



2026 South Dakota Legislature

House Bill 1138

Introduced by: **Representative** Heermann

1 **An Act to require the licensure of non-medical home care agencies, and to provide**
 2 **a penalty therefor.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

5 Terms defined in this chapter mean:

6 (1) "Client," an individual who receives non-medical home care services from a home
 7 care aide;

8 (2) "Department," the Department of Health;

9 (3) "Home care aide," an individual employed by or under contract with a non-medical
 10 home care agency to provide non-medical home care services;

11 (4) "Non-medical home care agency," a person that, for consideration, employs or
 12 contracts with home care aides to provide non-medical home care services
 13 intended to enable a client to remain safely in the client's personal residence; and

14 (5) "Non-medical home care services," the following, when provided by a home care
 15 aide to a client in the client's personal residence:

16 (a) Assistance with bathing, dressing, eating, personal grooming, or toileting;

17 (b) Assistance with the self-administration of medications;

18 (c) Companionship;

19 (d) Housekeeping or assistance with household chores;

20 (e) Meal preparation; or

21 (f) Other routine activities of daily living that are not required to be performed
 22 by a licensed health care professional.

23 **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

24 A non-medical home care agency may not operate in this state unless the agency
 25 is licensed by the department.

1 Any person who operates, claims to operate, or advertises as operating, a non-
2 medical home care agency without a license is guilty of a Class 1 misdemeanor.

3 **Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

4 To obtain or renew a license to operate a non-medical home care agency, a person
5 shall submit to the department:

- 6 (1) An application, developed by the department;
- 7 (2) A fee, established by the department in rules promulgated in accordance with
8 chapter 1-26, but not exceeding one hundred dollars;
- 9 (3) The name and contact information of the agency's owner; and
- 10 (4) An attestation that:
 - 11 (a) Any home care aides employed by or under contract with the agency have
12 completed training in accordance with section 4 of this Act; and
 - 13 (b) The owner of the agency and any home care aides employed by or under
14 contract with the agency have submitted to and passed a criminal history
15 background check, in accordance with section 5 of this Act.

16 A license issued in accordance with this section is valid for one year from the date
17 of issuance.

18 Any fee submitted under this section is nonrefundable.

19 **Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

20 A non-medical home care agency must ensure that any home care aide employed
21 by or under contract with the agency has completed at least ten hours of training on the
22 provision of non-medical home care services. The training must comprise of:

- 23 (1) At least two hours on basic care for individuals living with Alzheimer's and
24 dementia; and
- 25 (2) At least eight hours on:
 - 26 (a) The maintenance of a clean and safe environment;
 - 27 (b) Safe techniques for assisting with bathing, dressing, personal grooming,
28 and toileting;
 - 29 (c) Basic nutrition, meal preparation, food safety, and eating assistance;
 - 30 (d) Client confidentiality, privacy, and documentation and record requirements;
31 and
 - 32 (e) Elder abuse, neglect, and exploitation reporting and prevention.

1 The agency shall maintain, for each home care aide, documentation of the
2 completion of the training, and shall provide the documentation to the department, upon
3 request.

4 A home care aide who is licensed, certified, or registered as a health care
5 professional, in accordance with title 36, satisfies the training requirements of this section
6 if the professional provides documentation to the agency demonstrating training in the
7 topics set forth above, as part of the process for obtaining or renewing licensure,
8 certification, or registration.

9 **Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

10 Before employing or contracting with a home care aide, the non-medical home care
11 agency shall require the prospective employee or contractor to submit to a criminal history
12 background check in accordance with procedures established by the department.

13 Neither the owner of an agency, nor any home care aides employed by or
14 contracted with the agency, may have been convicted of, or pled guilty or nolo contendere
15 to, the following crimes in this state or a comparable crime in another state:

16 (1) A crime of violence, as defined by § 22-1-2;

17 (2) A sex crime listed in § 22-24B-1, or another crime under chapters 22-22, 22-22A,
18 or 22-24A; or

19 (3) A Class A or B felony.

20 The agency may not disseminate any information obtained under this section to a
21 person not employed by the agency.

22 **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

23 A non-medical home care agency shall maintain records documenting the type and
24 frequency of services provided to each client and shall provide client records to the
25 department upon request.

26 Client records and any personally identifiable information regarding a client are
27 confidential and may be disclosed only as permitted by law or as authorized by the client
28 or the client's designee.

29 **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

30 The department may inspect a non-medical home care agency, during business
31 hours, for compliance with this chapter. The department may audit an agency.

1 The department shall investigate any complaint alleging a violation of this chapter
2 or rules promulgated thereunder in the same manner as chapter 36-1C.

3 **Section 8. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

4 The department may, in accordance with chapter 1-26, deny the issuance or
5 renewal of, or may suspend or revoke, a license issued under this chapter, for a violation
6 of any provision of this chapter or rules promulgated thereunder.

7 Any party aggrieved by any act, ruling, or decision of the department may appeal
8 the act, ruling, or decision under the provisions of chapter 1-26.

9 **Section 9. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

10 The department shall promulgate rules, in accordance with chapter 1-26, to
11 establish:

- 12 (1) The application process for licensure as a non-medical home care agency;
13 (2) Home care aide training program standards necessary to protect the health and
14 safety of clients;
15 (3) Record keeping requirements for agencies; and
16 (4) Procedures for the completion of criminal history background checks for
17 prospective agency employees or contractors.

18 **Section 10. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

19 There is created in the state treasury the non-medical home care agency regulatory
20 fund. The fund consists of all fees imposed pursuant to this chapter.

21 The department shall administer the fund. The purpose of the fund is to defray
22 expenses associated with administering this chapter. Interest on moneys credited to the
23 fund must be deposited into the fund. Expenditures from the fund must be budgeted
24 through the general appropriation bill.

25 **Section 11. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

26 This chapter does not apply to:

- 27 (1) A home health agency certified by the Centers for Medicare and Medicaid Services;
28 (2) A health care facility licensed in accordance with chapter 34-12;
29 (3) A residential care facility registered in accordance with chapter 34-12;
30 (4) A community services provider or a community support provider;

1 (5) Any person who provides services under a medicaid waiver program administered
2 by the Department of Human Services;

3 (6) A health care professional, licensed in accordance with title 36, who provides non-
4 medical home cares services in conjunction with health care services in an
5 individual's personal residence;

6 (7) A person who coordinates, refers, or matches a non-medical home care agency to
7 a potential client, but who does not employ or contract with any home care aides;
8 or

9 (8) An individual who provides care to another family member.

10 **Section 12. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

11 Nothing in this chapter authorizes a non-medical home care agency to provide or
12 coordinate services that are required to be provided by a licensed health care professional.

13 **Section 13. This Act is effective beginning January 1, 2027.**