

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 247 Session of  
2005

INTRODUCED BY HESS, PISTELLA, SATHER, BAKER, BASTIAN, BELFANTI,  
BUNT, CALTAGIRONE, CAPPELLI, CAUSER, CRAHALLA, CURRY,  
FABRIZIO, GEIST, GINGRICH, GOODMAN, GRUCELA, HERMAN, LEDERER,  
MAITLAND, MCGEEHAN, O'NEILL, PHILLIPS, READSHAW, REICHLEY,  
RUBLEY, SOLOBAY, STABACK, STERN, THOMAS, TIGUE, WHEATLEY,  
CIVERA, BROWNE, WATSON, PICKETT, BIANCUCCI AND DeLUCA,  
FEBRUARY 8, 2005

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JUNE 14, 2005

## AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An  
2 act relating to health care; prescribing the powers and  
3 duties of the Department of Health; establishing and  
4 providing the powers and duties of the State Health  
5 Coordinating Council, health systems agencies and Health Care  
6 Policy Board in the Department of Health, and State Health  
7 Facility Hearing Board in the Department of Justice;  
8 providing for certification of need of health care providers  
9 and prescribing penalties," further providing for  
10 definitions; providing for licensure of home care agencies;  
11 establishing certain consumer rights and protections; and  
12 providing for inspections and plans of correction and for  
13 applicability of act.

14 The General Assembly finds and declares that:

15 The intent of this act is to license home care agencies in  
16 order to provide for consumer protection by establishing  
17 oversight, by requiring criminal background checks and  
18 communicable disease screens for individuals referred by a home  
19 care agency to provide care, and by ensuring the physical health  
20 and competency of individuals referred by a home care agency to

1 provide care.

2 The General Assembly of the Commonwealth of Pennsylvania  
3 hereby enacts as follows:

4 Section 1. The definitions of "health care facility" and  
5 "home health care agency" in section 802.1 of the act of July  
6 19, 1979 (P.L.130, No.48), known as the Health Care Facilities  
7 Act, amended December 18, 1992 (P.L.1602, No.179) and October  
8 16, 1998 (P.L.777, No.95), are amended and the section is  
9 amended by adding definitions to read:

10 Section 802.1. Definitions.

11 The following words and phrases when used in this chapter  
12 shall have, unless the context clearly indicates otherwise, the  
13 meanings given them in this section:

14 "Activities of daily living." The term includes, but is not  
15 limited to, services furnished to a consumer by an employee or  
16 an independent contractor referred from a home care agency in a  
17 consumer's place of residence or other independent living  
18 environment for compensation and which services provide  
19 assistance to the consumer with home management activities,  
20 respite care, companionship services and with personal care,  
21 including, but not limited to, assistance with self-administered  
22 medications, feeding, oral, skin and mouth care, shaving,  
23 assistance with ambulation, bathing, hair care and grooming,  
24 dressing, toileting and transfer activities. The term also  
25 includes instrumental activities of daily living. The term does  
26 not include services provided by a religious organization for  
27 the purpose of providing services exclusively to clergymen or  
28 consumers in a religious profession who are members of a  
29 religious denomination.

30 \* \* \*

1 "Health care facility." For purposes of Chapter 8, a health  
2 care facility includes, but is not limited to, a general,  
3 chronic disease or other type of hospital, a home health care  
4 agency, a home care agency, a hospice, a long-term care nursing  
5 facility, cancer treatment centers using radiation therapy on an  
6 ambulatory basis, an ambulatory surgical facility, a birth  
7 center regardless of whether such health care facility is  
8 operated for profit, nonprofit or by an agency of the  
9 Commonwealth or local government. The department shall have the  
10 authority to license other health care facilities as may be  
11 necessary due to emergence of new modes of health care. When the  
12 department so finds, it shall publish its intention to license a  
13 particular type of health care facility in the Pennsylvania  
14 Bulletin in accordance with the act of June 25, 1982 (P.L.633,  
15 No.181), known as the "Regulatory Review Act." The term health  
16 care facility shall not include an office used primarily for the  
17 private practice of a health care practitioner, nor a program  
18 which renders treatment or care for drug or alcohol abuse or  
19 dependence unless located within a health facility, nor a  
20 facility providing treatment solely on the basis of prayer or  
21 spiritual means. The term health care facility shall not apply  
22 to a facility which is conducted by a religious organization for  
23 the purpose of providing health care services exclusively to  
24 clergymen or other persons in a religious profession who are  
25 members of a religious denomination.

26 "Home care agency." An organization, registry or part  
27 thereof, exclusive of a home health care agency, that supplies,  
28 arranges, refers or schedules employees to provide or  
29 independent contractors to perform activities of daily living or  
30 instrumental activities of daily living or companionship

1 services or specialized care on an hourly, shift or continual  
2 basis to a consumer in the consumer's place of residence or  
3 other independent living environment for which the organization  
4 receives a fee, consideration or compensation of any kind. The  
5 term shall not include durable medical equipment providers or  
6 volunteer providers.

7 "Home care registry" or "registry." An organization or  
8 business entity or part thereof that supplies, arranges or  
9 refers independent contractors to provide activities of daily  
10 living or instrumental activities of daily living or specialized  
11 care in the consumer's place of residence or other independent  
12 living environment for which the registry receives a fee,  
13 consideration or compensation of any kind.

14 "Home health care agency." An organization or part thereof  
15 staffed and equipped to provide nursing and at least one  
16 therapeutic service to persons who are disabled, aged, injured  
17 or sick in their place of residence[.] or other independent  
18 living environment. The agency may also provide other health-  
19 related services to protect and maintain persons in their [own  
20 home.] place of residence or other independent living  
21 environment.

22 \* \* \*

23 "Inspection." An examination by the department or its  
24 representatives, including interviews with the office staff,  
25 clients, individuals providing care and review of documents  
26 pertinent to initial and continued licensure so that the  
27 department may determine whether a home care agency is operating  
28 in compliance with licensure requirements.

29 "Instrumental activities of daily living" or "IADL." This  
30 term includes, but is not limited to, meal preparation, shopping

1 and errands, telephone use, light housework, laundry and  
2 transportation.

3 \* \* \*

4 Section 2. Section 806 of the act is amended by adding a  
5 subsection to read:

6 Section 806. Licensure.

7 \* \* \*

8 (d.1) Home care agency regulations.--

9 (1) In developing rules and regulations for licensure of  
10 home care agencies, the department shall ensure that an  
11 individual accepted for referral by a home care agency after  
12 the effective date of this subsection shall have the <—  
13 following training or experience AT LEAST ONE OF THE <—  
14 FOLLOWING prior to referral to consumers:

15 (i) A valid nurse's license; <—

16 (ii) successful completion of a nurse aide training  
17 program approved by the State or successful completion of  
18 a competency examination;

19 (iii) successful completion of a home health aide  
20 training program approved by the State or successful  
21 completion of a competency examination or if an  
22 individual is an employee on the effective date of this  
23 subsection, the individual shall successfully complete  
24 the approved training program within one year;

25 (iv) successful completion of a personal care worker  
26 training credentialing program approved by the State or  
27 successful completion of a competency examination; or

28 (v) successful completion of a competency  
29 examination for persons performing only instrumental  
30 activities of daily living services.

1       (2) Documentation of at least one of paragraph (1)(i)  
2 through (v) shall be kept in each individual's file in the  
3 home care agency office, and documentation of applicable  
4 State licensure for any health care practitioner shall be  
5 kept on file in the home care agency office.

6       (3) Prior to licensing a home care agency, the  
7 department shall ensure that all individuals referred by the  
8 home care agency, office staff working for the home care  
9 agency and owners of the home care agency shall have criminal  
10 history record information, in accordance with the  
11 requirements of section 503 of the act of November 6, 1987  
12 (P.L.381, No.79), known as the "Older Adults Protective  
13 Services Act," on file in the office. If the agency provides  
14 services to persons who are under 18 years of age, then prior  
15 to the licensing of the home care agency, the department  
16 shall ensure that all individuals referred by the home care  
17 agency, office staff working for the home care agency and  
18 owners of the home care agency shall obtain clearance from  
19 the child abuse registry, in accordance with 23 Pa.C.S. Ch.  
20 63 (relating to child protective services).

21       (4) Prior to referral to consumers, all individuals and  
22 any other office staff or contractors with consumer contact  
23 must obtain documentation in the home care agency files from  
24 a physician or other appropriate health care professional  
25 that the individual is free from communicable disease  
26 including, at a minimum, a tuberculosis screening as outlined  
27 by the screening guidelines of the department.

28       (5) Ongoing supervision of an employee by a home care  
29 agency shall be maintained to ensure that the employee has  
30 the skills needed to provide the care required by the

1     consumer.

2     Section 3. The act is amended by adding sections to read:

3     Section 806.2. Consumer rights and protections.

4     (a) General rule.--A consumer shall have the following  
5     rights when receiving service:

6         (1) No individual, as a result of the individual's  
7         affiliation with a home care agency, may assume power of  
8         attorney or guardianship over the consumer.

9         (2) The consumer may not be required to endorse checks  
10        over to a home care agency.

11        (3) The consumer has the right to:

12            (i) Be involved in the service planning process and  
13            to receive services with reasonable accommodation of  
14            individual needs and preferences, except where the health  
15            or safety of the individual direct care worker is at  
16            risk.

17            (ii) Have privacy, confidentiality and freedom from  
18            abuse, neglect and financial exploitation.

19            (iii) Refuse treatment or services under the plan.

20            (iv) Receive from the home care agency or  
21            independent contractor two business days' advance written  
22            notice of the intent of the home care agency or  
23            independent contractor to terminate services with the  
24            consumer, except where lack of payment or immediate  
25            threat to the health or safety of consumers or providers,  
26            in accordance with regulations promulgated by the  
27            department, warrants shorter notice.

28            (v) Receive from the home care agency contact  
29            information on the department's 24-hour hotline and the  
30            ability to access the hotline at any time.

1           (vi) Be free from discrimination on the basis of  
2           race, color, religious creed, disability, handicap,  
3           ancestry, sexual orientation, national origin, age, sex  
4           or protected class.

5           (b) Information to be provided.--As a condition of  
6           licensure, each consumer or the consumer's legal representative  
7           or responsible family member shall receive an information packet  
8           from the home care agency prior to the commencement of services  
9           which includes the following items to be presented in a form  
10          able to be easily understood and read by the consumer:

11           (1) A standardized form developed by the department  
12          containing:

13           (i) Information regarding how to contact and obtain  
14           what is required by the department for home care  
15           agencies.

16           (ii) Information about availability and access to  
17           and contact information for the department's 24-hour  
18           hotline and the local ombudsman program.

19           (iii) Details about the department's external  
20           complaint mechanisms available to consumers.

21           (iv) General information about the admission and  
22           application process.

23           (2) The consumer rights as described in subsection (a).

24           (3) A description of the services provided by the home  
25          care agency and the fees for each service.

26           (4) A description of the relationship between the  
27          consumer, the referred employee or independent contractor and  
28          the agency.

29           (5) A description of ongoing supervision maintained by a  
30          home care agency to ensure that the employee has the skills



1 needed to provide care that is required by the consumer.

2 (6) Documentation from the home care agency that  
3 demonstrates personal face-to-face interviews with all  
4 employees or independent contractors referred by the home  
5 care agency and documentation of at least two satisfactory  
6 reference checks prior to referral to the consumer.

7 Section 806.3. Inspections and plans of correction.

8 (a) Consent to entry and access.--An application for  
9 licensure or the issuance and renewal of any license by the  
10 department shall constitute consent by the applicant for the  
11 home care agency and the owner of the premises for the  
12 department's representatives to enter the premises for the  
13 purpose of conducting an inspection during regular business  
14 hours.

15 (b) Violations and plan of correction.--If violations are  
16 identified as a result of an inspection, the home care agency  
17 will be given a report of inspection that clearly outlines the  
18 nature of the violation. The home care agency shall submit a  
19 written plan of correction in response to the report, stating  
20 actions to be taken by the agency to correct the violations and  
21 a time frame for those corrective actions.

22 Section 4. Section 807(b) of the act, amended December 18,  
23 1992 (P.L.1602, No.179), is amended to read:

24 Section 807. Application for license.

25 \* \* \*

26 (b) Fees.--Application for a license or for renewal of a  
27 license shall be accompanied by the following fees:

28 (1) Regular or special license:

|                         |               |
|-------------------------|---------------|
| Home health agency      | \$250.00      |
| <u>Home care agency</u> | <u>100.00</u> |

|    |   |          |
|----|---|----------|
| 1  | Ambulatory surgical facility                  | 250.00   |
| 2  | Birth center                                  | 70.00    |
| 3  | Long-term care nursing facility               | 250.00   |
| 4  | Plus per each long-term care bed in excess of |          |
| 5  | 75 beds                                       | 2.00     |
| 6  | Hospital                                      |          |
| 7  | Every two years                               | 500.00   |
| 8  | Plus per each inpatient bed                   |          |
| 9  | every two years                               | 4.00     |
| 10 | Other health care facility                    | 100.00   |
| 11 | (2) Provisional license all facilities:       |          |
| 12 | Provisional I                                 | \$400.00 |
| 13 | Plus per each inpatient bed                   | 4.00     |
| 14 | Provisional II                                | 600.00   |
| 15 | Plus per each inpatient bed                   | 6.00     |
| 16 | Provisional III                               | 800.00   |
| 17 | Plus per each inpatient bed                   | 8.00     |
| 18 | Provisional IV                                | 1,000.00 |
| 19 | Plus per each inpatient bed                   | 10.00    |

20 \* \* \*

21 Section 5. Section 808(b) of the act, amended October 16,  
22 1998 (P.L.777, No.95), is amended to read:

23 Section 808. Issuance of license.

24 \* \* \*

25 (b) Separate and limited licenses.--Separate licenses shall  
26 not be required for different services within a single health  
27 care facility except that home health care, home care, hospice  
28 or long-term nursing care will require separate licenses. A  
29 limited license, excluding from its terms a particular service  
30 or portion of a health care facility, may be issued under the

1 provisions of this act.

2 \* \* \*

3 Section 6. The act is amended by adding sections to read:

4 Section 809.1. Home care agency regulations.

5 The department shall promulgate regulations to implement  
6 sections 806(d.1) and 806.2.

7 Section 903.1. Nonapplicability.

8 Nothing in this act shall apply to:

9 (1) A private contract or arrangement entered into by a  
10 consumer and caregiver, provided that the caregiver was not  
11 supplied, arranged, scheduled or referred to the consumer by  
12 a home care agency.

13 (2) Any services authorized or paid for through a county  
14 mental health or mental retardation program. The provisions  
15 of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6),  
16 known as the "Mental Health and Mental Retardation Act of  
17 1966," and all related regulations shall continue to be  
18 applicable to such services.

19 Section 7. This act shall take effect in 60 days.