



**In-Home Personal Care
Services Agency Code**

Home Care Association of America
July 19, 2006

Part 245
In-Home Personal Care Services Agency Code

Subpart A: General Provisions

Section 245.10	Purpose
Section 245.20	Definitions
Section 245.30	Incorporated and Referenced Materials

Subpart B: Operational Requirements

Section 245.40	Organization and Administration
Section 245.50	Staffing and Staff Responsibilities
Section 245.70	In-Home Personal Care Services Worker Training
Section 245.80	Health Care Worker Background Check
Section 245.85	Infection Control
Section 245.90	Licensure Required
Section 245.100	License Application
Section 245.110	Provisional Licensure
Section 245.120	Inspections and Investigations
Section 245.130	Complaints
Section 245.140	Violations
Section 245.150	Adverse Licensure Actions
Section 245.160	Penalties and Fines
Section 245.170	Hearings

Subpart C: Client Services

Section 245.200	Required Agency Actions
Section 245.210	Client Service Contracts
Section 245.230	Quality Improvement Program
Section 245.240	Abuse, Neglect & Financial Exploitation Prevention and Reporting

TITLE 77: HEALTH CARE
CHAPTER 1: **
SUBCHAPTER: **
PART 245: In-Home Personal Care Services Agency Code

Subpart A: General Provisions

Section 245.10 Purpose

- a) This Part has been adopted in accordance with the In-Home Personal Care Services Agency Licensing Act.
- b) The purpose of adoption of these regulations is to provide for the better protection of the public health, well-being and safety through establishment and enforcement of minimum standards for the operation and provision of services for the care of individuals receiving personal care services in their homes.

Section 245.20 Definitions

Act – the In-Home Personal Care Services Agency Licensing Act.

Activities of Daily Living – means eating, dressing, bathing, toileting, transferring, or personal hygiene.

Agency – means an in-home personal care services agency.

Agency Manager – means the individual designated by the Governing body or the entity legally responsible for the agency, to have overall responsibility for the organization and day-to-day operation of the in-home personal care services agency.

Bylaws or Equivalent – means a set of rules adopted by an agency for governing the agency's operation.

Client – means an individual receiving services of an in-home services care services agency or a placement agency or the person or persons designated to act on the client's behalf.

Department – means The Department of **.

Director – means the Director of **, or his designee.

Employee Prospect – means a person or persons to whom an agency expects to extend an offer of employment.

Home Health Aide – means a person employed by a licensed home health agency to provide home health aide services.

In-Home Personal Services Agency- means a person or entity that provides or offers to provide services directly, through contractual arrangement, or acting as a placement agency, for the purpose of placing individuals as workers providing in-home personal services to consumers primarily in their personal residences. In-home personal care services agency does not include a local health department, agencies licensed under the Nurse Agency Licensing Act, the Hospital Licensing Act, the Nursing Home Care Act, the Home Health Agency Licensing Act, or the Assisted Living and Shared Housing Act and does not include an agency that limits its business exclusively to providing housecleaning services. Programs providing services exclusively through the Community Care Program of the Department on Aging or the Department of Human Services Office of Rehabilitation Services are not considered to be a home services agency under this Act.

In-home personal care services – means assistance with activities of daily living, personal care, housekeeping, personal laundry, and companionship provided to an individual primarily in his or her personal residence, which are intended to provide a support system to enable that individual to remain safely and comfortably in his or her own personal residence. In-home personal care services are

focused on providing assistance that is not medical in nature but, is based upon assisting the client in meeting the demands of living independently and maintaining a private home. Levels of in-home personal care services include:

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

Homemaker Services - assistance with household tasks, shopping, meals

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

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

Plan of Service – means a written list of the types and schedule of services prepared by the in-home personal care services agency manager, or his or her designee, updated to reflect changes in needs or services as appropriate but at least annually, that states the services to be delivered to the client subject to the client's right to temporarily suspend, permanently terminate, temporarily add, or permanently add the provision of any such service, prepared by and in collaboration with the agency and the client, the clients family, or to both.

Person – means any individual, firm, partnership, corporation, company, association or any other legal entity.

Personal care services - means services which are furnished to a client in the client's home to meet the client's physical, maintenance and supportive needs, when those services are not considered skilled personal care, as described in this Section and Part, and do not require the supervision of a nurse or the necessity of physician's orders.

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

Skilled personal care – means personal care at a level requiring skill and training at a level which may only be provided by a home health aide employed by a licensed home health or home nursing agency, or by an individual that is a certified or licensed health care professional under the laws of the State.

Substantial compliance or substantially meets – means meeting requirements except for variance from the strict and literal performance, which results in unimportant omissions or defects given the particular circumstances involved.

Summary Report – means a compilation of the pertinent factors regarding the client based on client visit records, which is submitted to the client's agency case manager or supervisor responsible for the client case and included as a part of the client record.

Supervision – means authoritative procedural guidance by a qualified person of the appropriate discipline.

Section 245.30 Incorporated and Referenced Materials

- a) All incorporations by reference of federal regulations and the standards of nationally recognized organizations in this Part refer to the regulations or standards on the date specified and do not include any additions or deletions subsequent to the date specified.

- b) The following State statutes are referenced in this Part:
 - 1) Administrative Review Law [statutory citation]
 - 2) Business Corporation Act [statutory citation]
 - 3) Administrative Procedure Act [statutory citation]
 - 4) Nursing Act [statutory citation]
 - 5) Occupational Therapy Practice Act [statutory citation]
 - 6) Physical Therapy Act [statutory]
 - 7) Speech-Language Pathology & Audiology Practice Act [statutory citation]
 - 8) Local Records Act [statutory citation]
 - 9) Medical Practice Act [statutory citation]
 - 10) Health Care Worker Background Check Act [statutory citation]
 - 11) Nurse Agency Licensing Act [statutory citation]

- c) The following State rules are referenced in this Part:
 - 1) Department of Public Health, Rules of Practice and Procedure in Administrative Hearings (Code Citation Number)

Subpart B: Operational Requirements

Section 245.40 Organization and Administration

- a) **Governing Body.** Each agency shall have a governing body or a clearly defined body having legal authority and responsibility for the conduct of the agency. For purposes of this Section, this would include but not necessarily be limited to LLCs, sole proprietorships, and S Corporations. For the purposes of this Section the governing body shall:
- 1) Have bylaws or the equivalent, which shall be reviewed and be revised as needed. They shall be made available to all members of the governing body. The bylaws or the equivalent shall specify the objectives of the agency.
 - 2) Employ an agency manager.
 - 3) Adopt and revise, as needed, policies and procedures for the operation and administration of the agency.
 - 4) Meet to review the operation of the agency.
 - 5) Keep minutes of all meetings.
 - 6) Provide and maintain an office facility adequately equipped for efficient work and that provides a safe working environment in compliance with local ordinances and fire regulations.
- b) **Administration**
- 1) The agency shall have written administrative policies and procedures to ensure safe and adequate care of the client.
 - 2) The agency shall show evidence of liability insurance coverage.
 - 3) The agency shall develop, implement and have written policies in place for complaint resolution between the agency and its clients and/or client representative(s) in regard to services being provided to the client.
- c) **Agency Manager**
- 1) An in-home personal care services agency shall designate a person to supervise the provision of services through the licensed in-home personal care services agency.

d) Personnel Policies

- 1) Personnel policies applicable and available to all full- and part-time employees, as well as contracted employees shall include but not be limited to the following:
 - A) Wage scales, fringe benefits, hours of work and leave time.
 - B) Acknowledgement and confirmation of receipt of notification, as developed and provided by the Department, referenced in Section 245.200 regarding responsible party(ies) for various employment related duties including but not limited to: supervision; payment of income and employment taxes; workman's compensation insurance, etc.
 - C) Requirements for any required initial health evaluation of new employees who would have contact with clients, including a physical examination and any other components that the governing body may choose to specify for employment with the agency.
 - D) Orientation to the agency and appropriate continuing education.
 - E) Job descriptions for all positions utilized by the agency.
 - F) Annual performance evaluation for all employees.
 - G) Compliance with all applicable requirements of the Civil Rights Act of 1964.
 - H) Provision for confidentiality of personnel records.
 - I) Employee health policies that require employees to report health symptoms and exposure to any communicable or infectious disease and that specify conditions under which employees are to be removed from client contact and conditions under which employees may resume client contact.
- 2) Prior to employing any individual in a position that requires a State professional license, the agency shall contact the appropriate agency to verify that the individual's license is active. A copy of the verification of the individual's license shall be placed in the individual's personnel file.
- 3) The agency shall comply with the requirements and process of the state criminal background check law for all employee prospects who have direct client or patient care responsibilities prior to hiring.
- 4) The agency shall check the status of employee prospects who have direct client care responsibilities with the state Nurse Aide Registry prior to hiring to ensure that the

individual is not been found to have committed an act that would require notation on or disqualification from the registry.

- 5) Personnel records for all employees shall include the name and address of the employee, social security number, date of birth, name and address of next of kin, evidence of qualifications (including any current licensure, registration, or certification that is required by state or federal law for the functions performed), dates of employment and separation from the agency and the reason for separation.

Section 245.50 Staffing and Staff Responsibilities

- a) Administrator / Agency Manager. The agency manager or administrator shall have the following responsibilities:
- 1) Ensure that the agency is in compliance with all applicable federal, State and local laws.
 - 2) Be familiar with the applicable rules of the Department and maintain them within the agency.
 - 3) Familiarize all employees, as well as providers through contractual purchase of services, with the law and the rules of the Department and make copies available for their use.
 - 4) Ensure the completion, maintenance and submission of such reports and records as required by the Department.
 - 5) Maintain ongoing liaison with the governing body, staff members and the community.
 - 6) Maintain a current organizational chart to show lines of authority down to the client level.
 - 7) Have the authority for the management of the business affairs and the overall operation of the agency.
 - 8) Maintain appropriate personnel records, administrative records and all policies and procedures of the agency.
 - 9) Employ qualified personnel in accordance with job descriptions.
 - 10) Provide orientation of new staff, regularly scheduled in-service education programs and opportunities for continuing education for the staff.
 - 11) Designate in writing the qualified staff member to act in the absence of the manager or administrator.
- b) In-Home Personal Care Services Worker
- 1) As defined in this Part and under the Act, In-Home care personal services means: assistance with activities of daily living, housekeeping, personal laundry, and companionship provided to an individual in his or her residence, which are intended to

enable that individual to remain safely and comfortably in their residence. Levels of in-home personal care service include:

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

Homemaker Services - assistance with household tasks, shopping, meals

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

- 2) In-home personal care service workers will provide services in accordance with the policies and requirements of the placement or employing agency as well as the service arrangements spelled out in the client contract.
- 3) Duties of an in-home personal care services worker may include the following:
 - A) Supervision of the home environment that ensures the safety and security of the client.
 - B) Assistance with household chores including cooking and meal preparation, cleaning, and laundry.
 - C) Assistance in completing activities such as shopping, appointments outside the home.
 - D) Companionship, including but not limited to social interaction, conversation, emotional reassurance, and encourage reading, writing and activities that stimulate the mind.
 - E) Completion of appropriate records regarding service provision.
 - F) Assistance with activities of daily living and personal care.
- 4) In order to delineate the types of services that can be provided by an in-home personal care service worker, the following are examples of limitations where a more medical model of assistance would be needed to meet higher needs of the client.
 - A) Skin Care. An in-home personal care services worker may perform general skin care assistance. Skin care may be performed by an in-home personal care service worker only when skin is unbroken, and when any chronic skin problems are not active. The skin care provided by an in-home personal care services worker must be preventative rather than therapeutic in nature and, may include the application of non-medicated lotions and solutions, or of lotions and solutions not requiring a physician's prescription. Skilled skin care must be provided by an agency licensed as a home health services or home nursing services agency. Skilled skin care includes wound

care, dressing changes, application of prescription medications, skilled observation and reporting.

- B) **Ambulation.** An in-home personal care services worker may generally assist clients with ambulation. Clients in the process of being trained to use adaptive equipment for ambulation, such as walkers, canes or wheelchairs, require supervision by an agency licensed to provide home health or home nursing services during the period of their training. Once the prescribing individual or the health care provider responsible for the training of the client is comfortable with releasing the client to work on their own with the adaptive equipment, an in-home personal services worker may be assigned to assist with ambulation.
- C) **Bathing.** An in-home personal care service worker may assist clients with bathing. When a client has skilled skin care needs or skilled dressings that will need attention before, during or after bathing, the client should be in the care of an agency licensed as a home health agency or a home nursing agency to meet those specific needs.
- D) **Dressing.** An in-home personal care services worker may assist a client with dressing. This may include assistance with ordinary clothing and application of support stockings of the type that can be purchased without a physician's prescription. An in-home personal care service worker may not assist with application of an Ace bandage and anti-embolic or other pressure stockings that can be purchased only with a physician's prescription.
- E) **Exercise.** An in-home personal care services worker may assist a client with exercise. However, this does not include assistance with a plan of exercise prescribed by a licensed health care professional. Assistance with exercise that can be performed by an in-home personal care service worker is limited to the encouragement of normal bodily movement, as tolerated, on the part of the client and, encouragement with a prescribed exercise program. Passive range of motion (ROM) may not be performed by an in-home personal care services worker.
- F) **Feeding.** Assistance with feeding may generally be performed by an in-home personal service worker. In-home personal care services workers can assist clients with feeding when the client can independently swallow and be positioned upright. Assistance by an in-home personal care services worker does not include syringe, tube feedings and intravenous nutrition. Whenever there is a high risk that the client may choke as a result of the feeding the client should be in the care of an agency licensed as a home health or home nursing agency to fulfill this function.
- G) **Hair care.** As a part of the broader set of services provided to clients who are receiving in-home personal services, in-home personal care service agencies may assist clients with the maintenance and appearance of their hair. Hair care within

these limitations may include shampooing with non-medicated shampoo or shampoo that does not require a physician's prescription, drying, combing and styling of hair.

- H) Mouth care. An in-home personal care services worker may assist and perform mouth care. This may include denture care and basic oral hygiene, including oral suctioning for mouth care. Mouth care for clients who are unconscious should be performed by an agency licensed as home health services or home nursing services.
- I) Nail care. Assistance with nail care can be generally performed by an in-home personal services worker. This assistance may include soaking of nails, pushing back cuticles without utensils, and filing of nails. Assistance by an in-home personal care services worker may not include nail trimming. Clients with a medical condition that might involve peripheral circulatory problems or loss of sensation should be under the care of an agency licensed as a home health agency or home nursing agency to meet this need.
- J) Positioning. An in-home personal care services worker may assist a client with positioning when the client is able to identify to the in-home personal care staff, verbally, non-verbally or through others, when the positions needs to be changed AND only when skilled skin care, as previously described, is not required in conjunction with the positions. Positioning may include simple alignment in a bed, wheelchair, or other furniture.
- K) Shaving. An in-home personal care service worker may assist a client with shaving only with an electric or a safety razor.
- L) Toileting. An in-home personal care services worker may assist a client to and from the bathroom, provide assistance with bedpans, urinals, and commodes; pericare; or changing of clothing and pads of any kind used for the care of incontinence.
 - 1) An in-home personal care services worker may empty or change external urinary collection devices, such as catheter bags or suprapubic catheter bags. In all cases, the insertion and removal of catheters and care of external catheters is considered skilled care and may NOT be performed by an in-home personal care service worker.
 - 2) An in-home personal care services worker may empty ostomy bags and provide assistance with other client-directed ostomy care only when there is no need for skilled skin care or for observation or reporting to a nurse. An in-home personal services worker may not perform digital stimulation, insert suppositories or give an enema.
- M) Transfers. An in-home personal care service worker may assist with transfers only when the client has sufficient balance and strength to reliably stand and pivot and

assist with the transfer to some extent. Adaptive and safety equipment may be used in transfers, provided that the client is fully trained in the use of the equipment and can direct the transfer step by step. Adaptive equipment may include, but is not limited to wheel chairs, tub seats and grab bars. Gait belts may be used in a transfer as a safety device for the in-home personal service worker as long as the worker has been properly trained in its use.

- 1) In general, assistance with transfers may not be performed by an in-home personal care service worker when the client is unable to assist with the transfer. In-home services workers, with training and demonstrated competency, may assist a client in a transfer involving a lift device.
- N) Medication reminding. An in-home personal care services worker may assist a client with medication reminding only when medications have been pre-selected, by the client, a family member, a nurse, or a pharmacist, and are stored in containers other than the prescription bottles, such as medication minders. Medication minder containers must be clearly marked as to day and time of dosage, and reminding includes: inquiries as to whether medications were taken; verbal prompting to take medications; handling the appropriately marked medication minder container to the client; and, opening the appropriately marked medication minder container for the client if the client is physically unable to open the container. These limitations apply to all prescription and all over-the-counter medications. Any irregularities noted in the pre-selected medications, such as medications taken too often or not often enough, or not at the correct time as marked in the medication minder container, shall be reported immediately by the in-home personal care service worker to the supervisor.
- O) Respiratory care is considered skilled care and may NOT be performed by an in-home personal care service worker. Respiratory care includes postural drainage, cupping, adjusting oxygen flow within established parameters, nasal, endotracheal, and tracheal suctioning, and turning off or changing tanks. However, in-home personal care service workers may temporarily remove and replace a cannula or mask from the client's face for the purposes of shaving, washing a client's face or providing oral suctioning.
- P) In addition to the exclusions prescribed in the preceding section, in-home personal care service workers may not act in the following capacities:
- 1.) Perform skilled personal care services as defined in this Part
 - 2.) Becoming or acting as a Power of Attorney
 - 3.) Be involved in any financial transactions of the client, including check writing or account management, outside of contracted services such as grocery shopping or running general errands. In such cases, the in-home services

worker will follow agency policies in regard to securing receipts for items purchased and ensuring both client and worker signatures documenting those expenditures.

- 4.) Perform or provide medication set up for a client
 - 5.) Other actions specifically prohibited by agency policy
- 5) Supervision of an in-home personal care services worker shall include the following:
- A) Someone who is in a supervisory capacity that is designated and available to the worker for questions at all times
 - B) On-site supervision should take place at a minimum every 90 days
 - C) Supervision does not constitute time or an activity that can be billed as a service to the client/consumer

Section 245.70 In-Home Personal Care Services Worker Training

- a) Each agency shall ensure and maintain documentation in the employee file that all persons employed or providing services as an in-home personal care services worker, and who are not otherwise licensed, certified or registered in accordance with state law to render such care, comply with the following conditions:
- 1) Does not have a disqualifying background check under the requirements of the Health Care Worker Background Check Act [statutory reference] without a waiver;
 - 2) Has a copy of the Social Security card; and
 - 3) Has visa or proof of citizenship in compliance with federal requirements for employment.
- b) The agency is responsible for assuring that the individuals who furnish in-home personal care services on its behalf are competent to carry out assigned tasks in the client's place of residence. Proof of a competency evaluation conducted by the agency manager or via another qualified representative of the agency shall address each of the following subjects:
- 1) The employee's job responsibilities and limitations;
 - 2) Communication skills in areas such as with persons who are hard of hearing, have dementia, or other special needs;
 - 3) Observation, reporting and documentation of client status and the service furnished;
 - 4) Performance of personal care tasks for clients including bathing, skin care, hair care, nail care, mouth care, shaving, dressing, feeding, assistance with ambulation, exercise and transfers, positions, bladder and bowel care, and medication reminding.
 - 5) Performance of ability to assist in the use of specific adaptive equipment, such as a lift device, if the worker will be assisting clients who use the device.
 - 6) Basic hygiene and basic infection control practices;
 - 7) Maintenance of a clean, safe and healthy environment;
 - 8) Basic personal and environmental safety precautions;
 - 9) Recognizing emergencies and knowledge of emergency procedures;
 - 10) Confidentiality of client personal, financial and health information;

- 11) Knowledge and understanding of abuse and neglect prevention and reporting requirements;
 - 12) Any other task that the agency may choose to have the worker perform.
- c) All in-home personal care services staff shall complete a minimum of 8 hours of training, which can include self study courses with demonstration of learned concepts, which are applicable to the employee's responsibilities, every 12 months after the starting date of employment. Training shall include:
- 1) Promoting client dignity, independence, self-determination, privacy, choice and rights;
 - 2) Disaster procedures;
 - 3) Hygiene and infection control;
 - 4) Abuse and neglect prevention and reporting requirements
- d) All training shall be documented. Classroom type trainings shall be documented with the date of the training; starting and ending times; instructors and their qualifications; short description of content; and staff member's signature. On-line or self-study trainings shall be documented with information as to the content of the training; the entity that offered or produced the training; and a copy of any quiz or comprehension document assessing the learning from the course.

Section 245.80 Health Care Worker Background Check

An agency shall comply with the Health Care Worker Background Check Act [statutory reference] and the Health Care Worker Background Check Code (Code Reference).

Section 245.85 Infection Control

- a) Each agency shall develop and implement policies and procedures for investigating, controlling, and preventing infections.
- b) Each agency shall adhere, at a minimum, to the following guidelines of the Center for Infectious Diseases, Centers for Disease Control and Prevention, United States Public Health Service, Department of Health and Human Services, as applicable:
 - 1) Guideline for Hand Hygiene in Health-Care Settings
 - 2) Guidelines for Infection Control in Health Care Personnel

Section 245.90 Licensure Required

- a) No person shall open, manage, conduct or maintain an in-home personal care services agency without a license issued by the Department. (Section 3 of the Act)
- b) License Nontransferable
 - 1) Each license shall be issued only for the specific agency named in the application and shall not be transferred or assigned to any other person, agency or corporation.
 - 2) Sale, assignment, lease or other transfer, voluntary or involuntary, shall require relicensure by the new owner or person in interest prior to maintaining, operating or conducting an in-home personal care services agency.
 - 3) In the case of agencies operating under a franchise arrangement, each unique business entity must obtain and maintain a distinct license and may not share licensure based on franchised name status.
- c) Each license shall be for a term of one year and shall expire one year from the date of issuance. However, initial licenses shall expire one year from the end of the month in which the initial license was issued.
- d) Out-of-State Agencies. A license is required for any agency providing care in this state, or functioning in a capacity of matching workers with clients or consumers. In-home personal services care, including internet matching services where the parent agency is domiciled in a state other than this state. In such cases, the following conditions must be met:
 - 1) The licensee must be registered to do business in this state under the Business Corporation Act or otherwise authorized to do business in this State.
 - 2) All professional care supervisory and staff personnel caring for clients residing in the state, will be subject to any licensure, certification, or registration which is required to perform the respective service in the state, and shall be so licensed, certified, or registered.
- e) The licensee shall notify the Department in writing not less than 30 days prior to closing the agency.

Section 245.100 License Application

- a) Initial Application
 - 1) Any person who desires to obtain a license to operate an in-home personal care service agency shall file with the Department a licensure application.
 - 2) Each initial application for licensure shall be on forms provided by the Department and shall contain the following information:
 - A) Name, address, and location of the agency.
 - B) Organization and governing structure of the agency.
 - C) Name and resume of agency manager.
 - D) A description of the services to be provided.
 - E) Sources of financing of services and any other sources of income of the agency.
- b) Renewal Application
 - 1) Each licensee shall file a renewal application with the Department not less than 60 days, nor more than 90 days, prior to the expiration date of the licensee's current license.
 - 2) Each renewal application shall be on forms provided by the Department and shall contain, at a minimum, the information specified in subsection (b) of this Section.
- c) The Department will review each application. The Department will approve the application and issue an initial or renewal license to the applicant for operation of an agency, when it finds that the applicant meets all of the requirements of the Act and the standards established by the Department in this Part. The Department may also issue a provisional license as provided in Section 5 of the Act and Section 245.110 of this Part, or deny an application as provided in Section 6 of the Act and Section 245.150 of this Part.

Section 245.110 Provisional License

- a) Provisional License for New Agencies
- 1) If the Department is unable to determine that the agency complies with the requirements of the Act and this Part from the information provided in the application, the Department may conduct an on-site survey. The Department shall issue a provisional license to an applicant for licensure when the applicant appears to comply with the requirements of the Act and this Part, and either of the following conditions exists:
 - A) The applicant for licensure has not previously been licensed.
 - B) The agency is not in operation at the time of the application.
(Section 5 of the Act).
 - 2) Within 30 days prior to the expiration of the provisional license, the Department shall inspect the agency. If the Department finds that the agency substantially meets the requirements of the Act and this Part, it shall issue a license. This license shall expire one year from the end of the month in which the provisional license was first issued. The initial license fee shall be applied to this license. (Section 5 of the Act)
- b) Provisional License for Operating Agencies
- 1) The Department shall issue a provisional license to an agency when it finds that all of the following conditions exist:
 - A) The agency does not substantially comply with all of the requirements of the Act and this Part.
 - B) The violations of the requirements of the Act and this Part are not serious enough to support adverse licensure action as provided under Sections 9 and 10 of the Act and Section 245.150 of this Part.
 - C) The health and safety of the clients of the agency will be protected during the period of the provisional license. (Section 5 of the Act)
 - 2) When a provisional license is issued to an operating agency, the Department shall notify the agency of the issuance of the provisional license. The notice to the agency shall include the following information:
 - A) A description of the manner in which the agency fails to substantially comply with all of the requirements of the Act and this Part.

- B) A description of the corrections which must be made by the In-Home Personal Care Services agency to substantially comply with all of the requirements of the Act and this Part.
 - C) A specific time within which the necessary corrections shall be completed by the agency. (Section 5 of the Act)
- c) A provisional license is valid for 120 days unless sooner suspended or revoked in accordance with Section 5 of the Act and Section 245.150 of this Part. A provisional license will be renewed for an additional 120 days when the Department finds that all of the following conditions exist:
- 1) The agency does not substantially meet all of the requirements of the Act and this Part.
 - 2) The agency has made significant progress toward correcting deficiencies and bringing the Agency into full compliance with the requirements of the Act and this Part.
 - 3) The health and safety of the clients of the agency will be protected during the period of the extension of the provisional license. (Section 5 of the Act)

Section 245.120 Inspections and Investigations

- a) The Department will conduct such investigations and inspections of licensed agencies and of persons suspected of operating an agency without a license, as it deems necessary to assess compliance with the Act and this Part. The Department will conduct an investigation or inspection based on complaints received by the Department when it finds that the complaint alleges a violation of the Act or this Part and that a reasonable basis exists for the complaint. (Section 7 of the Act)
- b) Agencies shall facilitate any necessary visits by the Department's staff to clients in their homes during the Department's investigations or inspections. The Department will obtain consent from the clients prior to conducting direct observation of the provision of personal care services in the home during an investigation or inspection. (Section 7 of the Act)
- c) Agencies shall reasonably make available to the Department all books, records, policies and procedures, or any other materials requested during the course of an investigation or inspection. (Section 7 the Act)
- d) Inspections and investigations shall be scheduled and conducted by the Department, wherever possible and practical, to combine efforts and purposes so as to create the least possible disruption to the operation of the agency and the provision of services to clients.

Section 245.130 Complaints

- a) Complaints may be submitted either in writing, by telephone or by other electronic means to the state licensing authority in regard to agencies licensed under this Act.
- b) The Department shall conduct an investigation of all complaints received in accordance with Section 245.120. An appropriate investigation may involve record reviews and/or telephone interviews, on-site survey or a combination of methods.

Section 245.140 Violations

a) Notice of Violation

- 1) When the Department determines that an agency is in violation of the Act or this Part, a notice of violation shall be served on the licensee. The notice shall be served on the licensee personally or by certified mail. (Section 9 of the Act)
- 2) Each notice of violation shall be in writing and shall include:
 - A) A description of the nature of the violation.
 - B) Citation of the statutory provision or rule alleged to have been violated.
 - C) A statement that the agency must submit a plan of correction as provided under Section 9(b) of the Act and subsection (b)(1) of this Section.
 - D) A description of additional action the Department may take under the Act, including adverse licensure action under Section 9 of the Act and Section 245.150 of this Part or assessment of a penalty under Section 10 of the Act and Section 245.160 of this Part.
 - E) A statement that the licensee has a right to a hearing to contest the violation as provided in Section 9 of the Act and Section 245.170 of this Part and a description of the procedure for requesting a hearing. (Section 9 of the Act)

b) Plan of Correction

- 1) In response to the receipt of a notice of violation, the agency shall file with the Department a written plan of correction. Each plan of correction is subject to the approval of the Department and shall comply with the following requirements:
 - A) Be filed with the Department within 14 days of the Agency's receipt of the notice of violation.
 - B) State with particularity the method by which the Agency intends to correct each violation specified in the notice of violation.
 - C) Contain a stated date by which each violation will be corrected. (Section 9 of the Act)
- 2) The Department will review each plan of correction. If the Department finds that the plan of correction fails to comply with the requirements in subsection (1) of this

Section, the Department will reject the plan of correction and notify the licensee of the rejection and the reason for the rejection. (Section 9 of the Act)

- 3) The Agency shall have 14 days after the receipt of a notice of rejection in which to submit a modified plan of correction. The Department shall review each modified plan of correction. (Section 9 of the Act)
- 4) The Department shall reject a modified plan and impose a plan of correction, which the agency shall follow, in any of the following conditions:
 - A) The modified plan is not submitted on time.
 - B) The modified plan fails to resolve the reasons for the rejection of the plan of correction.
 - C) The modified plan fails to state with particularity the method by which the agency intends to correct each violation specified in the notice of violation.
 - D) The modified plan fails to contain a stated date by which each violation will be corrected.

c) Hearing to Contest Violations

- 1) An agency may contest any department action under this section by sending a written request for a hearing to the Department within 14 days of the receipt of the notice of the action being contested as provided in Section 9 of the Act and Section 245.150 of this Part.
- 2) Whenever possible, all action of the Department under this Section arising out of a violation shall be contested and determined at a single hearing. (Section 9 of the Act)

Section 245.150 Adverse Licensure Actions

- a) Adverse licensure actions include the denial of an initial license application, denial of an application for license renewal, revocation of a license, suspension of a license, and the imposition of a penalty or fine.
- b) Adverse licensure action shall be considered by the Department under the following conditions:
 - 1) Failure of the agency to meet the standards prescribed by the Department in this Part. (Section 6 of the Act)
 - 2) Satisfactory evidence that the moral character of the applicant or supervisor of the agency is not reputable. In determining moral character, the Department may take into consideration any convictions of the applicant or supervisor for criminal offenses but such convictions shall not operate as a bar to licensing. (Section 6 of the Act.)
 - 3) Lack of personnel qualified by training and experience to properly perform the function of an agency. This determination shall be based on the personnel requirements established in this Part. (Section 6 of the Act)
 - 4) Insufficient financial or other resources to operate and conduct an agency in accordance with the requirements of the Act and this Part. (Section 6 of the Act)
 - 5) Refusal to make available books, records, policies and procedures, or any other materials requested during the course of an investigation or inspection available to the Department. (Section 7 of the Act)
 - 6) Violation of any provision of the Act or this Part. (Section 9 of the Act)
 - 7) Conduct or practice found by the Department to be detrimental to the health, safety or welfare of a client.
- c) In determining whether to take adverse licensure action, the Department shall consider the following factors:
 - 1) The gravity of the violation, including the probability that death or serious physical or mental harm to a client will result or has resulted and the severity of the actual or potential harm.
 - 2) The extent to which the provisions of the Act or this Part were violated.
 - 3) The reasonable diligence exercised by the licensee and any efforts by the licensee to correct the violations.

- 4) Any previous violations committed by the licensee.
 - 5) The financial benefit to the agency of committing or continuing the violation. (Section 10 of the Act)
- d) The Department shall deny an application for license renewal when the licensee refuses to make payment at the time of the application for renewal of the license for penalties or fines which have been imposed and added to the license fee. (Section 10 of the Act)
- e) The Director will order an emergency suspension of a license, when the Director finds that continued operation of the agency poses an immediate and serious danger to the public health, safety and welfare. The suspension shall take effect upon the issuance of an order of emergency suspension by the Director and shall remain in effect during any administrative proceeding contesting the action. Promptly following any emergency suspension of a license, the Department shall take action to revoke the license.
- f) Notice of Adverse Licensure Action
- 1) The Department shall notify the applicant or licensee in writing, prior to denying an application, refusing to renew a license, or revoking a license. (Section 9 of the Act)
 - 2) The notice shall be served on the applicant or licensee either by personal service or by registered mail. The notice shall contain the following information:
 - A) A description of the particular reasons for the proposed action, including citations of the specific provisions of the Act and this Part under which the proposed action is being taken.
 - B) The date, not less than 15 days from the date of the mailing or service of the notice, on which the action will take effect, unless appealed by the applicant or licensee.
 - C) A description of the manner in which the applicant or licensee may appeal the proposed action and the right of the applicant or licensee to a hearing under Section 9 of the Act and Section 245.170 of this Part.

Section 245.160 Penalties and Fines

- a) Notice of Assessment of Penalties and Fines
 - 1) When the Department determines that a penalty or fine is to be assessed under Section 245.150 of this Part, the Department shall issue a notice of fine assessment which shall contain the following information:
 - A) A specific description of the violations for which the fine is levied. (Section 10 of the Act)
 - B) The amount of the penalty or fine, based on consideration of the factors specified in Section 10 of the Act and Section 245.140 of this Part. The Department may impose a fine of up to \$100 per day commencing on the date the violation was identified and ending on the date the violation is corrected, or action is taken by the Department to suspend, revoke or deny renewal of the license, whichever comes first. (Section 10 of the Act)
 - C) A description of the manner in which the licensee may appeal the assessment and the right of the licensee to a hearing under Section 11 of the Act and Section 245.170 of this Part.
 - 2) The notice shall be served on the applicant or licensee either by personal service or by registered mail.
- b) Payment of Penalties and Fines
 - 1) All penalties and fines shall be paid to the Department by the licensee within the following time periods:
 - A) If the assessment is not contested by the licensee, no later than 14 days after the notice of assessment.
 - B) If the fine is contested in accordance with Section 10 of the Act and Section 245.170 of this Part, no later than 14 days after the licensee's receipt of the final decision, unless the decision is appealed and the order is stayed by court order under Section 10 of the Act.
 - 2) If payment has not been made by the licensee within the time periods specified in subsection (b)(1) of this Section, the Director shall issue a written demand for payment to the licensee. (Section 10 of the Act)

- 3) If the licensee against whom a penalty or fine has been assessed does not comply with a written demand for payment within 30 days of the demand, the Director shall issue an order to do any of the following:
- A) Certify to the Comptroller that the delinquent fines are due and owing from the licensee. The certification shall include any amounts due and owing as a result of a civil action pursuant to Section 10 of the Act. The Department shall send notice of the certification to the licensee and to any other person known to the Department who may be affected by the certification. (Section 10 of the Act)
 - B) Certify to the Social Security Administration that the delinquent fines are due and owing from the licensee. The certification shall include any amounts due and owing as a result of a civil action pursuant to Section 10 of the Act. The Department shall send notice of the certification to the licensee and to any other person known to the Department who may be affected by the certification. (Section 10 of the Act)
 - C) Add the amount of the penalty or fine to the agency's licensing fee. (Section 10 of the Act)
 - 1. Bring an action in circuit court to recover the amount of the penalty or fine. (Section 10 of the Act)

Section 245.170 Hearings

- a) Applicants for an agency license and licensees may appeal certain actions of the Department under the Act and this Part. Following receipt of an appeal or a request for a hearing from an applicant or licensee, the Department shall conduct a hearing to review the contested action.
- b) Hearings conducted pursuant to the Act and this Part shall be conducted in accordance with the following:
 - 1) Section 11 of the Act.
 - 2) The Administrative Procedure Act
 - 3) The rules of the Department entitled "Rules of Practice and Procedure in Administrative Hearings".
- c) Applicants and licensees have a right to administrative review of actions and decisions of the Department by the courts under the Administrative Review Law.

Subpart C: Client Services

Section 245.200 Required Agency Actions

- a) Agencies licensed as in-home personal care service agencies shall provide services that are non-medical in nature and that are intended to assist clients with activities of daily living that would include but not limited to, activity of daily living support and personal care, medication reminding, housekeeping services, personal laundry, cooking, shopping, assistance in getting to and from appointments, maintenance of household records, and companionship. Each agency shall maintain and distribute to clients within 5 days of service initiation and thereafter annually, a listing of the types of services offered by the agency, the scope of the work to be provided under each area.
- b) When services are provided to clients by means of agency employees, through contractual arrangements, or under circumstances where the agency is acting as a placement agency, there shall be a written contractual agreement between all of the parties, including the client and the agency that includes but is not limited to:
 - 1) Indication and assurance of compliance by agency with the requirements of the licensing Act, including the Health Care Worker Background Check Act.
 - 2) Identification of responsible party or parties for payment of employment taxes, social security taxes, and workers' compensation.
 - 3) Information on the party or parties responsible for supervision of worker, as well as hiring, firing and discipline of the in-home personal care services worker.
 - 4) Identification of the charges to be paid, payment schedule, and to who payments are to be made by, or on behalf of the client for services under the contract for services.
 - 5) Time period for contractual arrangement and conditions for termination of contract.
 - 6) Contact information for client to use in case of concerns, complaints or questions on care to be provided.
- c) Acceptance of clients. In-home personal service agencies shall develop and follow policies on acceptance and discharge of clients that shall include but not be limited to the following:
 - 1) Persons shall be accepted for service on the basis of their desire or need for household or personal support and/or companionship services. The services provided by an in-home personal service agency will not be medical in nature or the type of services that would require performance by an agency licensed as a home health agency.

- 2) That no person shall be refused services based on age, race, color, sex, marital status, or national origin.
- 3) When services are terminated by the agency, the client is to be notified at least 3 working days in advance of the date of termination with a stated reason for the termination. This information will be maintained in the client record.
 - A) The 3 day notice requirement is not applicable in cases where the worker's safety is at risk. In such cases, the agency may notify the client of termination of services and the reason for that termination. Documentation of the risk to the provider shall be maintained in the client record.
- d) Plan of Service. For each client a plan shall be established by the agency, in consultation with the client and his or her appropriate family members or representative that outlines the services to be provided to the client. The plan should address and include but not be limited to:
 - 1) The level, type and or scope of services the client is receiving;
 - 2) Identification of any functional limitations of the client and its relevance to services.
 - 3) Any information on circumstances that might impact activity or involvement by the client including basic information on medications being taken, treatments received, activity, diet, mental status.
 - 4) Physician signature is not required for the plan of care developed under this Section.
- e) The service plan shall be reviewed and revised as necessary, but not less than once annually.
- f) Client Records. A client record will be maintained for each client receiving in-home services. The record shall contain:
 - 1) Appropriate identifying information for the client, including the client's name, address, and telephone number(s).
 - 2) The name, telephone number and address of the client's representative, if applicable;
 - 3) The name, telephone number and address of an individual or relative to be contacted in the event of an emergency;
 - 4) The plan of services agreed to by the client and agency.
 - 5) A copy of the Client Home Care Services Agreement or Contract.

- 6) Evidence of supervisory assessment of service provision.
- g) Each agency shall have a written policy on records procedures and shall retain records for a minimum of two years beyond the last date of service provided.
- h) Each agency shall have a written policy for the protection of confidentiality of client records, which explains the use of records, removal or records and release of information.

Section 245.210 Client Service Contracts

- a) A contract between an in-home personal care services agency and a client must be in force, a copy of which is provided to the client and a copy maintained in the client file at the agency. The document shall include at least the following elements in the body or through supporting documents or attachments:
- 1) Client consent to receive services;
 - 2) The name, street address and mailing address of the agency;
 - 3) The name and mailing address of the person or persons designated as the agency manager and or other individual beyond the in-home personal care services worker to contact in regard to questions, problems, needs or concerns;
 - 4) A statement describing the agency license status;
 - 5) The duration of the contract;
 - 6) The rate to be paid by the client and a detailed description of services to be provided as a part of the rate;
 - 7) A description of the process through which the contract may be modified, amended or terminated;
 - 8) A description of the agency complaint resolution process;
 - 9) The billing and payment procedures and requirements;
 - 10) A statement regarding the agency's policy on notification of a relative or other individual in case of an emergency;
 - 11) A notice, as developed and provided by the Department, indicating the responsible party(ies) for the following:
 - A) Employer of the in-home personal care services worker
 - B) Liability for the in-home personal care services worker
 - C) Payment of wages to the in-home personal care services worker
 - D) Payment of employment taxes, unemployment insurance and worker's compensation for the in-home personal care services worker

- E) Payment of social security taxes for the in-home personal care services worker
- F) Day-to-day supervision of the in-home personal care services worker
- G) Assignment of duties to the in-home personal care services worker
- H) Responsibility for hiring, firing and discipline of the in-home personal care services worker(s)
- I) Provision of equipment or materials for the in-home personal care service worker's use in providing services to the consumer.

Section 245.230 Quality Improvement Program

- a) Each agency shall develop a quality improvement program for their agency. The quality improvement program should include written policies and shall make an overall evaluation of the agency's total program at least once a year. The evaluation shall, at a minimum, include a client record review, information gathered during supervisory reviews and client satisfaction data as appropriate. Results of the evaluation shall be reported to and acted upon by those responsible for the operation of the agency and maintained separately as administrative records.
- b) Record Review. At least quarterly the agency shall review a sample of both active and closed client records to assure that established policies are followed in providing services (direct, as well as those under contractual arrangement). The existence, results, and process of a quality improvement program cannot be used as evidence in any civil or criminal court proceedings.
- c) The results of the quality improvement program cannot be the sole basis for citing a violation.

Section 245.240 Abuse, Neglect & Financial Exploitation Prevention and Reporting

- a) When an agency has a reasonable belief that a client has been the victim of abuse, neglect or financial exploitation, the agency shall:
- 1) In the case of an individual 60 years of age or older or one who otherwise qualifies as an “eligible adult” under the Elder Abuse and Neglect Act, notify the Elder Abuse and Neglect agency designated for the area in which the client resides. The agency shall document this report and maintain documentation on the premises for a 12-month period after the date of the report.
 - 2) In the case of an alleged victim under the age of 18, notify the Department of Children and Family services through the Child Abuse Hotline. The agency shall document this report and maintain documentation on the premises for a 12 month period after the date of the report.
 - 3) If the abuse or neglect is alleged to be a result of actions by an employee of the agency, or one placed by an agency providing in-home services, the agency will remove the alleged perpetrator from direct contact with clients and investigate the allegation(s).
- b) In cases of allegations of abuse or neglect by an employee or an individual who has been placed by an agency, the agency shall conduct their own investigation and develop a written report of the findings of their investigation within 14 days of the initial report. The agency shall send the written report to the Department within 24 hours of its completion and shall maintain a copy of the report on the agency premises for 12 months after the date of the report.
- c) The written report of the investigation conducted pursuant to this Section shall contain at least the following:
- 1) Dates, times and description of alleged abuse, neglect or financial exploitation;
 - 2) Description of injury or abuse to client;
 - 3) Any actions taken by the licensee;
 - 4) A list of individuals and agencies interviewed or notified by the licensee;
 - 5) A description of the action to be taken by the licensee to prevent the abuse, neglect or financial exploitation from occurring in the future.
- d) Agency employees and volunteers are obligated to report abuse, neglect, or financial exploitation of a client to the agency management and to the appropriate elder abuse and neglect agency or the Department on Aging.

- e) The agency shall immediately contact local law enforcement authorities (e.g., telephoning 911 where available) in the following situations:
 - 1) Physical abuse involving physical injury inflicted on a client by a staff member;
 - 2) Sexual abuse of a client by a staff member;
 - 3) When an alleged crime has been committed in the client's home by a person other than the client; or
 - 4) When a client's death has occurred other than by disease processes.

- f) Each agency shall develop and implement a policy concerning local law enforcement notification, including:
 - 1) Ensuring the safety of clients in situations requiring local law enforcement notification;
 - 2) Contacting local law enforcement in situations involving physical abuse of a client by another person, not a staff member of the agency;
 - 3) Contacting police, fire, ambulance and rescue services in accordance with recommended procedure;
 - 4) Seeking advice concerning preservation of a potential crime scene.