



NPDA

National Private Duty Association

The Voice of Private Duty Home Care ®

In-Home Personal Care Agency Licensure

Model Legislation
National Private Duty Association
Approved July 19, 2006



1 **Section 1**

2
3 **Legislative Intent**

4
5 It is declared to be the public policy that the State has a legitimate interest in assuring that
6 all in-home care services, including companion, homemaker and personal care services,
7 provided to a person at his or her residence are performed under circumstances that insure
8 consumer protection and quality care. Therefore, the purpose of this Act is to provide for
9 the better protection of the public health, well being, and safety through the development,
10 establishment, and enforcement of standards for services, as well as standards for the care
11 of individuals receiving personal care services in their homes.
12

13
14 **Section 2**

15
16 **Definitions**

17
18 As used in this Act, unless otherwise specified in the text, the terms defined in the
19 following Sections have the meanings ascribed to them as follows:
20

21 **Agency** means: an in-home personal care services agency.
22

23 **Client** means: an individual desiring personal services who has been accepted to receive
24 personal services from a personal services agency.
25

26 **Department** means: the Department of *** (the agency designated to license and
27 regulate this type of agency).
28

29 **In-home personal care services agency** means: a person or entity that provides or
30 offers to provide personal care service, as defined in this Act, in a consumers place of
31 residence for compensation, whether through the agency's own employees, contractual
32 employees, a placement agency or by arrangement with another person.
33

34 In-home personal care services agency does not include an agency that limits its business
35 to exclusively providing house cleaning services; a local health department; agencies
36 required to be licensed under a separate Act as a home health agency, a nurse registry; a
37 hospital or a long term care facility, or a person approved under the disability, aging or
38 rehabilitative services office acting as a personal care attendant (PCA) under the program
39 authorized at (statutory reference to this program).
40

41 **In-Home personal care services** means: assistance with activities of daily living,
42 housekeeping, personal laundry, and companionship provided to an individual in his or
43 her residence, which are intended to enable that individual to remain safely and
44 comfortably in their residence. Levels of in-home or personal care services include:
45

46 Attendant Care – hands on assistance with activities of daily living including, but
47 not limited to: ambulation, transfer, toileting, and grooming.
48

1 Homemaker Services - assistance with household tasks, shopping, meals

2
3 Companion Care – provision of fellowship, care and protections for client
4 including transportation, letter writing, escort services, reading and medication
5 reminding.

6
7 In-home personal care services does not include incidental services provided by a
8 licensed health facility to patients of the licensed health facility; services provided by
9 employers of membership organizations for their employees, members and families of the
10 employees or members if the services are not the predominant purpose of the employer or
11 membership organization’s business; services allowed to be performed by a personal care
12 attendant under the statute authorizing that program; services that require the order of a
13 health care professional, as defined in state law, for the services to be lawfully performed.

14
15 **In-home services worker or in-home personal care worker** – means an individual with
16 appropriate training and competency for the tasks assigned, who provides services up to,
17 and including, personal care services to a consumer in the consumer’s residence.

18
19 **Personal representative** means: that person who, under applicable state law, has the
20 authority to act on behalf of the client with regard to an action to be taken.

21
22 **Placement Agency** means any person or entity engaged for gain or profit, regardless of
23 Federal tax status, in the business of securing or attempting to secure (i) work for hire for
24 persons seeking work or (ii) workers for employers. The term includes a private
25 employment agency and any other entity that places a worker for private hire by a
26 consumer in that consumer’s residence for purposes of providing personal care services.
27 The term does not include a person that provides or procures temporary employment in
28 health care facilities, as defined in the Nurse Agency Licensing Act (statutory citation for
29 this type of agency in your state).

30
31 **Service plan or Plan of Service** means: a written list of the types and schedule of
32 services prepared by the in-home personal care services agency manager, or his or her
33 designee, updated to reflect changes in needs or services as appropriate but at least
34 annually, that states the services to be provided to the client subject to the client’s right to
35 temporarily suspend, permanently terminate, temporarily add, or permanently add the
36 provision of any such service.

37
38
39 **Section 3**

40
41 **Licensure Required**

- 42
43 (a) On or after January 1, 200 *, no person shall open, manage, conduct, or maintain
44 an in-home personal care services agency, or advertise himself or herself as an in-
45 home personal care services agency or as offering services that would be included
46 in the definition of in-home personal care services or in-home personal care,
47 without a license issued by the Department. This licensure shall be in accordance
48 with rules adopted by the Department in order to protect the health, safety, and

- 1 well-being of clients and consumers through licensure of personal care services
2 agencies which shall address, at a minimum, the following areas:
3
- 4 (1) Compliance with requirements of the state law related to criminal
5 background checks of persons to provide services to the client in his or her
6 home;
7
- 8 (2) Compliance with requirement for provision of list of client rights, as
9 developed by the Department, to the client within five (5) calendar days of
10 the initiation of services to the client and thereafter, on an annual basis.
11 These rights include:
12
- 13 (A) Client's right to be free from verbal, physical and psychological
14 abuse and to be treated with dignity;
15 (B) Client's right to temporarily or permanently suspend, terminate, or
16 add the provision of any services stated in the service plan;
17 (C) Client's right to have property treated with respect;
18 (D) Client's right to voice grievances regarding services furnished or
19 regarding the lack of respect for property by anyone who is
20 furnishing services on behalf of the personal services agency and
21 that the client must not be subject to discrimination or reprisal for
22 doing so;
23 (E) A statement that it is not within the scope of the in-home personal
24 care services agency license to manage the medical and health
25 conditions of the clients;
26 (F) The charges for services provided by the in-home personal care
27 services agency;
28 (G) The hours of operation of the agency and the procedures for
29 contacting the agency's manager, or their designee, while the
30 agency office is open for business and while it is closed;
31 (H) The procedure and contact information to call to file a complaint
32 with the agency; and,
33 (I) The procedure and contact information to call to file a complaint
34 with the state licensing department.
35
- 36 (3) Notification, in a form and manner established by the Department in rule,
37 to in-home personal care services workers and clients as to the party or
38 parties responsible under State and federal laws for payment of
39 employment taxes, social security taxes, and workers' compensation,
40 liability insurance coverage, the day-to-day supervision of workers, and
41 the hiring, firing and discipline of workers with the placement
42 arrangement for provision of in-home personal care services;
43
- 44 (4) Compliance with the minimum standards and regulations developed by the
45 Department addressing health, safety and well-being of clients receiving
46 in-home personal care services;
47
48

- 1 (5) Payment of an annual non-refundable fee of \$250 for agency licensure, as
2 well as any fines or penalties levied as a result of a finding by the agency
3 as to non-compliance.
4
- 5 (b) By January **, 200*, the Department shall adopt standards for the licensure and
6 operation of in-home personal care service agencies operated in this state in
7 accordance with the provisions outlined in Section 3 of this Act. The structure of
8 the standards shall be based on the concept of personal care services and its focus
9 on assistance with activities of daily living, housekeeping, personal laundry, and
10 companionship being provided to an individual intended to enable that individual
11 to remain safely and comfortably in his or her own personal residence. As in-
12 home personal care services do not include services that would be required to be
13 performed by an individual licensed under the Nursing Practice Act, the standards
14 shall be developed from a similar concept. After consideration and
15 recommendation by the In-Home Personal Care Services Advisory Committee,
16 the Department shall adopt such rules and regulations as are necessary for the
17 proper regulation of home services agencies.
18
- 19 (c) A license is required for any personal services agency providing services in this
20 state where the parent agency is located in another state. The agency must be
21 authorized by the Secretary of State to conduct business in the state and have a
22 branch office located in this state.
23
24

Section 4

Advisory Board

- 25
26
27
28
- 29 (a) The Director shall appoint an In-Home Personal Care Services Advisory
30 Committee composed of 11 persons to advise and consult with the Department in
31 the administration of the Act. Five of the appointed members shall represent the
32 personal care services profession. Two of the appointed members shall represent
33 consumers of in-home personal care services, either as a direct consumer or a
34 family member of a consumer. Two of the appointed members shall be in-home
35 personal care services workers. One of the appointed members shall be a
36 representative of an organization that advocates for consumers. And, one member
37 shall represent the general public. The recommendations of organizations
38 representing professional and industry interests, as well as other organizations
39 may be taken into consideration when selecting individuals for appointment to
40 this Committee.
41
- 42 (b) Each member shall hold office for a term of 3 years, except that any member
43 appointed to fill a vacancy occurring prior to the expiration of the term for which
44 his predecessor was appointed shall be appointed for the remainder of such term.
45 The terms of office of the members first taking office shall expire, as designated
46 at the time of appointment, one at the end of the first year, one at the end of the
47 second year, and 3 at the end of the 3rd year. The term of office of each of the
48 original appointees shall commence on January 1, 200** (12 months prior to the
49 date when licensure is required).

- 1 (c) The Committee shall meet as frequently as the Director deems necessary but, no
2 less than one time per year. Committee members, while service on business of
3 the Committee, shall receive actual and necessary travel and subsidence expenses
4 while so service away from their places of residence.
5
- 6 (d) The Committee shall provide input and recommendations to the Department on
7 the development of rules for the licensure of personal care services agencies
8 operating in the State. On or before ***, the Committee shall issue an interim
9 report to the General Assembly on the status of development and implementation
10 of the rules.
11

12 Section 5

13 Licenses

- 14
- 15
- 16
- 17 (a) If an applicant for licensure has not been previously licensed, and the agency is
18 not in operation at the time the application is made, the Department may issue a
19 provisional license. A provisional license shall be valid for a period of 120 days
20 unless sooner suspended or revoked pursuant to Section 9 of this Act. Within 30
21 days prior to the termination of a provisional license, the Department shall inspect
22 the agency and, if the applicant substantially meets the requirements for licensure,
23 it shall issue a license under this Section. If the Department finds that the holder
24 of the provisional license does not substantially meet the requirements for
25 licensure, but has made significant progress toward meetings those requirements,
26 the Director may renewal the provisional license once for a period not to exceed
27 120 days from the expiration of the initial provisional license.
28
- 29 (b)(1) The Director may also issue a provisional license to any licensed agency which
30 does not substantially comply with the provisions of this Act and the rules
31 promulgated under this Act, provided he or she finds that the health, safety, and
32 well being of the clients of the agency will be protected during the period for
33 which such a provisional license is issued. The term of such provisional license
34 shall not exceed 120 days.
35
- 36 (2) The Director shall advise the licensee of the conditions under which such
37 provisional license is issued, including the manner in which the licensee fails to
38 comply with the provisions of the Act or rules, and the time within which the
39 corrections necessary for the agency to substantially comply with the Act and
40 rules shall be completed.
41
- 42 (3) The Director, at his discretion, may extend the term of such a provisional license
43 for an additional 120 days, if he finds that the agency has made substantial
44 progress toward correcting the violations and bring the agency into full
45 compliance with this Act and the rules promulgated hereunder.
46
- 47 (c) An annual license shall be issued to any person conducting or maintaining an
48 agency upon receipt of an application and payment of the licensure fee, and when

1 the other requirements of the Act, and the standards, rules and regulations
2 promulgated hereunder, are met.
3

- 4 (d) Each license shall be issued only for the in-home personal care services agency
5 named in the application and shall not be transferred or assigned. Upon sale,
6 assignment lease or other transfer, voluntary or involuntary, including those
7 transfers that qualify as a change in ownership, the new owner or person in
8 interest shall obtain a license from the state department prior to maintaining,
9 operating, or conducting the agency.

10
11
12 **Section 6**

13
14 **License Denial**

15
16 An application for a license may be denied for any of the following reasons:
17

- 18 (a) Failure to meet the minimum standards prescribed by the Department pursuant to
19 Section 6;
20 (b) Satisfactory evidence that the moral character of the applicant or supervisor of the
21 agency is not reputable. In determining moral character, the Department may take
22 into consideration any convictions of the applicant or supervisor but such
23 conviction shall not operate as a bar to licensing;
24 (c) Lack of personnel qualified by training and experience to properly perform the
25 function of an in-home personal care services agency;
26 (d) Insufficient financial or other resources to operate and conduct a personal services
27 agency in accordance with the requirements of this Act and the minimum
28 standards, rules and regulations promulgated thereunder.
29
30

31 **Section 7**

32
33 **Inspections and Investigations**

34
35 The Department may conduct any such investigation and inspection as it deems necessary
36 to assess compliance with this Act and the rules and regulations promulgated thereto.
37 Whenever possible and practical, on-site reviews shall be scheduled, in an effort so as to
38 reduce the number of visits and the disruption to agency operation. Investigations and
39 inspections may include the direct observation of the provision of client care in the home,
40 if consent is given by the client. Agencies licensed under the Act shall make available to
41 the Department all books, records, policies and procedures, or any other materials
42 requested during the course of an investigation or inspection. Refusal to make such
43 materials available to the Department shall be grounds for license revocation, or the
44 imposition of any other penalty provided in the Act.
45
46
47
48

1 **Section 8**

2
3 **Complaint Process**

4
5 An in-home personal care services agency shall investigate complaints made by a client
6 or the client's family or personal representative regarding services that are (or failed to
7 be) furnished, regarding lack of respect for client's property by anyone furnishing
8 services on behalf of the personal care services agency, and shall document the existence
9 of the complaint and the resolution of the complaint in accordance with Department
10 requirements.

11
12
13 **Section 9**

14
15 **Violations**

- 16
17 (a) When the Department determines that an agency is in violation of the Act or any
18 rules promulgated hereunder, a notice of violation shall be serviced upon the
19 licensee. Each notice of violation shall be prepared in writing and shall specify
20 the nature of the violation and the statutory provision or rule alleged to have been
21 violated. The notice shall inform the licensee of any action the Department may
22 take under this Act, including the requirement of an agency plan of correction,
23 assessment of a penalty, or licensure action. The Director or his designee shall
24 also inform the licensee of rights to a hearing under the Act.
25
26 (b) Each agency served with a notice of violation under the Act shall file with the
27 Department a written plan of correction within 15 days of receipt of the notice.
28 The plan of correction is subject to approval of the Department and shall state
29 with particularity the method by which the agency intends to correct each
30 violation and shall contain a stated date by which each violation shall be
31 corrected.
32
33 (c) If the Department rejects a plan of correction, it shall send notice of the rejection
34 and the reason for rejection to the licensee. The agency shall have 10 days from
35 receipt of the notice of rejection in which to submit a modified plan. If the
36 modified plan is not submitted on time, or if the modified plan is rejected, the
37 agency shall follow a plan of correction imposed by the Department.
38
39 (d) If an agency desires to contest any Department action under this Section, it shall
40 send a written request for a hearing. The Department shall commence the hearing
41 as provided under Section 11. Whenever possible, all action of the Department
42 under this Section arising out of a violation shall be contested and determined at a
43 single hearing. Issues decided at a hearing may not be reheard at subsequent
44 hearings under this Section.
45
46
47
48

Section 10

Fines or penalties

- 1
2
3
4
5 (a) The licensee of an agency operating in violation of this Act or any rule adopted
6 hereunder may be subject to the penalties or fines levied by the Department as
7 specified in this Section.
8
9 (b) When the Director determines that an agency has failed to comply with this Act or
10 any rule adopted hereunder, the Department may issue a notice of fine assessment
11 which shall specify the violations for which the fine is levied. The Department
12 may impose a fine of \$100 per day commencing on the date the violation was
13 identified and ending on the date the violation is corrected, or action is taken to
14 suspend, revoke, or deny renewal of the license, whichever comes first.
15
16 (c) In determining whether a fine is to be imposed, the Director shall consider the
17 following factors:
18
19 (1) The gravity of the violation, including the probability that death or serious
20 physical or mental harm to a client will result or has resulted, the severity
21 of the actual or potential harm, and the extent to which the provisions of
22 the applicable statutes or regulations were violated;
23 (2) The reasonable diligence exercised by the licensee and efforts to correct
24 violations;
25 (3) Any previous violations committed by the licensee; and
26 (4) The financial benefit to the agency of committing or continuing the
27 violation.
28
29 (d) All fines shall be paid to the Department within 15 days of the notice of
30 assessment or, if the fine is contested under the provisions of this Act, within 15
31 days of the receipt of the final decision, unless the decision is appealed and the
32 order is stayed by court order. A fine assessed under this Act shall be collected
33 by the Department. If the licensee against whom the fine has been assessed does
34 not comply with a written demand for payment within 30 days, the Director shall
35 issue an order to do any of the following:
36
37 (1) Certification to the appropriate state entity of delinquent fines for the
38 purpose of interception of state income tax refunds or other payments due
39 to the licensee in order to satisfy, in whole or in part, any delinquent fines
40 or amounts recoverable;
41
42 (2) Addition of the amount of the penalty to the agency's licensing fee; if the
43 licensee refuses to make the payment at the time of application for renewal
44 of its license, the license shall not be renewed; or
45
46 (3) Bring an action in circuit court to recover the amount of the penalty.
47
48

1 **Section 11**

2
3 **Administrative Review**

4
5 Whenever the Department refuses to grant, or revokes or suspends a license to open,
6 conduct, operate or maintain an agency, the applicant or licensee may have such decision
7 reviewed under the provisions of the administrative review law. In such cases the
8 licensee shall comply with the requirements and time frame for filing appeals after
9 appropriate and timely notification by the Department of the action to be taken.

10
11
12 **Section 12**

13
14 **Public Nuisance**

15
16 The operation or maintenance of an agency in violation of this Act or of the rules and
17 regulations promulgated by the Department is declared a public nuisance inimical to the
18 public welfare, The Director of the Department in the name of the People of the State,
19 through the Attorney General or the State's Attorney of the county in which the violation
20 occurs, may in addition to other remedies herein provided, bring action for an injunction
21 to restrain such violation or to enjoin the future operation or maintenance of any such
22 agency.

23
24
25 **Section 13**

26
27 This Section of the Act would be to make amendments to other Acts to bring into
28 compliance with this Act, i.e. state criminal background check acts, nurse agency or
29 home health agency licensing, etc.

30
31
32 **Section 14**

33
34 **Effective Date**

35
36 This Act becomes effective upon becoming law.