

Adopted Rejected

COMMITTEE REPORT

YES: 10
NO: 0

MR. SPEAKER:

Your Committee on Public Health, to which was referred House Bill 1750, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Page 5, between lines 15 and 16, begin a new paragraph and insert:
- 2 "SECTION 4. IC 16-18-2-56.5 IS ADDED TO THE INDIANA
- 3 CODE AS A **NEW** SECTION TO READ AS FOLLOW [EFFECTIVE
- 4 JULY 1, 2005]: **Sec. 56.5. "Client", for purposes of IC 16-27-4, has**
- 5 **the meaning set forth in IC 16-27-4-1."**
- 6 Page 5, line 26, delete "IC 16-27-4-1." and insert "**IC 16-27-4-2.**".
- 7 Page 5, delete lines 27 through 39 begin a new paragraph and insert:
- 8 "SECTION 6. IC 16-18-2-277.6 IS ADDED TO THE INDIANA
- 9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 10 [EFFECTIVE JULY 1, 2005]: **Sec. 277.6. "Personal representative",**
- 11 **for purposes of IC 16-27-4, has the meaning set forth in**
- 12 **IC 16-27-4-3."**
- 13 Page 6, delete lines 7 through 14.
- 14 Page 6, line 23, delete "either." and insert "**either, are required by**
- 15 **law to be:"**.

- 1 Page 6, line 24, delete "are required by law to be".
- 2 Page 6, line 28, delete "may be".
- 3 Page 7, line 24, after "agency" insert "**or a personal services**
- 4 **agency**".
- 5 Page 9, between lines 15 and 16, begin a new paragraph and insert:
- 6 "**Sec. 1. As used in this chapter, "client" means an individual**
- 7 **who has been accepted to receive personal services from a personal**
- 8 **services agency**".
- 9 Page 9, line 16, delete "1." and insert "2."
- 10 Page 9, delete lines 19 through 21, begin a new paragraph and insert:
- 11 "**Sec. 3. As used in this chapter, "personal representative"**
- 12 **means a person who has legal authority to act on behalf of the**
- 13 **client with regard to the action to be taken**".
- 14 Page 9, line 22, delete "3." and insert "4."
- 15 Page 9, line 23, after "attendant" insert "**care**".
- 16 Page 9, line 28, delete "patient," and insert "**client**".
- 17 Page 9, line 30, delete "patient at the patient's" and insert "**client at**
- 18 **the client's**".
- 19 Page 10, line 2, delete "4." and insert "5."
- 20 Page 10, line 7, after "services" insert "**only to the individual's**
- 21 **family and**".
- 22 Page 10, line 8, delete "patients concurrently at the patient's
- 23 residence." and insert "**individuals per residence and not more than**
- 24 **a total of six (6) clients concurrently. As used in this subdivision,**
- 25 **"family" means the individual's spouse, children, parent,**
- 26 **parent-in-law, grandparent, grandchild, brother, brother-in-law,**
- 27 **sister, sister-in-law, aunt, aunt-in-law, uncle, uncle-in-law, niece,**
- 28 **and nephew**".
- 29 Page 10, delete lines 19 through 26.
- 30 Page 10, line 40, after "within" insert "**a radius of**".
- 31 Page 10, line 40, delete "minutes driving" and insert "**miles**".
- 32 Page 10, line 41, delete "time".
- 33 Page 11, line 25, delete "patients" and insert "**clients**".
- 34 Page 11, line 26, delete "patient files." and insert "**client files. If the**
- 35 **state department approves the application, the state department**
- 36 **shall issue a license to the applicant**".
- 37 Page 11, delete lines 35 through 39 and insert "**licensure, an**
- 38 **application for license renewal, or an investigation and its onsite**

1 reviews in conjunction with those actions are limited to
 2 determining the personal service agency's compliance with the
 3 requirements of this chapter or permitting or aiding an illegal act
 4 in a personal services agency."

5 Page 11, line 41, after "(e)." insert "**However, the state department**
 6 **may issue an initial license for a period of less than three (3) years**
 7 **to stagger the expiration dates.**".

8 Page 12, between lines 7 and 8, begin a new paragraph and insert:

9 "**(k) A personal services agency that is operated by a home**
 10 **health agency licensed under IC 16-27-1 is subject to the**
 11 **requirements of this chapter and not IC 16-27-1. The home health**
 12 **agency is not subject to the requirements of this chapter. A home**
 13 **health agency that is licensed under IC 16-27-1 is not required to**
 14 **obtain a license under this chapter.**".

15 Page 12, line 8, delete "(k)" and insert "(l)".

16 Page 12, line 22, delete "patient's" and insert "**client's**".

17 Page 12, line 23, delete "patient," and insert "**client,**".

18 Page 12, line 24, delete "patient's" and insert "**client's personal**".

19 Page 12, line 25, delete "patient," and insert "**client,**".

20 Page 12, line 25, delete "patient" and insert "**client**".

21 Page 12, line 27, delete "patient's" and insert "**client's**".

22 Page 12, line 30, delete "patient" and insert "**client**".

23 Page 12, line 32, delete "patient's" and insert "**client's**".

24 Page 12, line 42, delete "patient" and insert "**client**".

25 Page 13, line 1, delete "patient." and insert "**client.**".

26 Page 13, line 7, delete "patient" and insert "**client**".

27 Page 13, line 8, delete "patient's" and insert "**client's**".

28 Page 13, line 13, delete "patient" and insert "**client**".

29 Page 13, line 14, delete "patient" and insert "**client**".

30 Page 13, line 16, delete "patient" and insert "**client**".

31 Page 13, line 17, delete "patient" and insert "**client**".

32 Page 13, line 22, delete "patient" and insert "**client**".

33 Page 13, line 23, delete "patient's" and insert "**client's personal**".

34 Page 13, line 24, delete "patient" and insert "**client**".

35 Page 13, line 25, delete "patient." and insert "**client.**".

36 Page 13, line 25, delete "patient" and insert "**client**".

37 Page 13, line 27, delete "patient" and insert "**client**".

38 Page 13, line 27, delete "patient's" and insert "**client's**".

- 1 Page 13, line 29, delete "patient" and insert "**client**".
- 2 Page 13, line 32, delete "patient" and insert "**client**".
- 3 Page 13, line 36, delete "patient" and insert "**client**".
- 4 Page 13, line 40, delete "patient" and insert "**client**".
- 5 Page 14, line 3, delete "patient" and insert "**client**".
- 6 Page 14, line 7, delete "patient" and insert "**client**".
- 7 Page 14, line 20, delete "patient, the patient's family, or the patient's"
- 8 and insert "**client, the client's family, or the client's personal**".
- 9 Page 14, line 23, delete "patient's" and insert "**client's**".
- 10 Page 14, line 28, delete "patient" and insert "**client**".
- 11 Page 14, line 31, delete "patient" and insert "**client**".
- 12 Page 14, line 36, delete "patient's" and insert "**client's**".
- 13 Page 15, line 6, delete "performing" and insert "**performs**".
- 14 Page 15, line 7, delete "patient" and insert "**client**".
- 15 Page 15, line 39, delete "chapter." and insert "**chapter and**
- 16 **document services provided to clients.**".
- 17 Page 15, line 40, after "documentation" insert "**or copies of the**
- 18 **documentation**".
- 19 Page 15, line 40, after "maintained" insert "**or be electronically**
- 20 **accessible**".
- 21 Page 16, between lines 40 and 41, begin a new paragraph and insert:
- 22 "SECTION 18. IC 22-1-5 IS ADDED TO THE INDIANA CODE
- 23 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 24 JULY 1, 2005]:
- 25 **Chapter 5. Home Care Consumers and Worker Protection**
- 26 **Sec. 1. As used in this chapter, "attendant care services" has the**
- 27 **meaning set forth in IC 16-27-1-0.5.**
- 28 **Sec. 2. As used in this chapter, "companion type services" has**
- 29 **the meaning set forth in IC 12-10-17-2(2).**
- 30 **Sec. 3. As used in this chapter, "consumer" means an individual**
- 31 **who:**
- 32 **(1) receives home care services given by a home care services**
- 33 **worker in the individual's residence; or**
- 34 **(2) pays for and directs the home care services for another**
- 35 **individual.**
- 36 **Sec. 4. As used in this chapter, "consumer notice" means the**
- 37 **notice described in section 14 of this chapter.**
- 38 **Sec. 5. As used in this chapter, "department" means the**

1 department of labor created under IC 22-1-1-1.

2 Sec. 6. As used in this chapter, "home care services" means
3 skilled and unskilled services provided to an individual at the
4 individual's residence to enable the individual to remain in the
5 residence safely and comfortably. The provision of at least two (2)
6 of the following is included in home care services:

- 7 (1) Nursing.
- 8 (2) Therapy.
- 9 (3) Attendant care.
- 10 (4) Companion type services.
- 11 (5) Homemaker services.

12 Sec. 7. As used in this chapter, "home care services worker"
13 means an individual performing home care services for
14 compensation.

15 Sec. 8. As used in this chapter, "homemaker services" means
16 assistance with or performing household tasks that include
17 housekeeping, shopping, laundry, meal planning and preparation,
18 handyman services, and seasonal chores.

19 Sec. 9. As used in this chapter, "placement agency" means a
20 person engaged in the business of securing home care services
21 employment for an individual or securing a home care services
22 worker for a consumer. The term:

- 23 (1) includes an employment agency, a nurse registry, and an
24 entity that places a home care services worker for
25 compensation by a consumer in the consumer's residence to
26 provide home care services; and
- 27 (2) does not include a worker who solely and personally
28 provides home care services to another individual at the
29 residence of that individual.

30 Sec. 10. As used in this chapter, "skilled services" means
31 services provided by a:

- 32 (1) registered nurse (as defined in IC 25-23-1-1.1(a));
- 33 (2) licensed practical nurse (as defined in IC 25-23-1-1.2); or
- 34 (3) health care professional listed in IC 16-27-1-1.

35 Sec. 11. As used in this chapter, "worker notice" means the
36 statement described in section 17 of this chapter.

37 Sec. 12. This chapter applies to a placement agency, but does not
38 apply to a:

- 1 **(1) hospital (as defined in IC 16-18-2-179);**
- 2 **(2) health facility (as defined in IC 16-18-2-167(a)); or**
- 3 **(3) home health agency (as defined in IC 16-18-2-173).**

4 **Sec. 13. A placement agency:**

- 5 **(1) must provide a consumer with a consumer notice each time**
- 6 **a home care services worker is placed in the home of the**
- 7 **consumer; but**
- 8 **(2) is not required to provide a consumer notice when a new**
- 9 **or different home care services worker is substituting for the**
- 10 **regular home care services worker placed with the consumer.**

11 **Sec. 14. A consumer notice must include the following:**

- 12 **(1) The duties, responsibilities and obligations of the**
- 13 **placement agency to the:**
 - 14 **(A) home care services worker; and**
 - 15 **(B) consumer.**
- 16 **(2) A statement identifying the placement agency as:**
 - 17 **(A) an employer;**
 - 18 **(B) a joint employer;**
 - 19 **(C) a leasing employer; or**
 - 20 **(D) not an employer.**
- 21 **(3) A statement that notwithstanding the employment status**
- 22 **of the placement agency, the consumer:**
 - 23 **(A) may be considered an employer under state and federal**
 - 24 **employment laws; and**
 - 25 **(B) may be responsible for:**
 - 26 **(i) payment of local, state, or federal employment taxes;**
 - 27 **(ii) payment for Social Security and Medicare**
 - 28 **contributions;**
 - 29 **(iii) ensuring payment of at least the minimum wage;**
 - 30 **(iv) overtime payment;**
 - 31 **(v) unemployment contributions under IC 22-4-11; or**
 - 32 **(vi) worker's compensation insurance as required by**
 - 33 **IC 22-3-2-5 and IC 22-3-7-34;**
 - 34 **of the home care services worker.**
- 35 **(4) The appropriate telephone number, address, and**
- 36 **electronic mail address of the department for inquiries**
- 37 **regarding the contents of the notice.**

38 **The department shall determine the content and format of the**

1 consumer notice.

2 Sec. 15. The failure of a placement agency to provide a
3 consumer notice to the consumer at the time a home care services
4 worker is placed in the consumer's home does not relieve a
5 consumer from the duties or obligations as an employer. If a
6 placement agency fails to provide a consumer notice and the
7 consumer is liable for payment of wages, taxes, worker's
8 compensation insurance premiums, or unemployment
9 compensation employer contributions, the consumer has a right of
10 indemnification against the placement agency, which includes the
11 actual amounts paid to or on behalf of the home care services
12 worker as well as the consumer's attorney's fees and costs.

13 Sec. 16. A placement agency that will not be the actual employer
14 of the home care services worker shall provide a worker notice as
15 set forth in section 17 of this chapter to a home care services
16 worker who is placed with a consumer. The worker notice must:

- 17 (1) be provided to the home care services worker upon
18 placement in the consumer's home; and
19 (2) specify the home care services worker's legal relationship
20 with the placement agency and the consumer.

21 Sec. 17. The worker notice must contain the following:

22 (1) The duties, responsibilities, and obligations of the
23 placement agency, the consumer, and the home care services
24 worker if the home care services worker is determined to be
25 an independent contractor, including:

26 (A) a statement of the party responsible for the payment of
27 the home care services worker's wages, taxes, Social
28 Security and Medicare contributions, unemployment
29 contributions, and worker's compensation insurance
30 premiums; and

31 (B) a statement identifying the party responsible for the
32 home care services worker's hiring, firing, discipline, day
33 to day supervision, assignment of duties, and provision of
34 equipment or materials for use by the home care services
35 worker.

36 (2) The telephone number, address, and electronic mail
37 address of the department for inquiries regarding the contents
38 of the notice.

1 **The department shall determine the content and format of the**
2 **consumer notice.**

3 **Sec. 18. The department may at any time and upon receiving a**
4 **complaint from an interested person investigate an alleged**
5 **violation of this chapter by a placement agency.**

6 **Sec. 19. The department may impose a civil penalty not to**
7 **exceed one thousand dollars (\$1,000) against a placement agency**
8 **that fails to provide a worker notice or a consumer notice at the**
9 **times required under section 13 or 16 of this chapter. The civil**
10 **penalty may be assessed by the department and, if necessary, shall**
11 **be recovered by the prosecuting attorney of the county in which the**
12 **violation has occurred or by the attorney general, as provided in**
13 **IC 22-1-1-18."**

14 Renumber all SECTIONS consecutively.
 (Reference is to HB 1750 as introduced.)

and when so amended that said bill do pass.

Representative Becker