the Commissioner to determine if the home care organization is in compliance with the provisions of this article and regulations of the Board.

G. No license issued pursuant to this article may be transferred or assigned. (1986, c. 633; 1991, c. 695; 1994, c. 902; 2012, c. 139; 2013, cc. 184, 505.)

§ 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; drug testing; suspension or revocation of license. - A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of a felony violation of a protective order as set out in § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by a mob as set out in § 18.2-41, abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-59, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, a felony violation of a protective order as set out in § 18.2-60.4, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out

in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state.

However, a home care organization or hospice may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect, if five years have elapsed since the conviction.

Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such home care organization or hospice shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a or b of § 32.1-162.8 shall establish policies for maintaining a drug-free workplace, which may include drug testing when the employer has cause to believe that the person has engaged in the use of illegal drugs and periodically during the course of employment. All positive results from drug testing administered pursuant to this section shall be reported to the health regulatory boards responsible for licensing, certifying, or registering the person to practice, if any.

C. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

D. A licensed home care organization or hospice shall notify and provide all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such home care organization or hospice. (1992, c. 844; 1993, cc. 17, 657; 1999, c. 637; 2003, c. 517; 2006, cc. 701, 764; 2010, cc. 415, 790; 2012, c. 383.)

§ 32.1-162.10. Inspections; fees. - The Commissioner may cause each home care organization licensed under this article to be periodically inspected at reasonable times.

Notwithstanding the foregoing or any other provision of this article, any home care organization which has obtained accreditation or has been certified as provided in subdivision 3 of § 32.1-162.8 may be subject to inspection so long as such accreditation or certification is maintained but only to the extent necessary to ensure the public health and safety. If any such home care organization fails to comply with the provisions of this article or with the regulations of the Board relating to public health and safety, the Commissioner is authorized to revoke the exemption from licensure and require such organization to be relicensed before it can again qualify for an exemption pursuant to § 32.1-162.8. (1986, c. 633; 1991, c. 695; 2010, c. 790.)

§ 32.1-162.11. Liability insurance required. - Every licensed home care organization shall obtain and maintain a liability insurance policy and third-party crime insurance policy or blanket fidelity bond in accordance with regulations of the Board. Such insurance policy or bond shall provide coverage in an amount sufficient to compensate patients or individuals for injuries and losses resulting from the negligent or criminal acts of the licensee. Failure to maintain these requirements shall result in revocation of the home care organization's license. (1986, c. 633; 1991, c. 695; 2013, c. 184.)

§ 32.1-162.12. Regulations. - The Board shall prescribe such regulations governing the activities and services provided by home care organizations as may be necessary to protect the public health, safety and welfare. Such regulations shall include, but not be limited to, an informed consent contract, the qualifications and supervision of licensed and nonlicensed personnel, a complaint procedure for consumers, the provision and coordination of treatment and services provided by the organization, clinical records kept by the organization, utilization and quality control review procedures and arrangements for the continuing evaluation of the quality of care provided. Regulations shall be appropriate for the categories of service defined in § 32.1-162.7. (1986, c. 633; 1991, c. 695.)

§ 32.1-162.13. Revocation or suspension of license. - A. The Commissioner is authorized to revoke or suspend any license issued hereunder if the holder of the license fails to comply with the provisions of this article or with the regulations of the Board.

B. If a license is revoked as herein provided, the Commissioner may issue a new license upon application therefor if, when, and after the conditions upon which revocation was based have been corrected and all provisions of this article and applicable regulations have been complied with.

C. Whenever a license is revoked or suspended the Commissioner may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the home care organization is located for an injunction to cause such home care organization to cease providing services.

D. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation.

E. The Commissioner shall notify the Department of Medical Assistance Services whenever any license is revoked, suspended, or expired for the purpose of terminating or suspending the licensee Medicaid provider agreement. (1986, c. 633; 1991, c. 695; 2010, c. 790.)

§ 32.1-162.14. - Repealed by Acts 2003, c. 449.

§ 32.1-162.15. Violation; penalties. - Any person owning, establishing, conducting, maintaining, managing or operating a home care organization which is not licensed as required by this article shall be guilty of a Class 6 felony. The Commissioner may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the nonlicensed home care organization is located for an injunction to cause such nonlicensed home care organization to cease providing services. (1991, c. 695; 2010, c. 790.)