In-Home Personal Care
Agency Licensure

Model Legislation
Home Care Association of America
Approved July 19, 2006
Section 1

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

Section 2

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

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

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

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

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

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

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

In-home services worker or in-home personal care 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.

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

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).

Service plan or 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 provided 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.

Section 3

Licensure Required

(a) On or after January 1, 200 *, no person shall open, manage, conduct, or maintain an in-home personal care services agency, or advertise himself or herself as an in-home personal care services agency or as offering services that would be included in the definition of in-home personal care services or in-home personal care, without a license issued by the Department. This licensure shall be in accordance with rules adopted by the Department in order to protect the health, safety, and
well-being of clients and consumers through licensure of personal care services 
agencies which shall address, at a minimum, the following areas:

(1) Compliance with requirements of the state law related to criminal 
background checks of persons to provide services to the client in his or her 
home;

(2) Compliance with requirement for provision of list of client rights, as 
developed by the Department, to the client within five (5) calendar days of 
the initiation of services to the client and thereafter, on an annual basis. 
These rights include:

(A) Client’s right to be free from verbal, physical and psychological 
abuse and to be treated with dignity;

(B) Client’s right to temporarily or permanently suspend, terminate, or 
add the provision of any services stated in the service plan;

(C) Client’s right to have property treated with respect;

(D) Client’s right to voice grievances regarding services furnished or 
regarding the lack of respect for property by anyone who is 
furnishing services on behalf of the personal services agency and 
that the client must not be subject to discrimination or reprisal for 
doing so;

(E) A statement that it is not within the scope of the in-home personal 
care services agency license to manage the medical and health 
conditions of the clients;

(F) The charges for services provided by the in-home personal care 
services agency;

(G) The hours of operation of the agency and the procedures for 
contacting the agency’s manager, or their designee, while the 
agency office is open for business and while it is closed;

(H) The procedure and contact information to call to file a complaint 
with the agency; and,

(I) The procedure and contact information to call to file a complaint 
with the state licensing department.

(3) Notification, in a form and manner established by the Department in rule, to 
in-home personal care services workers and clients as to the party or parties 
responsible under State and federal laws for payment of employment taxes, 
social security taxes, and workers’ compensation, liability insurance coverage, 
the day-to-day supervision of workers, and the hiring, firing and discipline of 
workers with the placement arrangement for provision of in-home personal 
care services;

(4) Compliance with the minimum standards and regulations developed by the 
Department addressing health, safety and well-being of clients receiving in-
home personal care services;

(5) Payment of an annual non-refundable fee of $250 for agency licensure, as 
well as any fines of penalties levied as a result of a finding by the agency as to 
non-compliance.
(b) By January **200*, the Department shall adopt standards for the licensure and operation of in-home personal care service agencies operated in this state in accordance with the provisions outlines in Section 3 of this Act. The structure of the standards shall be based on the concept of personal care services and its focus on assistance with activities of daily living, housekeeping, personal laundry, and companionship being provided to an individual intended to enable that individual to remain safely and comfortably in his or her own personal residence. As in-home personal care services do not include services that would be required to be performed by an individual licensed under the Nursing Practice Act, the standards shall be developed from a similar concept. After consideration and recommendation by the In-Home Personal Care Services Advisory Committee, the Department shall adopt such rules and regulations as are necessary for the proper regulation of home services agencies.

(c) A license is required for any personal services agency providing services in this state where the parent agency is located in another state. The agency must be authorized by the Secretary of State to conduct business in the state and have a branch office located in this state.

Section 4

Advisory Board

(a) The Director shall appoint an In-Home Personal Care Services Advisory Committee composed of 11 persons to advise and consult with the Department in the administration of the Act. Five of the appointed members shall represent the personal care services profession. Two of the appointed members shall represent consumers of in-home personal care services, either as a direct consumer or a family member of a consumer. Two of the appointed members shall be in-home personal care services workers. One of the appointed members shall be a representative of an organization that advocates for consumers. And, one member shall represent the general public. The recommendations of organizations representing professional and industry interests, as well as other organizations may be taken into consideration when selecting individuals for appointment to this Committee.

(b) Each member shall hold office for a term of 3 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The terms of office of the members first taking office shall expire, as designated at the time of appointment, one at the end of the first year, one at the end of the second year, and 3 at the end of the 3rd year. The term of office of each of the original appointees shall commence on January 1, 200**(12 months prior to the date when licensure is required)**
(c) The Committee shall meet as frequently as the Director deems necessary but, no less than one time per year. Committee members, while service on business of the Committee, shall receive actual and necessary travel and subsistence expenses while so service away from their places of residence.

(d) The Committee shall provide input and recommendations to the Department on the development of rules for the licensure of personal care services agencies operating in the State. On or before ***, the Committee shall issue an interim report to the General Assembly on the status of development and implementation of the rules.

**Section 5**

**Licenses**

(a) If an applicant for licensure has not been previously licensed, and the agency is not in operation at the time the application is made, the Department may issue a provisional license. A provisional license shall be valid for a period of 120 days unless sooner suspended or revoked pursuant to Section 9 of this Act. Within 30 days prior to the termination of a provisional license, the Department shall inspect the agency and, if the applicant substantially meets the requirements for licensure, it shall issue a license under this Section. If the Department finds that the holder of the provisional license does not substantially meet the requirements for licensure, but has made significant progress toward meeting those requirements, the Director may renewal the provisional license once for a period not to exceed 120 days from the expiration of the initial provisional license.

(b)(1) The Director may also issue a provisional license to any licensed agency which does not substantially comply with the provisions of this Act and the rules promulgated under this Act, provided he or she finds that the health, safety, and well being of the clients of the agency will be protected during the period for which such a provisional license is issued. The term of such provisional license shall not exceed 120 days.

(2) The Director shall advise the licensee of the conditions under which such provisional license is issued, including the manner in which the licensee fails to comply with the provisions of the Act or rules, and the time within which the corrections necessary for the agency to substantially comply with the Act and rules shall be competed.

(3) The Director, at his discretion, may extend the term of such a provisional license for an additional 120 days, if he finds that the agency has made substantial progress toward correcting the violations and bring the agency into full compliance with this Act and the rules promulgated hereunder.

(c) An annual license shall be issued to any person conducted or maintaining an agency upon receipt of an application and payment of the licensure fee, and when
the other requirements of the Act, and the standards, rules and regulations
promulgated hereunder, are met.

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

Section 6

License Denial

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

(a) Failure to meet the minimum standards prescribed by the Department pursuant to
Section 6;

(b) 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 but such
conviction shall not operate as a bar to licensing;

(c) Lack of personnel qualified by training and experience to properly perform the
function of an in-home personal care services agency;

(d) Insufficient financial or other resources to operate and conduct a personal services
agency in accordance with the requirements of this Act and the minimum
standards, rules and regulations promulgated thereunder.

Section 7

Inspections and Investigations

The Department may conduct any such investigation and inspection as it deems necessary
to assess compliance with this Act and the rules and regulations promulgated thereto.
Whenever possible and practical, on-site reviews shall be scheduled, in an effort so as to
reduce the number of visits and the disruption to agency operation. Investigations and
inspection may include the direct observation of the provision of client care in the home,
if consent is given by the client. Agencies licensed under the Act shall make available to
the Department all books, records, policies and procedures, or any other materials
requested during the course of an investigation of inspection. Refusal to make such
materials available to the Department shall be grounds for license revocation, or the
imposition of any other penalty provided in the Act.
Section 8

Complaint Process

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

Section 9

Violations

(a) When the Department determines that an agency is in violation of the Act or any rules promulgated hereunder, a notice of violation shall be serviced upon the licensee. Each notice of violation shall be prepared in writing and shall specify the nature of the violation and the statutory provision or rule alleged to have been violated. The notice shall inform the licensee of any action the Department may take under this Act, including the requirement of an agency plan of correction, assessment of a penalty, or licensure action. The Director or his designee shall also inform the licensee of rights to a hearing under the Act.

(b) Each agency served with a notice of violation under the Act shall file with the Department a written plan of correction within 15 days of receipt of the notice. The plan of correction is subject to approval of the Department and shall state with particularity the method by which the agency intends to correct each violation and shall contain a stated date by which each violation shall be corrected.

(c) If the Department rejects a plan of correction, it shall send notice of the rejection and the reason for rejection to the licensee. The agency shall have 10 days from receipt of the notice of rejection in which to submit a modified plan. If the modified plan is not submitted on time, or if the modified plan is rejected, the agency shall follow a plan of correction imposed by the Department.

(d) If an agency desires to contest any Department action under this Section, it shall send a written request for a hearing under Section * to the Department within 15 days of receipt of notice of the contested action. The Department shall commence the hearing as provided under Section 11. Whenever possible, all action of the Department under this Section arising out of a violation shall be contested and determined at a single hearing. Issues decided at a hearing may not be reheard at subsequent hearings under this Section.
Section 10

Fines or penalties

(a) The licensee of an agency operating in violation of this Act or any rule adopted hereunder may be subject to the penalties or fines levied by the Department as specified in this Section.

(b) When the Director determines that an agency has failed to comply with this Act or any rule adopted hereunder, the Department may issue a notice of fine assessment which shall specify the violations for which the fine is levied. The Department may impose a fine of $100 per day commencing on the date the violation was identified and ending on the date the violation is corrected, or action is taken to suspend, revoke, or deny renewal of the license, whichever comes first.

(c) In determining whether a fine is to be imposed, the Director 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, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) the reasonable diligence exercised by the licensee and efforts to correct violations;

(3) any previous violations committed by the licensee; and

(4) the financial benefit to the agency of committing or continuing the violation.

(d) All fines shall be paid to the Department within 15 days of the notice of assessment or, if the fine is contested under the provisions of this Act, within 15 days of the receipt of the final decision, unless the decision is appealed and the order is stayed by court order. A fine assessed under this Act shall be collected by the Department. If the licensee against whom the fine has been assessed does not comply with a written demand for payment within 30 days, the Director shall issue an order to do any of the following:

(1) Certification to the appropriate state entity of delinquent fines for the purpose of interception of state income tax refunds or other payments due to the licensee in order to satisfy, in whole or in part, any delinquent fines or amounts recoverable.

(2) Addition of the amount of the penalty to the agency’s licensing fee; if the licensee refuses to make the payment at the time of application for renewal of its license, the license shall not be renewed; or
(3) Bring an action in circuit court to recover the amount of the penalty.

**Section 11**

**Administrative Review**

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

**Section 12**

**Public Nuisance**

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

**Section 13**

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

**Section 14**

**Effective Date**

This Act becomes effective upon becoming law.