



REGULATION 61-122, STANDARDS FOR LICENSING IN-HOME CARE PROVIDERS

Effective June 27, 2014

**Bureau of Health Facilities Licensing
S.C. Department of Health and Environmental Control
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PREAMBLE

This regulation implements the provisions of the South Carolina In-Home Care Providers Act codified at Section 44-70-10 et seq., S.C. Code of Laws, 1976, as amended. This regulation will apply to all in-home care providers in South Carolina.

Regulation History

Promulgated pursuant to Section 44-70-10 et seq., S.C. Code of Laws, 1976, as amended

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61-122. Standards for Licensing In-Home Care Providers

Statutory Authority: 1976 Code Section 44-70-10 et seq.

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SECTION 100. PURPOSE AND SCOPE, DEFINITIONS, AND REQUIREMENTS FOR LICENSURE.

101. Purpose and Scope.

This regulation implements the provisions of the South Carolina In-Home Care Providers Act codified at Section 44-70-10 et seq., S.C. Code of Laws, 1976, as amended. This regulation will apply to all in-home care providers in South Carolina.

102. Definitions.

For the purposes of these regulations the following definitions apply:

A. Administrator. The individual designated by the licensee to have the authority and responsibility to manage the in-home care provider and is in charge of all functions and activities of the provider.

B. Blood Assay for *Mycobacterium tuberculosis* (BAMT). A general term to refer to *in vitro* diagnostic tests that assess for the presence of tuberculosis (TB) infection with *M. tuberculosis*. This term includes, but is not limited to, interferon-gamma release assays (IGRA).

C. Caregiver. Individual employed by, contracted by, referred by, or agent of the in-home care provider who provides services to clients.

D. Client. A person that receives services or care from an in-home care provider licensed by the Department.

E. Department. The South Carolina Department of Health and Environmental Control.

F. Repeat Violation. The recurrence of a violation cited under the same section of the regulation or statute within a thirty-six (36) month period. The time-period determinant of repeat violation status is applicable in instances when there are ownership changes.

G. Responsible Party. A person who is authorized by law to make decisions on behalf of a client. This includes, but is not limited to, a court-appointed guardian, conservator, or any individual with health care or other durable power of attorney.

H. Revocation of License. An action by the Department to cancel or annul a provider's license by recalling, withdrawing, or rescinding the provider's authority to operate.

I. Suspension of License. An action by the Department requiring a provider to cease operations for a period of time or requiring a provider to cease admitting clients until such time as the Department rescinds the restriction.

103. Requirements for Licensure.

A. License. No person, private or public organization, political subdivision, or governmental agency shall establish, operate, maintain, or represent itself (advertise and/or market) as an in-home care provider in South Carolina without first obtaining a license from the Department. When it has been determined by the Department that services are being provided and the owner has not been issued a license from the Department to provide such care services, the owner shall cease operation immediately and ensure the safety, health, and well-being of its clients. Current and/or previous violations of the S.C. Code and/or

Department regulations may jeopardize the issuance of a license for the provider or the licensing of any other provider or addition to an existing provider which is owned and/or operated by the licensee.

B. Issuance and Terms of License.

1. The license issued by the Department shall be posted in a conspicuous place in a public area of the provider's business office or readily available to the public.

2. The issuance of a license does not guarantee adequacy or quality of individual services, personal safety, fire safety, or the well-being of any client of the provider.

3. A license is not assignable or transferable and is subject to suspension or revocation at any time by the Department for the licensee's failure to comply with the laws and regulations of this State.

4. A license shall be effective for a specified provider at a specific location. A license shall be valid for a period of time specified by the Department.

5. The issuance of a license under this chapter does not guarantee provision of care by the licensee that meets or exceeds applicable standards of care. The Department is not liable to any party for acts or omissions of a licensee involving or relating to provision of care.

C. Provider Name. No proposed provider shall be named, nor shall any existing provider have its name changed to, the same or similar name as any other provider licensed in South Carolina. The Department shall determine if names are similar. If a provider is part of a franchise with multiple locations, the provider must include the geographic area in which it is located as part of its name.

D. Application. Applicants for a license shall submit to the Department a complete and accurate application on a form or by electronic means, as prescribed by the Department prior to initial licensing and periodically thereafter at intervals determined by the Department. The application includes both the applicant's oath assuring that the contents of the application are accurate and true and the applicant will comply with this regulation. The application shall be signed by the owner(s) if an individual or partnership; in the case of a corporation, by two of its officers. The application shall set forth the full name and address of the provider for which the license is sought, the owner in the event the owner's name and address is different from that of the provider, and the names of the persons in control of the provider. The Department may require additional information, including affirmative evidence of the applicant's ability to comply with these regulations. When submitting an application for an initial or renewal license, the provider shall include evidence of:

1. Either liability insurance coverage or, in lieu of liability insurance coverage, a surety bond. The provider shall maintain such coverage for the duration of the license period. The minimum amount of coverage is one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) aggregate;

2. Indemnity coverage to compensate clients for injuries and losses resulting from services provided; and

3. Workers compensation insurance in accordance with S.C. Code Section 42-5-10 et seq.;

4. Criminal record checks and drug test results for the prospective licensee; and

5. A random drug testing program pursuant to S.C. Code 44-70-70.

E. Licensing Fees. The initial license fee shall be one thousand dollars (\$1,000). The fee for annual license renewal shall be eight hundred dollars (\$800). Such fees shall be made payable by check or credit card to the Department and is not refundable. If the application is denied, a portion of the fee may be refunded based upon the remaining months of the licensure year.

F. Late Fee. The Department may order an entity to cease operations upon license expiration. Failure to submit a renewal application or fee within thirty (30) days of the expiration of a license may result in a late fee of twenty-five (25) percent of the licensing fee amount, in addition to the licensing fee. Continual failure to submit completed and accurate renewal applications and/or fees by the time period specified by the Department may result in an enforcement action, including revocation.

G. License Renewal. For a license to be renewed, applicants shall file an application with the Department, pay a license fee of eight hundred dollars (\$800), and must not be undergoing enforcement actions by the Department. If the license renewal is delayed due to enforcement actions, the renewal license shall be issued only when the matter has been resolved satisfactorily by the Department or when the adjudicatory process is completed, whichever is applicable.

1. Prior to reinstatement of a suspended license, the licensee shall submit a reinstatement fee of four hundred dollars (\$400).

2. Prior to reinstatement of a revoked license, the licensee must apply for a license as provided for in Section 103 of this regulation along with the initial licensing fee. Any time remaining from the revoked license is forfeited.

H. Change of License.

1. A provider shall request issuance of an amended license by application to the Department prior to any of the following circumstances:

- a. Change of ownership; and/or
- b. Change of provider location from one geographic site to another.

2. Changes in provider name or address (as notified by the post office) shall be accomplished by application or by letter from the licensee to the Department.

3. An amendment fee of fifty dollars (\$50) is required for each amendment.

I. Exceptions to Licensing Standards. The Department has the authority to make exceptions to these standards where it is determined that the health, safety, and well-being of the clients are not compromised, and provided the standard is not specifically required by statute.

J. The in-home care provider shall ensure that it is accessible in person, by phone, or page during the hours of 9:00 A.M. to 5:00 P.M., Monday through Friday, except for those holidays recognized by the State of South Carolina. Those staff members shall have access to all records required for routine inspections and complaint investigations.

SECTION 200. ENFORCEMENT.

201. General.

The Department shall utilize inspections, investigations, applications, and other pertinent documentation regarding a proposed or licensed provider in order to enforce this regulation.

202. Violations.

When the Department determines that an in-home care provider is in violation of any statutory provision, rule, or regulation relating to the operation or maintenance of such provider, the Department, upon proper notice to the licensee, may impose a monetary penalty, deny, suspend, or revoke licenses.

203. Monetary Penalties.

Monetary penalties assessed by the Department must be not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each violation of any of the provisions of this regulation. Each day a violation continues will be considered a subsequent offense.

SECTION 300. STAFF, CAREGIVERS, AND TRAINING REQUIREMENTS.

A. Before being employed as an in-home caregiver by a licensed in-home care provider, a person shall undergo a criminal background check as provided by S.C. Code Sections 44-70-60(B) and 44-7-2910 and submit to a drug test as provided by S.C. Code Section 44-70-60(B).

B. Licensed in-home care providers and individuals employed as in-home caregivers by licensed in-home care providers are subject to and must pass random drug testing as provided for in S.C. Code Section 44-70-70. The provider may choose the method of random testing that most suitably meets the provider's needs. The provider's policies and procedures must address random drug testing and describe the procedure chosen. At a minimum, a five (5) panel drug screen will be utilized that tests for cannabis, cocaine, amphetamines, opiates, and phencyclidine.

C. The provider shall maintain accurate information on all staff members including, but not limited to, current address, phone number, training, criminal background checks, and health assessments.

D. Caregivers shall receive or independently obtain necessary training to perform the duties for which they are responsible. Documentation of all in-service training shall be signed and dated by both the individual providing the training and the individual receiving the training. A signature for the individual providing the training may be omitted for computer-based training. The following training shall be provided by appropriate resources:

1. Basic first aid;
2. Medication assistance, if applicable;
3. Depending on the type of clients, care services for persons specific to the physical and/or mental condition of the individual, for example, Alzheimer's disease, related dementia, cognitive disabilities, or similar disabilities;
4. Confidentiality of client information and records and the protecting of client rights, including prevention of abuse and neglect;

5. Documentation and recordkeeping procedures;
6. Ethics and interpersonal relationships;
7. Proper lifting and transfer techniques, if applicable; and
8. Infection control techniques.

E. Minimum qualifications for caregivers.

A caregiver must:

1. Be able to read, write, and communicate effectively with client and supervisor;
2. Be capable of completing assigned job duties;
3. Be capable of following a care services plan with minimal supervision, if applicable;
4. Have a valid driver's license and proof of insurance if transportation is a part of the caregiver's duties. The provider must ensure the caregiver's license is valid while transporting any client of the provider by verifying the official highway department driving record of the employed individual. A copy of the driving record must be maintained in the caregiver's file;
5. Be at least eighteen (18) years of age;
6. Not have prior convictions or have pled no contest (*nolo contendere*) to crimes related to theft, abuse, neglect, or exploitation of a child or a vulnerable adult as defined in S.C. Code Section 43-35-10 et seq., for child or adult abuse, neglect or mistreatment, or a criminal offense similar in nature to the crimes listed in this subsection. The provider shall coordinate with appropriate abuse-related registries prior to the employment of staff or the contracting with or referral of caregivers to ensure compliance with this provision; and
7. Not have prior convictions or have pled no contest (*nolo contendere*) to crimes related to drugs within ten (10) years of providing in-home care to clients. The provider shall coordinate with appropriate abuse-related registries prior to the employment of staff or the contracting with or referral of caregivers to ensure compliance with this provision.

SECTION 400. HEALTH STATUS.

A. All staff members and caregivers who have contact with clients shall have a health assessment within twelve (12) months prior to initial client contact. The health assessment shall include tuberculosis screening in a manner prescribed in the Center for Disease Control and Prevention's and the Department's most current tuberculosis guidelines.

B. All in-home care providers shall conduct an annual tuberculosis risk assessment in the Appendix to determine the appropriateness and frequency of tuberculosis screening and other tuberculosis related measures to be taken.

SECTION 500. REPORTING.

501. Incidents

A. Serious incidents and/or any sudden or unexpected illness or staff member error resulting in death or inpatient hospitalization shall be reported immediately via telephone to the client's next-of-kin or responsible party.

B. A serious incident is one that results in death or a significant loss of function or damage to a body structure not related to the natural course of a client's illness or underlying condition and resulting from an incident that occurs during staff contact with clients. A serious incident shall be considered as, but is not limited to:

1. Falls or trauma resulting in fractures of major limbs or joints;
2. Client suicide;
3. Criminal events or assaults against clients which are reported and filed with the police; and/or
4. Allegations of client abuse, neglect, or exploitation, as defined in S.C. Code Section 43-35-5 et seq., by an employee.

C. The Department's Bureau of Health Facilities Licensing shall be notified in writing within three (3) days of the occurrence of a serious incident.

D. Reports submitted to the Department shall contain at a minimum: provider name, client age and sex, date of incident, location, witness name(s), extent and type of injury and how treated, for example, hospitalization, cause of incident, internal investigation results if applicable, identity of other agencies notified of incident and the date of any such report(s).

E. The provider shall report any allegation of abuse, neglect, or exploitation of clients to the Adult Protective Services Program in the Department of Social Services in accordance with S.C. Code Section 43-35-25, or Child Protective Services, as appropriate.

502. Provider Closure.

A. Prior to the temporary closure of a provider, the Department's Bureau of Health Facilities Licensing shall be notified, in writing, of the intent to close and the effective closure date. Within ten (10) business days prior to the closure, the provider shall notify the Department's Bureau of Health Facilities Licensing of provisions for the maintenance of records, identification of clients that will require transfer to another provider, and date of anticipated reopening. If the provider closes for a period longer than one year and there is a desire to reopen, the provider shall re-apply to the Department for licensure and shall be subject to all licensing requirements at the time of application as if for a new provider. In the event that the license expires during the period of temporary closure, the licensee shall submit a license renewal application and licensing fee on schedule as if the provider is operating.

B. Prior to permanent closure of a provider, the Bureau of Health Facilities Licensing shall be notified, in writing, of the intent to close and effective closure date. Within ten (10) business days prior to the closure, the provider shall notify the Bureau of Health Facilities Licensing of provisions for maintenance of the records, identification of clients that will require transfer to another provider, and dates and

amounts of client refunds. On the date of closure, the provider shall return the license to the Department's Bureau of Health Facilities Licensing.

SECTION 600. SEVERABILITY.

In the event that any portion of these regulations is construed by a court of competent jurisdiction to be invalid, or otherwise unenforceable, such determination shall in no manner affect the remaining portions of these regulations, and they shall remain in effect as if such invalid portions were not originally a part of these regulations.

SECTION 700. GENERAL.

Conditions arising which have not been addressed in these regulations shall be managed in accordance with the best practices as determined by the Department. These regulations do not create a duty on the part of the State of South Carolina or the South Carolina Department of Health and Environmental Control independent or in addition to any other duty otherwise prescribed by law.

APPENDIX

Annual Tuberculosis Risk Assessment
In-Home Care Providers

The Tuberculosis (TB) risk assessment worksheet of this appendix applies to Section 400.B of this regulation and shall be used in performing TB risk assessments for in-home care providers. Providers with more than one type of setting shall apply this worksheet to each setting.

Contact the Department of Health and Environmental Control’s TB control program to obtain epidemiologic data necessary to conduct the TB risk assessment.

Provider: _____

Number of Clients: _____

Address: _____

Phone: _____ County: _____

Completed by: _____ Title: _____

Date completed: _____

Part A. Incidence of TB in the provider organization

1. Number of TB cases identified in provider staff, caregivers under contract or otherwise eligible for referral, and clients combined in the past year? (Check only one box)

- No cases within the last 12 months.
- Less than 3 cases identified in the past year.
- 3 or more cases identified in the past year.
- Evidence of ongoing *M. tuberculosis* transmission.

2. Number of TB cases identified in your County in the last year? _____

Information may be obtained from the TB Control section of the South Carolina Department of Health and Environmental Control’s web site.

3. Number of TB cases identified in the State of South Carolina the last year? _____

Information may be obtained from the TB Control section of the South Carolina Department of Health and Environmental Control’s web site.

Part B. TB Infection Control Procedure

- Yes No Are all new hires and caregivers newly contracted or newly eligible for referral screened for TB before initial client contact?
- Yes No Does the provider have a written procedure for managing confirmed or suspected TB cases? (See Section 400.A for the requirement of a written procedure.)
- Yes No Does the provider’s procedure assure prompt detection and appropriate management of infectious persons, including prevention of further transmission of TB?

Part C. Assigning a Risk Classification (*check only one box*)

- If there have been no cases of TB identified in the provider in the past 12 months, this provider may be classified as LOW RISK.
- If there have been less than 3 cases of TB identified in the provider in the past 12 months, this provider may be classified as LOW RISK.
- If there have been 3 or more cases of TB identified in the provider in the past 12 months, this provider may be classified as MEDIUM RISK.
- There is evidence of ongoing *M. tuberculosis* transmission and the provider has reported the events to the County Health Department and appropriate measures have been implemented. (*This is a temporary classification only warranting immediate investigation. After the ongoing transmission has ceased, the setting will be reassessed for classification.*)

This TB risk assessment is performed annually to assess and assign an appropriate risk classification.

Date of next TB Risk Assessment Review (annually) _____

| Provider TB Risk Classification | |
|--|---|
| <p>Low Risk Setting</p> <p>Less than 3 TB cases/year (see Part A)</p> <p>AND</p> <p>No risk factors are present (See Part B)</p> | <p>Low Risk TB Screening</p> <ul style="list-style-type: none"> • Baseline two step TST or single BAMT upon hire or contract/eligible for referral and prior to client contact. • If TST is positive or employee or caregiver is symptomatic, obtain chest X-ray and refer to Health Department for a symptom assessment and medical evaluation. • NO ANNUAL TST or BAMT required. • Perform/obtain annual symptom assessment if documented prior positive TST or has documentation of prior active TB disease. • Persons identified as a contact to an infectious case and having unprotected exposure will be evaluated in accordance with the Health Department’s contact investigation policies and procedures. |
| <p>Medium Risk Setting</p> <p>3 or more TB cases/year (see Part A)</p> <p>OR</p> <p>Other risk factors apply (see Part B)</p> | <p>Medium Risk TB Screening</p> <ul style="list-style-type: none"> • Baseline two step TST or single BAMT upon hire contract/eligible for referral and prior to client contact. • If TST is positive or employee or caregiver is symptomatic, obtain chest X-ray and refer to Health Department for a symptom assessment and medical evaluation. • Perform/obtain ANNUAL TB screening test (TST, BAMT or symptom assessment) for each employee and caregiver. • Perform/obtain annual symptom assessment if documented prior positive TST or has documentation of prior active TB disease treatment. • Persons identified as contact to an infectious case and having unprotected exposure will be evaluated in accordance with the Health Department’s investigation policies and procedures. |

| | |
|--|--|
| <p>Potential Ongoing Transmission Setting</p> <p>Evidence of ongoing <i>M. tuberculosis</i> transmission</p> <p><i>This is a temporary classification only, warranting immediate investigation. After the ongoing transmission has ceased, the setting will be reassessed for classification.</i></p> | <p>Potential Ongoing Transmission TB Screening</p> <ul style="list-style-type: none"> • Report to local health department immediately. • Persons identified as a contact to an infectious case and having unprotected exposure will be evaluated in accordance with the Health Department’s contact investigation policies and procedures. • Baseline two-step TST for TB or single BAMT for any new hire or any caregiver newly contracted or newly eligible for referral and prior to client contact while in this category. • Consult and coordinate with the Health Department for guidance as to when transmission has ceased and a new risk assessment can be completed. |
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Sample Indications for Two-Step Tuberculin Skin Testing – TST

| Employee & Client TST Situation | Recommended TST Testing |
|--|--|
| 1. No previous TST or BAMT result. | 1. Two-step baseline TST or single BAMT completed upon hire or contract/eligible for referral and prior to client contact. |
| 2. Previous negative TST or BAMT result > 12 months before new employment or contract/eligible for referral. | 2. Two-step baseline TST or single BAMT completed upon hire or contract/eligible for referral and prior to client contact. |
| 3. a. Previous documented negative TST result within 12 months before employment or contract/eligible for referral. b. Previous documented negative BAMT. | 3. a. Single TST needed for baseline testing; this will be the second step. b. Single BAMT needed. |
| 4. Previous documented positive TST result in millimeters. | 4. No TST or BAMT; need TB symptom assessment. |
| 5. Undocumented history of prior positive TST result. | 5. Two-step baseline or single BAMT upon hire or contract/eligible for referral and prior to client contact. |