



**NPDA**

National Private Duty Association

*The Voice of Private Duty Home Care*

**ACT 999**  
**Home Care Consumer and Worker Protection Act**

### 999/1. Short title

§ 1. Short title. This Act may be cited as the Home Care Consumer and Worker Protection Act.

### 999/2. Legislative intent

§ 2. The General Assembly intends to protect the home care services consumer and those individuals providing such private, individual services, by ensuring that both the consumer and the employee are given the ability to make informed, knowing decisions regarding their status as employees, independent contractors and employers.

### 999/3. Definitions

§ 3. Definitions. As used in this Act:

- (a) "Activities of daily living" means eating, dressing, bathing, toileting, transferring, or personal hygiene.
- (b) "Consumer" means an individual who receives home care services in his or her temporary or permanent residence through a privately employed individual.
- (c) "Department" means the Department of Labor.
- (d) "Director" means the Director of Labor.
- (e) "Employee" means any person performing work or services of any kind or character whatsoever for hire.
- (f) "Placement agency" means any person engaged for gain or profit in the business of securing or attempting to secure employment for persons seeking employment or employees for employers. This term shall include private employment agencies, nurse registries and any other entity that places an employee for private employment by a consumer in that consumer's residence for purposes of providing home care services.
- (g) "Home care aide" means a person employed in a person's place of residence to assist with the activities of daily living that require no medical intervention and are non-invasive.
- (h) "Home care employee" means an employee who provides home care services to a consumer in his or her temporary or permanent residence.
- (i) "Home care services" means skilled and/or non-skilled care provided to an individual in his or her residence for the purpose of enabling that individual to remain safely and comfortably in his or her own residence. Home care includes, but is not limited to, companionship, fellowship, nursing, home care aide, and homemaker services.
- (j) "Homemaker services" means the completion of household work, including cooking, cleaning and completing miscellaneous chores, that supports the smooth and safe functioning of a consumer's residence.
- (k) "Nursing service" means the assignment of a registered nurse or licensed practical nurse as defined in the Nursing and Advanced Practice Nursing Act to, for the

purposes of rendering services to a consumer under the direction or supervision of a physician or surgeon registered to practice in this state.

- (l) "Person" means any individual, firm, association, partnership, company or corporation.

#### **999/4. Application of the Act**

##### § 4. Application of the Act.

This Act shall apply to all persons that meet the definition of a placement agency. Health care facilities that meet this definition, but are otherwise regulated under a separate statute shall be exempt from this Act, including nursing homes, home health care agencies, and assisted living facilities.

#### **999/5. Consumer notice**

##### § 5. Consumer notice.

- (a) A placement agency shall provide a consumer with a notice of his or her rights, duties, obligations and legal liabilities as a private employer of a home care services provider. This notice shall be provided to the consumer each time a home care employee is placed in the consumer's home. A separate notice shall not be required in those instances where a home care employee is temporarily covering or substituting for the consumer's regular home care employee.
- (b) The Consumer Notice shall be on a form prescribed by the Department, and shall include, at a minimum, the following information:
  1. The duties, responsibilities, obligations and legal liabilities of the placement agency to the employee and to the consumer. Such description shall clearly set forth the consumer's responsibility (if any) for:
    - i. Day-to-day supervision of the employee;
    - ii. Assigning duties to the employee;
    - iii. Hiring, firing and discipline of the employee;
    - iv. Provision of equipment or materials for use by the employee;
    - v. Performing a criminal background check on the employee;
    - vi. Checking employee references; and,
    - vii. Ensuring credentials and appropriate licensure/certification of an employee.
  2. A statement identifying the placement agency as an employer, joint employer, leasing employer, or non-employer, as applicable, along with the responsibility it will assume (if any) for the payment of wages, taxes, social security, overtime, workers' compensation and unemployment compensation payments.
  3. A statement that, regardless of the placement agency's status, the consumer may be considered an employer under various state and federal employment laws, and that if this is the case, he or she may be held responsible for the payment of federal, state and local taxes, social security, overtime and minimum wages, unemployment and workers' compensation insurance payments.

4. A list of the forms that the consumer may be required by law to complete and submit as an employer.
  5. The penalties that may be assessed against the consumer in the event that he or she is determined to be an employer but has not fulfilled his or her obligations as an employer.
  6. The Department's appropriate phone number(s) and address(es), in the event the consumer has questions concerning the content of the notice.
- (c) A placement agency's failure to provide a Consumer Notice shall not relieve a consumer of any of his or her duties or obligations as an employer. However, in the event a placement agency fails to provide a Consumer Notice and the consumer is determined by the Department to be liable to the employee for payment of wages, taxes, workers' compensation or unemployment compensation, the consumer shall have a right of indemnification against the placement agency, which shall include the actual amounts paid to or on behalf of the employee, as well as the consumer's attorneys' fees and costs.

### 999/6. Employee Notice

#### § 6. Employee Notice.

- (a) A placement agency shall provide a notice to each home care employee who is placed with a consumer that sets out the employee's legal relationship with the placement agency and the consumer. The Employee Notice shall be provided to the employee upon his or her placement in a consumer's home.
- (b) The Employee Notice shall be on a form prescribed by the Department, and shall include, at a minimum, the following information:
  1. The duties, responsibilities, obligations and legal liabilities the placement agency, the consumer, and the employee, in the event that employee is determined to be an independent contractor. Such description shall include the following information:
    - i. A statement as to the party responsible for the payment of the employee's wages, taxes, social security, unemployment and workers' compensation insurance;
    - ii. A statement identifying which party will be responsible for the employee's hiring, firing, discipline, day-to-day supervision, assignment of duties and provision of equipment or materials for use by the employee.
  2. The Department's appropriate phone number(s) and address(es), in the event the employee has questions concerning the contents of the notice.
- (c) A placement agency's failure to provide such a notice to an employee shall subject that agency to civil fines and/or penalties as set forth in this Act.

### 999/7. Investigations; orders; civil penalties

#### § 7. Investigations; orders; civil penalties.

- (a) The Department may at any time, and shall upon receiving a complaint from any interested person, investigate a placement agency's violation of this Act.

The Director or his or her authorized representative may examine the premises of any placement agency, may compel by subpoena, for examination or inspection, the attendance and testimony of witnesses and the production of books, payrolls, records, papers and other evidence in any investigation or hearing, and may administer oaths or affirmations to witnesses.

- (b) After appropriate notice and investigation, and if supported by the evidence, the Department may issue and cause to be served on any person an order to cease and desist from violation of this Act and to take any further action that is reasonably necessary to eliminate the effect of the violation.
- (c) Whenever it appears that any person has violated a valid order of the Department issued under this Act, the Director may commence an action and obtain from the court an order directing the person to obey the order of the Department or be subject to punishment for contempt of court.
- (d) In addition to any order or action, the Department may petition a court of competent jurisdiction for an order enjoining any violation of this Act.
- (e) Any placement agency that violates this Act or the rules adopted under this Act shall be subject to a civil penalty of \$1,000.00 per day per violation. Civil penalties may be assessed by the Department in an administrative action and may, if necessary, be recovered in a civil action brought by the Director through the Attorney General of the State of Illinois or the State's attorney of any county in which the violation occurred. The court may order that the civil penalties assessed for violation of this Act, together with any costs or attorney's fees arising out of the action to collect the penalties, be paid to the Department. The fact that the violation has ceased does not excuse any person from liability for civil penalties arising from the violation.

### **999/8. Illinois Administrative Procedure Act**

§ 8. Illinois Administrative Procedure Act. The Illinois Administrative Procedure Act, including the contested case provisions and the requirements of Section 10-65 of that Act shall apply to this Act.

### **999/9. Review under the Administrative Review Law**

§ 9. Review under the Administrative Review law. All final administrative decisions of the Department under this Act are subject to judicial review under the Administrative Review Law, as now or hereafter amended, and its rules. Administrative decision is defined as in Section 3-101 of the Code of Civil Procedure, as now or hereafter amended.

### **999/10. Rulemaking**

§ 10. Rulemaking. The Department shall adopt rules pursuant to the Illinois Administrative Procedure Act to implement this Act.

### **For More Information Contact**

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