
HOUSE BILL No. 1750

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-3-2; IC 12-9-9-5; IC 16-18-2; IC 16-27.

Synopsis: Personal services agencies. Establishes a program for the licensing and regulation of personal services agencies. Provides that home health agencies and personal services agencies are approved to provide home health services under certain federal waivers. Provides that home health services includes services that are required to be ordered by or may only be performed by certain health care professionals. Requires a personal services agency to comply with employee criminal history check requirements. Requires a personal services agency to be licensed by the state department of health after January 1, 2006. Makes operating or advertising an unlicensed personal services agency a Class A misdemeanor. Makes conforming changes. Relocates the definition of "attendant care services".

Effective: July 1, 2005.

Welch

January 19, 2005, read first time and referred to Committee on Public Health.

C
O
P
Y



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

C
O
P
Y

HOUSE BILL No. 1750



A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-14-3-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]; Sec. 2. As used in this chapter:
3 "Copy" includes transcribing by handwriting, photocopying,
4 xerography, duplicating machine, duplicating electronically stored data
5 onto a disk, tape, drum, or any other medium of electronic data storage,
6 and reproducing by any other means.
7 "Direct cost" means one hundred five percent (105%) of the sum of
8 the cost of:
9 (1) the initial development of a program, if any;
10 (2) the labor required to retrieve electronically stored data; and
11 (3) any medium used for electronic output;
12 for providing a duplicate of electronically stored data onto a disk, tape,
13 drum, or other medium of electronic data retrieval under section 8(g)
14 of this chapter, or for reprogramming a computer system under section
15 6(c) of this chapter.
16 "Electronic map" means copyrighted data provided by a public
17 agency from an electronic geographic information system.



1 "Enhanced access" means the inspection of a public record by a
2 person other than a governmental entity and that:

3 (1) is by means of an electronic device other than an electronic
4 device provided by a public agency in the office of the public
5 agency; or

6 (2) requires the compilation or creation of a list or report that does
7 not result in the permanent electronic storage of the information.

8 "Facsimile machine" means a machine that electronically transmits
9 exact images through connection with a telephone network.

10 "Inspect" includes the right to do the following:

11 (1) Manually transcribe and make notes, abstracts, or memoranda.

12 (2) In the case of tape recordings or other aural public records, to
13 listen and manually transcribe or duplicate, or make notes,
14 abstracts, or other memoranda from them.

15 (3) In the case of public records available:

16 (A) by enhanced access under section 3.5 of this chapter; or

17 (B) to a governmental entity under section 3(c)(2) of this
18 chapter;

19 to examine and copy the public records by use of an electronic
20 device.

21 (4) In the case of electronically stored data, to manually transcribe
22 and make notes, abstracts, or memoranda or to duplicate the data
23 onto a disk, tape, drum, or any other medium of electronic
24 storage.

25 "Investigatory record" means information compiled in the course of
26 the investigation of a crime.

27 "Patient" has the meaning set out in ~~IC 16-18-2-272(d)~~.
28 **IC 16-18-2-272(e).**

29 "Person" means an individual, a corporation, a limited liability
30 company, a partnership, an unincorporated association, or a
31 governmental entity.

32 "Provider" has the meaning set out in IC 16-18-2-295(a) and
33 includes employees of the state department of health or local boards of
34 health who create patient records at the request of another provider or
35 who are social workers and create records concerning the family
36 background of children who may need assistance.

37 "Public agency" means the following:

38 (1) Any board, commission, department, division, bureau,
39 committee, agency, office, instrumentality, or authority, by
40 whatever name designated, exercising any part of the executive,
41 administrative, judicial, or legislative power of the state.

42 (2) Any:

C
O
P
Y



- 1 (A) county, township, school corporation, city, or town, or any
- 2 board, commission, department, division, bureau, committee,
- 3 office, instrumentality, or authority of any county, township,
- 4 school corporation, city, or town;
- 5 (B) political subdivision (as defined by IC 36-1-2-13); or
- 6 (C) other entity, or any office thereof, by whatever name
- 7 designated, exercising in a limited geographical area the
- 8 executive, administrative, judicial, or legislative power of the
- 9 state or a delegated local governmental power.
- 10 (3) Any entity or office that is subject to:
- 11 (A) budget review by either the department of local
- 12 government finance or the governing body of a county, city,
- 13 town, township, or school corporation; or
- 14 (B) an audit by the state board of accounts.
- 15 (4) Any building corporation of a political subdivision that issues
- 16 bonds for the purpose of constructing public facilities.
- 17 (5) Any advisory commission, committee, or body created by
- 18 statute, ordinance, or executive order to advise the governing
- 19 body of a public agency, except medical staffs or the committees
- 20 of any such staff.
- 21 (6) Any law enforcement agency, which means an agency or a
- 22 department of any level of government that engages in the
- 23 investigation, apprehension, arrest, or prosecution of alleged
- 24 criminal offenders, such as the state police department, the police
- 25 or sheriff's department of a political subdivision, prosecuting
- 26 attorneys, members of the excise police division of the alcohol
- 27 and tobacco commission, conservation officers of the department
- 28 of natural resources, and the security division of the state lottery
- 29 commission.
- 30 (7) Any license branch staffed by employees of the bureau of
- 31 motor vehicles commission under IC 9-16.
- 32 (8) The state lottery commission, including any department,
- 33 division, or office of the commission.
- 34 (9) The Indiana gaming commission established under IC 4-33,
- 35 including any department, division, or office of the commission.
- 36 (10) The Indiana horse racing commission established by IC 4-31,
- 37 including any department, division, or office of the commission.
- 38 "Public record" means any writing, paper, report, study, map,
- 39 photograph, book, card, tape recording, or other material that is
- 40 created, received, retained, maintained, or filed by or with a public
- 41 agency and which is generated on paper, paper substitutes,
- 42 photographic media, chemically based media, magnetic or machine

C
O
P
Y



1 readable media, electronically stored data, or any other material,
2 regardless of form or characteristics.

3 "Standard-sized documents" includes all documents that can be
4 mechanically reproduced (without mechanical reduction) on paper
5 sized eight and one-half (8 1/2) inches by eleven (11) inches or eight
6 and one-half (8 1/2) inches by fourteen (14) inches.

7 "Trade secret" has the meaning set forth in IC 24-2-3-2.

8 "Work product of an attorney" means information compiled by an
9 attorney in reasonable anticipation of litigation and includes the
10 attorney's:

11 (1) notes and statements taken during interviews of prospective
12 witnesses; and

13 (2) legal research or records, correspondence, reports, or
14 memoranda to the extent that each contains the attorney's
15 opinions, theories, or conclusions.

16 This definition does not restrict the application of any exception under
17 section 4 of this chapter.

18 SECTION 2. IC 12-9-9-5 IS ADDED TO THE INDIANA CODE
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2005]: **Sec. 5. Notwithstanding any other law:**

- 21 (1) **home health agencies licensed under IC 16-27-1; and**
- 22 (2) **personal services agencies licensed under IC 16-27-4;**
- 23 **are approved to provide home health services under any federal**
- 24 **waiver granted to the state under 42 U.S.C. 1315 or 42 U.S.C.**
- 25 **1396n.**

26 SECTION 3. IC 16-18-2-28.5 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 28.5. (a) "Attendant**
28 **care services", for purposes of IC 16-27-1 has the meaning set forth in**
29 **~~IC 16-27-1-0.5.~~ and IC 16-27-4, means services:**

30 (1) **that could be performed by an impaired individual for**
31 **whom the services are provided if the individual were not**
32 **impaired; and**

- 33 (2) **that enable the impaired individual:**
 - 34 (A) **to live in the individual's home and community rather**
 - 35 **than in an institution; and**
 - 36 (B) **to carry out functions of daily living, self-care, and**
 - 37 **mobility.**

38 (b) **The term includes the following:**

39 (1) **Assistance in getting in and out of beds, wheelchairs, and**
40 **motor vehicles.**

41 (2) **Assistance with routine bodily functions, including:**

- 42 (A) **bathing and personal hygiene;**

C
o
p
y



- 1 **(B) using the toilet;**
- 2 **(C) dressing and grooming; and**
- 3 **(D) feeding, including preparation and cleanup.**
- 4 **(3) The provision of assistance:**
- 5 **(A) through providing reminders or cues to take**
- 6 **medication, the opening of preset medication containers,**
- 7 **and providing assistance in the handling or ingesting of**
- 8 **noncontrolled substance medications, including eye drops,**
- 9 **herbs, supplements, and over-the-counter medications; and**
- 10 **(B) to an individual who is unable to accomplish the task**
- 11 **due to an impairment and who is:**
- 12 **(i) competent and has directed the services; or**
- 13 **(ii) incompetent and has the services directed by a**
- 14 **competent individual who may consent to health care for**
- 15 **the impaired individual.**

16 SECTION 4. IC 16-18-2-162 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 162. (a) "Health care
 18 professional", for purposes of IC 16-27-1 **and IC 16-27-4**, has the
 19 meaning set forth in IC 16-27-1-1.

20 (b) "Health care professional", for purposes of IC 16-27-2, has the
 21 meaning set forth in IC 16-27-2-1.

22 SECTION 5. IC 16-18-2-266.5 IS ADDED TO THE INDIANA
 23 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2005]: **Sec. 266.5. "Parent personal services**
 25 **agency"**, for purposes of IC 16-27-4, has the meaning set forth in
 26 **IC 16-27-4-1.**

27 SECTION 6. IC 16-18-2-272 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 272. (a) "Patient", for
 29 purposes of IC 16-27-1, has the meaning set forth in IC 16-27-1-6.

30 **(b) "Patient", for purposes of IC 16-27-4, has the meaning set**
 31 **forth in IC 16-27-4-2.**

32 ~~(b)~~ **(c) "Patient"**, for the purposes of IC 16-28 and IC 16-29, means
 33 an individual who has been accepted and assured care by a health
 34 facility.

35 ~~(c)~~ **(d) "Patient"**, for purposes of IC 16-36-1.5, has the meaning set
 36 forth in IC 16-36-1.5-3.

37 ~~(d)~~ **(e) "Patient"**, for purposes of IC 16-39, means an individual who
 38 has received health care services from a provider for the examination,
 39 treatment, diagnosis, or prevention of a physical or mental condition.

40 SECTION 7. IC 16-18-2-277.7 IS ADDED TO THE INDIANA
 41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2005]: **Sec. 277.7. "Personal services"**, for

C
o
p
y



1 **purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-3.**

2 SECTION 8. IC 16-18-2-277.8 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2005]: **Sec. 277.8. "Personal services**
5 **agency", for purposes of IC 16-27-4, has the meaning set forth in**
6 **IC 16-27-4-4.**

7 SECTION 9. IC 16-18-2-317 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 317. **(a)**
9 **"Representative", for purposes of IC 16-27-4, has the meaning set**
10 **forth in IC 16-27-4-5.**

11 ~~(a)~~ **(b)** "Representative", for purposes of IC 16-36-1, has the
12 meaning set forth in IC 16-36-1-2.

13 ~~(b)~~ **(c)** "Representative", for purposes of IC 16-36-5, has the
14 meaning set forth in IC 16-36-5-9.

15 SECTION 10. IC 16-27-1-5 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) As used in this
17 chapter, "home health services" means services that: ~~are:~~

18 (1) **are** provided to a patient by:

19 (A) a home health agency; or

20 (B) another person under an arrangement with a home health
21 agency;

22 in the temporary or permanent residence of the patient; and

23 (2) **either:**

24 **(A) are required by law to be** ordered by a licensed
25 physician, a licensed dentist, a licensed chiropractor, a
26 licensed podiatrist, or a licensed optometrist **for the service to**
27 **be performed; or**

28 **(B) may be performed only by a health care professional.**

29 (b) The term includes the following:

30 (1) Nursing treatment and procedures.

31 (2) Physical therapy.

32 (3) Occupational therapy.

33 (4) Speech therapy.

34 (5) Medical social services.

35 (6) Home health aide services.

36 (7) Other therapeutic services.

37 (c) The term does not apply to the following:

38 (1) Services provided by a physician licensed under IC 25-22.5.

39 (2) Incidental services provided by a licensed health facility to
40 patients of the licensed health facility.

41 (3) Services provided by employers or membership organizations
42 using health care professionals for their employees, members, and

C
o
p
y



1 families of the employees or members if the health or home care
 2 services are not the predominant purpose of the employer or a
 3 membership organization's business.

4 (4) Nonmedical nursing care given in accordance with the tenets
 5 and practice of a recognized church or religious denomination to
 6 a patient who depends upon healing by prayer and spiritual means
 7 alone in accordance with the tenets and practices of the patient's
 8 church or religious denomination.

9 (5) Services that are allowed to be performed by an attendant
 10 under IC 16-27-1-10.

11 (6) Authorized services provided by a personal services attendant
 12 under IC 12-10-17.

13 SECTION 11. IC 16-27-2-2.2 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.2. As used in this
 15 chapter, "services" includes:

16 (1) home health services (as defined in IC 16-27-1-5); ~~and~~

17 (2) any services such as homemaker, companion, sitter, or
 18 handyman services provided by a home health agency in the
 19 temporary or permanent residence of a patient or client of the
 20 home health agency; **and**

21 **(3) personal services.**

22 SECTION 12. IC 16-27-2-3 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A person may not
 24 operate a home health agency if the person has been convicted of any
 25 of the following:

26 (1) Rape (IC 35-42-4-1).

27 (2) Criminal deviate conduct (IC 35-42-4-2).

28 (3) Exploitation of an endangered adult (IC 35-46-1-12).

29 (4) Failure to report battery, neglect, or exploitation of an
 30 endangered adult (IC 35-46-1-13).

31 (5) Theft (IC 35-43-4), if the person's conviction for theft
 32 occurred less than ten (10) years before the date of submission by
 33 the person of an application for licensure as a home health agency
 34 under IC 16-27-1 **or as a personal services agency under**
 35 **IC 16-27-4.**

36 (b) A person who knowingly or intentionally violates this section
 37 commits a Class A misdemeanor.

38 SECTION 13. IC 16-27-2-4 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person who
 40 operates a home health agency **under IC 16-27-1 or a personal**
 41 **services agency under IC 16-27-4** shall apply, not more than three (3)
 42 business days after the date that an employee begins to provide services

C
o
p
y



1 in a patient's temporary or permanent residence, for a copy of the
2 employee's limited criminal history from the Indiana central repository
3 for criminal history information under IC 10-13-3.

4 (b) A home health agency **or personal services agency** may not
5 employ a person to provide services in a patient's or client's temporary
6 or permanent residence for more than three (3) business days without
7 applying for that person's limited criminal history as required by
8 subsection (a).

9 SECTION 14. IC 16-27-2-5 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Except as
11 provided in subsection (b), a person who operates a home health
12 agency **under IC 16-27-1 or a personal services agency under**
13 **IC 16-27-4** may not employ a person to provide services in a patient's
14 or client's temporary or permanent residence if that person's limited
15 criminal history indicates that the person has been convicted of any of
16 the following:

- 17 (1) Rape (IC 35-42-4-1).
- 18 (2) Criminal deviate conduct (IC 35-42-4-2).
- 19 (3) Exploitation of an endangered adult (IC 35-46-1-12).
- 20 (4) Failure to report battery, neglect, or exploitation of an
21 endangered adult (IC 35-46-1-13).
- 22 (5) Theft (IC 35-43-4), if the conviction for theft occurred less
23 than ten (10) years before the person's employment application
24 date.

25 (b) A home health agency **or personal services agency** may not
26 employ a person to provide services in a patient's or client's temporary
27 or permanent residence for more than twenty-one (21) calendar days
28 without receipt of that person's limited criminal history required by
29 section 4 of this chapter, unless the Indiana central repository for
30 criminal history information under IC 10-13-3 is solely responsible for
31 failing to provide the person's limited criminal history to the home
32 health agency **or personal services agency** within the time required
33 under this subsection.

34 SECTION 15. IC 16-27-2-6 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A person who
36 operates a home health agency **or a personal services agency under**
37 **IC 16-27-4** is responsible for the payment of fees under IC 10-13-3-30
38 and other fees required under section 4 of this chapter.

39 (b) A home health agency **or personal services agency** may require
40 a person who applies to the home health agency **or personal services**
41 **agency** for employment to provide services in a patient's or client's
42 temporary or permanent residence:

C
o
p
y



- 1 (1) to pay the cost of fees described in subsection (a) to the home
- 2 health agency **or personal services agency** at the time the person
- 3 submits an application for employment; or
- 4 (2) to reimburse the home health agency **or personal services**
- 5 **agency** for the cost of fees described in subsection (a).

6 SECTION 16. IC 16-27-2-7 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. A person who:

- 8 (1) operates a home health agency **or personal services agency**;
- 9 and
- 10 (2) violates section 4 or 5 of this chapter;

11 commits a Class A infraction.

12 SECTION 17. IC 16-27-4 IS ADDED TO THE INDIANA CODE
 13 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2005]:

15 **Chapter 4. Licensure of Personal Services Agencies**

16 **Sec. 1. As used in this chapter, "parent personal services**
 17 **agency" means the personal services agency that develops and**
 18 **maintains administrative and fiscal control over a branch office.**

19 **Sec. 2. As use in this chapter, "patient" means an individual**
 20 **who has been accepted to receive personal services from a personal**
 21 **services agency.**

22 **Sec. 3. (a) As used in this chapter, "personal services" means:**

- 23 (1) attendant services;
- 24 (2) homemaker services that assist with or perform household
- 25 tasks, including housekeeping, shopping, laundry, meal
- 26 planning and preparation, and cleaning; and
- 27 (3) companion services that provide fellowship, care, and
- 28 protection for a patient, including transportation, letter
- 29 writing, mail reading, and escort services;

30 **that are provided to a patient at the patient's residence.**

31 **(b) The term does not apply to the following:**

- 32 (1) **Incidental services provided by a licensed health facility to**
 33 **patients of the licensed health facility.**
- 34 (2) **Services provided by employers or membership**
 35 **organizations for their employees, members, and families of**
 36 **the employees or members if the services are not the**
 37 **predominant purpose of the employer or the membership**
 38 **organization's business.**
- 39 (3) **Services that are allowed to be performed by a personal**
 40 **services attendant under IC 12-10-17.**
- 41 (4) **Services that require the order of a health care**
 42 **professional for the services to be lawfully performed in**

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

Indiana.

Sec. 4. (a) As used in this chapter, "personal services agency" means a person that provides or offers to provide a personal service for compensation, whether through the agency's own employees or by arrangement with another person.

(b) The term does not include the following:

- (1) An individual who provides personal services to not more than two (2) patients concurrently at the patient's residence.**
- (2) A local health department as described in IC 16-20 or IC 16-22-8.**
- (3) A person that:**
 - (A) is approved by the division of disability, aging, and rehabilitative services to provide supported living services or supported living support to individuals with developmental disabilities;**
 - (B) is subject to rules adopted under IC 12-11-2.1; and**
 - (C) serves only individuals with developmental disabilities who are in a placement authorized under IC 12-11-2.1-4.**

Sec. 5. As used in this chapter, "representative" means a person's:

- (1) legal guardian or other court appointed representative who is responsible for making health care decisions for the person;**
- (2) health care representative under IC 16-36-1; or**
- (3) attorney in fact authorized to exercise the powers with respect to health care that are set forth in IC 30-5-5-16.**

Sec. 6. (a) To operate a personal services agency, a person must obtain a license from the state health commissioner. A personal services agency may not be opened, operated, managed, maintained, or conduct business without a license from the state department. Each parent personal services agency must obtain a separate license.

(b) A parent personal services agency may maintain branch offices that operate under the license of the parent personal services agency. Each branch office must be:

- (1) at a location or site from which the personal services agency provides services;**
- (2) owned and controlled by the parent personal services agency; and**
- (3) located within one hundred twenty (120) minutes driving time of the parent personal services agency.**

(c) A license is required for any personal services agency

**C
O
P
Y**



1 providing services in Indiana. An out-of-state personal services
 2 agency must be authorized by the secretary of state to conduct
 3 business in Indiana and have a branch office located in Indiana.
 4 (d) Application for a license to operate a personal services
 5 agency must be made on a form provided by the state department
 6 and must be accompanied by a nonrefundable fee established by
 7 the state department. The application may not require any
 8 information except as required under this chapter.
 9 (e) After receiving a completed application that demonstrates
 10 prima facie compliance with the requirements of this chapter and
 11 the fee required by subsection (d), the state department shall issue
 12 a temporary license to operate a personal services agency for a
 13 period of up to ninety (90) days pending an onsite inspection by the
 14 state department.
 15 (f) The state department may extend the ninety (90) day period
 16 for the temporary license set in subsection (e) for a total period of
 17 one hundred twenty (120) days based on the circumstances
 18 warranting the extension. Each extension may not exceed fifteen
 19 (15) days. In the event the state department fails to complete the
 20 onsite inspection or notify the applicant of the inspection results
 21 within that ninety (90) period set in subsection (e), the state
 22 department shall extend the ninety (90) day period until the state
 23 department has completed the onsite inspection and notified the
 24 applicant of the results of the inspection. The personal services
 25 agency must provide at least three (3) documented patients for
 26 review, which may include open and closed patient files.
 27 (g) Subject to subsection (h), in conducting an onsite inspection,
 28 the state department shall receive copies of all documents
 29 necessary to make a determination of the personal services
 30 agency's compliance with the requirements of this chapter. The
 31 personal services agency must produce documents requested by the
 32 inspection surveyor within twenty-four (24) hours after the
 33 documents are requested.
 34 (h) The state department's consideration of the application for
 35 licensure and its onsite review is limited to determining the
 36 personal services agency, compliance with the requirements of this
 37 chapter. If the state department approves an application, the
 38 temporary license issued to the applicant under subsection (e)
 39 becomes an ordinary license subject to subsection (i).
 40 (i) A license expires three (3) years from the date of issuance of
 41 the temporary license under subsection (e). The licensee shall
 42 notify the state department in writing at least thirty (30) days in

COPY



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

advance of closing or selling the personal services agency.

(j) A personal services agency license may not be transferred or assigned. Upon sale, assignment, lease, or other transfer, including transfers that qualify as a change in ownership, the new owner or person in interest must obtain a license from the state department under this chapter before maintaining, operating, or conducting the personal services agency.

(k) If a person who is licensed to operate a personal services agency is also licensed to operate a home health agency under IC 16-27-1, an onsite inspection for renewal of the person's personal services agency license must, to the extent feasible, be conducted at the same time as an onsite inspection of the home health agency license.

Sec. 7. (a) The state department shall investigate a report of an unlicensed personal services agency operation and report its findings to the attorney general.

(b) The attorney general may do the following:

- (1) Seek an injunction in the circuit or superior court of the county in which the unlicensed home health agency is located.
- (2) Prosecute violations under section 23 of this chapter.

Sec. 8. (a) If a personal services agency is aware that the patient's medical or health condition has become unstable or unpredictable, the personal services agency shall notify the patient, the patient's representative, a family member, other relative of the patient, or other person identified by the patient of the need for a referral for medical or health services. The notification may be given in writing or orally and must be documented in the patient's record with the personal services agency.

(b) The personal services agency may continue to provide personal services for a patient with an unstable or unpredictable medical or health condition but may not manage or represent itself as able to manage the patient's medical or health condition.

Sec. 9. (a) A personal services agency shall employ an individual to act as the personal services agency's manager. The manager is responsible for the organization and daily operation of the personal services agency.

(b) The manager may designate in writing one (1) or more individuals to act on behalf of or to perform any or all of the responsibilities of the personal services agency's manager under this chapter.

Sec. 10. The personal services agency's manager or the manager's designee shall prepare a service plan for a patient

C
o
p
y



1 before providing personal services for the patient. A permanent
2 change to the service plan requires a written change to the service
3 plan. The service plan must:

- 4 (1) be in writing, dated, and signed by the individual who
- 5 prepared it;
- 6 (2) list the types and schedule of services to be provided; and
- 7 (3) state that the services to be provided to the patient are
- 8 subject to the patient's right to temporarily suspend,
- 9 permanently terminate, temporarily add, or permanently add
- 10 the provision of any service. All permanent changes require
- 11 a change in the written service plan.

12 Sec. 11. The personal services agency's manager or the
13 manager's designee shall conduct a patient satisfaction review with
14 the patient every seventy-six (76) to one hundred four (104) days
15 to discuss the services being provided and determine if any change
16 in the plan of services should occur. The review with the patient
17 may be in person or by telephone. This patient satisfaction review
18 must:

- 19 (1) be put in writing; and
- 20 (2) be signed and dated by the individual conducting the
- 21 review.

22 Sec. 12. The personal services agency shall provide the patient
23 or the patient's representative with the personal services agency's
24 written statement of patient rights before or within seven (7) days
25 of providing services to the patient. The statement of patient rights
26 must include the following information:

- 27 (1) The patient has the right to have the patient's property
- 28 treated with respect.
- 29 (2) The patient has the right to temporarily suspend,
- 30 permanently terminate, temporarily add, or permanently add
- 31 services in the service plan.
- 32 (3) The patient has the right to file grievances regarding
- 33 services furnished or regarding the lack of respect for
- 34 property by the personal services agency and is not subject to
- 35 discrimination or reprisal for filing a grievance.
- 36 (4) The patient has the right to be free from verbal, physical,
- 37 and psychological abuse and to be treated with dignity.
- 38 (5) A statement that it is not within the scope of the personal
- 39 services agency's license to manage the medical and health
- 40 conditions of the patient if a condition becomes unstable or
- 41 unpredictable.
- 42 (6) The charges for services provided by the personal services

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- agency.
- (7) The personal services agency's policy for notifying the patient of any increase in the cost of services.
- (8) The hours the personal services agency's office is open for business.
- (9) That on request the personal services agency will make available to the patient a written list of the names and addresses of all persons having at least a five percent (5%) ownership or controlling interest in the personal services agency.
- (10) The procedures for contacting the personal services agency's manager, or the manager's designee, while the personal services agency's office is open or closed.
- (11) The procedure and telephone number to call to file a complaint with the personal services agency.
- (12) The procedure and telephone number to call to file a complaint with the state department along with the business hours of the state department.

Sec. 13. A personal services agency shall investigate a complaint made by a patient, the patient's family, or the patient's representative regarding:

- (1) service that is or fails to be furnished; and
- (2) the lack of respect for the patient's property by anyone furnishing services on behalf of the personal services agency.

The personal services agency shall document the complaint and the resolution of the complaint.

Sec. 14. The personal services agency's manager or the manager's designee shall be available to respond to patient telephone calls twenty-four (24) hours a day.

Sec. 15. An employee or agent of a personal services agency who will have direct patient contact must complete a tuberculosis test in the same manner as required by the state department for licenced home health agency employees and agents.

Sec. 16. (a) The competency of an employee or agent of a personal services agency who will perform attendant care services at the patient's residence must be evaluated by the agency or the agency's designee for each attendant care services task that the personal services agency chooses to have that employee or agent perform. The agency has the sole discretion to determine if an employee or agent is competent to perform an attendant care services task.

(b) After an evaluation an employee or agent shall be trained in

**C
O
P
Y**



1 the attendant care services tasks the personal services agency
2 believes require improvement. The employee or agent shall be
3 reevaluated following any training. The evaluation of the employee
4 or agent and determination by the agency that the employee or
5 agent is competent to perform the attendant care services task
6 must occur before the employee or agent performing that task for
7 a patient without direct agency supervision.

8 (c) The content of the evaluation and training conducted under
9 this section, including the date and the signature of the person
10 conducting the evaluation and training, must be documented for
11 each employee or agent who performs personal services.

12 Sec. 17. (a) Disclosure of ownership and management
13 information must be made to the state department:

- 14 (1) at the time of the personal services agency's request for
15 licensure;
- 16 (2) during each survey of the personal services agency; and
- 17 (3) when there is a change in the management or in a
18 ownership interest of more than five percent (5%) of the
19 personal services agency.

20 (b) The disclosure under subsection (a) must include the
21 following:

- 22 (1) The name and address of all persons having at least five
23 percent (5%) ownership or controlling interest in the personal
24 services agency.
- 25 (2) The name and address of each person who is an officer, a
26 director, a managing agent, or a managing employee of the
27 personal services agency.
- 28 (3) The name and address of the person responsible for the
29 management of the personal services agency.
- 30 (4) The name and address of the chief executive officer and
31 the chairperson (or holder of the equivalent position) of the
32 governing body that is responsible for the person identified
33 under subdivision (3).

34 (c) The determination of an ownership interest and the
35 percentage of an ownership interest under this chapter must be
36 determined under 45 CFR 420.201 and 45 CFR 420.202, as in effect
37 on July 1, 2005.

38 Sec. 18. A personal services agency shall document evidence of
39 compliance with the requirements of this chapter. The
40 documentation must be maintained at a personal services agency's
41 office in Indiana for not less than seven (7) years.

42 Sec. 19. (a) The state health commissioner may take one (1) or

C
O
P
Y



1 more of the following actions on any ground listed in subsection
2 (b):

- 3 (1) Issue a probationary license.
- 4 (2) Conduct a resurvey.
- 5 (3) Deny renewal of a license.
- 6 (4) Revoke a license.
- 7 (5) Impose a civil penalty in an amount not to exceed one
- 8 thousand dollars (\$1,000).

9 (b) The state health commissioner may take action under
10 subsection (a) on any of the following grounds:

- 11 (1) Violation of a provision of this chapter or a rule adopted
- 12 under this chapter.
- 13 (2) Permitting, aiding, or abetting the commission of an illegal
- 14 act in a personal services agency.
- 15 (c) IC 4-21.5 applies to an action under this section.

16 Sec. 20. (a) The state department shall adopt rules under
17 IC 4-22-2 to govern the procedure for issuing, renewing, denying,
18 or revoking a personal services agency license.

19 (b) The state department may not add to the substantive or
20 procedural requirements in this chapter.

21 Sec. 21. A licensee or an applicant for a license aggrieved by an
22 action under this chapter may request a review under IC 4-21.5.

23 Sec. 22. (a) In response to a request for review of an order
24 referred to in subsection (c), the executive board shall appoint an
25 appeals panel that consists of three (3) members as follows:

- 26 (1) One (1) member of the executive board.
- 27 (2) One (1) attorney admitted to the practice of law in
- 28 Indiana.
- 29 (3) One (1) individual with qualifications determined by the
- 30 executive board.

31 (b) An employee of the state department may not be a member
32 of the panel.

33 (c) The panel shall conduct proceedings for review of an order
34 issued by an administrative law judge under this chapter. The
35 panel is the ultimate authority under IC 4-21.5.

36 Sec. 23. A person who knowingly or intentionally:

- 37 (1) operates a personal services agency; or
 - 38 (2) advertises the operation of a personal services agency;
- 39 that is not licensed under this chapter commits a Class A
40 misdemeanor.

41 SECTION 18. [EFFECTIVE JULY 1, 2005]: IC 16-27-1-0.5 IS
42 REPEALED.

C
O
P
Y



1 SECTION 19. [EFFECTIVE JULY 1, 2005] (a) **The definitions in**
2 **IC 16-27-4, as added by this act, apply to this SECTION.**

3 (b) **Notwithstanding IC 16-27-4, as added by this act, a person**
4 **is not required to be licensed by the state department of health to**
5 **operate a personal services agency before January 1, 2006.**

6 (c) **This SECTION expires January 1, 2006.**

C
o
p
y

