

# SENATE NO. 68

## **AN ACT** RELATIVE TO IN-HOME PERSONAL CARE SERVICE AGENCIES

*Be it enacted by the Senate and House of Representatives in General Court assembled,  
And by the authority of the same, as follows:*

1 SECTION 1. CHAPTER \_\_

2 SECTION 2. Legislative Intent

3 It is declared to be the public policy that the State has a legitimate interest in assuring that all in-home  
4 care services, including companion, homemaker and personal care services, provided to a person at his  
5 or her residence are performed under circumstances that insure consumer protection and quality care.

6 Therefore, the purpose of this Act is to provide for the better protection of the public health, well  
7 being, and safety through the development, establishment, and enforcement of standards for services,  
8 as well as standards for the care of individuals receiving personal care services in their homes.

9 SECTION 3. Definitions

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

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

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

15 The Executive Office: The Executive Office of Health and Human Service

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

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

25 In-Home personal care services: assistance with activities of daily living, housekeeping, personal  
26 laundry, and companionship provided to an individual in his or her residence, which are intended to  
27 enable that individual to remain safely and comfortably in their residence. Levels of in-home or  
28 personal care services include:

29 Attendant Care: hands on assistance with activities of daily living including, but not limited to:  
30 ambulation, transfer, toileting, and grooming.

31 Homemaker Services: assistance with household tasks, shopping, meals

32 Companion Care: provision of fellowship, care and protections for client including transportation,  
33 letter writing, escort services, reading and medication reminding.

34 In-home personal care services does not include incidental services provided by a licensed health  
35 facility to patients of the licensed health facility; services provided by employers of membership

36 organizations for their employees, members and families of the employees or members if the services  
37 are not the predominant purpose of the employer or membership organization's business; services  
38 allowed to be performed by a personal care attendant under the statute authorizing that program;  
39 services that require the order of a health care professional, as defined in state law, for the services to  
40 be lawfully performed.

41 In-home services worker or in-home personal care worker: means an individual with appropriate  
42 training and competency for the tasks assigned, who provides services up to, and including, personal  
43 care services to a consumer in the consumer's residence.

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

46 Placement Agency: any person or entity engaged for gain or profit, regardless of Federal tax status, in  
47 the business of securing or attempting to secure (i) work for hire for persons seeking work or (ii)  
48 workers for employers. The term includes a private employment agency and any other entity that  
49 places a worker for private hire by a consumer in that consumer's residence for purposes of providing  
50 personal care services. The term does not include a person that provides or procures temporary  
51 employment in health care facilities, as defined in the Nurse Agency Licensing Act (statutory citation  
52 for this type of agency in your state).

53 Service plan or Plan of Service: a written list of the types and schedule of services prepared by the in-  
54 home personal care services agency manager, or his or her designee, updated to reflect changes in  
55 needs or services as appropriate but at least annually, that states the services to be provided to the  
56 client subject to the client's right to temporarily suspend, permanently terminate, temporarily add, or  
57 permanently add the provision of any such service.

58 SECTION 4. Licensure Required

59 (a) No later than six months after enactment, no person shall open, manage, conduct, or maintain an  
60 in-home personal care services agency, or advertise himself or herself as an in-home personal care  
61 services agency or as offering services that would be included in the definition of in-home personal  
62 care services or in-home personal care, without a license issued by the Executive Office. This  
63 licensure shall be in accordance with rules adopted by the Executive Office in order to protect the  
64 health, safety, and well-being of clients and consumers through licensure of personal care services  
65 agencies which shall address, at a minimum, the following areas:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

96 (b) Within 90 days after enactment, the Executive Office shall adopt standards for the licensure and  
97 operation of in-home personal care service agencies operated in this state in accordance with the  
98 provisions outlined in Section 4 of this Act. The structure of the standards shall be based on the  
99 concept of personal care services and its focus on assistance with activities of daily living,  
100 housekeeping, personal laundry, and companionship being provided to an individual intended to  
101 enable that individual to remain safely and comfortably in his or her own personal residence. As in-  
102 home personal care services do not include services that would be required to be performed by an  
103 individual licensed under the Nursing Practice Act, the standards shall be developed from a similar  
104 concept. After consideration and recommendation by the Personal Care Attendant Quality Home Care

105 Workforce Council, as defined by Chapter 268 of the Acts of 2006, the Executive Office shall adopt  
106 such rules and regulations as are necessary for the proper regulation of home services agencies.

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

#### 110 SECTION 5. Advisory Board

111 (a). The Executive Office shall consult with the personal care attendant quality home care workforce  
112 council on the administration of this act.

113 (b). The personal care attendant quality home care workforce council shall meet as frequently with the  
114 secretary of the Executive Office as the secretary deems necessary but, no less than one time per year.

115 (c) The personal care attendant quality home care workforce council shall provide input and  
116 recommendations to the Executive Office on the development of rules for licensure of personal care  
117 services agencies operating in the commonwealth.

#### 118 SECTION 6. Licenses

119 (a) If an applicant for licensure has not been previously licensed, and the agency is not in operation at  
120 the time the application is made, the Executive Office may issue a provisional license. A provisional  
121 license shall be valid for a period of 120 days unless sooner suspended or revoked pursuant to Section  
122 9 of this Act. Within 30 days prior to the termination of a provisional license, the Executive Office  
123 shall inspect the agency and, if the applicant substantially meets the requirements for licensure, it shall  
124 issue a license under this Section. If the Executive Office finds that the holder of the provisional  
125 license does not substantially meet the requirements for licensure, but has made significant progress  
126 toward meeting those requirements, the Secretary may renew the provisional license once for a  
127 period not to exceed 120 days from the expiration of the initial provisional license.

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

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

137 (3) The Secretary, at his discretion, may extend the term of such a provisional license for an additional  
138 120 days, if he finds that the agency has made substantial progress toward correcting the violations  
139 and bring the agency into full compliance with this Act and the rules promulgated hereunder.

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

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

#### 148 SECTION 7. License Denial

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

150 (a) Failure to meet the minimum standards prescribed by the Executive Office pursuant to Section 6;

151 (b) Satisfactory evidence that the moral character of the applicant or supervisor of the agency is not  
152 reputable. In determining moral character, the Executive Office may take into consideration any  
153 convictions of the applicant or supervisor but such conviction shall not operate as a bar to licensing;

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

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

#### 159 SECTION 8. Inspections and Investigations

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

#### 169 SECTION 9. Complaint Process

170 An in-home personal care services agency shall investigate complaints made by a client or the client's  
171 family or personal representative regarding services that are (or failed to be) furnished, regarding lack  
172 of respect for client's property by anyone furnishing services on behalf of the personal care services

173 agency, and shall document the existence of the complaint and the resolution of the complaint in  
174 accordance with Executive Office requirements.

#### 175 SECTION 10. Violations

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

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

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

193 (d) If an agency desires to contest any Executive Office action under this Section, it shall send a  
194 written request for a hearing. The Executive Office shall commence the hearing as provided under  
195 Section 12. Whenever possible, all action of the Executive Office under this Section arising out of a

196 violation shall be contested and determined at a single hearing. Issues decided at a hearing may not be  
197 reheard at subsequent hearings under this Section.

#### 198 SECTION 11. Fines or penalties

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

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

206 (c) In determining whether a fine is to be imposed, the Secretary shall consider the following factors:

207 (1) The gravity of the violation, including the probability that death or serious physical or mental harm  
208 to a client will result or has resulted, the severity of the actual or potential harm, and the extent to  
209 which the provisions of the applicable statutes or regulations were violated;

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

211 (3) Any previous violations committed by the licensee; and

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

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

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

222 (2) Addition of the amount of the penalty to the agency's licensing fee; if the licensee refuses to make  
223 the payment at the time of application for renewal of its license, the license shall not be renewed; or

224 (3) Bring an action in circuit court to recover the amount of the penalty.

225 SECTION 12. Administrative Review

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

231 SECTION 13. Public Nuisance

232 The operation or maintenance of an agency in violation of this Act or of the rules and regulations  
233 promulgated by the Executive Office is declared a public nuisance inimical to the public welfare, The  
234 Secretary of the Executive Office through the Attorney General, may in addition to other remedies  
235 herein provided, bring action for an injunction to restrain such violation or to enjoin the future  
236 operation or maintenance of any such agenc

