Chapter DHS 133

HOME HEALTH AGENCIES

Note: Chapter H 33 as it existed on May 31, 1984 was repealed and a new chapter HSS 133 was created effective June 1, 1984. Chapter HSS 133 was renumbered chapter HFS 133 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, September, 1999, No. 525. Chapter HFS 133 was renumbered chapter DHS 133 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

DHS 133.01 Authority and purpose. This chapter is promulgated under the authority of s. 50.49 (2), Stats. The chapter establishes minimum standards for the care, treatment, health, safety, welfare, and comfort of patients by home health agencies and for the maintenance and operation of home health agencies which, in the light of advancing knowledge, will promote safe and adequate care and treatment of such patients by home health agencies.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; correction made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; **CR 16−077: am. Register September 2017 No. 741 eff. 10−1−17.**

DHS 133.02 Definitions. In this chapter:

(1) "Advanced practice nurse" has the meaning given in s. N 8.02 (1).

(1e) "Advanced practice nurse prescriber" has the meaning given in s. N 8.02 (2).

(1m) "Branch office" means a location or site from which a home health agency provides services within a portion of the total geographic area served by the home health agency.

(1s) "Caregiver" has the meaning given in s. 50.065 (1) (ag), Stats.

(2) "Department" means the Wisconsin department of health services.

(3) "Home health agency" has the meaning given in s. 50.49 (1) (a), Stats.

(4) "Home health aide" means an individual whose name is on the registry and who is eligible for employment in a home health agency, and who is employed by or under contract to a home health agency to provide home health aide services under supervision of a registered nurse.

(5) "Home health aide services" means personal care services which will facilitate the patient's self−care at home and are necessary to prevent or postpone institutionalization, but do not require performance by a registered nurse or licensed practical nurse.

(5g) "Home health services" has the meaning given in s. 50.49 (1) (b), Stats.

(5m) "Legal representative" means a person who is any of the following:

(a) A guardian as defined under s. 54.01 (10), Stats.

(b) A person appointed as a health care agent under an activated power of attorney for health care under ch. 155, Stats.

(c) A person appointed as an agent to make health care decisions under a durable power of attorney under s. 243.07, 1989 Stats., executed on or before April 28, 1990.

(d) A parent of a minor.

(6) "Licensed practical nurse" means a person licensed as a trained practical nurse under ch. 441, Stats.

(6g) "Medical assistance" has the meaning given in s. DHS 101.03 (95).

(6m) "Medicare" has the meaning given is s. DHS 101.03 (98).

(7) "Occupational therapist" means someone who meets the requirements of s. DHS 105.28.

(8) "Parent agency" means a home health agency with one or more branch offices.

(8m) "Patient fee revenue" means gross patient revenue less the following deductions:

(a) Contractual adjustments from medical assistance, medicare, other federal payment sources, and third party payers.

(b) Bad debts that cannot be collected from private pay clients.

(c) Charitable contributions.

Note: Examples of other federal payment sources are the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as authorized under 32 CFR 199, and benefits provided through the Veteran's Administration. An example of a third party payer is a commercial insurer, including a health maintenance organization.

(9) "Physical therapist" means a person licensed to practice physical therapy under ch. 448, Stats.

(9m) "Physician assistant" has the meaning given in s. 448.01 (6), Stats.

(10) "Registered nurse" means a nurse registered under s. 441.06, Stats.

(10m) "Registry" has the meaning specified in s. DHS 129.03 (18).

(11) "Social worker" means an individual who holds a social worker certificate or a clinical social worker license under s. 457.08, Stats., and has had one year of social work experience in a health care setting.

(12) "Speech pathologist" means a person who possesses a certificate of clinical competence from the American speech and hearing association, or has completed the equivalent educational requirements and work experience necessary for such a certificate, or who will have completed the academic program and be in the process of accumulating the supervised work experience required to qualify for such a certificate before employment by the home health agency.

(12m) "Statement of deficiency" means a notice of a violation of a requirement of s. 50.49, Stats., or this chapter.

(13) "Therapeutic service" means physical, occupational, speech or other therapy, medical social services, home health aide service, or any other medically oriented service except skilled nursing care.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; reprinted to correct printing error in (8), Register, September, 1984, No. 345; cr. (6g), Register, October, 1995, No. 478, eff. 11−1−95; correction in (6g) made under s. 13.93 (2m) (b) 7., Stats., Reg-

ister, August, 2000, No. 536; cr. (5m), r. and recr. (6g), cr. (6m), (8m) and (12m); Register, April, 2001, No. 544, eff. 5−1−01; corrections in (8m) were made under s. 13.93 (2m) (b) 1., Stats., Register August 2001 No. 548; CR 07−060: renum. (1) to be (1m), cr. (1), (1e), (1s) and (10m), am. (4) and (11) Register November 2007 No. 623, eff. 12−1−07; correction in (5m) (a) made under s. 13.93 (2m) (b) 7., Stats., Register November 2007 No. 623; corrections in (2), (6g), (6m), (7) and (10m) made under s. 13.92 (4) (b) 6. and 7., Stats., Register January 2009 No. 636; CR 09−107: am. (5m) (c), cr. (5m) (d) Register August 2010 No. 656, eff. 9−1−10; correction in (5m) (c) made under s. 13.92 (4) (b) 7., Stats., Register July 2011 No. 667; **CR 16−077: am. (3), cr. (5g), (9m) Register September 2017 No. 741 eff. 10−1−17; correction in (3), (5g) made under s. 35.17, Stats., Register September 2017 No. 741**.

DHS 133.03 Licensure. (1) LICENSE REQUIREMENT. No person, firm, partnership, association, corporation, receiver, political subdivision of the state or other governmental agency may establish, operate, or maintain a home health agency, or represent and advertise by any means that it operates a home health agency providing services within the state without first obtaining a license from the department.

(2) MULTIPLE UNITS. Multiple units of a licensed agency shall be separately licensed if the department determines that the units, because of the volume of services provided or the distance between them and the central office, cannot adequately share supervision and administration of services with the central office. If a branch agency is not separately licensed from a parent agency, the parent agency shall be deemed to be in violation of this chapter if the branch is in violation.

(3) APPLICATION. Application for a license to operate a home health agency shall be made on a form provided by the department, shall be accompanied by a nonrefundable fee of $300, and shall include at least the following information:

(a) Name and address of applicant;

(b) For all incorporated applicants, the date and the state of incorporation, a copy of the articles of incorporation, tax status and, if a foreign corporation, evidence of authority to do business in Wisconsin;

(c) The location of the home health agency and branch offices;

(d) The name, principal business address and the percentage of ownership interest of all officers, directors, stockholders owning 10% or more of stock, members, partners, and all other persons having authority or responsibility for the operation of the agency;

(e) Proof of sufficient financial responsibility as may be necessary to operate the agency for at least 90 days;

(f) A description of the nature, type and scope of service to be provided, including geographic area to be served;

(g) Name, identification and qualifications of the administrator; and

(h) Name, identification, and qualifications of the substitute administrator required by s. DHS 133.05 (1) (e).

(i) The department may use any of the following information to determine that a home health agency applicant or owner is fit and qualified:

1. Any adverse action against a home health agency applicant or owner by a licensing agency of any state that resulted in denial, suspension, injunction, or revocation of a health care agency or health care facility license.

2. Any adverse action initiated by a state or federal agency based on non−compliance that resulted in civil money penalties, termination of a provider agreement, suspension of payments, or the appointment of temporary management of the facility.

3. Any conviction of the applicant for a crime involving neglect or abuse of patients or of the elderly or involving assaultive behavior or wanton disregard for the health or safety of others, or any act of abuse under ss. 940.285 or 940.295, Stats.

4. Any conviction of a home health agency applicant or owner for a crime related to the delivery of health care services or items, or for providing health care without a license.

5. Any conviction of a home health agency applicant or owner for a crime involving a controlled substance under ch. 961, Stats.

6. Any conviction of a home health agency applicant or owner for a crime involving a sexual offense.

7. Any prior financial failure of a home health agency applicant or owner that resulted in bankruptcy or in the closing of a health care agency or health care facility or the relocation or discharge of a health care agency's or health care facility's patients.

8. Any unsatisfied judgment against a home health agency applicant or owner or any debts that are at least 90 days past due.

Note: To obtain a copy of the license application form, send your request to the Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701−2969. The street address is 1 W. Wilson Street in Madison. The e−mail address is: Plicnsghomesfdds@dhs.wisconsin.gov. The completed application form should be sent to the same office.

(4) ISSUANCE OF LICENSE. (a) Following receipt of a complete application for a new license or for a license change when there has been a change in the ownership of a home health agency, the department shall investigate the application to determine the applicant's ability to comply with this chapter.

(b) 1. Within 90 days after receiving a complete application, the department shall either approve the application and issue a license or deny the application, unless either of the following applies:

a. The department has not yet completed its investigation; or

b. The applicant or agency is temporarily unable to conform to all the rules in this chapter.

2. If subd. 1. a. or b. applies, the department may, within the 90−day period in subd. 1., issue a provisional license for a term of 90 days. The department may, upon the agency's request, renew that license for additional 90−day terms not to exceed one year from the original issuance date of the provisional license.

3. During the provisional period specified in subd. 2., the home health agency shall actively serve at least 10 patients requiring skilled nursing care or other therapeutic services in Wisconsin. At least seven of the 10 patients shall be actively receiving skilled nursing services when the home health agency submits a written request for an on−site licensure survey. At least 3 patients shall be receiving skilled nursing services at the time of the on−site licensure survey.

(c) The department may not charge an additional fee for the original regular license issued to a home health agency that has not had a provisional license.

(d) After the department issues an initial regular license, the department may not charge the home health agency an additional licensing fee until the annual, continuing license fee is due. The fee shall be 0.25% of patient fee revenue of the home health agency based on the agency's financial information submitted to the department in the form prescribed by the department, with a maximum fee of $2,500 and a minimum fee of $500.

(5) LICENSURE TERM. A home health agency regular license is valid indefinitely unless suspended, revoked or voluntarily surrendered.

(6) REPORT OF CHANGES. (a) *Changes requiring notice.* The licensee shall, within 10 days, notify the department in writing of any changes in the services provided and any appointment or change of the administrator.

(b) *Changes requiring new application.* A new application under sub. (3) shall be submitted to the department within 10 working days when any of the following changes has occurred:

1. The corporate licensee has transferred 50% or more of the issued stock to another party or other parties;

2. The licensee has transferred ownership of 50% or more of the assets to another party or other parties;

3. There has been change in partners or partnership interests of 50% or greater in terms of capital or share of profits; or

4. The licensee has relinquished management of the agency.

(7) DENIAL OR REVOCATION. If at any time the department determines that there has been a substantial failure to comply with the requirements of this chapter, or that the license fee has not been

paid, or that the information required by the department for licensure is not provided, it shall deny or revoke the license after providing notice to the licensee.

(8) HEARINGS. (a) An applicant or home health agency may appeal the following department actions:

1. Denial or revocation of a license.

2. Issuance of a statement of deficiency that results in the imposition of a plan of correction under s. DHS 133.04 (4) (b) 3. or the imposition of penalties under s. DHS 133.04 (4) (c).

(b) If a home health agency wants to contest a department action specified in par. (a), it shall file a written request for a hearing under s. 227.44, Stats., with the department of administration's division of hearings and appeals within 10 days of receipt of notice of the contested action.

Note: The mailing address of the Division of Hearing and Appeals is: P.O. Box 7875, Madison, WI 53707−7875. The facsimile transmission number is 608−267−2744. The hearing request may be delivered in person to the Division of Hearings and Appeals at: 5005 University Avenue, Suite 201, Madison, WI.

(9) REPORTING. Every 12 months, on a schedule determined by the department, a licensed home health agency shall submit to the department an annual report in the form and containing the information that the department requires, including payment of the fee required under s. 50.49 (2) (b), Stats., and sub. (4) (d). If a complete annual report is not timely filed, the department shall issue a warning to the licensee. If a licensed home health agency that has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; reprinted to correct printing error in (3) (e), Register, September, 1984, No. 345; r. and recr. (4) and (5), Register, November, 1985, No. 359, eff. 12−1−85; correction in (4) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; am. (6) (b), Register, October, 1995, No. 478, eff. 11−1−95; r. and recr. (5), r. (6), renum. (7) to (9) to be (6) to (8), cr. (9), Register, August, 2000, No. 536, eff. 9−1−00; r. and recr. (3) (h), (4) (b), (c), (8), cr. (4) (d), am. (9), Register, April, 2001, No. 544, eff. 5−1−01; correction in (8) (a) 2. was made under s. 13.93 (2m) (b) 7., Stats., Register August 2001 No. 548; CR 03−033: am. (8) (b) Register December 2003 No. 576, eff. 1−1−04; CR 07−060: am. (4) (b) 3. and (5), cr. (3) (i) Register November 2007 No. 623, eff. 12−1−07.

DHS 133.04 Inspections. (1) REGULAR SURVEYS. The department may make any inspections and investigations it considers necessary, including review of clinical and administrative records, subject only to restrictions of law.

(2) COMPLAINTS. The department may investigate any complaints received by it concerning the operation or services of a home health agency.

Note: A complaint may be filed by writing the Bureau of Health Services, Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701−2969 or by calling the Wisconsin Home Health Hotline toll free at 1−800−642−6552.

(3) PATIENT VISITS. The department may contact patients of a home health agency as part of an inspection or investigation. A licensee shall provide the department a list of names, addresses and other identifying information of current and past patients as may be requested. The department may select the names of the patients to be visited and may visit these patients with their approval.

(4) ENFORCEMENT. (a) *Statement of deficiency.* Upon determining that a home health agency is in violation of any requirement of this chapter, the department shall promptly serve a statement of deficiency upon the administrator or other designated representative of the home health agency. The statement of deficiency shall specify the rule violated and state the facts that constitute the violation.

(b) *Plan of correction.* 1. Within 10 working days of receipt of the statement of deficiency, the home health agency shall submit a plan of correction to the department for approval detailing how the agency will correct the violation or how the agency has corrected the violation. The department may require that a plan of correction be submitted for approval within a shorter specified time for violations the department determines may be harmful to the health, safety, welfare, or rights of patients.

2. The department may require the home health agency to modify the proposed plan of correction before the department approves the plan of correction.

3. The department may require a licensee to implement and comply with a plan of correction that is developed by the department.

4. The department shall verify that the home health agency has completed the plan of correction submitted or imposed in par. (b).

(c) *Penalties.* The department may impose any of the following penalties for a violation of a requirement of this chapter:

1. Suspend admissions of new patients until the department has verified that the home health agency has completed the plan of correction under par. (b).

2. Place conditions on the license.

3. Revoke the license as specified in s. DHS 133.03 (7).

(5) INTERFERENCE WITH INSPECTIONS. Any interference with or refusal to allow any inspection or investigation under this chapter shall be grounds for denial or revocation of the license.

(6) WAIVERS OR VARIANCES. Upon application of a home health agency, the department may waive or vary any provision of this chapter if it finds that the waiver or variance will not adversely affect the health, safety or welfare of any patient.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; r. and recr. (4), Register, April, 2001, No. 544, eff. 5−1−01.

DHS 133.05 Governance. (1) GOVERNING BODY. Each home health agency shall have a governing body which shall:

(a) Adopt governing policies in the form of by−laws, charter, written policies or other official means;

(b) Adopt a statement detailing the services to be provided;

(c) Oversee the management of the agency;

(d) Appoint an administrator; and

(e) Provide for a qualified substitute administrator to act in absence of the administrator.

(2) PROFESSIONAL ADVISORY BODY. (a) The home health agency shall establish an advisory group of at least one practicing physician and one registered nurse and appropriate representation from other professional disciplines. A majority of the members shall be persons who are neither owners nor employees of the agency.

(b) The advisory group shall:

1. Review annually and make recommendations to the governing body concerning the agency's scope of services offered, admission and discharge policies, medical supervision and plans of care, emergency care, clinical records, personnel qualifications, and program evaluation;

2. Meet at least annually to advise the agency on professional issues, participate in the evaluation of the agency's program and assist the agency in maintaining liaison with other health care providers in a community information program; and

3. Document all meetings by dated minutes.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; CR 07−060: am. (2) (b) 1., Register November 2007 No. 623, eff. 12−1−07.

DHS 133.06 Administration. (1) ADMINISTRATOR. The home health agency shall be administered by an administrator who shall be a licensed physician, a registered nurse, or a person who has had training and experience in health care administration and at least one year of supervisory or administrative experience in home health care or related health programs.

(2) DUTIES OF THE ADMINISTRATOR. The administrator shall:

(a) Be knowledgeable about this chapter, and shall take all reasonable steps to ensure compliance of the agency with the requirements of this chapter;

(b) Administer the entire home health services of the agency; and

(c) Cooperate with the department in investigating compliance with this chapter.

(3) PERSONNEL POLICIES. The agency shall prepare in writing and review annually the following policies:

(a) A system for recruitment, orientation and continuing training of staff; and

(b) A plan for the evaluation of staff in the performance of duties.

(4) EMPLOYEES. (a) *Orientation.* Prior to beginning patient care, every employee shall be oriented to the agency and the job for which he or she is hired, with the orientation program to include:

1. Policies and objectives of the agency;

2. Information concerning specific job duties;

3. The functions of health personnel employed by the home health agency and how they relate to each other in providing services;

4. Information about other community agencies, including emergency medical services; and

5. Ethics, confidentiality of patient information, and patients' rights.

(b) *Scope of duties.* No employees may be assigned any duties for which they are not capable, as evidenced by training or possession of a license.

(c) *Evaluation.* Every employee shall be evaluated periodically for quality of performance and adherence to the agency's policies and this chapter, in accordance with the written plan of evaluation under sub. (3) (b). Evaluations shall be followed up with appropriate action.

(d) *Health.* 1. 'Physical health of new employees.' Each new employee, prior to having direct patient contact, shall be certified in writing by a physician, physician assistant or registered nurse as having been screened for tuberculosis, and clinically apparent communicable disease that may be transmitted to a patient during the normal performance of the employee's duties. The screening shall occur within 90 days prior to the employee having direct patient contact.

2. 'Continuing employees.' Each employee having direct patient contact shall be screened for clinically apparent communicable disease by a physician, physician assistant, or registered nurse based on the likelihood of their exposure to a communicable disease, including tuberculosis. The exposure to a communicable disease may have occurred in the community or in another location.

3. 'Disease surveillance.' Agencies shall develop and implement written policies for control of communicable diseases which take into consideration control procedures incorporated by reference in ch. DHS 145 and which ensure that employees with symptoms or signs of communicable disease or infected skin lesions are not permitted to work unless authorized to do so by a physician or physician assistant or advanced practice nurse.

Note: The Americans with Disabilities Act and the Rehabilitation Act of 1973 prohibit the termination or non−hiring of an employee based solely on an employee having an infectious disease, illness or condition.

(e) *Continuing training.* A program of continuing training shall be provided to all employees as appropriate for the client population and the employee's duties.

(f) *Personnel records.* A separate up−to−date personnel record shall be maintained on each employee. The record shall include evidence of suitability for employment in the position to which the employee is assigned.

(g) *Background checks and misconduct reporting and investigation.* Each home health agency shall comply with the caregiver background check and misconduct reporting requirements in s. 50.065, Stats., and ch. DHS 12, and the caregiver misconduct reporting and investigation requirements in ch. DHS 13.

(5) INFECTION CONTROL AND PREVENTION. Each home health agency shall do all of the following:

(a) Develop and implement initial orientation and ongoing education and training for all staff having direct patient contact, including students, trainees and volunteers, in the epidemiology, modes of transmission and prevention of infections and the need for routine use of current infection control measures as recommended by the U.S. centers for disease control and prevention.

(b) Provide equipment and supplies necessary for all staff having direct patient care contact to minimize the risk of infection while providing patient care.

(c) Monitor adherence to evidence−based standards of practice related to protective measures. When monitoring reveals a failure to follow evidence−based standards of practice, the home health agency shall provide counseling, education, or retraining to ensure staff is adequately trained to complete their job responsibilities.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; am. (4) (d) 1., Register, April, 2001, No. 544, eff. 5−1−01; CR 07−060: am. (4) (d) 1. and 3., r. and recr. (4) (d) 2., cr. (4) (g) and (5) Register November 2007 No. 623, eff. 12−1−07; corrections in (4) (d) 3. and (g) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

DHS 133.07 Evaluation. (1) REQUIREMENT. An evaluation of the home health agency's total program shall be conducted at least once a year by the advisory group required by s. DHS 133.05 (2), home health agency staff and consumers.

(2) METHOD OF EVALUATION. The agency shall establish methods to determine whether the established programs and service policies are effective and whether service policies and procedures are substantially followed by agency staff. These methods shall include a review of a sample of patient records to determine whether services are being provided appropriately and the extent to which the needs of patients are met.

(3) REPORTS. Results of the evaluations shall be recorded in writing and reported to those responsible for the operation of the agency.

(4) MANAGEMENT REVIEW. The agency shall periodically review its policies and administrative practices to determine the extent to which they promote appropriate, adequate, effective and efficient patient care.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84.

DHS 133.08 Patient rights. (1) SERVICE APPLICANT. The home health agency shall promptly determine the applicant's suitability for services and, if the applicant is accepted, shall promptly provide services to the individual. If the applicant is found unsuitable for acceptance, the agency shall inform the applicant of other service providers in the area.

(2) POLICIES. The home health agency shall provide the patient with a written notice of the patient's rights in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of treatment. Each patient receiving care from the agency shall have all of the following rights:

(a) To be fully informed, as evidenced by home health agency documentation, of all rules and regulations governing patient responsibilities;

(b) To be fully informed, prior to or at the time of admission, of services available from the agency and of related charges, including any charges for services for which the patient or a private insurer may be responsible;

(c) To be informed of all changes in services and charges as they occur;

(d) To be fully informed of one's own health condition, unless medically contraindicated, and to be afforded the opportunity to participate in the planning of the home health services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(f) To confidential treatment of personal and medical records and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another health facility, or as required by law or third−party payment contract;

(g) To be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs; and

(h) To be taught, and have the family taught, the treatment required, so that the patient can, to the extent possible, help himself or herself, and the family or other party designated by the patient can understand and help the patient.

(i) To exercise his or her rights as a patient of the home health agency;

(j) To have the patient's family or legal representative exercise the patient's rights when the patient has been judged incompetent by a court of law.

(3) COMPLAINTS. At the same time that the statement of patient rights is distributed under sub. (2), the home health agency shall provide the patient or guardian with a statement, provided by the department, setting forth the right to and procedure for registering complaints with the department.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; reprinted to correct printing error in (2) (g), Register, September, 1984, No. 345; CR 07−060: r. and recr. (2) (intro.) and (a), cr. (2) (i) and (j) Register November 2007 No. 623, eff. 12−1−07.

DHS 133.09 Acceptance and discharge of patients. **(1)** ACCEPTANCE OF PATIENTS. A patient shall be accepted for service on the basis of a reasonable expectation that the patient's medical, nursing and social needs can be met adequately by the home health agency. No patient may be provided services except under a plan of care established by a physician, an advanced practice nurse prescriber, or a physician assistant.

(2) SERVICE AGREEMENT. Before care is initiated, the home health agency shall inform the patient, orally and in writing, of the extent to which payment may be expected from other sources, the charges for services that will not be covered by other sources and charges that the individual may have to pay.

(3) DISCHARGE OF PATIENTS. (a) *Notice of discharge.* 1. A home health agency may not discharge a patient for any reason until the agency has discussed the discharge with the patient or the patient's legal representative and the patient's attending physician, advanced practice nurse prescriber, or physician assistant, and has provided written notice to the patient or the patient's legal representative in the timelines specified in this paragraph.

2. The home health agency shall provide the written notice, except when a patient is discharged due to hospital admission that occurs near the end of a 60−day episode of treatment, required under subd. 1. to the patient or the patient's legal representative at least 10 working days in advance of discharge if the reason for discharge is any of the following:

a. Payment has not been made for the patient's care, following reasonable opportunity to pay any unpaid billings.

b. The home health agency is unable to provide the care required by the patient due to a change in the patient's condition that is not an emergency.

3. The home health agency shall provide the written notice under subd. 1. to the patient or the patient's legal representative at the time of discharge if the reason for discharge is any of the following:

a. The safety of staff is compromised, as documented by the home health agency.

b. The attending physician, advanced practice nurse prescriber, or physician assistant orders the discharge for emergency medical reasons.

c. The patient no longer needs home health care as determined by the attending physician, advanced practice nurse prescriber, or physician assistant.

4. The home health agency shall insert a copy of the written discharge notice in the patient's medical record.

5. The home health agency shall include in every written discharge notice to a patient or the patient's legal representative all of the following:

a. The reason for discharge.

b. A notice of the patient's right to file a complaint with the department and the department's toll−free home health hotline telephone number and the address and telephone number of the department's division of quality assurance.

Note: A complaint may be filed by writing the Bureau of Health Services, Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701−2969 or by calling the Wisconsin Home Health Hotline toll free at 1−800−642−6552.

(b) *Discharge summary.* The home health agency shall complete a written discharge summary within 30 calendar days following discharge of a patient. The discharge summary shall include a description of the care provided and the reason for discharge. The home health agency shall place a copy of the discharge summary in the former patient's medical record. Upon request, the home health agency shall provide a copy of the discharge summary to the former patient, the patient's legal representative, the attending physician, advanced practice nurse prescriber, or physician assistant.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; r. and recr. (3), Register, April, 2001, No. 544, eff. 5−1−01; CR 07−060: am. (1), (3) (a) 1., 2. (intro.), 3. b., c. and (b), r. and recr. (2) Register November 2007 No. 623, eff. 12−1−07; correction in (3) (a) 5. b. made under s. 13.92 (4) (b) 6., Stats., Register February 2008 No. 626; **CR 16−077: am. (1), (3) (a) 1., 3. b., c., (b) Register September 2017 No. 741 eff. 10−1−17.**

DHS 133.10 Services provided. **(1)** REQUIRED SERVICES. The home health agency shall directly provide or arrange for at least part−time or intermittent nursing services and provide or arrange for home health aide services.

(2) OPTIONAL SERVICES. In addition to the services required under sub. (1), the agency may provide therapeutic services including, but not limited to, physical therapy, speech therapy, occupational therapy and medical social services.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; am. (1), Register, April, 2001, No. 544, eff. 5−1−01.

DHS 133.11 Referrals. When patients have needs which the home health agency cannot meet, the home health agency shall refer these patients to other agencies, social service organizations, or governmental units which are appropriate for unmet needs of the patients and which may be of assistance in meeting those needs. Referrals shall include referrals to meet the needs of patients for services at times before and after the normal business hours of the home health agency.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84.

DHS 133.12 Coordination with other providers. The home health agency shall coordinate its services with any other health or social service providers serving the patient.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84.

DHS 133.13 Emergency notification. Home health agency personnel shall promptly notify a patient's physician, advanced practice nurse prescriber, physician assistant, or other appropriate medical personnel and guardian, if any, of any significant changes observed or reported in the patient's condition.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; CR 07−060: am. Register November 2007 No. 623, eff. 12−1−07; **CR 16−077: am. Register September 2017 No. 741 eff. 10−1−17.**

DHS 133.14 Skilled nursing services. **(1)** PROVISION OF SERVICES. Skilled nursing services shall be provided by or under the supervision of a registered nurse.

(2) DUTIES OF THE REGISTERED NURSE. The registered nurse shall:

(a) Make the initial evaluation visit to the patient.

(b) Regularly reevaluate the patient's needs.

(c) Initiate the plan of care and necessary revisions.

(d) Provide those services requiring substantial specialized care.

(e) Initiate appropriate preventive and rehabilitative procedures.

(f) Prepare clinical and progress notes.

(g) Promptly inform either the physician, advanced practice nurse prescriber, or physician assistant, as well as other personnel participating in the patient's care of changes in the patient's condition and needs.

(h) Arrange for counseling the patient and family in meeting related needs.

(i) Participate in inservice programs for agency staff.

(j) Supervise and teach other personnel.

(3) SCOPE OF DUTIES. Nurses shall perform only those duties within the scope of their licensure.

(4) PRACTICAL NURSING. Nursing services not requiring a registered nurse may be provided by a licensed practical nurse under the supervision of a registered nurse.

(5) COORDINATION OF SERVICES. A registered nurse shall maintain overall responsibility for coordinating services provided to the patient by the agency.

(6) CONTRACTED REGISTERED NURSE SERVICES. A home health agency may purchase registered nurse services on an hourly or per visit basis, in accordance with the requirements in s. DHS 133.19. Persons providing registered nurse services under contract shall meet the requirements in s. DHS 133.06 (4) (a) to (d), be assigned to duties for which they are licensed and trained and be utilized only in non−supervisory nursing assignments.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; cr. (6), Register, April, 2001, No. 544, eff. 5−1−01; CR 07−060: am. (2) (c) and (g) Register November 2007 No. 623, eff. 12−1−07; **CR 16−077: am. (2) (a) to (i) Register September 2017 No. 741 eff. 10−1−17; correction in (2) (b) made under s. 35.17, Stats., Register September 2017 No. 741.**

DHS 133.15 Therapy services. (1) PROVISION OF SERVICES. Physical therapy, occupational therapy, speech therapy, and other therapy services provided directly by the home health agency or arranged for under s. DHS 133.19, shall be given in accordance with the plan of care developed under s. DHS 133.20. Individuals providing these services shall perform the duties under s. DHS 133.14 (2) (a), (c), (f), (h) and (i).

(2) PHYSICAL THERAPY. If offered, physical therapy shall be provided by a physical therapist or by a qualified therapy assistant under the supervision of a qualified physical therapist.

(3) OCCUPATIONAL THERAPY. If offered, occupational therapy shall be provided by an occupational therapist or by a qualified therapy assistant under the supervision of a qualified occupational therapist.

(4) SPEECH THERAPY. If offered, speech therapy shall be provided by a speech pathologist or audiologist.

(5) OTHER THERAPIES. Therapies other than those under subs. (2), (3) and (4), shall be provided by persons qualified by training or by being licensed to perform the services.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; CR 07−060: am. (1) Register November 2007 No. 623, eff. 12−1−07.

DHS 133.16 Medical social services. If offered, medical social services shall be provided by a social worker in accordance with the plan of care developed under s. DHS 133.20. Individuals providing these services shall perform the duties under s. DHS 133.14 (2) (c), (f), (h) and (i).

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; CR 07−060: am. Register November 2007 No. 623, eff. 12−1−07.

DHS 133.17 Home health aide services. (1) PROVISION OF SERVICES. When a home health agency provides or arranges for home health aide services, the services shall be given in accordance with the plan of care provided for under s. DHS 133.20, and shall be supervised by a registered nurse or, when appropriate, by a therapist.

(2) DUTIES. Home health aide services may include, but are not limited to:

(a) Assisting patients with care of mouth, skin and hair, and bathing;

(b) Assisting patients into and out of bed and assisting with ambulation;

(c) Assisting with prescribed exercises which patients and home health aides have been taught by appropriate health personnel;

(d) Preparing meals and assisting patients with eating;

(e) Household services essential to health care at home;

(f) Assisting patients to bathroom or in using bedpan;

(g) Assisting patients with self−administration of medications;

(h) Reporting changes in the patient's condition and needs; and

(i) Completing appropriate records.

(3) ASSIGNMENTS. Home health aides shall be assigned to specific patients by a registered nurse. Written instructions for patient care shall be prepared and updated for the aides at least each 60 days by a registered nurse or appropriate therapist, consistent with the plan of care under s. DHS 133.20. These instructions shall be reviewed by the immediate supervisors with their aides.

(4) TRAINING OF AIDES. (a) *Curriculum.* In addition to the orientation required by s. DHS 133.06 (4) (a), the agency shall ensure that all home health aides providing service have successfully completed a course of training covering at least the following subjects:

1. The role of the home health aide as a member of the health services team;

2. Instruction and supervised practice in in−home personal care of the sick, including personal hygiene and activities of daily living;

3. Principles of good nutrition and nutritional problems of the sick and elderly;

4. Preparation of meals, including special diets;

5. The needs and characteristics of the populations served, including the aged and disabled;

6. The emotional problems accompanying illness;

7. Principles and practices of maintaining a clean, healthy, and safe environment;

8. What, when and how to report to the supervisor; and

9. Record−keeping.

(b) *Training.* Training, if provided by the agency, shall be directed by a registered nurse. Physicians, nutritionists, physical therapists, medical social workers, and other health personnel shall provide relevant training when pertinent to the duties to be assigned.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; CR 07−060: am. (1) and (3) Register November 2007 No. 623, eff. 12−1−07.

DHS 133.18 Supervisory visits. (1) If a patient receives skilled nursing care, a registered nurse shall make a supervisory visit to each patient's residence at least every 2 weeks. The visit may be made when the home health aide is present or when the home health aide is absent. If the patient is not receiving skilled nursing care, but is receiving another skilled service, the supervisory visit may be provided by the appropriate therapist providing a skilled service.

(2) If home health aide services are provided to a patient who is not receiving skilled nursing care, or physical, occupational or speech−language therapy, the registered nurse shall make a supervisory visit to the patient's residence, when the home health aide

is present or when the home health aide is absent, at least every 60 days to observe or assist, to assess relationships, and to determine whether goals are being met and whether home health services continue to be required.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; CR 07−060: r. and recr. Register November 2007 No. 623, eff. 12−1−07.

DHS 133.19 Services under contract. (1) TERMS. A written contract shall be required for health care services purchased on an hourly or per visit basis or by arrangement with another provider. The contract shall contain:

(a) A statement that patients are accepted for care only by the primary home health agency;

(b) A list of services to be provided;

(c) Agreement to conform to all applicable agency policies including personnel qualifications;

(d) A statement about the contractor's responsibility for participating in developing plans of treatment;

(e) A statement concerning the manner in which services will be controlled, coordinated and evaluated by the primary agency; and

(f) Procedures for submitting clinical and progress notes, scheduling visits, and undertaking periodic patient evaluation.

(2) QUALIFICATIONS OF CONTRACTORS. All providers of services under contract shall meet the same qualifications required of practitioners of the same service under the terms of this chapter.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84.

DHS 133.20 Plan of care. (1) REQUIREMENT. A plan of care, including physician's, advanced practice nurse prescriber's, or physician assistant's orders, shall be established for every patient accepted for care and shall be incorporated in the patient's medical record. An initial plan shall be developed within 72 hours of acceptance. The total plan of care shall be developed in consultation with the patient, home health agency staff, contractual providers, and the patient's physician, advanced practice nurse prescriber, or physician assistant and shall be signed and dated by the physician, advanced practice nurse prescriber, or physician assistant within 20 working days following the patient's admission for care.

(2) CONTENTS OF PLAN. Each plan developed under sub. (1) shall include:

(a) Measurable time−specific goals, with benchmark dates for review; and

(b) The methods for delivering needed care, and an indication of which professional disciplines are responsible for delivering the care.

(3) REVIEW OF PLAN. The total plan of care shall be reviewed by the attending physician, advanced practice nurse prescriber, or physician assistant, and appropriate agency personnel as often as required by the patient's condition, but no less often than every 60 days. The agency shall promptly notify the physician, the advanced practice nurse prescriber, or the physician assistant of any changes in the patient's condition that suggest a need to modify the plan of care.

(4) ORDERS. Drugs and treatment shall be administered by the agency staff only as ordered by the attending physician, advanced practice nurse prescriber, or physician assistant. The nurse or therapist shall immediately record and sign and date oral orders and obtain the physician's, the advanced practice nurse prescriber's or physician assistant's countersignature and date within 20 working days.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; am. (4), Register, April, 2001, No. 544, eff. 5−1−01; CR 07−060: am. (1), (3) and (4) Register November 2007 No. 623, eff. 12−1−07; **CR 16−077: am. (1), (3), (4) Register September 2017 No. 741 eff. 10−1−17**.

DHS 133.21 Medical records. (1) REQUIREMENT. A medical record shall be maintained on each patient and shall be completely and accurately documented, systematically organized and readily accessible to authorized personnel.

(2) SECURITY. Medical record information shall be safeguarded against loss, destruction or unauthorized use. Written procedures shall be established to control use and removal of records and to identify conditions for release of information.

Note: For information regarding confidentiality of patient health care records, see s. 146.82, Stats.

(3) RETENTION. For the purposes of this chapter medical records shall be retained for a minimum of 5 years following discharge. Arrangements shall be made for the storage and safekeeping of records if the agency goes out of business.

(4) TRANSFER. If a patient is transferred to another health facility or agency, a copy of the record or summary of the record shall be provided to the receiving agency or facility.

(5) CONTENT. The medical record shall document the patient's condition, problems, progress and services rendered, and shall include:

(a) Patient identification information.

(b) Appropriate hospital information (discharge summary, diagnosis, current patient status, post−discharge plan of care).

(c) Patient evaluation and assessment.

(d) Plan of care.

(e) Physician's, advanced practice nurse prescriber's, or physician assistant's orders.

(f) Medication list and documentation of patient instructions.

(g) Progress notes, as frequently as necessary to document patient status and services provided.

(h) Summaries of reviews of the plan of care.

(i) Discharge summary, completed within 30 days following discharge.

(6) FORM OF ENTRIES. All entries in the medical record shall be legible, permanently recorded, dated and authenticated with the name and title of the person making the entry.

(7) ABBREVIATIONS. Medical symbols and abbreviations may be used in medical records if approved by a written agency policy which defines the symbols and abbreviations and controls their use.

History: Cr. Register, May, 1984, No. 341, eff. 6−1−84; CR 07−060: am. (5) (d), (e), (h) and (i) Register November 2007 No. 623, eff. 12−1−07; **CR 16−077: am. (4), (5) (a) to (h) Register September 2017 No. 741 eff. 10−1−17; correction in (5) (b) made under s. 35.17, Stats., Register September 2017 No. 741**.