CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

AGENCY: Rhode Island Department of Health

DIVISION: N/A

RULE IDENTIFIER: 216-RICR-40-10-17

RULE TITLE: Licensing Home Nursing Care Providers and Home Care Providers

REASON FOR RULEMAKING: The Rhode Island Department of Health ("RIDOH"; "The Department") is proposing to amend "Licensing Home Nursing Care Providers and Home Care Providers" [216-RICR-40-10-17] in order to bring these regulations into conformity with current statutory requirements.

ANY FINDINGS REQUIRED BY LAW AS A PREEQUISITE TO THE EFFECTIVENESS OF THE RULE: N/A

TESTIMONY AND COMMENTS:

- RIDOH received a comment stating that the change from thirty (30) days to sixty (60) for the voluntary cessation of a license [in § 17.4.5(B)] is unrealistic based on precedent. The commenter noted that since "voluntary cessation usually occurs as a result of a catastrophic event, mainly financial reasons, and is not subject to a hearing process, such as a Change of Effective Control," RIDOH should consider this information in regards to the proposed change. The commenter proposed "that this amendment be reverted to the current text of 30 days and add the phrase ", when possible or otherwise ordered by a state or federal court," immediately following "30 days."
    - RIDOH notes that the original amendments proposed for public comment were written to ensure greater advanced notice to patients/clients so that patients/clients are transitioned to new providers in a timely manner. No changes were made.

- RIDOH received a comment on § 17.5.1(C)(8) stating that the wording "proposes a mandate of national accreditation but does not express a timeline for the initiation of this process in order to maintain good standing for licensure renewal." The commenter recommended that RIDOH remove the word "national" "and adding the following two sentences: "Initial accreditation must be achieved within one (1) complete calendar year following the year in which the home care provider or home nursing care provider is initially licensed in order to maintain said license in good standing. The department recognizes accreditation only from

The Joint Commission, Community Health Accreditation Partner, Accreditation Commission for Health Care and Rhode Island Partnership for Home Care.""
    - RIDOH notes that this process has been a standard condition of the Health Services Council in the past. RIDOH amended the proposed language to read "Maintenance of accreditation by an accrediting body approved by the Director must be achieved within two years of the date on which the home care provider/home nursing care provider is initially licensed in order to maintain licensure in good standing."

- RIDOH received a comment requesting further definition of "the assistance of a qualified safety, emergency management and/or other appropriate experts" which appears in § 17.5.1(G)(2).
    - RIDOH notes that this language replicates the Centers for Medicare and Medicaid Services (CMS) requirements. RIDOH declines to define this phrase; the input is appreciated.

- RIDOH received a comment inquiring, [in regards to § 17.5.1(G)(3)] "What internal systems and/or equipment failures that require backup procedures is RIDOH referring as it relates to home care service delivery?" The commenter proposed eliminating this amendment and "add an amendment that requires RIDOH to notify home care providers and home nursing care providers of any emergency in which can impact patient/client care services in the home."
    - RIDOH notes that the language that was proposed for public comment replicates the CMS requirements. RIDOH further notes that possible internal systems and/or equipment failure may include electronic medical records, computer scheduling, and telephones. RIDOH declines to eliminate this requirement.

- RIDOH received a comment requesting that RIDOH further define which ""infection control measures" [in § 17.5.3(D)] need to be included for staff at orientation or continuing education other than what is already required under their respective professional or paraprofessional licensure requirements or by a provider's accreditation organization standards."
    - RIDOH responds that "Infection control measures" is a phrase that has common meaning for clinicians and includes a wide range of topics (e.g. handwashing). RIDOH declines to further define it at this time; but rather defers to the facilities to determine based upon the needs of their staff.

- RIDOH received a comment requesting that "staff" [in § 17.5.3(D)] be further defined as "personnel that are not responsible nor licensed for direct care [and] should be exempted from this in-service requirement."
    - RIDOH declines to further define "staff" at this time but appreciates the input. No changes were made.

- RIDOH received a comment disagreeing with the proposed amendment to § 17.5.1(H)(2) to "broaden homemaker supervision to a "nurse."" The commenter

noted that “LPNs do not have the professional education, nor the scope of practice under their license to supervise staff."
    - RIDOH responds that this change was proposed at the industry's request. It will provide more staff flexibility in supervising homemakers. No further changes were made.

- RIDOH received a comment regarding § 17.6.4(A)(1)(b) which noted that “Home care providers and home nursing care providers do not “treat patients” with any illness." The commenter proposed that this amendment “be rephrased as follows: “Management ~~and treatment~~ of ~~residents~~/patients/clients with Alzheimer’s disease;”
    - RIDOH notes This requirement is pursuant to R.I. Gen. Laws § 23-1.7-6. An Alzheimer's statewide advisory council has participated in the regulatory process. While there is an interest in keeping the language consistent throughout the affected facility regulations, this clarifying amendment will be made to this section.

- RIDOH received a comment requesting that “RIDOH define 'non-clinical' staff” The commenter proposed that “RIDOH strike the proposed amendment in its entirety and replace it with the following: “Training of licensed professionals and paraprofessionals responsible for patients/clients that have or are at risk for Alzheimer’s disease.””
    - RIDOH declines to amend the language in this section at this time to be consistent with similar sections in other health care facility regulations (as noted above).

- RIDOH received a comment stating that “Due to the ongoing healthcare worker staffing crisis impacting all provider settings across the state, it would be difficult for home care providers and home nursing care providers to comply with the service hours scheduled provision as proposed in this amendment." The commenter proposed “to strike and amend that provision [in § 17.8.1(C)(5)] as follows: “Copies of the plan of care ~~and the number of service hours scheduled~~ shall be provided to the patient/client upon admission and as revised.”
    - RIDOH responds that clients are entitled to know the number of service hours scheduled as part of their plan of care. Changes to the plan of care, and the number of hours scheduled, may be made in light of staffing issues, but the client should always be advised about the number of service hours provided. RIDOH declines to amend the language as recommended.

CHANGES TO THE TEXT OF THE RULE:

- **§ 17.5.1(C)(8)** was revised to read: “"Accreditation by a nationally recognized accrediting body must be achieved within two (2) years of the date on which the home care provider/home nursing care provider is initially licensed. Further, such accreditation must be maintained in order to remain licensed in good standing.”

- **§ 17.6.4(A)(1)(b)** was revised to read: “Management of clients/patients with Alzheimer’s disease;”

REGULATORY ANALYSIS:

In development of this rule, consideration was given to:

1) Alternative approaches;

2) Overlap or duplication with other statutory and regulatory provisions; and

3) Significant economic impact on small business

No alternative approach, duplication or overlap was identified based on available information. RIDOH has determined that the benefits of the rule justify its costs.