

IC 16-27

ARTICLE 27. HOME HEALTH AGENCIES

IC 16-27-0.5

Chapter 0.5. Proposal of Rule or Rule Amendment by Health Care Advisory Council

IC 16-27-0.5-0.5

Repealed

(As added by P.L.152-2005, SEC.2. Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)

IC 16-27-0.5-1

Repealed

(As added by P.L.12-2004, SEC.5. Amended by P.L.152-2005, SEC.3; P.L.197-2007, SEC.5. Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)

IC 16-27-0.5-2

Repealed

(As added by P.L.12-2004, SEC.5. Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)

IC 16-27-0.5-3

Repealed

(As added by P.L.12-2004, SEC.5. Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)

IC 16-27-0.5-4

Repealed

(As added by P.L.12-2004, SEC.5. Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)

IC 16-27-0.5-5

Repealed

(As added by P.L.12-2004, SEC.5. Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)

IC 16-27-0.5-6

Repealed

(As added by P.L.12-2004, SEC.5. Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)

IC 16-27-0.5-7

Repealed

(As added by P.L.12-2004, SEC.5. Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)

IC 16-27-0.5-8

Repealed

(As added by P.L.12-2004, SEC.5. Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)

IC 16-27-0.5-9

Rules

Sec. 9. The state department may adopt rules under IC 4-22-2 necessary to protect the health, safety, rights, and welfare of the home health care patients and hospice patients.

As added by P.L.12-2004, SEC.5. Amended by P.L.156-2011, SEC.20; P.L.197-2011, SEC.63; P.L.6-2012, SEC.117; P.L.141-2014, SEC.8.

IC 16-27-1

Chapter 1. Licensure of Home Health Agencies

IC 16-27-1-0.5

Repealed

(As added by P.L.255-2001, SEC.13. Repealed by P.L.212-2005, SEC.77.)

IC 16-27-1-1

"Health care professional"

Sec. 1. As used in this chapter, "health care professional" means any of the following:

- (1) A licensed physician.
- (2) A licensed dentist.
- (3) A licensed chiropractor.
- (4) A licensed podiatrist.
- (5) A licensed optometrist.
- (6) A nurse licensed under IC 25-23-1.
- (7) A physical therapist licensed under IC 25-27 or a physical therapy assistant certified under IC 25-27.
- (8) A speech-language pathologist or an audiologist licensed under IC 25-35.6-3.
- (9) A speech-language pathology aide or an audiology aide (as defined in IC 25-35.6-1-2).
- (10) An:
 - (A) occupational therapist; or
 - (B) occupational therapy assistant;licensed under IC 25-23.5.
- (11) A social worker licensed under IC 25-23.6 or a social work assistant.
- (12) A pharmacist licensed under IC 25-26-13.

As added by P.L.2-1993, SEC.10. Amended by P.L.146-1996, SEC.1; P.L.147-1997, SEC.1; P.L.197-2007, SEC.6; P.L.197-2011, SEC.64.

IC 16-27-1-2

"Home health agency"

Sec. 2. (a) As used in this chapter, "home health agency" means a person that provides or offers to provide only a home health service for compensation.

(b) The term does not include the following:

- (1) An individual health care professional who provides professional services to a patient in the temporary or permanent residence of the patient.
- (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 supports 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.2-1993, SEC.10. Amended by P.L.37-2003, SEC.1; P.L.141-2006, SEC.80.

IC 16-27-1-3

Repealed

(As added by P.L.2-1993, SEC.10. Repealed by P.L.110-1999, SEC.6.)

IC 16-27-1-4

"Home health aide services"

Sec. 4. As used in this chapter, "home health aide services" means only home health services that may be performed by a home health aide.

As added by P.L.2-1993, SEC.10.

IC 16-27-1-5

"Home health services"

Sec. 5. (a) As used in this chapter, "home health services" means services that:

(1) are provided to a patient by:

(A) a home health agency; or

(B) another person under an arrangement with a home health agency;

in the temporary or permanent residence of the patient; and

(2) either, are required by law to be:

(A) ordered by a licensed physician, a licensed dentist, a licensed chiropractor, a licensed podiatrist, or a licensed optometrist for the service to be performed; or

(B) performed only by a health care professional.

(b) The term includes the following:

(1) Nursing treatment and procedures.

(2) Physical therapy.

(3) Occupational therapy.

(4) Speech therapy.

(5) Medical social services.

(6) Home health aide services.

(7) Other therapeutic services.

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

(1) Services provided by a physician licensed under IC 25-22.5.

(2) Incidental services provided by a licensed health facility to patients of the licensed health facility.

(3) Services provided by employers or membership organizations using health care professionals for their

employees, members, and families of the employees or members if the health or home care services are not the predominant purpose of the employer or a membership organization's business.

(4) Nonmedical nursing care given in accordance with the tenets and practice of a recognized church or religious denomination to a patient who depends upon healing by prayer and spiritual means alone in accordance with the tenets and practices of the patient's church or religious denomination.

(5) Services that are allowed to be performed by an attendant under IC 16-27-1-10.

(6) Authorized services provided by a personal services attendant under IC 12-10-17.1.

As added by P.L.2-1993, SEC.10. Amended by P.L.146-1996, SEC.2; P.L.255-2001, SEC.14; P.L.212-2005, SEC.10; P.L.141-2006, SEC.81.

IC 16-27-1-6

"Patient"

Sec. 6. As used in this chapter, "patient" means an individual who has been accepted for care by a home health agency.

As added by P.L.2-1993, SEC.10.

IC 16-27-1-7

Rules

Sec. 7. The state department shall adopt rules under IC 4-22-2 to do the following:

- (1) Protect the health, safety, and welfare of patients.
- (2) Govern the qualifications of applicants for licenses.
- (3) Govern the operating policies, supervision, and maintenance of service records of home health agencies.
- (4) Govern the procedure for issuing, renewing, denying, or revoking an annual license to a home health agency, including the following:
 - (A) The form and content of the license.
 - (B) The collection of an annual license fee of not more than two hundred fifty dollars (\$250) that the state department may waive.
- (5) Exempt persons who do not provide home health services under this chapter.

As added by P.L.2-1993, SEC.10. Amended by P.L.212-2005, SEC.11.

IC 16-27-1-8

Licensing; tax warrant list

Sec. 8. (a) To operate a home health agency, a person must first obtain a license from the state health commissioner, unless the person is exempted by a rule adopted by the state department.

(b) The state health commissioner may also permit persons who are not required to be licensed under this chapter to be voluntarily licensed if:

- (1) the services provided by the person are substantially similar to those provided by licensed home health agencies under this chapter; and
- (2) licensure will assist the person in obtaining:
 - (A) payment for services; or
 - (B) certification.

(c) If the department of state revenue notifies the department that a person is on the most recent tax warrant list, the department shall not issue or renew the person's license until:

- (1) the person provides to the department a statement from the department of state revenue indicating that the person's tax warrant has been satisfied; or
- (2) the department receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

As added by P.L.2-1993, SEC.10. Amended by P.L.172-2011, SEC.117.

IC 16-27-1-9

Operation of unlicensed home health agencies

Sec. 9. (a) The state department shall investigate a report of an unlicensed home health 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 15 of this chapter.

As added by P.L.2-1993, SEC.10.

IC 16-27-1-10

Services not prohibited

Sec. 10. This chapter does not prohibit the provision of:

- (1) homemaker services, including shopping, laundry, cleaning, and seasonal chores;
- (2) companion type services, including transportation, letter writing, mail reading, and escort services;
- (3) assistance with cognitive tasks, including managing finances, planning activities, and making decisions;
- (4) attendant care services; or
- (5) any other services for which an individual license, certification, registration, or permit is not required under state law.

As added by P.L.2-1993, SEC.10. Amended by P.L.256-1999, SEC.18; P.L.255-2001, SEC.15.

IC 16-27-1-11

Home health agency operated by licensed hospital or health facility

Sec. 11. For purposes of this chapter, a facility licensed under IC 16-21-2 or IC 16-28-2 that operates a home health agency is subject to the rules adopted under this chapter for the facility's home health agency. However, the facility may only be licensed under IC 16-21-2 or IC 16-28-2, respectively.

As added by P.L.2-1993, SEC.10.

IC 16-27-1-12

Prohibited acts; penalties

Sec. 12. (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 letter of correction.
- (2) Issue a probationary license.
- (3) Conduct a resurvey.
- (4) Deny renewal of a license.
- (5) Revoke a license.
- (6) Impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000).

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

- (1) Violation of any of the provisions of this chapter or rules adopted under this chapter.
- (2) Permitting, aiding, or abetting the commission of an illegal act in a home health agency.
- (3) Conduct or practice found by the state department to be detrimental to the welfare of the patients of the home health care agency.

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

As added by P.L.2-1993, SEC.10.

IC 16-27-1-13

Review

Sec. 13. A licensee or an applicant for a license aggrieved by an action under this chapter may request review under IC 4-21.5.

As added by P.L.2-1993, SEC.10.

IC 16-27-1-14

Appeals panel

Sec. 14. (a) The executive board shall appoint an appeals panel consisting 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 who is not an employee of the state department.
- (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.2-1993, SEC.10.

IC 16-27-1-15

Operation or advertisement of unlicensed home health agency; violation; classification

Sec. 15. A person who:

- (1) operates a home health agency; or
- (2) advertises the operation of a home health agency;

that is not licensed commits a Class A misdemeanor.

As added by P.L.2-1993, SEC.10.

IC 16-27-1-16

Acceptance of written orders for home health services

Sec. 16. (a) A licensed home health agency may accept written orders for home health services from a physician, a dentist, a chiropractor, a podiatrist, or an optometrist licensed in Indiana or any other state. If the physician, dentist, chiropractor, podiatrist, or optometrist is licensed in a state other than Indiana, the home health agency shall take reasonable immediate steps to determine that:

- (1) the order complies with the laws of the state where the order originated; and
- (2) the individual who issued the order examined the patient and is licensed to practice in that state.

(b) All orders issued by a physician, a dentist, a chiropractor, a podiatrist, or an optometrist for home health services:

- (1) must meet the same requirements whether the order originates in Indiana or another state; and
- (2) from another state may not exceed the authority allowed under orders from the same profession in Indiana under IC 25.

As added by P.L.146-1996, SEC.3.

IC 16-27-1-17

Third party billing notice

Sec. 17. A home health agency that provides to a patient notice concerning a third party billing for a home health service provided to the patient shall ensure that the notice:

- (1) conspicuously states that the notice is not a bill;
- (2) does not include a tear-off portion; and
- (3) is not accompanied by a return mailing envelope.

As added by P.L.178-2003, SEC.6.

IC 16-27-1.5

Chapter 1.5. Registration of Home Health Aides

IC 16-27-1.5-1

Home health aide included in registry of nurse aides

Sec. 1. The state department shall include in the registry of nurse aides required by 42 CFR 483.156(a) a home health aide who has successfully completed a home health aide competency evaluation program as required by 42 CFR 484.36.

As added by P.L.110-1999, SEC.2.

IC 16-27-1.5-2

Information required for entry in registry

Sec. 2. Information required for entry of a home health aide in the registry of nurse aides described in section 1 of this chapter must be the same as the information required for nurse aides under 42 CFR 483.156(c).

As added by P.L.110-1999, SEC.2.

IC 16-27-1.5-3

Review and investigation of allegations against home health aides

Sec. 3. (a) The state department shall establish a procedure for the receipt and the timely review and investigation of allegations of:

- (1) neglect of a patient;
- (2) abuse of a patient; or
- (3) misappropriation of patient property;

by a home health aide.

(b) The procedure required under subsection (a) must allow for:

- (1) reasonable notice to the home health aide; and
- (2) reasonable opportunity for a hearing in which the home health aide may rebut the allegation.

(c) The state department shall, after following the procedure required under this section, make a finding whether the home health aide:

- (1) neglected a patient;
- (2) abused a patient; or
- (3) misappropriated patient property.

(d) If the state department determines that a home health aide has:

- (1) neglected a patient;
- (2) abused a patient; or
- (3) misappropriated patient property;

the state department shall notify the registry of nurse aides of that determination.

As added by P.L.110-1999, SEC.2.

IC 16-27-1.5-4

Rules

Sec. 4. The state department may adopt rules under IC 4-22-2 to

implement this chapter.
As added by P.L.110-1999, SEC.2.

IC 16-27-2

Chapter 2. Criminal History of Home Health Care Operators and Workers

IC 16-27-2-0.2

Application of prior law to employees of home health agencies

Sec. 0.2. The addition of IC 16-10-2.6 (before its repeal, now codified in this chapter) by P.L.190-1989 applies to individuals who are initially employed by a home health agency after June 30, 1989. *As added by P.L.220-2011, SEC.314.*

IC 16-27-2-0.5

"Expanded criminal history check"

Sec. 0.5. As used in this chapter, "expanded criminal history check" has the meaning set forth in IC 20-26-2-1.5. *As added by P.L.84-2010, SEC.2. Amended by P.L.51-2016, SEC.3.*

IC 16-27-2-1

"Health care professional"

Sec. 1. As used in this chapter, "health care professional" means any of the following:

- (1) A licensed physician or a physician assistant (as defined in IC 25-22.5-1-1.1).
- (2) A dentist licensed under IC 25-14.
- (3) A chiropractor licensed under IC 25-10-1.
- (4) A podiatrist licensed under IC 25-29.
- (5) An optometrist licensed under IC 25-24.
- (6) A nurse licensed under IC 25-23-1.
- (7) A physical therapist licensed under IC 25-27 or a physical therapy assistant certified under IC 25-27.
- (8) A speech-language pathologist or an audiologist licensed under IC 25-35.6-3.
- (9) A speech-language pathology aide or an audiology aide (as defined in IC 25-35.6-1-2).
- (10) An:
 - (A) occupational therapist licensed; or
 - (B) occupational therapy assistant licensed; under IC 25-23.5.
- (11) A social worker licensed under IC 25-23.6 or a clinical social worker licensed under IC 25-23.6.
- (12) A pharmacist licensed under IC 25-26-13.

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.2; P.L.147-1997, SEC.2; P.L.90-2007, SEC.1; P.L.197-2007, SEC.7; P.L.197-2011, SEC.65.

IC 16-27-2-1.5

Repealed

(As added by P.L.177-2009, SEC.3. Repealed by P.L.51-2016,

SEC.4.)

IC 16-27-2-2

"Home health agency"

Sec. 2. (a) As used in this chapter, "home health agency" means a home health agency licensed under IC 16-27-1.

(b) The term does not include an individual health care professional who provides professional service to a patient in the temporary or permanent residence of the patient.

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.3.

IC 16-27-2-2.1

"National criminal history background check"

Sec. 2.1. As used in this chapter, "national criminal history background check" means the determination provided by the state police department under IC 10-13-3-39(i).

As added by P.L.197-2007, SEC.8. Amended by P.L.84-2010, SEC.3.

IC 16-27-2-2.2

"Services"

Sec. 2.2. As used in this chapter, "services" includes:

- (1) home health services (as defined in IC 16-27-1-5);
- (2) any services such as homemaker, companion, sitter, or handyman services provided by a home health agency in the temporary or permanent residence of a patient or client of the home health agency; and
- (3) personal services (as defined in IC 16-27-4-4).

As added by P.L.178-1993, SEC.4. Amended by P.L.212-2005, SEC.12; P.L.177-2009, SEC.4.

IC 16-27-2-3

Operation of home health agency or personal services agency; prohibition; criminal conviction

Sec. 3. (a) A person may not operate a home health agency or a personal services agency if the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) (repealed).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the person's conviction for theft occurred less than ten (10) years before the date of submission by the person of an application for licensure as a home health agency under IC 16-27-1 or as a personal services agency under IC 16-27-4.

(b) A person who knowingly or intentionally violates this section commits a Class A misdemeanor.

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.5; P.L.212-2005, SEC.13; P.L.158-2013, SEC.231; P.L.214-2013, SEC.18.

IC 16-27-2-4

Employees; criminal history

Sec. 4. (a) A person who operates a home health agency under IC 16-27-1 or a personal services agency under IC 16-27-4 shall apply, not more than three (3) business days after the date that an employee begins to provide services in a patient's temporary or permanent residence, for a copy of the employee's national criminal history background check or expanded criminal history check.

(b) A home health agency or personal services agency may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than three (3) business days without applying for a national criminal history background check or an expanded criminal history check.

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.6; P.L.146-1996, SEC.4; P.L.148-1997, SEC.1; P.L.2-2003, SEC.48; P.L.212-2005, SEC.14; P.L.197-2007, SEC.9; P.L.177-2009, SEC.5; P.L.84-2010, SEC.4; P.L.51-2016, SEC.5.

IC 16-27-2-5

Employees; prohibition; criminal conviction

Sec. 5. (a) Except as provided in subsection (b), a person who operates a home health agency under IC 16-27-1 or a personal services agency under IC 16-27-4 may not employ a person to provide services in a patient's or client's temporary or permanent residence if that person's national criminal history background check or expanded criminal history check indicates that the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) (repealed).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the conviction for theft occurred less than ten (10) years before the person's employment application date.
- (6) A felony that is substantially equivalent to a felony listed in:
 - (A) subdivisions (1) through (4); or
 - (B) subdivision (5), if the conviction for theft occurred less than ten (10) years before the person's employment application date;for which the conviction was entered in another state.

(b) A home health agency or personal services agency may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than twenty-one (21)

calendar days without receipt of that person's national criminal history background check or expanded criminal history check required by section 4 of this chapter, unless the state police department, the Federal Bureau of Investigation under IC 10-13-3-39, or the private agency providing the expanded criminal history check is responsible for failing to provide the person's national criminal history background check or expanded criminal history check to the home health agency or personal services agency within the time required under this subsection.

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.7; P.L.148-1997, SEC.2; P.L.2-2003, SEC.49; P.L.212-2005, SEC.15; P.L.197-2007, SEC.10; P.L.134-2008, SEC.12; P.L.177-2009, SEC.6; P.L.84-2010, SEC.5; P.L.158-2013, SEC.232; P.L.214-2013, SEC.19; P.L.51-2016, SEC.6.

IC 16-27-2-6

Fees; responsibility for payment

Sec. 6. (a) A person who operates a home health agency or a personal services agency under IC 16-27-4 is responsible for the payment of fees under IC 10-13-3-39 and other fees required under section 4 of this chapter.

(b) A home health agency or personal services agency may require a person who applies to the home health agency or personal services agency for employment to provide services in a patient's or client's temporary or permanent residence:

(1) to pay the cost of fees described in subsection (a) to the home health agency or personal services agency at the time the person submits an application for employment; or

(2) to reimburse the home health agency or personal services agency for the cost of fees described in subsection (a).

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.8; P.L.2-2003, SEC.50; P.L.212-2005, SEC.16; P.L.197-2007, SEC.11.

IC 16-27-2-7

Prohibited employment practices

Sec. 7. A person who:

(1) operates a home health agency or personal services agency; and

(2) violates section 4 or 5 of this chapter;

commits a Class A infraction.

As added by P.L.2-1993, SEC.10. Amended by P.L.212-2005, SEC.17.

IC 16-27-2-8

Repealed

(As added by P.L.110-1999, SEC.3. Repealed by P.L.290-2001, SEC.36.)

IC 16-27-2-9

Immunity from liability

Sec. 9. A person (other than a person denied employment or dismissed under this chapter or against whom a finding is made for the registry of nurse aides under 42 CFR 483.156) who in good faith:

- (1) denies employment to an individual or dismisses an individual from employment under this chapter;
- (2) testifies or participates in an investigation or an administrative or a judicial proceeding arising from:
 - (A) this chapter; or
 - (B) 42 CFR 483 regarding the registry of nurse aides; or
- (3) makes a report to the state department or the registry of nurse aides;

is immune from both civil and criminal liability arising from those actions.

As added by P.L.110-1999, SEC.4.

IC 16-27-3

Chapter 3. Possession of Certain Drugs and Other Health Care Items

IC 16-27-3-1

Sterile water or saline

Sec. 1. An employee of a home health agency who is a licensed pharmacist, registered nurse, or licensed practical nurse may purchase, store, or transport for administering to a home health patient or hospice patient of the home health agency under the order of a licensed physician the following:

- (1) Sterile water for injection and irrigation.
- (2) Sterile saline for injection and irrigation.

As added by P.L.105-1998, SEC.2.

IC 16-27-3-2

Vaccines

Sec. 2. (a) An employee of a home health agency who is a licensed pharmacist, registered nurse, or licensed practical nurse may purchase, store, or transport a vaccine in order to administer the vaccine to:

- (1) the home health agency's:
 - (A) employees; or
 - (B) home health patients or hospice patients; or
- (2) family members of a home health patient or hospice patient; under the order of a licensed physician.

(b) An employee described in subsection (a) who purchases, stores, or transports a vaccine under this section must ensure that a standing order for the vaccine:

- (1) is signed and dated by a licensed physician;
- (2) identifies the vaccine covered by the order;
- (3) indicates that appropriate procedures are established for responding to any adverse reaction to the vaccine; and
- (4) directs that a specific medication or category of medication be administered if a recipient has an adverse reaction to the vaccine.

As added by P.L.105-1998, SEC.2.

IC 16-27-3-3

Other drugs

Sec. 3. An employee of a home health agency who is a licensed pharmacist, registered nurse, or licensed practical nurse may purchase, store, or transport the following drugs in order to administer to a home health patient or hospice patient of the home health agency, in accordance with section 5 of this chapter:

- (1) Any of the following items in a sealed portable container in a size determined by the dispensing pharmacist:
 - (A) Up to one thousand (1,000) milliliters of nine-tenths of

- one percent (0.9%) sodium chloride intravenous infusion.
- (B) Up to one thousand (1,000) milliliters of five percent (5%) dextrose in water injection.
- (2) Not more than five (5) dosage units of each of the following items, each in an individually sealed, unused container:
 - (A) Heparin sodium lock flush in a concentration of ten (10) units per milliliter, one hundred (100) units per milliliter, or one thousand (1,000) units per milliliter.
 - (B) Epinephrine HCl solution in a concentration of one (1) to one thousand (1,000).
 - (C) Diphenhydramine HCl solution in a concentration of fifty (50) milligrams per milliliter.
 - (D) Methylprednisolone in a concentration of one hundred twenty-five (125) milligrams per two (2) milliliters.
 - (E) Naloxone in a concentration of up to one (1) milligram per milliliter in a two (2) milliliter vial.
 - (F) Glucagon in a concentration of one (1) milligram per milliliter.
 - (G) Furosemide in a concentration of ten (10) milligrams per milliliter.
 - (H) Lidocaine two and one-half percent (2.5%) and prilocaine two and one-half percent (2.5%) cream in a five (5) gram tube.
 - (I) Lidocaine HCl solution in a concentration of one percent (1%) in a two (2) milliliter vial.
 - (J) Urokinase five thousand (5,000) units per a one (1) milliliter vial.

As added by P.L.105-1998, SEC.2.

IC 16-27-3-4

Transportation of drugs in sealed portable container by pharmacist or nurse

Sec. 4. An employee of a home health agency who is a licensed pharmacist, registered nurse, or licensed practical nurse may purchase, store, or transport drugs in a sealed portable container under this chapter only if the home health agency has established written policies and procedures to ensure the following:

- (1) That the container is handled properly with respect to storage, transportation, and temperature stability.
- (2) That a drug is removed from the container only on the written or oral order of a licensed physician.
- (3) That the administration of a drug in the container is performed in accordance with a specific treatment protocol.
- (4) That the home health agency maintains a written record of the dates and times the container is in the possession of a licensed pharmacist, registered nurse, or licensed practical nurse.
- (5) That the home health agency require an employee who

possesses the container to submit a daily accounting of all drugs and devices in the container to the home health agency in writing.

As added by P.L.105-1998, SEC.2.

IC 16-27-3-5

Administering drugs by pharmacist or nurse

Sec. 5. An employee of a home health agency who:

(1) is a licensed pharmacist, registered nurse, or licensed practical nurse; and

(2) administers a drug listed in section 3 of this chapter;

may administer the drug only in the residence of a home health patient or hospice patient of the home health agency under the order of a licensed physician in connection with the provision of emergency treatment or the adjustment of parenteral drug therapy or vaccine administration.

As added by P.L.105-1998, SEC.2.

IC 16-27-3-6

Physician's orders to pharmacist or nurse to administer drugs

Sec. 6. (a) If an employee of a home health agency who is a licensed pharmacist, registered nurse, or licensed practical nurse administers a drug listed in section 3 of this chapter under the oral order of a licensed physician, the physician shall promptly send a signed copy of the order to the home health agency.

(b) Not more than twenty (20) days after receiving an order under subsection (a), the home health agency shall send a copy of the order, as signed by and received from the physician, to the dispensing pharmacy.

As added by P.L.105-1998, SEC.2.

IC 16-27-3-7

Duties of pharmacist regarding drug containers

Sec. 7. A pharmacist who dispenses a sealed portable container under this chapter shall ensure that the container:

(1) is designed to allow access to the contents of the container only if a tamperproof seal is broken;

(2) bears a label that lists the drugs in the container and provides notice of the container's expiration date; and

(3) remains in the pharmacy or under the control of a licensed pharmacist, registered nurse, or licensed practical nurse.

As added by P.L.105-1998, SEC.2.

IC 16-27-3-8

Honoring nurse's orders

Sec. 8. If a home health agency or hospice patient's care or treatment is being managed, directed, or provided by an advanced practice nurse licensed under IC 25-23, that nurses's orders will be

honored, unless it will cause the home health agency or hospice to be
unreimbursed for their service.
As added by P.L.105-1998, SEC.2.

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 42 CFR 420.201 and 42 CFR 420.202, as in effect on July 1, 2005. *As added by P.L.212-2005, SEC.18. Amended by P.L.7-2015, SEC.42.*

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.