

IC 22-1-5

Chapter 5. Home Care Consumers and Worker Protection

IC 22-1-5-1

"Attendant care services"

Sec. 1. As used in this chapter, "attendant care services" has the meaning set forth in IC 16-18-2-28.5.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-2

"Companion type services"

Sec. 2. As used in this chapter, "companion type services" refers to services described in IC 12-10-17.1-2(2).

As added by P.L.212-2005, SEC.19. Amended by P.L.141-2006, SEC.103.

IC 22-1-5-3

"Consumer"

Sec. 3. As used in this chapter, "consumer" means an individual who:

- (1) receives home care services given by a home care services worker in the individual's residence; or
- (2) pays for and directs the home care services for another individual.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-4

"Consumer notice"

Sec. 4. As used in this chapter, "consumer notice" means the notice described in section 14 of this chapter.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-5

"Department"

Sec. 5. As used in this chapter, "department" refers to the department of labor created under IC 22-1-1-1.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-6

"Home care services"

Sec. 6. As used in this chapter, "home care services" means skilled and unskilled services provided to an individual at the individual's residence to enable the individual to remain in the residence safely and comfortably. The provision of at least two (2) of the following is included in home care services:

- (1) Nursing.
- (2) Therapy.
- (3) Attendant care.
- (4) Companion type services.
- (5) Homemaker services.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-7

"Home care services worker"

Sec. 7. As used in this chapter, "home care services worker" means an individual performing home care services for compensation.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-8

"Homemaker services"

Sec. 8. As used in this chapter, "homemaker services" means assistance with or performing household tasks that include housekeeping, shopping, laundry, meal planning and preparation, handyman services, and seasonal chores.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-9

"Placement agency"

Sec. 9. As used in this chapter, "placement agency" means a person engaged in the business of securing home care services employment for an individual or securing a home care services worker for a consumer. The term:

- (1) includes an employment agency, a nurse registry, and an entity that places a home care services worker for compensation by a consumer in the consumer's residence to provide home care services; and
- (2) does not include a worker who solely and personally provides home care services to another individual at the residence of that individual.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-10

"Skilled services"

Sec. 10. As used in this chapter, "skilled services" means services provided by a:

- (1) registered nurse (as defined in IC 25-23-1-1.1(a));
- (2) licensed practical nurse (as defined in IC 25-23-1-1.2); or
- (3) health care professional listed in IC 16-27-1-1.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-11

"Worker notice"

Sec. 11. As used in this chapter, "worker notice" means the statement described in section 17 of this chapter.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-12

Application of chapter

Sec. 12. This chapter applies to a placement agency, but does not

apply to a:

- (1) hospital (as defined in IC 16-18-2-179);
- (2) health facility (as defined in IC 16-18-2-167(a)); or
- (3) home health agency (as defined in IC 16-18-2-173).

As added by P.L.212-2005, SEC.19.

IC 22-1-5-13

Consumer notice; criminal history check

Sec. 13. (a) A placement agency:

- (1) must provide a consumer with a consumer notice each time a home care services worker is placed in the home of the consumer; and
- (2) is not required to provide a consumer notice when a new or different home care services worker is substituting for the regular home care services worker placed with the consumer.

(b) Before a placement agency places a home care services worker with a consumer, the home care services worker must provide the placement agency with a copy of the individual's limited criminal history from the central repository for criminal history information under IC 10-13-3. The home care services worker is responsible for the fees required under IC 10-13-3-30 and must annually obtain an updated limited criminal history. A copy of the home care services worker's limited criminal history must be made available to the consumer.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-14

Consumer notice information

Sec. 14. A consumer notice must include the following:

- (1) The duties, responsibilities, and obligations of the placement agency to the:
 - (A) home care services worker; and
 - (B) consumer.
- (2) A statement identifying the placement agency as:
 - (A) an employer;
 - (B) a joint employer;
 - (C) a leasing employer; or
 - (D) not an employer.
- (3) A statement that notwithstanding the employment status of the placement agency, the consumer:
 - (A) may be considered an employer under state and federal employment laws; and
 - (B) may be responsible for:
 - (i) payment of local, state, or federal employment taxes;
 - (ii) payment for Social Security and Medicare contributions;
 - (iii) ensuring payment of at least the minimum wage;
 - (iv) overtime payment;
 - (v) unemployment contributions under IC 22-4-11; or
 - (vi) worker's compensation insurance as required by

IC 22-3-2-5 and IC 22-3-7-34;
of the home care services worker.

(4) The appropriate telephone number, address, and electronic mail address of the department for inquiries regarding the contents of the notice.

The department shall determine the content and format of the consumer notice.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-15

Failure to provide consumer notice

Sec. 15. The failure of a placement agency to provide a consumer notice to the consumer at the time a home care services worker is placed in the consumer's home does not relieve a consumer from the duties or obligations as an employer. If a placement agency fails to provide a consumer notice and the consumer is liable for payment of wages, taxes, worker's compensation insurance premiums, or unemployment compensation employer contributions, the consumer has a right of indemnification against the placement agency, which includes the actual amounts paid to or on behalf of the home care services worker as well as the consumer's attorney's fees and costs.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-16

Worker notice

Sec. 16. A placement agency that will not be the actual employer of the home care services worker shall provide a worker notice as set forth in section 17 of this chapter to a home care services worker who is placed with a consumer. The worker notice must:

- (1) be provided to the home care services worker upon placement in the consumer's home; and
- (2) specify the home care services worker's legal relationship with the placement agency and the consumer.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-17

Worker notice information

Sec. 17. The worker notice referred to in section 16 of this chapter must contain the following:

- (1) The duties, responsibilities, and obligations of the placement agency, the consumer, and the home care services worker if the home care services worker is determined to be an independent contractor, including:

- (A) a statement of the party responsible for the payment of the home care services worker's wages, taxes, Social Security and Medicare contributions, unemployment contributions, and worker's compensation insurance premiums; and

- (B) a statement identifying the party responsible for the home care services worker's hiring, firing, discipline, day to

day supervision, assignment of duties, and provision of equipment or materials for use by the home care services worker.

(2) The telephone number, address, and electronic mail address of the department for inquiries regarding the contents of the notice.

The department shall determine the content and format of the consumer notice.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-18

Investigation of complaints

Sec. 18. The department may at any time and upon receiving a complaint from an interested person investigate an alleged violation of this chapter by a placement agency.

As added by P.L.212-2005, SEC.19.

IC 22-1-5-19

Penalties

Sec. 19. The department may impose a civil penalty not to exceed one thousand dollars (\$1,000) against a placement agency that fails to provide a worker notice or a consumer notice at the times required under section 13 or 16 of this chapter. The civil penalty may be assessed by the department and, if necessary, shall be recovered by the prosecuting attorney of the county in which the violation has occurred or by the attorney general, as provided in IC 22-1-1-18.

As added by P.L.212-2005, SEC.19.