

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

SENATOR ORIE, AGING AND YOUTH, IN SENATE, AS AMENDED,  
FEBRUARY 13, 2006

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 AND HOME CARE REGISTRIES; establishing certain consumer <—  
12 ~~rights and~~ protections; and providing for inspections and <—  
13 plans of correction and for applicability of act.

14 The General Assembly finds and declares that:

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

1 of individuals EMPLOYED BY A HOME CARE AGENCY AND referred by a <—  
2 home care agency to provide care.

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

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

11 Section 802.1. Definitions.

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

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

1       \* \* \*

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

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

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

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

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

23 \* \* \*

24 "Inspection." An examination by the department or its  
25 representatives, including interviews with the office staff,  
26 clients, individuals providing care and AND INDIVIDUALS <—  
27 PROVIDING CARE AND A review of documents pertinent to initial  
28 and continued licensure so that the department may determine <—  
29 whether a home care agency is operating in FOR THE PURPOSE OF <—  
30 DETERMINING A HOME CARE AGENCY'S OR HOME CARE REGISTRY'S

1 compliance with licensure requirements.

2 "Instrumental activities of daily living" or "IADL." This  
3 term includes, but is not limited to, meal preparation, shopping  
4 and errands, telephone use, light housework, laundry and  
5 transportation.

6 \* \* \*

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

9 Section 806. Licensure.

10 \* \* \*

11 (d.1) Home care agency AND HOME CARE REGISTRY regulations.-- <—

12 ~~(1) In developing rules and regulations for licensure of~~ <—  
13 ~~home care agencies, the department shall ensure that an~~  
14 ~~individual accepted for referral~~

15 (1) AN INDIVIDUAL EMPLOYED BY THE HOME CARE AGENCY AND <—  
16 AN INDIVIDUAL REFERRED TO A CONSUMER by a home care agency  
17 after the effective date of this subsection shall have MEET <—  
18 at least one of the following REQUIREMENTS prior to referral <—  
19 to consumers:

20 (i) ~~a~~ A valid nurse's license+ IN THIS COMMONWEALTH. <—

21 (ii) THE successful completion of a nurse aide <—  
22 training program approved by the State. ~~or successful~~ <—  
23 ~~completion of a competency examination;~~

24 (iii) THE successful completion of a home health <—  
25 aide training program approved by the State. ~~or~~ <—  
26 ~~successful completion of a competency examination or if~~  
27 ~~an individual is an employee on the effective date of~~  
28 ~~this subsection, the individual shall successfully~~  
29 ~~complete the approved training program within one year;~~

30 (iv) THE successful completion of a personal care <—

worker training credentialing program approved by the  
State. ~~or successful completion of a competency~~  
~~examination; or~~

<—

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

<—

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

<—

(2) AN INDIVIDUAL EMPLOYED BY A HOME CARE AGENCY OR  
REFERRED BY A HOME CARE REGISTRY ON THE EFFECTIVE DATE OF  
THIS SUBSECTION SHALL SUCCESSFULLY COMPLETE ONE OF THE  
TRAINING REQUIREMENTS SET FORTH IN PARAGRAPH (1) WITHIN TWO  
YEARS OF THE EFFECTIVE DATE OF THIS ACT.

<—

~~(3) Prior to licensing a home care agency, the~~  
~~department shall ensure that all individuals referred by the~~  
~~home care agency, office staff working for the home care~~  
~~agency and owners of the home care agency shall have criminal~~

<—

(3) DOCUMENTATION OF COMPLIANCE WITH AT LEAST ONE OF THE  
TRAINING REQUIREMENTS UNDER PARAGRAPH (1) SHALL BE MAINTAINED  
IN EACH INDIVIDUAL'S FILE IN THE HOME CARE AGENCY OR HOME  
CARE REGISTRY OFFICE. DOCUMENTATION OF APPLICABLE STATE  
LICENSURE FOR ANY HEALTH CARE PRACTITIONER SHALL ALSO BE  
MAINTAINED ON FILE IN THE HOME CARE AGENCY OR REGISTRY  
OFFICE.

<—

(4) (I) PRIOR TO LICENSING A HOME CARE AGENCY OR A HOME  
CARE REGISTRY, THE DEPARTMENT SHALL DETERMINE THAT ALL  
INDIVIDUALS EMPLOYED BY AN AGENCY OR REFERRED BY A

1 REGISTRY, ALL STAFF WORKING WITHIN EACH ENTITY AND OWNER  
2 OR OWNERS HAVE OBTAINED CRIMINAL history record  
3 information, in accordance with the requirements of  
4 section 503 of the act of November 6, 1987 (P.L.381,  
5 No.79), known as the "Older Adults Protective Services <—  
6 Act," on file in the office. If the agency provides  
7 services to persons who are under 18 years of age, then  
8 prior to the licensing of the home care agency, the  
9 department shall ensure that all individuals referred by  
10 the home care agency, office staff working for the home  
11 care agency and owners of the home care agency shall  
12 obtain clearance from SERVICES ACT," AND MAINTAIN THAT <—  
13 INFORMATION ON FILE IN THE HOME CARE AGENCY OR REGISTRY  
14 OFFICE.

15 (II) PRIOR TO LICENSING A HOME CARE AGENCY OR A HOME  
16 CARE REGISTRY WHICH PROVIDES SERVICES TO PERSONS UNDER 18  
17 YEARS OF AGE, THE DEPARTMENT SHALL DETERMINE THAT ALL  
18 INDIVIDUALS EMPLOYED BY AN AGENCY OR REFERRED BY A  
19 REGISTRY, ALL OFFICE STAFF WORKING WITHIN EACH ENTITY AND  
20 OWNER OR OWNERS HAVE OBTAINED CLEARANCE FROM the child  
21 abuse registry, in accordance with 23 Pa.C.S. Ch. 63  
22 (relating to child protective services) AND MAINTAIN THAT <—  
23 INFORMATION ON FILE IN THE HOME CARE AGENCY OFFICE.

24 (4) (5) Prior to referral to consumers, all individuals <—  
25 and any other office staff or contractors with DIRECT <—  
26 consumer contact must obtain documentation in the home care <—  
27 agency files from a physician or other appropriate health  
28 care professional that the individual is free from  
29 communicable disease including, at a minimum, a tuberculosis  
30 screening as outlined by the screening guidelines of the

1 department. SUCH DOCUMENTATION MUST BE MAINTAINED ON FILE IN <—  
2 THE HOME CARE AGENCY OR HOME CARE REGISTRY OFFICE.

3 ~~(5)~~ (6) Ongoing supervision of an employee by a home <—  
4 care agency OR AN INDEPENDENT CONTRACTOR THROUGH A HOME CARE <—  
5 REGISTRY shall be maintained to ensure that the employee has  
6 the skills needed to provide the care required by the  
7 consumer.

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

9 ~~Section 806.2. Consumer rights and protections.~~ <—

10 ~~(a) General rule. A consumer shall have the following~~  
11 ~~rights when receiving service:~~

12 ~~(1) No individual, as a result of the individual's~~  
13 ~~affiliation with a home care agency, may assume power of~~  
14 ~~attorney or guardianship over the consumer.~~

15 ~~(2) The consumer may not be required to endorse checks~~  
16 ~~over to a home care agency.~~

17 ~~(3) The consumer has the right to:~~

18 ~~(i) Be involved in the service planning process and~~  
19 ~~to receive services with reasonable accommodation of~~  
20 ~~individual needs and preferences, except where the health~~  
21 ~~or safety of the individual direct care worker is at~~  
22 ~~risk.~~

23 ~~(ii) Have privacy, confidentiality and freedom from~~  
24 ~~abuse, neglect and financial exploitation.~~

25 ~~(iii) Refuse treatment or services under the plan.~~

26 ~~(iv) Receive from the home care agency or~~  
27 ~~independent contractor two business days' advance written~~  
28 ~~notice of the intent of the home care agency or~~  
29 ~~independent contractor to terminate services with the~~  
30 ~~consumer, except where lack of payment or immediate~~



~~threat to the health or safety of consumers or providers,  
in accordance with regulations promulgated by the  
department, warrants shorter notice.~~

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

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

SECTION 806.2. PROHIBITED ACTIVITIES.

(A) PERSONAL REPRESENTATIVE.--NO INDIVIDUAL, AS A RESULT OF  
THE INDIVIDUAL'S AFFILIATION WITH A HOME CARE AGENCY OR HOME  
CARE REGISTRY, MAY ASSUME POWER OF ATTORNEY OR GUARDIANSHIP OVER  
A CONSUMER UTILIZING THE SERVICES OF THAT HOME CARE AGENCY OR  
HOME CARE REGISTRY.

(B) ENDORSEMENT OF CHECKS.--NO CONSUMER MAY BE REQUIRED TO  
ENDORSE CHECKS OVER TO A HOME CARE AGENCY OR HOME CARE REGISTRY.

SECTION 806.3. CONSUMER RIGHTS AND PROTECTIONS.

(A) GENERAL RULE.--A CONSUMER SHALL HAVE THE FOLLOWING  
RIGHTS WHEN RECEIVING SERVICES:

(1) THE ABILITY TO BE INVOLVED IN THE SERVICE PLANNING  
PROCESS AND TO RECEIVE SERVICES WITH REASONABLE ACCOMMODATION  
OF INDIVIDUAL NEEDS AND PREFERENCES, EXCEPT WHERE THE HEALTH  
OR SAFETY OF THE INDIVIDUAL DIRECT CARE WORKER IS AT RISK.

(2) THE RECEIPT OF AT LEAST TEN CALENDAR DAYS' ADVANCE  
WRITTEN NOTICE OF THE INTENT OF THE HOME CARE AGENCY OR HOME  
CARE REGISTRY TO TERMINATE SERVICES WITH THE CONSUMER, UNLESS  
LACK OF PAYMENT OR AN IMMEDIATE THREAT TO THE HEALTH OR  
SAFETY OF THE CONSUMER OR PROVIDER, IN ACCORDANCE WITH

1 REGULATIONS PROMULGATED BY THE DEPARTMENT, WARRANTS LESS  
2 NOTICE.

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

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

12 IN A FORM THAT IS ABLE TO BE EASILY UNDERSTOOD AND READ: <—

13 (1) A LISTING OF THE AVAILABLE HOME CARE AGENCY OR HOME  
14 CARE REGISTRY SERVICES THAT WILL BE PROVIDED TO THE CONSUMER  
15 TO ASSIST WITH ACTIVITIES OF DAILY LIVING.

16 (2) THE HOURS WHEN THOSE SERVICES WILL BE PROVIDED.

17 (3) COMMENSURATE FEES AND TOTAL COSTS FOR THOSE SERVICES  
18 ON AN HOURLY OR WEEKLY BASIS.

19 (i) (4) Information regarding how to contact and obtain <—  
20 what is required by the department for home care agencies OR <—  
21 HOME CARE REGISTRIES.

22 (ii) Information about availability and access to <—  
23 and

24 (5) INFORMATION ABOUT THE AVAILABILITY OF ACCESS TO <—  
25 contact information for the department's 24-hour hotline and  
26 the local ombudsman program.

27 (iii) Details about the department's external <—  
28 complaint mechanisms available to consumers.

29 (iv) General information about the admission and  
30 application process.

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

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

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

~~(5) (6) A description of ongoing supervision DOCUMENTATION maintained by a home care agency to ensure that the employee has the AND A HOME CARE REGISTRY TO ENSURE THAT THE EMPLOYEE OR INDEPENDENT CONTRACTOR HAS MET THE REQUIREMENTS OF THIS ACT AND HAS THE REQUISITE skills needed to provide care that is required by TO the consumer.~~

~~(6) (7) Documentation from the home care agency AND A HOME CARE REGISTRY that demonstrates personal face-to-face interviews with all employees FROM A HOME CARE AGENCY or independent contractors referred by the home care agency REGISTRY and documentation of at least two satisfactory reference checks prior to referral to the consumer.~~

~~(8) DISCLOSURE OF WHETHER THE DIRECT CARE WORKER REFERRED IS AN EMPLOYEE OF THE HOME CARE AGENCY OR IS AN INDEPENDENT CONTRACTOR.~~

~~(9) INFORMATION REGARDING THE TAX OBLIGATIONS OF THE CONSUMER AND THE HOME CARE AGENCY OR HOME CARE REGISTRY.~~

~~Section 806.3 806.4. Inspections and plans of correction.~~

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

1 ~~hours.~~ REPRESENTATIVE OF THE DEPARTMENT TO HAVE ACCESS TO ENTER <—  
2 THE PREMISES FOR INSPECTION PURPOSES DURING REGULAR BUSINESS  
3 HOURS.

4 (b) Violations and plan of correction.--If violations are  
5 identified as a result of an inspection, the home care agency OR <—  
6 HOME CARE REGISTRY will be given a report of inspection that  
7 clearly outlines the nature of the violation. The home care  
8 agency OR HOME CARE REGISTRY shall submit a written plan of <—  
9 correction in response to the report, stating actions to be  
10 taken by the agency OR REGISTRY to correct the violations and a <—  
11 time frame for those corrective actions.

12 Section 4. Section 807(b) of the act, amended December 18,  
13 1992 (P.L.1602, No.179), is amended to read:

14 Section 807. Application for license.

15 \* \* \*

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

18 (1) Regular or special license:

19 Home health agency \$250.00

20 Home care agency OR HOME CARE <—

21 REGISTRY 100.00

22 Ambulatory surgical facility 250.00

23 Birth center 70.00

24 Long-term care nursing facility 250.00

25 Plus per each long-term care bed in excess of

26 75 beds 2.00

27 Hospital

28 Every two years 500.00

29 Plus per each inpatient bed

30 every two years 4.00

1	Other health care facility	100.00
2	(2) Provisional license all facilities:	
3	Provisional I	\$400.00
4	Plus per each inpatient bed	4.00
5	Provisional II	600.00
6	Plus per each inpatient bed	6.00
7	Provisional III	800.00
8	Plus per each inpatient bed	8.00
9	Provisional IV	1,000.00
10	Plus per each inpatient bed	10.00

11 \* \* \*

12 Section 5. Section 808(b) of the act, amended October 16,  
 13 1998 (P.L.777, No.95), is amended to read:

14 Section 808. Issuance of license.

15 \* \* \*

16 (b) Separate and limited licenses.--Separate licenses shall  
 17 not be required for different services within a single health  
 18 care facility except that home health care, home care, hospice  
 19 or long-term nursing care will require separate licenses. A  
 20 limited license, excluding from its terms a particular service  
 21 or portion of a health care facility, may be issued under the  
 22 provisions of this act.

23 \* \* \*

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

25 Section 809.1. Home care agency AND HOME CARE REGISTRY  
 26 regulations.

<—

27 The department shall promulgate regulations to implement  
 28 sections 806(d.1) and ~~806.2~~. 806.3. ANY SUCH REGULATIONS SHALL  
 29 BE DEVELOPED IN CONSULTATION WITH THE DEPARTMENT OF AGING AND  
 30 THE DEPARTMENT OF PUBLIC WELFARE.

<—

1 Section 903.1. Nonapplicability.

2 Nothing in this act shall apply to:

3 (1) A private contract or arrangement entered into by a  
4 consumer and caregiver, provided that the caregiver was not  
5 supplied, arranged, scheduled or referred to the consumer by  
6 a home care agency OR A HOME CARE REGISTRY. <—

7 (2) Any services authorized or paid for through a county  
8 mental health or mental retardation program. The provisions  
9 of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6),  
10 known as the "Mental Health and Mental Retardation Act of  
11 1966," and all related regulations shall continue to be  
12 applicable to such services.

13 Section 7. This act shall take effect in ~~60~~ 120 days. <—