Requirements for Payment of Home Health Agencies

Sec. 17b-262-1. Scope
Sections 17b-262-2 to 17b-262-9 inclusive set forth the requirements for payment of Home Health services provided to individuals who are determined eligible to receive services under Connecticut’s Medical Assistance Program pursuant to Section 17b-262 of the Connecticut General Statutes.
(Effective June 4, 1996)

Sec. 17b-262-2. Definitions
For the purpose of Sections 17b-262-1 through 17b-262-9 the following definitions apply:

(1) ‘‘Commissioner’’ means the Commissioner of the department of social services, or his representative.

(2) ‘‘Department’’ means the State of Connecticut department of social services, or its agent.

(3) ‘‘Home’’ means the recipient’s place of residence which includes a boarding home or Home for the Aged. Home does not include a hospital, Skilled Nursing Facility, Intermediate Care Facility, or Intermediate Care Facility for the Mentally Retarded.

(4) ‘‘Home Health Care Agency’’ means the definition contained in subsection (d) of section 19a-490 of the Connecticut General Statutes (CGS).

(5) ‘‘Home Health Provider’’ means any home health care agency licensed by the Department of Public Health and who also meets the requirements for participation in Medicare. Providers shall also meet all departmental enrollment requirements.

(6) ‘‘Refusal to Serve’’ shall mean a refusal to accept a new client, a termination of service to an existing client, or an interruption of service to an existing client which lasts longer than 48 hours.

(7) ‘‘Service Area’’ means those cities or towns designated by zip codes on forms provided by the department.

(8) ‘‘Suspension of Service’’ shall mean an interruption of service to an existing client which lasts 48 hours or less.
(Effective June 4, 1996)

Sec. 17b-262-3. Provider participation
In order to receive payment from the department for home health services, all Home Health Care Agencies shall be licensed by the Department of Public Health and shall meet the requirements for participation in Medicare. [Home Health Care Agency Licensure Regulations: Public Health Code Sections 19-13-D66 to D79 Inclusive and Federal Regulation: Sections 42 (Code of Federal Regulations) 440.70 and 42 (Code of Federal Regulations) 441.15]. Providers shall also meet all departmental enrollment requirements.
(Effective June 4, 1996)

Sec. 17b-262-4. Eligibility
Payment for home health services is available to all persons eligible for Medicaid subject to the conditions and limitations which apply to these services.
(Effective June 4, 1996)

Sec. 17b-262-5. Policy
No home health care agency enrolled as a Medicaid provider shall select a service area, or refuse to serve any person, based on the geographical location of the
service to be provided unless the home health care agency has a legitimate, non-discriminatory reason for its choice of service area or its refusal to serve. Referrals for service made to Medicaid enrolled home health care agencies shall not be refused if the patient’s home is located within the home health care agency’s designated service area. Any and all home health care agency refusals to serve shall be documented and based upon objective, legitimate, non-discriminatory reason(s). Upon receipt of a complaint of discriminatory action by a home health care agency, the home health care agency’s proof of legitimate non-discriminatory purpose shall be evaluated to determine that it is not pretextual.

(Effective June 4, 1996)

Sec. 17b-262-6. Designation of service area

(a) All home health care agencies shall designate their service area by identifying the zip codes of the areas which they serve on a form to be provided by the department. All changes in that service area shall be reported to the department on an annual basis. The designated service area shall not be smaller than that reported to the Department of Public Health. If an agency serves any zip code within a town or municipality, the agency shall serve all zip codes within such town.

(b) The department shall timely evaluate all such designations, and changes in designations, to determine that the service area has not been chosen in a pattern which suggests an intent to avoid, or has the effect of avoiding, areas with a high concentration of minority residents, based on census data and other objective information. If the department determines that the choice of service area is designed to or has the effect of avoiding areas with a high concentration of minority residents, the agency shall be notified in writing of such determination and shall be required, within ten days, to provide written justification of its choice of service area based upon legitimate non-discriminatory reasons in accordance with subsection 17b-262-8, Legitimate Non-Discriminatory Reason.

(Effective June 4, 1996)

Sec. 17b-262-7. Refusal to serve

(a) All home health care agencies shall record each and every written or oral refusal to serve and suspension of service, including but not limited to discharges, including the date, the name and address of the patient or the reason why the name and address is unavailable, the reason for the refusal to serve, and identifying the support for this reason.

(b) If the stated reason for the refusal to serve is that there is an immediate danger to the health and safety of the home health care agency’s personnel, the home health care agency shall, within 48 hours of the refusal to serve or discharge:

1. Complete a form to be provided by the department detailing the timely, objective and substantial evidence on which the refusal to serve is based, the reasonable efforts taken to protect the home health care agency personnel, the geographic area covered by the refusal to serve, and the actual or expected duration of the refusal to serve;

2. If the name and address of the client are known, send the client written notice of the refusal to serve in a form prescribed by the department, which notice shall include the reason for the refusal to serve, the timely, objective and substantial evidence on which the refusal to serve is based, the length of time during which service shall be refused, the right of the client to file a complaint with the department; and informing the client of his or her right to seek legal advice if he or she feels his or her rights have been violated; and
(3) Send the department a copy of the form with a copy of the notice to the client attached.

If the department determines that the agency has failed to comply with these requirements, the home health care agency shall be notified in writing of such determination, and shall be required, within ten days of receipt of the notice, to submit, in writing, justification for its failure to comply based on legitimate non-discriminatory reasons in accordance with section 17b-262-8.

(c) The department shall review and monitor all forms prepared by home health care agencies pursuant to subsection (b) of section 17b-262-7, Refusal to Serve, to determine that the refusal to serve does not evidence a pattern which suggests an intent to avoid, or have the effect of avoiding, areas with a high concentration of minority residents, based on census data and other objective information. If the department determines that such a pattern exists, the home health care agency shall be notified of such determination, and shall be required, within ten days, to submit, in writing, justification for his refusal to serve based on legitimate non-discriminatory reasons in accordance with section 17b-262-8.

(d) The department shall conduct random inspections to ensure compliance with record-keeping requirements.

(e) The department shall respond to all complaints of refusal to serve by conducting a full investigation into the circumstances of the particular case, including but not limited to inspection of the home health care agency’s records regarding refusals to serve.

(f) The department shall, in its discretion, conduct investigations into any refusals to serve or discharges which it determines warrant investigation, even in the absence of a specific complaint.

(g) If the department determines that a home health care agency has refused to serve a person located within its designated service areas, the agency shall be notified in writing of such determination and shall be required, within ten days, to submit, in writing, justification for its refusal to serve based upon legitimate non-discriminatory reasons in accordance with section 17b-262-8.

(h) All suspensions of service shall be justified by timely, objective and substantial evidence, and oral or written notice of the suspension shall be given to the client.

(Effective June 4, 1996)

Sec. 17b-262-8. Legitimate non-discriminatory reason

(a) In any case in which a home health care agency is required to provide written justification based upon legitimate non-discriminatory reasons in accordance with this section, the home health care agency shall be afforded an opportunity to demonstrate, and shall have the burden of demonstrating, that it had a legitimate, non-discriminatory reason for its actions, including but not limited to:

(1) The patient’s non-compliance with the plan of care;

(2) Lack of staff qualified for the client’s particular medical needs; and

(3) Immediate danger to the health or safety of home health care agency personnel.

(b) Immediate danger to the health or safety of home health care agency personnel shall not constitute a legitimate, non-discriminatory reason unless:

(1) There is timely, substantial and objective evidence demonstrating that the provider has a well-founded belief that there is an immediate danger to the health or safety of home health care agency personnel in providing services at the particular time and location at which the home health care services were requested, or in accessing such location, which prevents the agency from delivering services;
(2) All reasonable efforts to protect the home health care agency personnel have been made prior to refusing service, including but not limited to the use of escorts, coordination with community patrols, and coordination with public and housing authority law enforcement;

(3) The refusal to serve covers an area no larger than necessary to avoid the immediate danger to the health and safety of the home health care agency personnel; and

(4) The refusal to serve is limited in duration so as to be no longer than necessary to avoid the immediate danger to the health or safety of the home health care agency personnel.

(c) Proof of a legitimate non-discriminatory reason, including immediate danger to the health and safety of home health care agency personnel, shall be documented in writing and be based on timely, objective and substantial evidence. Such proof may include, but not be limited to, records maintained pursuant to Department of Public Health’s regulations. Proof of immediate danger to the health and safety of home health care agency personnel, such as documented observation of significant drug dealing, criminal gang activity or threatening use of weapons or police department reports of ongoing criminal activity, shall relate to the particular location in question, or the means of access to that location.

(d) All proof of legitimate non-discriminatory purpose submitted pursuant to subsection (c) of section 17b-262-8, Legitimate Non-Discriminatory Reason, shall be investigated and evaluated by the department to ensure that they are not pretextual. For purposes of this section, an allegedly legitimate non-discriminatory purpose is pretextual when:

(1) The home health care agency is unable to offer timely, substantial and objective proof of its alleged legitimate non-discriminatory purpose; or

(2) Timely, substantial and objective evidence exists which demonstrates that there were alternative, neutral means of accomplishing the alleged purpose and that the home health care agency knew or should have known of the existence of such alternative, neutral means.

The department shall issue its findings and recommendations in writing at the conclusion of its investigation.

(e) If the home health care agency is unable to demonstrate a legitimate non-discriminatory purpose, or if the department finds an alleged legitimate non-discriminatory purpose to be pretextual, the department shall issue a notice of violation and refer the case to the U.S. Department of Health and Human Services Office of Civil Rights.

(Effective June 4, 1996)

Sec. 17b-262-9. Sanctions

If the department determines, in accordance with sections 17b-262-1 through 17b-262-9, that these regulations have been violated, the department shall provide the home health care agency a written notice of violation stating the basis of the department’s determination and the sanctions to be imposed. Such sanctions may include any of the following, alone or in combination:

(a) Termination of provider agreement;

(b) Monitoring and/or reporting requirements;

(c) Public Notice; and

(d) Such other and further sanctions as the department deems appropriate.

(Effective June 4, 1996)