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## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Health
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12VAC5-381-10 <i>et seq.</i>
<b>VAC Chapter title(s)</b>	Regulations for the Licensure of Home Care Organizations
<b>Action title</b>	Amend the Regulation after Enactment of Chapter 470 (2021 Acts of Assembly, Special Session I)
<b>Date this document prepared</b>	March 27, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Chapter 470 of the 2021 Acts of Assembly, Special Session I amended Code of Virginia § 32.1-162.12 to direct the State Board of Health to promulgate regulations for home care organizations that govern the delivery of personal care services shall provide for supervision of home care attendants providing personal care services by a licensed nurse through use of interactive audio or video technology. This regulatory action will be used to amend 12VAC5-381-10 *et seq.* to address remote supervision of personal care services by home care organizations.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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“Board” means the State Board of Health.

“HCO” means home care organization.

“LPN” means licensed practical nurse.

“RN” means registered nurse.

“VDH” means the Virginia Department of Health.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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Section 32.1-162.12 of the Code of Virginia requires the Board to adopt regulations for HCOs as may be necessary to protect the public health, safety, and welfare. Chapter 470 (2021 Acts of Assembly, Special Session I) amended this section to also require the Board to adopt regulations addressing supervision of home care attendants providing personal care services by a licensed nurse through use of interactive audio or video technology

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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Section 32.1-12 of the Code of Virginia gives the Board the responsibility to make, adopt, promulgate, and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia. Section 32.1-162.12 requires the Board to adopt regulations governing the activities and services provided by HCOs.

## Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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By enacting § 32.1-162.12, the General Assembly required the Board to adopt regulations governing the activities and services provided by HCOs, as may be necessary to protect the public health, safety, and welfare. Section 32.1-162.12 further requires such regulations to address supervision of home care attendants providing personal care services by a licensed nurse through use of interactive audio or video technology.

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.*

### Section 10. Definitions

Amended the definition of

- “client record” to include patients of an HCO
- “functional limitation” to remove reference to RNs

### Section 360. Personal care services

Amended to:

- add section-specific definitions for “client”, “patient”, and “plan of care”;
- allow RN or LPNs to supervise home care attendants;
- specify what needs to be documented on each visit in the client record or patient record;
- clarify that the plan of care must be developed prior to any personal care services being delivered;
- specify that the registered nurse should include frequency of supervision, whether remote supervision is an acceptable alternate to in-person on-site supervision, and rationale for remote supervision (if applicable);
- clarify that the review of the plan of care between the home care attendant and their supervisor should be documented in writing;
- specify when and how often a RN should assess a client or patient;
- specify that the client or patient may refuse or withdraw consent for remote interactive audio and video supervision and that separate consent is needed for the recording, storage, or other non-care-related use;
- require that HCOs must tell clients and patients of the right to refuse or withdraw consent for remote interactive audio and video supervision;
- specify that HCOs cannot decrease frequency of supervision because a client or patient has refused or withdrawn consent for remote interactive audio and video supervision;
- set the interval at which remote interactive audio and video supervision must take place; and
- specify what information about supervision must be documented in the client record or patient record.

## Issues

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

The primary advantages to the public are flexibility in supervision of personal care services provided by HCOs balanced against clients’ and patients’ privacy. There are no primary disadvantages to the public. The primary advantages to VDH or the Commonwealth are improved documentation of supervision and more explicit supervision standards. There are not primary disadvantages to VDH or the Commonwealth.

Other pertinent areas of interest to the regulated community, government officials, and the public is the competing interests in a client or patient’s privacy in their own home, in effective supervision, and in workforce demands for health care workers. The Board recognizes that the health care workforce, both statewide and nationally, remains under strain and technology may help ease that burden. The Board does note that audio and video technology for remote supervision would require connectivity to telecommunications; given the rurality of some regions of the Commonwealth, the lack of robust broadband

internet access, electronic devices and even cellular networks may not be available or stable enough for remote supervision. Remote interactive supervision requires audio and video technology that typically has recording capabilities and the Board recognizes that clients and patients may be ill at ease at the choice between receiving care and compromising their privacy. While there is some privacy compromise when in-person on-site supervision takes place, the compromise is limited to those persons physically at a client's or patient's residence; that is not necessarily true when remote interactive audio and/or video supervision takes place. The Board sought to address the privacy concerns by allowing the client or patient to refuse or withdraw consent for remote interactive audio and video supervision without fear of termination from care for that refusal or withdrawal and by requiring separate consent for its recording, storage, and other non-care-related use. In-person supervision remains the default supervision method, unless an RN determines that remote supervision is an appropriate alternative when assessing the client's or patient's care needs and the client or patient does not refuse or withdraw consent for remote supervision.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There are no applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected

None.

Localities Particularly Affected

None.

Other Entities Particularly Affected

Home care organizations that offer or intend to offer personal care services.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources.</p>	<p>There are no projected costs, savings, fees, or revenues resulting from the regulatory change for VDH.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no projected costs, savings, fees, or revenues resulting from the regulatory change for other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The benefits the regulatory change is designed to produce is balancing the health care workforce shortages and emerging technologies against clients' and patients' privacy and need for quality personal care services.</p>

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>There are no projected costs, savings, fees, or revenues resulting from the regulatory change for localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefits the regulatory change is designed to produce is balancing the health care workforce shortages and emerging technologies against clients' and patients' privacy and need for quality personal care services.</p>

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>HCOs that offer or intend to offer personal care services. Patients or clients receiving or anticipated to receive personal care services from an HCO.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:                  a) is independently owned and operated, and;                  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>It is estimated that there are 1,800 HCOs that offer or intend to offer personal care services. Based on anecdotal evidence, VDH believes nearly all HCOs, regardless of the services provided, would be small businesses.                   VDH does not have sufficient data to estimate how many patients or clients receiving or anticipated to receive personal care services from an HCO.</p>

<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>See table 1a and 4 of the ORM Economic Impact form.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefits the regulatory change is designed to produce is balancing the health care workforce shortages and emerging technologies against clients' and patients' privacy and need for quality personal care services.</p>

### Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

No alternative was considered because the General Assembly required the Board to adopt regulations governing the licensure of home care organizations and amending the regulation is the least burdensome method to accomplish the purpose of this action. Because VDH estimates that nearly all HCOs would qualify as small businesses as defined in § 2.2-4007.1 of the Code of Virginia, creating less intrusive or less costly alternatives would lower standards across the entire industry and potentially jeopardize health and safety.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

In developing the proposed regulations, the Board considered that the affected industry consists primarily—or even exclusively—of small businesses. Providing a small business exemption would result in the overwhelming number of HCOs being exempt from the requirements, just as establishing performance standards or less stringent requirements specific to small business would have the effect of lowered

standards and requirements in nearly every case. Consequently, there are no other alternative regulatory methods to minimizing the adverse impact on small businesses that the Board could utilize without being inconsistent with health, safety, environmental, and economic welfare while accomplishing the objectives of the General Assembly mandates.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

**Periodic Review and Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

This form is not being used to report the result of a periodic review/small business impact review.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

No comment was received during the public comment period following publication of the previous stage.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Rebekah E. Allen, Senior Policy Analyst, Virginia Department of Health, Office of Licensure and Certification, 9960 Mayland Drive, Suite 401, Henrico, VA

23233; email: regulatorycomment@vdh.virginia.gov; phone: (804) 367-2157; fax: (804) 527-4502. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

### Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
381-10	N/A	<p><b>12VAC5-381-10. Definitions.</b>                      The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:</p> <p style="text-align: center;">* * *</p> <p>"Client record" means the centralized location for documenting information about the client and the care and services provided to the client by the organization. A client record is a continuous and accurate account of care or services, whether hard copy or electronic, provided to a client, including information that has been dated and signed by the individuals who prescribed or delivered the care or service.</p> <p style="text-align: center;">* * *</p> <p>"Functional limitations" means the level of a client's need for assistance based on an assessment conducted by the supervising nurse...</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-381-10. Definitions.</b>                      The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:</p> <p style="text-align: center;">* * *</p> <p>"Client record" or "<u>patient record</u>" means the centralized location for documenting information about the client <u>or patient</u> and the care and services provided to the client <u>or patient</u> by the organization. A client record <u>or patient record</u> is a continuous and accurate account of care or services, whether hard copy or electronic, provided to a client <u>or patient</u>, including information that has been dated and signed by the individuals who prescribed or delivered the care or service.</p> <p style="text-align: center;">* * *</p> <p>"Functional limitations" means the level of a client's need for assistance based on an assessment conducted by the <u>supervising registered nurse</u>...</p> <p><b>INTENT:</b> The intent of the new requirement is to distinguish between</p>



			<p>persons receiving only personal care services and those who are receiving skilled care services and personal care services and to update the language to reflect the new statutory mandate.</p> <p><b>RATIONALE:</b> The rationale for the new requirement is that the regulations should be consistent with both statutory language and with current industry practice and terminology.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the new requirement is improved clarity for regulants.</p>
381-360	N/A	<p><b>12VAC5-381-360. Personal care services.</b>  A. An organization may provide personal care services in support of the client's health and safety in his home. The organization shall designate a registered nurse responsible for the supervision of personal care services.  B. The personal care services shall include:  1. Assistance with the activities of daily living. A need for assistance exists when the client is unable to complete an activity due to cognitive impairment, functional disability, physical health problems, or safety. The client's functional level is based on the client's need for assistance most or all of the time to perform the tasks of daily living in order to live independently;  2. Administration of normally self-administered drugs as allowed in § 54.1-3408 of the Virginia Drug Control Act (Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia);  3. Taking and recording vital signs, if specified in the plan of service;</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-381-360. Personal care services.</b>  A. For the purposes of this section:  1. "Client" means an individual who <u>receives personal care services from an HCO.</u>  2. "Patient" means an individual who <u>receives skilled services from an HCO and may receive personal care services as a client from an HCO.</u>  3. "Plan of care" means a written plan of personal care services to provide direction on the type of care to be provided that address the client's or patient's care needs and that is developed, signed, and periodically reviewed by a registered nurse employed or contracted by an HCO.  <del>A. An organization</del> <u>B. The HCO</u> may provide personal care services in support of the client's or patient's health and safety in his home residence. <del>The organization shall designate a registered nurse responsible for the supervision of personal care services.</del> <u>and shall employ or contract with:</u>  1. A registered nurse responsible for performing assessments of clients, patients, or both, as prescribed by subsection H of this section; and  2. A registered nurse or licensed practical nurse responsible for the supervision of personal care services as prescribed by subsection J of this section.  <del>B. The</del> <u>C. In providing personal care services, the HCO</u> shall include:</p>

		<p>4. Recording and reporting to the supervisor any changes regarding the client's condition, behavior or appearance; and</p> <p>5. Documenting the services delivered in the client's record.</p> <p>Personal care services may also include the instrumental activities of daily living related to the needs of the client.</p> <p>C. Such services shall be delivered based on a written plan of services developed by a registered nurse, in collaboration with the client and client's family. The plan shall include at least the following:</p> <ol style="list-style-type: none"> <li>1. Assessment of the client's needs;</li> <li>2. Functional limitations of the client;</li> <li>3. Activities permitted;</li> <li>4. Special dietary needs;</li> <li>5. Specific personal care services to be performed; and</li> <li>6. Frequency of service.</li> </ol> <p>D. The plan shall be retained in the client's record. Copies of the plan shall be provided to the client receiving services and reviewed with the assigned home attendant prior to delivering services.</p> <p>E. Supervision of services shall be provided as often as necessary as determined by the client's needs, the assessment of the registered nurse, and the organization's written policies not to exceed 90 days.</p> <p>F. A registered nurse or licensed practical nurse shall be available during all hours that personal care services are being provided.</p> <p>G. Home attendants providing personal care services shall receive at least 12 hours annually of inservice training and</p>	<p>1. Assistance with the <del>activities of daily living</del> <u>ADLs</u>. <del>A need for assistance exists when if</del> the client <u>or patient</u> is unable to complete an <u>activity ADL</u> due to cognitive impairment, functional disability, physical health problems, or safety. The client's <u>or patient's</u> functional level is based on <del>the client's</del> <u>his</u> need for assistance most or all of the time to perform the <del>tasks of daily living</del> <u>ADLs</u> in order to live independently;</p> <p>2. Administration of normally self-administered drugs as allowed in § 54.1-3408 of the Virginia Drug Control Act (<del>Chapter 34</del> (§ 54.1-3400 et seq.) of <del>Title 54.4</del> of the Code of Virginia);</p> <p>3. Taking and recording vital signs, if specified in the plan of <del>service care</del>;</p> <p>4. Recording and reporting to the supervisor any changes regarding the client's <u>or patient's</u> condition, behavior, or appearance; and</p> <p>5. Documenting <u>in the client record or patient record</u>:</p> <ol style="list-style-type: none"> <li>a. <u>The date on which personal care services were delivered;</u></li> <li>b. <u>By whom the personal care services were delivered; and</u></li> <li>c. <u>The specific type of personal care services provided in the client's record.</u></li> </ol> <p><del>D. The HCO's Personal</del> <u>personal</u> care services may <del>also</del> include the instrumental activities of daily living related to the needs of the client <u>or the patient</u>.</p> <p><del>C. Such services shall be delivered</del> <u>E. The HCO shall deliver personal care services</u> based on a written plan of <del>services care</del> <u>care</u> developed:</p> <ol style="list-style-type: none"> <li>1. <del>by</del> <u>By a the</u> registered nurse <u>with whom the HCO has employed or contracted pursuant to subdivision B 1 of this section;</u></li> <li>2. <del>in</del> <u>In</u> collaboration with the client <u>or patient</u> and <del>client's</del> <u>his</u> family; <u>and</u></li> <li>3. <u>Prior to the delivery of personal care services by a home care attendant.</u></li> </ol> <p>F. The <u>HCO</u> shall ensure that the <u>registered nurse with whom the HCO has employed or contracted pursuant to subdivision B 1 of this section includes in each plan of care shall include at least the following:</u></p>
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		<p>education. Inservice training may be in conjunction with on-site supervision.</p>	<ol style="list-style-type: none"> <li>1. Assessment of the client's or <u>patient's</u> needs;</li> <li>2. Functional limitations of the client or <u>patient</u>;</li> <li>3. Activities permitted;</li> <li>4. Special dietary needs;</li> <li>5. Specific personal care services to be performed; <del>and</del></li> <li>6. Frequency of <u>personal care services</u>;</li> <li>7. Frequency of supervision; and</li> <li>8. Whether supervision should be <u>in-person on-site at the client's or patient's residence, including rationale for providing supervision remotely if supervision is not provided in-person on-site at the client's or patient's residence.</u></li> </ol> <p><del>D.</del> G. The HCO shall:</p> <ol style="list-style-type: none"> <li>1. <del>Retain</del> <u>The the plan of care shall be retained</u> in the <u>client's client record or patient record</u>;</li> <li>2. Provide a copy <del>Copies</del> of the plan of care <del>shall be provided</del> to the client or <u>patient</u> receiving <u>personal care services</u>; and</li> <li>3. Ensure and document in writing that the <u>plan of care has been reviewed with by the assigned home care attendant with their supervisor</u> prior to delivering services.</li> </ol> <p><del>E.</del> Supervision of services shall be provided as often as necessary as determined by the client's needs, the assessment of the registered nurse, and the organization's written policies not to exceed 90 days.</p> <p>H. The registered nurse with whom the HCO has employed or contracted pursuant to subdivision B 1 of this section shall perform an in-person on-site client or patient assessment:</p> <ol style="list-style-type: none"> <li>1. Prior to the initiation of personal care services by the HCO;</li> <li>2. As often as necessary to reassess the client's or patient's needs, not to exceed 60 calendar days unless:             <ol style="list-style-type: none"> <li>a. The client or <u>patient experiences a significant change in condition</u>;</li> <li>b. The client or <u>patient has been discharged and returns to the same HCO during the 60-day calendar period</u>; or</li> <li>c. The client or <u>patient has transferred to a different HCO during the 60-day calendar period</u>;</li> </ol> </li> </ol>
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			<p><u>3. Within 48 hours of the client's or patient's return to the residence from a hospital stay of 24 hours or more for any reason other than diagnostic tests, or on the health care practitioner-ordered resumption date; and</u></p> <p><u>4. At discharge from the HCO.</u></p> <p><u>F. I. If the plan of care does not require in-person on-site supervision of the client's or patient's residence, the HCO may not provide remote interactive audio and video supervision of personal care services without the client's or patient's signed consent.</u></p> <p><u>1. The HCO shall disclose in writing to the client or patient that:</u></p> <p><u>a. He may refuse to consent to remote interactive audio and video supervision of personal care services;</u></p> <p><u>b. He may withdraw previously given consent to remote interactive audio and video supervision of personal care services at any time; and</u></p> <p><u>c. The HCO may not terminate the client's or patient's care for refusing or withdrawing consent to remote interactive audio and video supervision of personal care services.</u></p> <p><u>2. The HCO may not terminate the client's or patient's care for refusing or withdrawing consent to remote interactive audio and video supervision of personal care services.</u></p> <p><u>3. The HCO and any employee or contractor of the HCO may not decrease the frequency of supervision in the plan of care if the client or patient refuses or withdraws consent to remote interactive audio and video supervision of personal care services.</u></p> <p><u>4. The client's or patient's consent to remote interactive audio and video supervision of personal care services may not imply consent to recording or storing of the audio or video. The HCO shall obtain separate consent from the client or patient to record or store the audio or video. A recording of the audio or video may not be utilized for reasons other than the client's or patient's care, except as otherwise authorized by the client or</u></p>
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			<p><u>patient or as otherwise required by law.</u></p> <p>J. A <u>The registered nurse or licensed practical nurse with whom the HCO has employed or contracted with pursuant to subdivision B 2 of this section shall:</u></p> <ol style="list-style-type: none"> <li>1. <u>Supervise home care attendants as often as necessary as determined by the assessment of the registered nurse and the HCO's written policies, provided that:</u> <ol style="list-style-type: none"> <li>a. <u>Remote interactive audio supervision of personal care services occurs at least once every 15 calendar days;</u></li> <li>b. <u>Remote interactive audio and video supervision of personal care services occurs at least once every 30 calendar days;</u></li> <li>c. <u>In-person on-site supervision of personal care services occurs at least once every 60 calendar days, which may be in conjunction with the periodic assessment of the client or patient pursuant to subsection H of this section; and</u></li> <li>d. <u>The time, date, duration, and type of supervision is documented in writing in the client record or patient record by the registered nurse or licensed practical nurse who performs the supervision; and</u></li> </ol> </li> <li>2. <del>be</del> <u>Be</u> available during all hours that personal care services are being provided.</li> </ol> <p><del>G.</del> K. <u>The HCO shall ensure that Home home attendants providing personal care services shall receive at least 12 hours annually of inservice training and education-, which Inservice training may be in conjunction with in-person on-site supervision.</u></p> <p><b>INTENT:</b> The intent of the new requirement is to implement the mandate found in Chapter 470 (2021 Acts of Assembly, Special Session I) while ensuring necessary protections of the public health, safety, and welfare.</p> <p><b>RATIONALE:</b> The rationale for the new requirement is that the type of supervision should be a medically-driven decision rather than a profit-driven one, that remote audio or audio-visual supervision should be more frequent</p>
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			<p>than in-person supervision to ensure services being provided are adequate, that improved recordkeeping by HCOs about supervision will help VDH assess the effectiveness and utility of remote supervision, that workforce needs should be balanced appropriately against client and patient privacy, and that aligning reassessment frequency with federal requirements will make it easier for HCOs to acquire federal certification as a home health agency or to become accredited—either option then allowing them to apply for an exemption from licensure.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the new requirement is HCOs may choose to reduce personnel costs by using LPNs as supervisors, may branch out into the use of remote supervision as may be appropriate, and may seek accreditation or certification in order to obtain a licensure exemption.</p>
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