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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 568**      Session of  
2003

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INTRODUCED BY SCHWARTZ, ERICKSON, O'PAKE, COSTA, MUSTO AND  
TARTAGLIONE, APRIL 4, 2003

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REFERRED TO PUBLIC HEALTH AND WELFARE, APRIL 4, 2003

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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 the  
10 definition of "health care facility"; providing for the  
11 definitions of "activities of daily living," "home care  
12 agency," "home care registry," "home health aide,"  
13 "inspection," "instrumental activities of daily living" and  
14 "personal care worker"; further providing for licensure;  
15 providing for home care agency and registry consumer rights  
16 and protections, for home care agency and registry  
17 inspections and plans of correction and for home care agency  
18 and registry exemptions; further providing for application  
19 for license; and providing for penalties.

20 The General Assembly finds and declares that the licensure of  
21 home care agencies and registries that provide services that  
22 allow consumers to maintain independent living shall provide for  
23 specific consumer protections by establishing oversight, by  
24 requiring criminal background checks and communicable disease  
25 screenings for individuals referred by a home care agency or  
26 registry to provide care and by ensuring the competency of

1 individuals referred by a home care agency or registry to  
2 provide care.

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

5 Section 1. The definition of "health care facility" in  
6 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),  
7 known as the Health Care Facilities Act, amended October 16,  
8 1998 (P.L.777, No.95), is amended and the section is amended by  
9 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 person by an employee  
16 referred from a home care agency or an independent contractor  
17 referred from a registry in the consumer's place of residence or  
18 other independent living environment for compensation and which  
19 provide assistance to the consumer with home management  
20 activities, respite care, companionship services or with  
21 personal care which includes, but is not limited to, assistance  
22 with self-administered medications, feeding, oral, skin and  
23 mouth care, shaving, assistance with ambulation, bathing, hair  
24 care and grooming, dressing, toileting and transfer activities.  
25 The term does not include services provided by a religious  
26 organization for the purpose of providing services exclusively  
27 to clergymen or other persons in a religious profession who are  
28 members of a religious denomination.

29 \* \* \*

30 "Health care facility." For purposes of Chapter 8, a health

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

25 "Home care agency." An organization or part of an  
26 organization, exclusive of a home health care agency, that  
27 supplies, arranges or schedules employees to provide activities  
28 of daily living or instrumental activities of daily living or  
29 skilled services on an hourly, shift or continual basis to any  
30 consumer in the consumer's place of residence or other

1 independent living environment for which the organization  
2 receives a fee, consideration or compensation of any kind. The  
3 term shall not include durable medical equipment providers or  
4 volunteer providers.

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

12 "Home health aide." An individual, who in addition to  
13 performing instrumental activities of daily living services, can  
14 perform additional services including, but not limited to,  
15 performing simple measurements and tests to monitor a consumer's  
16 medical condition including vital signs, simple urine checks for  
17 sugar and albumin and measuring intake and output, assisting  
18 with ambulation when a consumer uses an ambulation aide,  
19 changing and or reinforcing simple dressings and stable surface  
20 wounds, monitoring of dietary habits and preparing special diet  
21 meals and assisting in retraining a consumer in self-help  
22 skills.

23 \* \* \*

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

30 "Instrumental activities of daily living" or "IADL." The

1 term includes, but is not limited to, meal preparation, shopping  
2 and errands, telephone use, light housework, laundry and  
3 transportation.

4 \* \* \*

5 "Personal care worker." An individual who can assist a  
6 consumer with activities of daily living including, but not  
7 limited to, bathing, skin care, mouth care, dressing, grooming,  
8 toileting, ambulation and transfer, change of position or  
9 turning of consumer, feeding and assistance with self-  
10 administered medication.

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

13 Section 806. Licensure.

14 \* \* \*

15 (d.1) Home care agency and registry regulations.--

16 (1) In developing rules and regulations for licensure of  
17 home care agencies and registries, the department shall  
18 ensure that an individual accepted for referral by a home  
19 care agency or registry after the effective date of this  
20 subsection shall have the following training or experience  
21 prior to referral to consumers:

22 (i) valid nurses license;

23 (ii) successful completion of a nurse aide training  
24 program approved by the Commonwealth;

25 (iii) successful completion of a home health aide  
26 training program developed by the department or a  
27 nonpublic organization and approved by the Commonwealth  
28 or successful completion of a competency examination  
29 approved by the Commonwealth;

30 (iv) successful completion of a personal care worker

1 training credentialing program developed by the  
2 department or a nonpublic organization and approved by  
3 the Commonwealth or successful completion of an inclusive  
4 competency examination or competency examination on those  
5 topics necessary to meet the needs of the consumer  
6 approved by the Commonwealth; or

7 (v) for persons performing only IADL services,  
8 successful completion of a training program or written  
9 skills examination developed by the Commonwealth or a  
10 nonpublic organization, and approved by the Commonwealth.

11 Documentation of at least one of subparagraphs (i) through  
12 (v) shall be kept in each individual's file in the home care  
13 agency or registry office. In addition, documentation of  
14 applicable State licensure for any health care practitioner  
15 shall be kept on file in the home care agency or registry  
16 office.

17 (2) Prior to licensing a home care agency or registry,  
18 the department shall ensure that all individuals referred by  
19 a home care agency or registry, office staff working for a  
20 home care agency or registry and owners of each home care  
21 agency or registry shall have criminal history record  
22 information, in accordance with the requirements of section  
23 503 of the act of November 6, 1987 (P.L.381, No.79), known as  
24 the "Older Adults Protective Services Act," on file in the  
25 office. If the agency or registry provides services to  
26 minors, then prior to the licensing of a home care agency or  
27 registry, the department shall ensure that all individuals  
28 referred by a home care agency or registry, office staff  
29 working for a home care agency or registry and owners of each  
30 home care agency or registry shall obtain clearance from the

1 child abuse registry.

2 (3) Prior to referral to consumers, all individuals and  
3 any other office staff or contractors with consumer contact  
4 shall have documentation in the home care agency or registry  
5 files from a physician or other appropriate health care  
6 professional that the individual is free of communicable  
7 disease including, at a minimum, a tuberculosis screening as  
8 outlined by the Department of Health screening guidelines.

9 (4) Ongoing supervision of an employee by a home care  
10 agency shall be maintained to insure the employee has the  
11 skills needed to provide the care required by the consumer.

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

13 Section 806.2. Home care agency and registry consumer rights  
14 and protections.

15 (a) Consumer protection.--As a condition of licensure, each  
16 consumer or the consumer's legal representative or responsible  
17 family member shall receive an information packet from the home  
18 care agency or registry at the service initiation which shall  
19 include the following items to be presented in a form able to be  
20 easily understood and read by the consumer:

21 (1) A standardized form developed by the department with  
22 information pertaining to:

23 (i) General information about the admission and  
24 application process.

25 (ii) Information regarding how to contact and obtain  
26 what is required by the department for home care  
27 agencies.

28 (iii) Information about availability and access to  
29 and contact information for the department's 24-hour  
30 hotline.

1           (iv) Details about the department's external  
2           complaint mechanisms available to consumers.

3           (2) The consumer's rights as described in this section.

4           (3) A description of the services provided by the agency  
5           or registry.

6           (4) A description of the relationship between the  
7           consumer, the referred employee or independent contractor and  
8           the agency or registry.

9           (5) Description of ongoing supervision maintained by a  
10          home care agency to ensure the employee has the skills needed  
11          to provide the care required by the consumer.

12          The home care agency or registry shall demonstrate documentation  
13          of personal face-to-face interviews with all employees or  
14          independent contractors referred by the home care agency or  
15          registry and have documentation of at least two satisfactory  
16          reference checks prior to referral to consumer.

17          (b) Consumer rights.--Consumers shall have the following  
18          rights when receiving service:

19               (1) No individual as a result of their affiliation with  
20               an agency or registry may assume power of attorney or  
21               guardianship over any consumer.

22               (2) No consumer may be required to endorse checks over  
23               to home care agencies or registries.

24               (3) (i) Be involved in a service planning process and  
25               to receive services with reasonable accommodation of  
26               individual needs and preferences except where the health  
27               or safety of the individual direct care worker is at  
28               risk.

29               (ii) Have privacy, confidentiality and freedom from  
30               abuse, neglect and financial exploitation.



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

2           (iv) Receive from the home care agency or registry  
3           and/or independent contractor five business days' advance  
4           written notice of the intent of the home care agency or  
5           registry and/or independent contractor to terminate  
6           services with the consumer, except where immediate  
7           jeopardy as determined by the department to consumers or  
8           providers warrants shorter notice.

9           (v) Access the department's 24-hour hotline.

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

14          (4) This section shall not apply in any way to private  
15          contracts or arrangements entered into by consumers and  
16          caregivers as long as those caregivers were not supplied,  
17          arranged, scheduled or referred to consumers by a home care  
18          agency or registry.

19 Section 806.3. Home care agency and registry inspections and  
20                   plans of correction.

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

28          (b) Violations and plan of correction.--If violations are  
29          identified as a result of an inspection, the home care agency or  
30          registry will be given a report of inspection that clearly

1 outlines the nature of the violation. The home care agency or  
2 registry shall submit a written plan of correction in response  
3 to the report, stating actions to be taken by the agency or  
4 registry to correct the violations and a time frame for those  
5 corrective actions.

6 (c) Ensurance of correction.--The department shall ensure  
7 that the home care agency or registry has taken steps to correct  
8 the violation outlined in the department's report as described  
9 in subsection (b).

10 (d) Penalties.--If the department finds after 30 days that  
11 the plan of action is not followed and/or the violation not  
12 corrected, it shall impose monetary penalties based on the  
13 potential risk of harm to consumers, as determined and  
14 promulgated by the department.

15 Section 806.4. Home care agency and registry applicability.

16 (a) Exceptions.--If an agency or registry or independent  
17 contractor is only performing home and community-based services  
18 under a Department of Public Welfare and/or Department of Aging  
19 waiver program, it shall be exempt from the requirements of  
20 sections 806(d.1), 806.2, 806.3, 807(b)(1) and 808(b), except  
21 that it shall be required to have on file for each employee:

22 (1) Criminal history record information, in accordance  
23 with the requirements of section 503 of the act of November  
24 6, 1987 (P.L.381, No.79), known as the "Older Adults  
25 Protective Services Act." If the agency or registry provides  
26 services to minors, it shall obtain clearance from the child  
27 abuse registry for its employees.

28 (2) Documentation from a physician or other appropriate  
29 health care professional that the individual is free of  
30 communicable disease, including, at a minimum, a tuberculosis

1 screening as outlined by the Department of Health screening  
2 guidelines.

3 (b) Compliance.--If an agency or registry or independent  
4 contractor has satisfied subsection (a) pursuant to compliance  
5 with waiver requirements, it shall be deemed in compliance with  
6 this section.

7 Section 4. Section 807(b) of the act, amended December 18,  
8 1992 (P.L.1602, No.179), is amended to read:

9 Section 807. Application for license.

10 \* \* \*

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

13 (1) Regular or special license:

14	Home health agency	\$250.00
15	<u>Home care agency</u>	<u>100.00</u>
16	<u>Registry</u>	<u>100.00</u>
17	Ambulatory surgical facility	250.00
18	Birth center	70.00
19	Long-term care nursing facility	250.00
20	Plus per each long-term care bed in excess of	
21	75 beds	2.00
22	Hospital	
23	Every two years	500.00
24	Plus per each inpatient bed	
25	every two years	4.00
26	Other health care facility	100.00

27 (2) Provisional license all facilities:

28	Provisional I	\$400.00
29	Plus per each inpatient bed	4.00
30	Provisional II	600.00

1	Plus per each inpatient bed	6.00
2	Provisional III	800.00
3	Plus per each inpatient bed	8.00
4	Provisional IV	1,000.00
5	Plus per each inpatient bed	10.00

6 \* \* \*

7 Section 5. Section 808(b) of the act, amended October 16,  
8 1998 (P.L.777, No.95), is amended to read:

9 Section 808. Issuance of license.

10 \* \* \*

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

18 \* \* \*

19 Section 6. This act shall take effect in 90 days.