

No. 2006-69

## AN ACT

HB 247

Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An act relating to health care; prescribing the powers and duties of the Department of Health; establishing and providing the powers and duties of the State Health-Coordinating Council, health systems agencies and Health Care Policy Board in the Department of Health, and State Health Facility Hearing Board in the Department of Justice; providing for certification of need of health care providers and prescribing penalties," further providing for definitions; providing for licensure of home care agencies and home care registries; establishing certain consumer protections; and providing for inspections and plans of correction and for applicability of act.

The General Assembly finds and declares that:

The intent of this act is to license home care agencies and home care registries in order to provide for consumer protection by establishing oversight, by requiring criminal background checks and communicable disease screens for individuals employed by a home care agency and referred by a home care registry to provide care and by ensuring the physical health and competency of individuals employed by a home care agency and referred by a home care registry to provide care.

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

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

Section 802.1. Definitions.

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

***"Activities of daily living." The term includes, but is not limited to, services furnished to a consumer by an employee of a home care agency or an independent contractor referred from a home care registry in a consumer's place of residence or other independent living environment for compensation and which services provide assistance to the consumer with home management activities, respite care, companionship services and with personal care, including, but not limited to, assistance with self-administered medications, feeding, oral, skin and mouth care, shaving, assistance with ambulation, bathing, hair care and grooming, dressing, toileting and transfer activities. The term also includes instrumental***

*activities of daily living. The term does not include services provided by a religious organization for the purpose of providing services exclusively to clergymen or consumers in a religious profession who are members of a religious denomination.*

\* \* \*

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

“**Home care agency.**” *An organization, exclusive of a home health care agency, that supplies, arranges or schedules employees to provide or perform activities of daily living or instrumental activities of daily living or companionship services or specialized care on an hourly, shift or continual basis to a consumer in the consumer’s place of residence or other independent living environment for which the organization receives a fee, consideration or compensation of any kind. The term shall not include durable medical equipment providers or volunteer providers.*

“**Home care registry**” or “**registry.**” *An organization or business entity or part thereof that supplies, arranges or refers independent contractors to provide activities of daily living or instrumental activities of daily living or specialized care in the consumer’s place of residence or other independent living environment for which the registry receives a fee, consideration or compensation of any kind.*

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

\* \* \*

***“Inspection.”*** *An examination by the department or its representatives, including interviews with the office staff, clients and individuals providing care and a review of documents pertinent to initial and continued licensure for the purpose of determining a home care agency’s or home care registry’s compliance with licensure requirements.*

***“Instrumental activities of daily living” or “IADL.”*** *This term includes, but is not limited to, meal preparation, shopping and errands, telephone use, light housework, laundry and transportation.*

\* \* \*

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

Section 806. Licensure.

\* \* \*

***(d.1) Home care agency and home care registry licensure requirements.—***

***(1) An individual with direct consumer contact employed by the home care agency and an individual referred to a consumer by a home care registry after the effective date of this subsection shall meet at least one of the following requirements prior to referral to consumers:***

***(i) A valid nurse’s license in this Commonwealth.***

***(ii) The successful completion of a nurse aide training program approved by the department.***

***(iii) The successful completion of a home health aide training program as provided in 42 CFR 484.36 (relating to condition of participation: home health aide services) approved by the department.***

***(iv) The successful completion of a personal care worker training credentialing program approved by the department.***

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

***(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 subsection.***

***(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 registry, staff working within each entity and the owner or owners have obtained criminal history record***

*information, in accordance with the requirements of section 503 of the act of November 6, 1987 (P.L.381, No.79), known as the "Older Adults Protective Services Act," and maintain that information on file in the home care agency or registry office.*

*(ii) Prior to licensing a home care agency or a home care registry which provides services to persons under 18 years of age, the department shall determine that all individuals employed by an agency or referred by a registry, all office staff working within each entity and the owner or owners have obtained clearance from the child abuse registry, in accordance with 23 Pa.C.S. Ch. 63 (relating to child protective services), and maintain that information on file in the home care agency or registry office.*

*(5) Prior to referral to consumers, all individuals and any other office staff or contractors with direct consumer contact must obtain documentation from a physician or other appropriate health care professional that the individual is free from communicable disease, including, at a minimum, a tuberculosis screening as outlined by the screening guidelines of the department. Such documentation must be maintained on file in the home care agency or home care registry office.*

*(6) Ongoing supervision of an employee by a home care agency or ongoing documentation of the referral of an independent contractor by a home care registry shall be maintained to ensure that the employee has the skills necessary to provide the care required by the consumer.*

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

**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 protections.**

*(a) General rule.—A consumer shall be provided the following protections 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 regulations promulgated by the department, warrants less notice.*

*(b) Information to be provided.—Each consumer or the consumer's legal representative or responsible family member shall receive an*

*information packet from the home care agency or home care registry prior to the commencement of services which includes the following in a form that is able to be easily understood and read:*

*(1) A listing of the available home care agency or home care registry services that will be provided to the consumer to assist with activities of daily living.*

*(2) The hours when those services will be provided.*

*(3) Commensurate fees and total costs for those services on an hourly or weekly basis.*

*(4) Department contact information for questions regarding requirements for and compliance by home care agencies or home care registries.*

*(5) Information about the availability of access to contact information for the department's 24-hour hotline and the local ombudsman program.*

*(6) A description of ongoing documentation maintained by a home care agency or a home care registry to ensure that the employee or independent contractor has met the requirements of this act and has the requisite skills necessary to provide care to the consumer.*

*(7) Documentation from the home care agency or 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 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 of a home care registry.*

*(9) Information regarding the tax obligations and employment responsibilities of the consumer and the home care agency or home care registry.*

**Section 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 or licensee for a representative of the department to have access to enter the premises for inspection purposes during regular business hours.*

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

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

## Section 807. Application for license.

\* \* \*

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

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|---|---------------|
| (1) Regular or special license:                       |               |
| Home health agency                                    | \$250.00      |
| <i>Home care agency or home care registry</i>         | <i>100.00</i> |
| Ambulatory surgical facility                          | 250.00        |
| Birth center  | 70.00         |
| Long-term care nursing facility                       | 250.00        |
| Plus per each long-term care bed in excess of 75 beds | 2.00          |
| Hospital  |               |
| Every two years                                       | 500.00        |
| Plus per each inpatient bed every two years           | 4.00          |
| Other health care facility                            | 100.00        |
| (2) Provisional license all facilities:               |               |
| Provisional I   | \$400.00      |
| Plus per each inpatient bed                           | 4.00          |
| Provisional II  | 600.00        |
| Plus per each inpatient bed                           | 6.00          |
| Provisional III                                       | 800.00        |
| Plus per each inpatient bed                           | 8.00          |
| Provisional IV  | 1,000.00      |
| Plus per each inpatient bed                           | 10.00         |

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

## Section 808. Issuance of license.

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

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

**Section 809.1. Home care agency and home care registry regulations.**

(a) *Regulations.*—*The department shall promulgate regulations to implement sections 806(d.1) and 806.3.*

(b) *Consultation.*—*Regulations pertaining to sections 806(d.1) and 806.3 shall be developed in consultation with the Department of Public*

*Welfare and other advisory groups that represent persons in the home health care industry, persons with physical disabilities and the aging community.*

*(c) Input.—In developing regulations pertaining to section 806(d.1), the department shall take into consideration the preferences and philosophies of persons with physical disabilities who receive services through home-based and community-based Medicaid waivers.*

*(d) Submittal.—Pursuant to the requirements of the act of June 25, 1982 (P.L.633, No.181), known as the “Regulatory Review Act,” the department shall submit proposed regulations pertaining to section 806.1 to the Public Health and Welfare Committee of the Senate, the Health and Human Services Committee of the House of Representatives, the Aging and Youth Committee of the Senate and the Aging and Older Adult Services Committee of the House of Representatives.*

*(e) Publication.—Within one year of the effective date of this section, the department shall publish the regulations in the Pennsylvania Bulletin.*

**Section 903.1. Nonapplicability.**

*Nothing in this act shall apply to:*

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

*(2) Any mental health and mental retardation services authorized or paid for by the Department of Public Welfare or a county mental health or mental retardation program. The provisions of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the “Mental Health and Mental Retardation Act of 1966,” and all related regulations shall continue to be applicable to such services.*

Section 7. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

- (i) The addition of section 809.1 of the act.
- (ii) This section.

(2) The remainder of this act shall take effect upon publication of the regulations under section 809.1 of the act.

APPROVED—The 7th day of July, A.D. 2006.

EDWARD G. RENDELL