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# Report on Establishing a State-wide Home Care Licensing Process

**October 1, 2021**



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**Commission Members**

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Secretary of Health and Human Services (or designee)	Undersecretary Lauren Peters
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Rep. of Mass. Home Care, Inc.	Lisa Gurgone
Rep. of Mass. Divisions of 1199SEIU-UHE	Tim Foley
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Rep. of a Home Care Agency operating in multiple localities 2	Danielle Lord

## **Overview and Summary**

The Home Care Licensing Commission (the Commission) was established in section 97 of chapter 227 of the Acts of 2020. The statutory charge of the Commission was to study and make recommendations to establish a statewide licensing process for Massachusetts home care agencies for the protection of consumers, home care agencies and home care professionals.

The Commission was required to study the following:

- Current licensure, reporting and oversight requirements across the long-term care services industry and support systems and other relevant state agencies, including the provider monitoring conducted by the aging services access points (ASAPs) established in section 4B of chapter 19A of the General Laws, to avoid duplication or conflicting requirements;
- Home care agency licensure requirements in other states;
- Processes for implementing a statewide home care agency licensure process; and
- Current licensure processes in the health care industry in Massachusetts.

Home care services include, but are not limited to companion, homemaker and chore services, and transportation. A home care agency is an entity employing home care workers to provide home care services. The Commission limited its focus on licensing of home care agencies and did not discuss or make recommendations on the licensure of home health agencies.

The Commission met four times from June 2021 through September 2021. The first two meetings consisted of a review of current processes and monitoring provided by ASAPs, of licensure requirements in other states, and of current licensure processes for healthcare facilities in Massachusetts.

The presentation of this information and the discussions that followed ultimately informed a final recommendation for a proposed licensure framework for home care agencies operating in Massachusetts.

## **Areas of Study by the Commission**

### **Current Home Care Agency Oversight**

There are gaps in the current oversight of home care agencies. No state agency currently licenses home care agencies. While home care agencies that contract with ASAPs are subject to contractual requirements and oversight by the ASAPs and the Executive Office of Elder Affairs (EOEA), private home care agencies that do not contract with ASAPs are not subject to such requirements or oversight.

In the meeting held on June 2, 2021, the Executive Office of Elder Affairs (EOEA) presented an overview of ASAPs and home care agencies, to the Commission members. ASAPs are regional, geographic-based non-profit organizations designated by EOEA, with statewide home care coverage. ASAPs contract with approximately 134 agencies to serve 65,000 consumers at home. Of those 134 contracted agencies, 77 are home care agencies that provide services such as

companion services, meal preparation, laundry, cleaning, grocery shopping, and personal care such as bathing, dressing and toileting in the home.

Home care agencies contracting with ASAPs must meet strict requirements related to procurement, contracting, monitoring, MassHealth provider enrollment, and critical incident management. Under the current structure, there are two levels of oversight to home care agencies that contract with ASAPs. EOEA oversees the ASAPs, with oversight over the procurement process, onboarding and termination of providers, ensuring processes are in place to respond to consumer complaints, quality monitoring, review of critical incidents in real time, and administrative oversight of needed corrective action. The ASAPs oversee contracted home care agencies through audits of services and billing, resolution of consumer and family complaints, quality monitoring, review of critical incident reports, point of service delivery review, and compliance with personnel practices and employee suitability requirements. ASAPs also provide monitoring that aligns with the Frail Elder Waiver issued by the Center for Medicare and Medicaid Services.

### **Home care agency licensure requirements in other states**

As of June 2020, thirty states have some form of licensure requirements for home care agencies, according to the Home Care Association of America (HCAOA). Licensure requirements vary among the states, including the licensing agency and the requirements to be met before issuance of a license.

At the June 30, 2021 meeting, the Commission members were provided with an overview by Department staff of home care agency licensure requirements in Pennsylvania, California and Connecticut. These states were chosen as examples provide a variety of options for licensure and registration requirements.

- In Pennsylvania, licensure of home care agencies is overseen by the Department of Health which is responsible for the following:
  - Determine compliance with home care licensure requirements through an on-site survey, interviews with staff, consumers, and individuals providing care.
    - Each physical location of the home care agency must be separately licensed.
  - Inspections at initial license and/or license renewal.
  - Identify deficiencies and require plans of correction.
  - Accept or reject plans of correction.
  - Investigate complaints.
- Home care agencies in Pennsylvania are required to:
  - Provide information to consumers including the services to be provided, competency requirements for workers, and information on the licensure and complaint process.
  - Ensure the competency of individuals that provide care by making sure they:
    - Possess a valid nurses license; or
    - Demonstrate competency by passing a competency examination developed by the HCA; or

- Have successfully completed at least one of the following:
      - Nurse aide training and certification
      - Home health aide training program that meets federal requirements
      - A program approved by the DPH
    - Review worker competency at least annually.
    - Maintain documentation that all staff have criminal background checks and child abuse clearances.
    - Pay an annual \$100 licensure fee to the Department of Health
- In California, the Home Care Services Bureau, within the Department of Social Services, is responsible for:
  - Licensing Home Care Organizations including processing applications
  - Receiving and responding to complaints
  - Conducting unannounced visits to ensure compliance
  - If not in compliance, issue deficiencies and impose civil penalties
  - The Home Care Aide application process and
  - Maintenance of the Home Care Aide Registry
- Home Care Organizations pay a bi-annual licensure fee of \$5,603.
- California's Home Care Services Bureau also maintains a searchable Home Care Aide Registry (searchable) which requires a home care aide employed by a home care organization to provide home care services to a client to be listed on the registry prior to providing home care services.
- Licensure in Connecticut is overseen by the Department of Consumer Protection.
  - Upon application by a homemaker-companion agency, the Department issues Certificate of Registration.
  - May revoke, suspend, refuse to issue or renew any certificate of registration as a homemaker-companion agency, place an agency on probation, or issue a letter of reprimand for: (1) Conduct by the agency of a character likely to mislead, deceive or defraud the public; or (2) Engaging in any untruthful or misleading advertising
  - Conduct investigations.
  - Homemaker-companion agencies pay an annual \$375 licensure fee.

### **Healthcare Facility Licensure**

Also at the June 30, 2021 meeting, the Department's Bureau of Healthcare Safety and Quality (the Bureau) provided Commission members with an overview of the licensure requirements for healthcare facilities that are licensed by the Bureau, including skilled nursing facilities, rest homes, clinics, clinical laboratories, hospitals, ambulatory surgical centers, and adult day health programs.

Bureau staff provided a detailed overview of the initial licensure process for healthcare facilities, the suitability review requirements for certain healthcare facilities, the licensure renewal process and specific additional licensure requirements for certain healthcare facilities. Commission



members also heard about the Bureau's healthcare facility survey process and process for receiving complaints from consumers.

The first step in the health care facility licensure process is obtaining architectural plan approval. After plan approval, the facility must submit a completed application which Bureau staff reviews for completeness. During the application review process, a suitability review of the applicant may also be completed if the facility is applying for a long-term care license. During a suitability review, Bureau staff review the applicant's ownership structure, compliance history, criminal history and financial capacity to operate and maintain the facility. When the facility is ready to occupy the space, the facility notifies the Bureau which then conducts an on-site licensure inspection. After the on-site inspection, Bureau staff will then issue the facility license. A licensed healthcare facility must renew its license every two years. Some of the above licensure requirements may not be applicable to the licensure of home care agencies due to the nature of care being provided in an individual's home, as opposed to a healthcare facility.

### **Recommended Licensure Framework**

Commission members reached consensus on a proposed licensure framework for all home care agencies in Massachusetts with focus on four key categories: consumers of home care agencies, home care agencies, home care workers, and the regulating state agency. Building from the presentations and discussions of the first two meetings, the Commission recommends the following licensure framework:

The Commission recommends the below licensure framework for all home care agencies in Massachusetts.

1. Definition of Home Care Agencies to be licensed: (1) a business, nonprofit organization or other entity engaged in directly providing home care services to consumers in their residence; or (2) any entity or individual that represents itself as a home care agency by name or advertising or presentments to the public or uses the terms home care agency or home care in its name.
  - Licensure is required for home care agencies that directly employ their own employees or directly contract with a company who employs all staff.
  - Licensure will not be required for ASAPs that contract with home care agencies.
2. Consumers of Home Care Agencies: defined as an individual receiving home care services, or any legal representative of such individual. Consumers of home care agencies must be afforded the minimum following protections:
  - A service plan for services to be provided<sup>1</sup> and a contract which must include:
    - A detailed description of services, including services the primary agency is subcontracting to another agency or provider.
    - A written unit, rate and total cost of services, inclusive of any additional fees or deposits.

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<sup>1</sup> If a home care agency is contracted with an ASAP, the contract and service plan are provided by the ASAP, not the home care agency.

- A written process for consumers to file complaints.
  - Contact information for questions.
  - Service plans must be developed in accordance with the needs of the client and by a home care professional in a supervisory role.
  - Receive all appropriate services from a qualified, properly trained home care worker.
3. Home Care Agencies shall be required to comply with the following licensure requirements:
- Carry liability and workers compensation insurance and maintain a payroll process which includes the following:
    - Prompt payment at established rates for all work performed, reporting of employment wages to the appropriate governmental agency, collecting state and federal taxes, and payment of taxes.
  - Ensure that all professionals in direct contact with consumers receive the appropriate level of training and competency required for the tasks performed. Home care agencies may contract with outside vendors to offer trainings, as is appropriate. Home care agencies must ensure that all direct care workers receive, at minimum, the following training:
    - Confidentiality/privacy and client's rights.
    - Infection control and communicable diseases.
    - Handling of emergencies, including safety and falls prevention.
    - Observation, reporting & documenting changes in client needs and environment.
    - Identifying and reporting suspected abuse, neglect, or theft.
    - Training on reporting wage theft.
  - Training must be culturally and linguistically competent for the employee and for the provision of services.
  - Must have policies and procedures to ensure home care workers have safe working conditions, adequate training, and a process for submitting complaints.
  - Must have an Emergency Preparedness Plan.
  - Must meet quality metrics and standards set forth in licensing regulations.
4. The regulating state agency, which may be the Executive Office of Health and Human Services (EHS) or an agency within EHS, shall be responsible for licensing home care agencies. The responsibilities of the regulating state agency shall include:
- Reviewing and processing licensure applications, including a suitability review that ensures the applicant can meet the obligations and conditions of licensure, including:
    - A review of the state disbarment list and Office of Inspector General List of Excluded Individuals/Entities list.
    - Competency review where all individuals with at least 5% ownership stake in the home care agency must submit their names, contact information, companies where they have at least a 5% ownership, any civil or criminal findings and a completed background check.
  - Establishing a process for a change of ownership that includes advanced notice to clients and home care workers, and a review by the regulating state agency to determine if the new licensee can meet the obligations and conditions of

licensure, including a suitability review. Home care agency licenses cannot be transferred.

- Working with other regulators to investigate and resolve complaints.
- Imposing fines on the licensee when determined to be appropriate.
- Suspending or revoking licenses, when determined to be appropriate.
- Posting on a publicly available webpage a listing of licensed home care agencies.
- Allowing for “deemed status” for licensure of home care agencies, if an ASAP or MassHealth provider contract is in place.

5. Home Care Workers shall be provided the following:

- Adequate training by the home care agency to perform services provided by the home care agency.
- Adequate equipment and supplies to perform job.
- Annual, ongoing training to ensure competencies are maintained and enhanced, as well as training on safe working conditions and wage theft.

In addition to the above licensure framework for home care agencies in Massachusetts, the Commission recommends that the regulating state agency, in consultation with the Executive Office of Health and Human Services and other appropriate state agencies, shall promulgate regulations based upon the above licensure framework, with the opportunity for input from interested stakeholders. The regulations for home care agency licensure should include:

- The licensure suitability process and review.
- Establishment of quality metrics and standards for monitoring the licensed home care agency performance, including the reporting mechanisms for tracking performance.
- Annual reporting by home care agencies, which may include reporting on quality metrics and significant changes related to home care agency finances
- Criteria for the suspension and/or revocation of licenses, which may include a finding of wage theft by the Attorney General’s Office, and other penalties for licensure violations.
- Conducting relevant background checks of home care workers by the home care agency, which may include:
  - Massachusetts criminal background checks (CORI)
  - State or county criminal history screenings for each location outside of the Commonwealth in which the home care professional is known to have lived or worked during the last five years
  - OIG List of Excluded Individuals and Entities
  - Massachusetts Nurse Aide Registry
  - Applicable professional licensing board check
  - For all home care professionals who will transport clients, verification of auto insurance and driving records for a minimum of the last five years

## **Additional Licensure Proposals Discussed by the Commission**

In developing a final recommended licensure framework for home care agencies, individual Commission members raised additional proposals for considerations that were ultimately not agreed upon by the Commission as a whole. Despite not reaching consensus on these proposals, the Commission felt it important to highlight these proposals.

### **Matching Services within the Definition of Home Care Agency**

Some members of the Commission expressed concern that the definition of home care agencies to be licensed did not cover those entities that, for a fee, match clients with individuals who provide home care services, including entities that provide matching services through an online platform. Some members argued that excluding such matching services would increase demand for these matching services as home care agencies subject to licensure may increase consumer costs. Other Commission members, however, argued that matching services fall outside the scope of the Commission charge as such matching services go beyond home care agencies due to the fact that matching services do not employ the individuals matched to provide service.

### **Market Analysis of Home Care Industry**

The Commission could not reach consensus on the proposal to require the regulating state agency to conduct market analyses to determine the appropriate number of licenses that will be awarded as demonstrated need indicates. The member in support of this proposal contended that a market analysis is an important part of understanding the home care industry in Massachusetts as there may be gaps in service in parts of the Commonwealth or market share fights between agencies in other areas of the Commonwealth. Some members expressed concern that determining an appropriate number of licenses would be subjective and that it is not the regulating state agency's responsibility to determine a set number of licenses. These members also expressed concern that attempts to limit or control the number of licenses could negatively impact the current home care workforce shortage and the growing number of older adults currently waiting to receive approved home care services through the ASAPs. Completing a market analysis of the current home care industry in Massachusetts was suggested as a possible alternative.

### **Administrative Cap on Revenue**

Additionally, the Commission could not reach consensus on the proposal to require home care agencies to adhere to an administrative cap where at least 75% of all revenue is spent on direct care expenses. Several members questioned whether the threshold of 75% would be the appropriate standard for home care agencies. Members expressed concern about how this proposed requirement would apply to private pay home care agencies. Additionally, such a proposed requirement would be administratively and resource intensive for the regulating state agency to implement and manage.

### **Publicly Posting Home Care Agency Prices**

One member proposed the publicly disclosure of prices for services provided by the home care agency as a consumer protection measure. However, several members objected to the proposal to publicly disclose pricing, stating that it would be an administratively burdensome requirement for home care agencies and pricing can be dependent on a multitude of factors. A public posting on the home care agency website of average prices was suggested as a possible alternative.

### **Expansion of the Home Care Worker Registry**

A Commission member recommended home care agencies be required to submit all direct care worker names and information to the Home Care Worker Registry. EOEa regulates and manages the Home Care Worker Registry. The purpose of the Home Care Worker Registry is to provide the public with information about home care workers who provide services to the State Home Care Program. Some members agreed with this proposed requirement if the Home Care Worker Registry were expanded in scope to be a more robust registry that includes, at a minimum, a quality component for home care workers. The Commission members determined that any recommendation to expand the current Home Care Worker Registry was outside the scope of the Commission charge.