



**Home Care**  
Association of America

**In-Home Personal Care  
Agency Licensure**

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

1 **Section 1**

2  
3 **Legislative Intent**

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

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12  
13 **Section 2**

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15 **Definitions**

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

19  
20 **Agency** means: an in-home personal care services agency.

21  
22 **Client** means: an individual desiring personal services who has been accepted to receive  
23 personal services from a personal services agency.

24  
25 **Department** means: the Department of \*\*\* (the agency designated to license and  
26 regulate this type of agency).

27  
28 **In-home personal care services agency** means: a person or entity that provides or  
29 offers to provide personal care service, as defined in this Act, in a consumers place of  
30 residence for compensation, whether through the agency's own employees, contractual  
31 employees, a placement agency or by arrangement with another person.

32  
33 In-home personal care services agency does not include an agency that limits its business  
34 to exclusively providing house cleaning services; a local health department; agencies  
35 required to be licensed under a separate Act as a home health agency, a nurse registry; a  
36 hospital or a long term care facility, or a person approved under the disability, aging or  
37 rehabilitative services office acting as a personal care attendant (PCA) under the program  
38 authorized at (statutory reference to this program).

39  
40 **In-Home personal care services** means: assistance with activities of daily living,  
41 housekeeping, personal laundry, and companionship provided to an individual in his or  
42 her residence, which are intended to enable that individual to remain safely and  
43 comfortably in their residence. Levels of in-home or personal care services include:

44  
45 Attendant Care – hands on assistance with activities of daily living including, but  
46 not limited to: ambulation, transfer, toileting, and grooming.

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

2

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

6

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

14

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

18

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

21

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

30

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

37

38

39

### Section 3

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#### Licensure Required

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

1 well-being of clients and consumers through licensure of personal care services  
2 agencies which shall address, at a minimum, the following areas:  
3

4 (1) Compliance with requirements of the state law related to criminal  
5 background checks of persons to provide services to the client in his or her  
6 home;  
7

8 (2) Compliance with requirement for provision of list of client rights, as  
9 developed by the Department, to the client within five (5) calendar days of  
10 the initiation of services to the client and thereafter, on an annual basis.  
11 These rights include:  
12

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

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

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

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

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

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

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

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

33 (I) The procedure and contact information to call to file a complaint  
34 with the state licensing department.  
35

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

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

46 (5) Payment of an annual non-refundable fee of \$250 for agency licensure, as  
47 well as any fines or penalties levied as a result of a finding by the agency as to  
48 non-compliance.

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

##### Advisory Board

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

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

## 12 Section 5

### 13 Licenses

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



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

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

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11  
12 **Section 6**

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14 **License Denial**

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16 An application for a license may be denied for any of the following reasons:  
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- 18 (a) Failure to meet the minimum standards prescribed by the Department pursuant to  
19 Section 6;  
20 (b) Satisfactory evidence that the moral character of the applicant or supervisor of the  
21 agency is not reputable. In determining moral character, the Department may take  
22 into consideration any convictions of the applicant or supervisor but such  
23 conviction shall not operate as a bar to licensing;  
24 (c) Lack of personnel qualified by training and experience to properly perform the  
25 function of an in-home personal care services agency;  
26 (d) Insufficient financial or other resources to operate and conduct a personal services  
27 agency in accordance with the requirements of this Act and the minimum  
28 standards, rules and regulations promulgated thereunder.  
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31 **Section 7**

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33 **Inspections and Investigations**

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35 The Department may conduct any such investigation and inspection as it deems necessary  
36 to assess compliance with this Act and the rules and regulations promulgated thereto.  
37 Whenever possible and practical, on-site reviews shall be scheduled, in an effort so as to  
38 reduce the number of visits and the disruption to agency operation. Investigations and  
39 inspection may include the direct observation of the provision of client care in the home,  
40 if consent is given by the client. Agencies licensed under the Act shall make available to  
41 the Department all books, records, policies and procedures, or any other materials  
42 requested during the course of an investigation of inspection. Refusal to make such  
43 materials available to the Department shall be grounds for license revocation, or the  
44 imposition of any other penalty provided in the Act.  
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- 1 (3) Bring an action in circuit court to recover the amount of the  
2 penalty.  
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5 **Section 11**

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7 **Administrative Review**

8  
9 Whenever the Department refuses to grant, or revokes or suspends a license to open,  
10 conduct, operate or maintain an agency, the applicant or licensee may have such decision  
11 reviewed under the provisions of the administrative review law. In such cases the  
12 licensee shall comply with the requirements and time frame for filing appeals after  
13 appropriate and timely notification by the Department of the action to be taken.  
14

15  
16 **Section 12**

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18 **Public Nuisance**

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20 The operation or maintenance of an agency in violation of this Act or of the rules and  
21 regulations promulgated by the Department is declared a public nuisance inimical to the  
22 public welfare, The Director of the Department in the name of the People of the State,  
23 through the Attorney General or the State's Attorney of the county in which the violation  
24 occurs, may in addition to other remedies herein provided, bring action for an injunction  
25 to restrain such violation or to enjoin the future operation or maintenance of any such  
26 agency.  
27

28  
29 **Section 13**

30  
31 This Section of the Act would be to make amendments to other Acts to bring into  
32 compliance with this Act , i.e. state criminal background check acts, nurse agency or  
33 home health agency licensing, etc.  
34

35  
36 **Section 14**

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38 **Effective Date**

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40 This Act becomes effective upon becoming law.