

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 397

Introduced by Johnson, 37

Read first time January 16, 2007

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health and welfare; to adopt the
2 In-home Personal Care Services Act.
3 Be it enacted by the people of the State of Nebraska,

1 Section 1. This act shall be known and may be cited as
2 the In-home Personal Care Services Act.

3 Sec. 2. (1) The Legislature declares it to be the public
4 policy of this state that:

5 (a) An individual should be allowed to remain
6 self-sufficient in his or her residence for as long as possible;
7 and

8 (b) The state has a legitimate interest in assuring
9 that all in-home care services, including attendant, companion,
10 homemaker, and services, provided to a person at his or her
11 residence are performed under circumstances that insure consumer
12 protection and quality care.

13 (2) The purposes of the In-home Personal Care Services
14 Act is to provide for the continued self-sufficiency of individuals
15 and better protection of the public health and well-being through
16 the licensing of in-home personal care services agencies.

17 Sec. 3. For purposes of the In-home Personal Care
18 Services Act:

19 (1) Activities of daily living has the definition found
20 in section 71-6602;

21 (2) Attendant services means hands-on assistance with
22 activities of daily living and transfer, exercise, grooming,
23 self-administering medication, and similar activities;

24 (3) Client means an individual who has been accepted to
25 receive in-home personal care services from an in-home personal

1 care services agency;

2 (4) Companion services means the provision of fellowship,
3 care, and protection for individuals, including, but not limited
4 to, letter writing, escort services, reading, and medication
5 reminders;

6 (5) Department means the Department of Health and Human
7 Services;

8 (6) Homemaker services means assistance with household
9 tasks, including, but not limited to, housekeeping, personal
10 laundry, shopping, incidental transportation, and meals;

11 (7) In-home personal care services means attendant
12 services, homemaker services, or companion services provided to
13 an individual in his or her residence to enable the individual
14 to remain safe and comfortable in his or her residence. In-home
15 personal care services does not include (a) health care procedures
16 which require the exercise of nursing judgment or medical
17 judgement, (b) incidental services provided by a licensed health
18 care facility to patients of the licensed health facility, or (c)
19 services that require the order of a health care professional for
20 the services to be lawfully performed;

21 (8) In-home personal care services agency means a person
22 or entity that provides or offers to provide in-home personal
23 care services for compensation, whether through the agency's own
24 employees or through contract employees. In-home personal care
25 services agency does not include: A local public health department;

1 a home health agency, a hospital, a skilled nursing facility, or an
2 intermediate care facility licensed under the Health Care Facility
3 Licensure Act; a nurse aide registry; or an agency that limits its
4 business exclusively to providing housecleaning services;

5 (9) In-home personal care services worker means a person
6 with appropriate training and competency who provides in-home
7 personal care services;

8 (10) Personal representative means a person who has the
9 authority to act on behalf of a client with regard to an action to
10 be taken; and

11 (11) Plan of service means a written list of the types
12 and schedule of services prepared by the in-home personal care
13 service agency updated to reflect changes in needs or services as
14 appropriate but at least annually, to be provided to the client
15 subject to the client's right to temporarily suspend, permanently
16 terminate, temporarily add, or permanently add any such service.

17 Sec. 4. On or after January 1, 2008, no person shall
18 open, manage, conduct, or maintain an in-home personal care
19 services agency or advertise as an in-home personal care services
20 agency or as offering in-home personal care services without
21 a license issued by the department. By December 1, 2007, the
22 department shall adopt and promulgate rules and regulations
23 containing standards for the licensure and operation of in-home
24 personal care service agencies operated in this state in accordance
25 with the In-home Personal Care Services Act.

1 Sec. 5. (1) A person may apply for a license as an
2 in-home personal care services agency by:

3 (a) Filing an application with the department on a form
4 developed and provided by the department;

5 (b) Paying a fee of two hundred fifty dollars; and

6 (c) Providing proof of compliance with the In-home
7 Personal Care Services Act and the rules and regulations adopted
8 and promulgated under the act.

9 (2) The department may issue a license to an applicant if
10 it finds that the applicant meets the requirements of subsection
11 (1) of this section. A license shall be issued only for the in-home
12 personal care services agency named in the application and shall
13 not be transferred or assigned. Upon sale, assignment, lease, or
14 transfer, voluntary or involuntary, of the in-home personal care
15 services agency, including a transfer that qualifies as a change in
16 ownership, the new owner shall apply for and be granted a license
17 from the department prior to maintaining, operating, or conducting
18 the in-home personal care services agency.

19 Sec. 6. (1) If an applicant for a license under the
20 In-home Personal Care Services Act has not been previously licensed
21 and the in-home personal care services agency is not in operation
22 at the time the application is made, the department may issue a
23 provisional license to the applicant. A provisional license shall
24 be valid for a period of up to one year from the date of issuance,
25 shall not be renewed, and may be converted to a regular license

1 upon a showing that the provisional licensee fully complies with
2 the requirements for licensure under the act.

3 (2) (a) The department may also issue a provisional
4 license to any in-home personal care services agency licensed under
5 the act which upon inspection does not substantially comply with
6 the act and the applicable rules and regulations if the department
7 finds that the health, safety, and well-being of the clients of the
8 in-home personal care services agency will be protected during the
9 period for which such a provisional license is issued. The term of
10 such provisional license shall not exceed one hundred twenty days.

11 (b) The department shall advise the licensee of the
12 conditions under which a provisional license is issued, including
13 the manner in which the licensee fails to comply with the
14 provisions of the act or rules and regulations and the time within
15 which the corrections necessary for the licensee to substantially
16 comply with the act or rules and regulations shall be completed.

17 (c) The Director of Health and Human Services, at his
18 or her discretion, may extend the term of such a provisional
19 license granted pursuant to subdivision (2) (a) of this section for
20 an additional one hundred twenty days, if he or she finds that
21 the licensee has made substantial progress toward correcting the
22 violations and bringing the licensee into full compliance with the
23 act, rules, and regulations.

24 Sec. 7. The department may deny an application for a
25 license for any of the following reasons:

1 (a) Failure to meet the minimum standards prescribed by
2 the department in rules and regulations adopted under the In-home
3 Personal Care Services Act;

4 (b) Satisfactory evidence that the moral character of
5 the applicant or any supervisor of the agency is not reputable.
6 In determining moral character, the department may take into
7 consideration any criminal convictions of the applicant or a
8 supervisor employed by the applicant, but such conviction shall not
9 operate as a bar to licensing;

10 (c) Lack of qualified in-home personal care services
11 workers; and

12 (d) Insufficient financial or other resources to operate
13 and conduct an in-home personal care services agency in accordance
14 with the requirements of the act.

15 Sec. 8. The department may conduct such investigations
16 and inspections as it deems necessary to assess compliance with
17 the In-home Personal Care Services Act. Whenever possible and
18 practical, on-site reviews shall be scheduled, in an effort so as
19 to reduce the number of visits and the disruption to operation
20 of the in-home personal care services agency. Investigations and
21 inspections may include the direct observation of the provision of
22 in-home personal care services if consent is given by the client.
23 The licensee shall make available to the department all books,
24 records, policies, procedures, or any other materials requested
25 during the course of an investigation or inspection.

1 Sec. 9. An in-home personal care services agency shall
2 investigate complaints made by a client, the client's family,
3 or the personal representative regarding in-home personal care
4 services that are or are not furnished or regarding lack of respect
5 for client's property by an in-home personal care services worker
6 on behalf of the personal care services agency and shall document
7 the existence of the complaint and the resolution of the complaint
8 in accordance with requirements of the department.

9 Sec. 10. (1) When the department determines that an
10 in-home personal care services agency is in violation of the
11 In-home Personal Care Services Act, a notice of violation shall
12 be serviced upon the in-home personal care services agency. Each
13 notice of violation shall be prepared in writing and shall specify
14 the nature of the violation and the statute, rule, or regulation
15 alleged to have been violated. The notice shall inform the in-home
16 personal care services agency of any action the department may take
17 under the act, including the requirement of any plan of correction
18 or any licensure action. The Director of Health and Human Services
19 or his or her designee shall also inform the in-home personal care
20 services agency of its rights to a hearing under the act.

21 (2) Each in-home personal care services agency served
22 with a notice of violation under this section shall file with
23 the department a written plan of correction within thirty days
24 after receipt of the notice. The plan of correction is subject to
25 approval of the department and shall state with particularity the

1 method by which the in-home personal care services agency intends
2 to correct each violation and shall contain a date by which each
3 violation shall be corrected.

4 (3) If the department rejects a plan of correction filed
5 under this section, it shall send notice of the rejection and
6 the reason for rejection to the in-home personal care services
7 agency. The in-home personal care services agency shall have
8 fifteen days after receipt of the notice of rejection during which
9 to submit a modified plan. If the modified plan is not submitted
10 within such fifteen-day time period or if the modified plan is
11 rejected, the department shall create a plan of correction and the
12 in-home personal care services agency shall implement it. If the
13 in-home personal care services agency fails to implement a plan of
14 correction under this section within thirty days, the department
15 shall suspend or revoke its license after notice and hearing. The
16 director may issue a provisional license pursuant to subsection (2)
17 of section 6 of this act if he or she determines that a plan of
18 correction is being implemented.

19 (4) Any action of the department under this section may
20 be appealed by the in-home personal care services agency, and the
21 appeal shall be in accordance with the Administrative Procedure
22 Act.

23 Sec. 11. If the department denies an application for a
24 license under the In-home Personal Care Services Act or revokes or
25 suspends a license issued under the act, the applicant or licensee

1 may appeal such decision and the appeal shall be in accordance with
2 the Administrative Procedure Act.

3 Sec. 12. The department may take disciplinary action
4 against a license issued under the In-home Personal Care Services
5 Act on any of the following grounds:

6 (1) Committing or permitting, aiding, or abetting the
7 commission of any unlawful act;

8 (2) Conduct or practices detrimental to the health or
9 safety of a person served by the licensee;

10 (3) Discrimination or retaliation against a person served
11 by or employed by the licensee who has submitted a complaint or
12 information to the department or the state long-term care ombudsman
13 or ombudsman advocate;

14 (4) Failure to file a report of suspected abuse or
15 neglect as required by sections 28-372 and 28-711; or

16 (5) Failure to comply with the consumer protection
17 provisions of section 13 of this act.

18 Sec. 13. (1) The licensee shall perform or cause to
19 be performed a criminal history record information check on each
20 in-home personal care services worker and a check of his or her
21 driving record as maintained by the Department of Motor Vehicles
22 or by any other state which has issued an operator's license
23 to the in-home personal care services worker and shall maintain
24 documentation of such checks in its records for inspection at its
25 place of business.

1 (2) The licensee shall provide the client with a written
2 list of the items listed in subdivisions (a) through (f) of
3 this subsection within five calendar days after the initiation of
4 in-home personal care services to the client and on an annual basis
5 thereafter. Such items include:

6 (a) The client's right to be free from verbal, physical,
7 and psychological abuse and to be treated with dignity;

8 (b) The client's right to temporarily or permanently
9 suspend, terminate, or add the provision of any services stated in
10 the plan of service for the client;

11 (c) The client's right to have his or her property
12 treated with respect;

13 (d) The client's right to be free from discrimination or
14 reprisal for voicing grievances regarding services furnished or the
15 lack of respect for property by anyone furnishing in-home personal
16 care services on behalf of the licensee;

17 (e) A statement that it is not within the scope of the
18 licensee's license to manage the medical and health conditions of
19 the client; and

20 (f) The charges for in-home personal care services
21 provided by the licensee.