

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 313 Session of
2009

INTRODUCED BY GINGRICH, BARRAR, BEYER, GEIST, GOODMAN,
HENNESSEY, HORNAMAN, KAUFFMAN, KORTZ, MAJOR, MELIO, MOUL,
PHILLIPS, PICKETT, RAPP, SWANGER AND VULAKOVICH,
FEBRUARY 9, 2009

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
FEBRUARY 9, 2009

AN ACT

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

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

10 Section 1. Short title.

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

13 Section 2. Definitions.

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

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

1 plan of social and other services and activities.

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

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

10 "Consumer." An individual who:

11 (1) Is at least 60 years of age.

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

14 (3) Is assessed as nursing facility clinically eligible.

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

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

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

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

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

1 "Other individual." Any person who:

2 (1) Is not a consumer.

3 (2) Is at least 18 years of age.

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

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

13 "State police." The Pennsylvania State Police.

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

19 Section 3. General duties of area agencies on aging.

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

28 Section 4. Care plan home visits.

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

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

10 Section 5. Annual review of care plan.

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

20 Section 6. Criminal background checks.

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

29 (b) Employees and other individuals.--

30 (1) For any employee or other individual continuing to

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

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

8 Section 7. Communicable disease screenings.

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

13 (b) Employees and other individuals.--

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

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

22 (c) Type of documentation.--

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

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

communicable disease and follow procedures recommended in the Centers for Disease Control 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

1 provides services; or

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

4 Section 12. Procedures for noncompliance; promulgation of
5 regulations.

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

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

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

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

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

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

22 (3) a provider who fails to comply with sections 6 and
23 7.

24 Section 13. Effective date.

25 This act shall take effect in 60 days.