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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 617 Session of 2011

INTRODUCED BY GINGRICH, BARRAR, GEIST, GILLESPIE, GOODMAN, GRELL, HENNESSEY, HORNAMAN, JOSEPHS, KAUFFMAN, MURT, O'NEILL, PICKETT, RAPP, SWANGER, J. TAYLOR AND VULAKOVICH, FEBRUARY 10, 2011

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES, FEBRUARY 10, 2011

AN ACT

Providing for the powers and duties of the Department of Aging and area agencies on aging and for annual review of care plans; requiring criminal background checks and communicable disease screenings of certain providers; prohibiting certain provider financial interests; providing for consumer telephone access; and providing for procedures for noncompliance.

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

Section 1. Short title.

This act shall be known and may be cited as the Home and Community-Based Services Accountability Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Area agency on aging." The single local agency designated by the Department of Aging within each planning and service area to administer the delivery of a comprehensive and coordinated

plan of social and other services and activities.

"Care manager." A staff member at a local area agency on aging who is assigned to write and maintain a care plan for each consumer and to comply with responsibilities and duties as set forth in procedures established by the Department of Aging.

"Care plan." A plan written by a care manager, developed in collaboration and consultation with a consumer, which addresses the consumer's needs and the services necessary to address those needs.

"Consumer." An individual who:

(1) Is at least 60 years of age.

(2) Receives home and community-based services through the Department of Aging waiver.

(3) Is assessed as nursing facility clinically eligible.

"Consumer representative." An individual designated by a consumer to act on behalf of the consumer.

"Department." The Department of Aging of the Commonwealth.

"Employee." An individual who is paid by a provider to provide home and community-based services to a consumer. The term includes a contract employee who has direct contact with a consumer or unsupervised access to the personal living quarters of a consumer.

"Home and community-based services." Services provided in a person's home or at a location in the community to assist consumers to function as independently as possible.

"Nursing facility clinically eligible" or "NFCE." An individual who requires health-related care and services because the individual's physical condition necessitates care and services that can be provided in the community with home and community-based services or in a nursing facility.

"Other individual." Any person who:

(1) Is not a consumer.

(2) Is at least 18 years of age.

(3) Has direct contact with a consumer and provides home and community-based services on behalf of an employee.

"Provider." A medical assistance certified entity responsible for payroll management and disbursement activities. The term includes a private payroll company, an area agency on aging, a medical assistance services provider and a Department of Public Welfare attendant care provider currently providing this service to Department of Public Welfare attendant care waiver consumers.

"State police." The Pennsylvania State Police.

"Waiver." A Medicaid home and community-based services waiver granted by the Centers for Medicaid and Medicare Services to the Department of Public Welfare, under the authority of section 1915(c) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.).

Section 3. General duties of area agencies on aging.

An area agency on aging providing services under a waiver shall retain overall responsibility to ensure that care management of consumers is competently provided to consumers in accordance with department standards and the care plan. The area agency on aging shall coordinate supportive services needed to promote and maintain consumer independence and shall monitor consumers by using consumer contact plans developed and administered through the area agency on aging.

Section 4. Care plan home visits.

A care plan shall include provisions for a private, physical, face-to-face home visit by the care manager with the consumer,

without the presence of an employee or other individual, unless the consumer requests the presence of a relative, a close friend or a person who has the legal authority to represent the consumer's interests. The frequency of the visits shall be based on the consumer's acuity level as outlined in the consumer's contact plan. At least one home visit per year shall be conducted on an unannounced basis. The home visit may also include a registered nurse whose responsibility shall be to monitor the health of the consumer.

Section 5. Annual review of care plan.

In accordance with procedures established by the department for home and community-based services, an area agency on aging shall maintain on file a care plan for each consumer that is reviewed and signed every six months by the consumer or the consumer representative, care manager, care manager's supervisor and a registered nurse. The care manager shall determine the type and frequency of contact with a consumer based upon the degree of consumer impairment and the involvement needed to ensure the effectiveness and stability of the care plan.

Section 6. Criminal background checks.

(a) General rule.--Prior to provision of services under a waiver, a provider shall, at its own expense, ensure that any employee or other individual meets the requirements of Chapter 5 of the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act, regarding criminal history. For the purposes of this section, a provider shall be deemed a facility in accordance with Chapter 5 of the Older Adults Protective Services Act.

(b) Employees and other individuals.--

(1) For any employee or other individual continuing to

provide waiver services, a provider shall comply with subsection (a) every five years from the initial date of the report.

(2) For any employee or other individual who provides services under a waiver on the effective date of this section, a provider shall comply with subsection (a) within one year.

Section 7. Communicable disease screenings.

(a) General rule.--Prior to provision of services under a waiver, a provider shall, at its own expense, obtain documentation as required under subsection (c) for any employee and any other individual.

(b) Employees and other individuals.--

(1) For any employee or other individual continuing to provide waiver services, a provider shall comply with subsection (a) every five years from the initial receipt of the documentation.

(2) For any employee or other individual who provides services under a waiver on the effective date of this section, a provider shall comply with subsection (a) within one year.

(c) Type of documentation.--

(1) Documentation required under this section shall be obtained from a physician or other appropriate health care professional and shall state that the employees and other individuals are free from communicable disease and have passed a tuberculosis screening as outlined by screening guidelines of the Department of Health.

(2) Employees and other individuals shall comply with Federal, State and local health requirements related to

communicable disease and follow procedures recommended in the Centers for Disease Control and Prevention guidelines and regulations of the Occupational Safety and Health Administration, including provisions of protective articles and in-service training on universal precautions.

Section 8. Recordkeeping.

(a) General rule.--Each provider shall maintain on file documentation of compliance with the provisions of sections 6 and 7.

(b) Confidentiality.--Documentation of compliance maintained on file with a provider shall not be subject to access under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

Section 9. Financial interest prohibition.

(a) General rule.--No employee or other individual shall:

(1) Be appointed or act as guardian of a consumer.

(2) Engage in any activity under a power of attorney of a consumer.

(3) Be a beneficiary of any insurance policy or annuity of a consumer.

(4) Serve as an executor of the estate of a consumer.

(b) Duty to inform consumers.--A care manager shall inform each consumer of the provisions of subsection (a).

Section 10. Consumer telephone access.

No employee or other individual shall restrict or prevent a consumer's access to local telephone service.

Section 11. Applicability.

The provisions of this act shall not apply:

(1) to any employee or other individual who is a family member of a consumer to whom the employee or other individual

provides services; or

(2) to a private contract between persons where public funding is not involved.

Section 12. Procedures for noncompliance; promulgation of regulations.

(a) General rule.--The department shall cooperate with the Department of Public Welfare to:

(1) Develop procedures, no later than 90 days after the effective date of this section, to be followed in the event of noncompliance with the provisions of this act.

(2) Promulgate regulations within one year after the effective date of this section to administer this act.

(b) Certain persons to be prohibited from participation in waiver.--Procedures and regulations under subsection (a) shall include, but not be limited to, prohibiting participation in a waiver for:

(1) an employee or any other individual who fails to meet the requirements of sections 6 and 7;

(2) an employee who fails to notify a provider of any other individual providing home and community-based services on behalf of the employee; or

(3) a provider who fails to comply with sections 6 and 7.

Section 13. Effective date.

This act shall take effect in 60 days.