

IC 16-27-4

Chapter 4. Licensure of Personal Services Agencies

IC 16-27-4-1

"Client"

Sec. 1. As used in this chapter, "client" means an individual who has been accepted to receive personal services from a personal services agency.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-2

"Parent personal services agency"

Sec. 2. As used in this chapter, "parent personal services agency" means the personal services agency that develops and maintains administrative and fiscal control over a branch office.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-3

"Personal representative"

Sec. 3. As used in this chapter, "personal representative" means a person who has legal authority to act on behalf of the client with regard to the action to be taken.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-4

"Personal services"

Sec. 4. (a) As used in this chapter, "personal services" means:

- (1) attendant care services;
- (2) homemaker services that assist with or perform household tasks, including housekeeping, shopping, laundry, meal planning and preparation, and cleaning; and
- (3) companion services that provide fellowship, care, and protection for a client, including transportation, letter writing, mail reading, and escort services;

that are provided to a client at the client's residence.

(b) The term does not apply to the following:

- (1) Incidental services provided by a licensed health facility to patients of the licensed health facility.
- (2) Services provided by employers or 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 the membership organization's business.
- (3) Services that are allowed to be performed by a personal services attendant under IC 12-10-17.1.
- (4) Services that require the order of a health care professional for the services to be lawfully performed in Indiana.
- (5) Assisted living Medicaid waiver services.
- (6) Services that are performed by a facility described in IC 12-10-15.

As added by P.L.212-2005, SEC.18. Amended by P.L.141-2006, SEC.82.

IC 16-27-4-5

"Personal services agency"

Sec. 5. (a) As used in this chapter, "personal services agency" means a person that provides or offers to provide a personal service for compensation, whether through the agency's own employees or by arrangement with another person.

(b) The term does not include the following:

(1) An individual who provides personal services only to the individual's family or to not more than three (3) individuals per residence and not more than a total of seven (7) individuals concurrently. As used in this subdivision, "family" means the individual's spouse, child, parent, parent-in-law, grandparent, grandchild, brother, brother-in-law, sister, sister-in-law, aunt, aunt-in-law, uncle, uncle-in-law, niece, and nephew.

(2) A local health department as described in IC 16-20 or IC 16-22-8.

(3) A person that:

(A) is approved by the division of disability and rehabilitative services to provide supported living services or supported living support to individuals with developmental disabilities;

(B) is subject to rules adopted under IC 12-11-2.1; and

(C) serves only individuals with developmental disabilities who are in a placement authorized under IC 12-11-2.1-4.

As added by P.L.212-2005, SEC.18. Amended by P.L.141-2006, SEC.83.

IC 16-27-4-6

License required; branch offices; fee; application; onsite inspection; expiration; home health agency

Sec. 6. (a) To operate a personal services agency, a person must obtain a license from the state health commissioner. A personal services agency may not be opened, operated, managed, or maintained or conduct business without a license from the state department. Each parent personal services agency must obtain a separate license.

(b) A parent personal services agency may maintain branch offices that operate under the license of the parent personal services agency. Each branch office must be:

(1) at a location or site from which the personal services agency provides services;

(2) owned and controlled by the parent personal services agency; and

(3) located within a radius of one hundred twenty (120) miles of the parent personal services agency.

(c) A license is required for any personal services agency providing services in Indiana. An out-of-state personal services

agency must be authorized by the secretary of state to conduct business in Indiana and have a branch office in Indiana.

(d) Application for a license to operate a personal services agency must be made on a form provided by the state department and must be accompanied by the payment of a fee of two hundred fifty dollars (\$250). The application may not require any information except as required under this chapter.

(e) After receiving a completed application that demonstrates prima facie compliance with the requirements of this chapter and the payment of the fee required by subsection (d), the state department shall issue a license to the applicant to operate a personal services agency. The state department may conduct an onsite inspection in conjunction with the issuance of an initial license or the renewal of a license.

(f) In the state department's consideration of:

- (1) an application for licensure;
- (2) an application for renewal of licensure;
- (3) a complaint alleging noncompliance with the requirements of this chapter; or
- (4) an investigation conducted under section 7(a) of this chapter;

the state department's onsite inspections in conjunction with those actions are limited to determining the personal service agency's compliance with the requirements of this chapter or permitting or aiding an illegal act in a personal services agency.

(g) Subject to subsection (e), when conducting an onsite inspection, the state department must receive all documents necessary to determine the personal service agency's compliance with the requirements of this chapter. A personal services agency must produce documents requested by the state department surveyor not less than twenty-four (24) hours after the documents have been requested.

(h) A license expires one (1) year after the date of issuance of the license under subsection (e). However, the state department may issue an initial license for a period of less than one (1) year to stagger the expiration dates. The licensee shall notify the state department in writing at least thirty (30) days before closing or selling the personal services agency.

(i) A personal services agency license may not be transferred or assigned. Upon sale, assignment, lease, or other transfer, including transfers that qualify as a change in ownership, the new owner or person in interest must obtain a license from the state department under this chapter before maintaining, operating, or conducting the personal services agency.

(j) A home health agency licensed under IC 16-27-1 that operates a personal services agency within the home health agency is subject to the requirements of this chapter. The requirements under IC 16-27-1 do not apply to a home health agency's personal services agency. The requirements under this chapter do not apply to a home health agency's operations. A home health agency that is licensed

under IC 16-27-1 is not required to obtain a license under this chapter.

(k) If a person who is licensed to operate a personal services agency is also licensed to operate a home health agency under IC 16-27-1, an onsite inspection for renewal of the person's personal services agency license must, to the extent feasible, be conducted at the same time as an onsite inspection for the home health agency license.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-7

Unlicensed agencies; attorney general

Sec. 7. (a) The state department shall investigate a report of an unlicensed personal services agency operation and report its findings to the attorney general.

(b) The attorney general may do the following:

(1) Seek an injunction in the circuit or superior court of the county in which the unlicensed home health agency is located.

(2) Prosecute violations under section 23 of this chapter.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-8

Unstable health conditions

Sec. 8. (a) If a personal services agency is aware that the client's medical or health condition has become unstable or unpredictable, the personal services agency shall notify the client, the client's personal representative, a family member, other relative of the client, or other person identified by the client of the need for a referral for medical or health services. The notification may be given in writing or orally and must be documented in the client's record with the personal services agency.

(b) The personal services agency may continue to provide personal services for a client with an unstable or unpredictable medical or health condition but may not manage or represent itself as able to manage the client's medical or health condition.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-9

Personal services agency manager

Sec. 9. (a) A personal services agency shall employ an individual to act as the personal services agency's manager. The manager is responsible for the organization and daily operation of the personal services agency.

(b) The manager may designate in writing one (1) or more individuals to act on behalf of or to perform any or all the responsibilities of the personal services agency's manager under this chapter.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-10

Service plan

Sec. 10. The personal services agency's manager or the manager's designee shall prepare a service plan for a client before providing personal services for the client. A permanent change to the service plan requires a written change to the service plan. The service plan must:

- (1) be in writing, dated, and signed by the individual who prepared it;
- (2) list the types and schedule of services to be provided; and
- (3) state that the services to be provided to the client are subject to the client's right to temporarily suspend, permanently terminate, temporarily add, or permanently add the provision of any service.

All permanent changes require a change in the written service plan. The service plan must be signed and dated by the client not later than fourteen (14) days after services begin for the client and not later than fourteen (14) days after any permanent change to the service plan.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-11**Client satisfaction review**

Sec. 11. The personal services agency's manager or the manager's designee shall conduct a client satisfaction review with the client every seventy-six (76) to one hundred four (104) days to discuss the services being provided and to determine if any change in the plan of services should occur. The review with the client may be in person or by telephone. This client satisfaction review must:

- (1) be put in writing; and
- (2) be signed and dated by the individual conducting the review.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-12**Client rights statement**

Sec. 12. The personal services agency shall provide the client or the client's personal representative with the personal services agency's written statement of client rights not more than seven (7) days after providing services to the client. The statement of client rights must include the following information:

- (1) The client has the right to have the client's property treated with respect.
- (2) The client has the right to temporarily suspend, permanently terminate, temporarily add, or permanently add services in the service plan.
- (3) The client has the right to file grievances regarding services furnished or regarding the lack of respect for property by the personal services agency and is not subject to discrimination or reprisal for filing a grievance.
- (4) The client has the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.

- (5) A statement that it is not within the scope of the personal services agency's license to manage the medical and health conditions of the client if a condition becomes unstable or unpredictable.
- (6) The charges for services provided by the personal services agency.
- (7) The personal services agency's policy for notifying the client of any increase in the cost of services.
- (8) The hours the personal services agency's office is open for business.
- (9) That on request the personal services agency will make available to the client a written list of the names and addresses of all persons having at least a five percent (5%) ownership or controlling interest in the personal services agency.
- (10) The procedures for contacting the personal services agency's manager, or the manager's designee, while the personal services agency's office is open or closed.
- (11) The procedure and telephone number to call to file a complaint with the personal services agency.
- (12) That the state department does not inspect personal service agencies as part of the licensing process but does investigate complaints concerning personal service agencies.
- (13) The procedure and telephone number to call to file a complaint with the state department along with the business hours of the state department.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-13

Complaint investigations

Sec. 13. A personal services agency shall investigate a complaint made by a client, the client's family, or the client's personal representative regarding:

- (1) service that is or fails to be furnished; and
- (2) lack of respect for the client's property by anyone furnishing services on behalf of the personal services agency.

The personal services agency shall document the complaint and the resolution of the complaint.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-14

Telephone contact

Sec. 14. The personal services agency's manager or the manager's designee shall be available to respond to client telephone calls twenty-four (24) hours a day.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-15

Tuberculosis test

Sec. 15. An employee or agent of a personal services agency who will have direct client contact must complete a tuberculosis test in

the same manner as required by the state department for licensed home health agency employees and agents.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-16

Evaluation and training

Sec. 16. (a) The competency of an employee or agent of a personal services agency who will perform attendant care services at the client's residence must be evaluated by the agency or the agency's designee for each attendant care services task that the personal services agency chooses to have that employee or agent perform. The agency has the sole discretion to determine if an employee or agent is competent to perform an attendant care services task.

(b) After an evaluation, an employee or agent shall be trained in the attendant care services tasks the personal services agency believes require improvement. The employee or agent shall be reevaluated following any training. The evaluation of the employee or agent and determination by the agency that the employee or agent is competent to perform the attendant care services task must occur before the employee or agent performs that task for a client without direct agency supervision.

(c) The content of the evaluation and training conducted under this section, including the date and the signature of the person conducting the evaluation and training, must be documented for each employee or agent who performs personal services.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-17

Disclosure of ownership

Sec. 17. (a) Disclosure of ownership and management information must be made to the state department:

- (1) at the time of the personal services agency's request for licensure;
- (2) during each survey of the personal services agency; and
- (3) when there is a change in the management or in an ownership interest of more than five percent (5%) of the personal services agency.

(b) The disclosure under subsection (a) must include the following:

- (1) The name and address of all persons having at least five percent (5%) ownership or controlling interest in the personal services agency.
- (2) The name and address of each person who is an officer, a director, a managing agent, or a managing employee of the personal services agency.
- (3) The name and address of the person responsible for the management of the personal services agency.
- (4) The name and address of the chief executive officer and the chairperson (or holder of the equivalent position) of the governing body that is responsible for the person identified

under subdivision (3).

(c) The determination of an ownership interest and the percentage of an ownership interest under this chapter must be determined under 45 CFR 420.201 and 45 CFR 420.202, as in effect on July 1, 2005. *As added by P.L.212-2005, SEC.18.*

IC 16-27-4-18

Compliance documentation

Sec. 18. A personal services agency shall document evidence of compliance with the requirements of this chapter and document services provided to clients. The documentation or copies of the documentation must be maintained or be electronically accessible at a personal services agency's office in Indiana for not less than seven (7) years.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-19

Penalties

Sec. 19. (a) The state health commissioner may take one (1) or more of the following actions on any ground listed in subsection (b):

- (1) Issue a probationary license.
- (2) Conduct a resurvey.
- (3) Deny renewal of a license.
- (4) Revoke a license.
- (5) Impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000).

(b) The state health commissioner may take action under subsection (a) on any of the following grounds:

- (1) Violation of a provision of this chapter or a rule adopted under this chapter.
- (2) Permitting, aiding, or abetting the commission of an illegal act in a personal services agency.

(c) IC 4-21.5 applies to an action under this section.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-20

Rules

Sec. 20. (a) The state department shall adopt rules under IC 4-22-2 to govern the procedure for the following:

- (1) Issuing, renewing, denying, or revoking a personal services agency license.
- (2) Investigating a complaint against a personal services agency that alleges a violation of this chapter.
- (3) Collecting fees required under this chapter.

(b) The state department may not add to the substantive or procedural requirements in this chapter.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-21

Penalty review

Sec. 21. A licensee or an applicant for a license aggrieved by an action under this chapter may request a review under IC 4-21.5.
As added by P.L.212-2005, SEC.18.

IC 16-27-4-22

Appeals panel

Sec. 22. (a) In response to a request for review of an order referred to in subsection (c), the executive board shall appoint an appeals panel that consists of three (3) members as follows:

- (1) One (1) member of the executive board.
- (2) One (1) attorney admitted to the practice of law in Indiana.
- (3) One (1) individual with qualifications determined by the executive board.

(b) An employee of the state department may not be a member of the panel.

(c) The panel shall conduct proceedings for review of an order issued by an administrative law judge under this chapter. The panel is the ultimate authority under IC 4-21.5.

As added by P.L.212-2005, SEC.18.

IC 16-27-4-23

Penalty

Sec. 23. A person who knowingly or intentionally:

- (1) operates a personal services agency; or
- (2) advertises the operation of a personal services agency;

that is not licensed under this chapter commits a Class A misdemeanor.

As added by P.L.212-2005, SEC.18.