

State of Wisconsin



2005 Assembly Bill 792

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2005 WISCONSIN ACT 197

AN ACT to amend 105.15; and to create 105.115 and 893.99 of the statutes; **relating to:** requiring a home care placement agency that places a home care worker in the residence of a home care consumer to provide notice to the consumer concerning the duties, responsibilities, and liabilities of the consumer with respect to the worker and notice to the worker concerning the worker's employment status and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 105.115 of the statutes is created to read:
105.115 Notice to home care consumers and workers. (1) **DEFINITIONS.** In this section:

(a) "Companionship services" means services that provide fellowship and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs.

(b) "Home care consumer" means a person who receives home care services in his or her temporary or permanent residence from a home care worker.

(c) "Home care placement agency" means a person that is engaged in placing home care workers in the temporary or permanent residences of home care consumers for the purpose of providing home care services to those home care consumers, including an employment agent engaged in the business specified in s. 105.01 (1) (intro.) or a person specified in s. 105.01 (1) (f) whose fees or charges are paid entirely by a home care consumer.

(d) "Home care services" means skilled or unskilled care provided to a person in his or her temporary or permanent residence for the purpose of enabling the person to remain safely and comfortably in that residence. "Home care services" include companionship services,

homemaker services, nursing services, and personal care services.

(e) "Home care worker" means a person who provides home care services to a home care consumer in the temporary or permanent residence of the home care consumer.

(f) "Homemaker services" means household work, including preparing meals, laundering clothes, making beds, cleaning, performing errands and shopping, completing other miscellaneous chores, and performing any other activities that support the smooth and safe functioning of a home care consumer's residence.

(g) "Nursing services" means nursing procedures, other than personal care services, that are permitted to be performed by a registered nurse under s. 441.001 (2) or by a licensed practical nurse under s. 441.001 (3).

(h) "Personal care services" means assistance with the activities of daily living, such as eating, dressing, bathing, personal hygiene, and ambulation, but does not include nursing services.

(2) **NOTICE TO HOME CARE CONSUMERS.** Whenever a home care placement agency places a home care worker in the temporary or permanent residence of a home care consumer, the home care placement agency shall provide the home care consumer with a notice of the duties, responsibilities, and liabilities of the home care con-

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

sumer with respect to the home care worker, except that a home care placement agency is not required to provide that notice when placing a home care worker who is temporarily substituting for the regular home care worker of a home care consumer. The notice shall be on a form prescribed by the department and shall include, at a minimum, all of the following:

(a) A statement specifying the duties, responsibilities, and liabilities of the home care placement agency with respect to the home care consumer and the home care worker and the duties, responsibilities, and liabilities of the home care consumer with respect to the home care worker. The statement shall clearly specify the home care consumer's responsibility, if any, for all of the following:

1. Day-to-day supervision of the home care worker.
2. Assigning duties to the home care worker.
3. Hiring, firing, and discipline of the home care worker.
4. Providing equipment or materials for use by the home care worker.
5. Performing a background investigation of the home care worker.

6. Ensuring that the home care worker has any credential, as defined in s. 440.01 (2) (a), or any other license, registration, certification, permit, or approval that is required for the home care worker to provide adequate home care services for the home care consumer.

(b) A statement of the employment status of the home care worker, specifically, whether the home care worker is an employee of the home care placement agency or of the home care consumer or is an independent contractor and a statement identifying which party is responsible for paying the wages or salary of the home care worker, paying federal social security taxes and state and federal unemployment contributions or taxes with respect to the home care worker, and procuring worker's compensation or liability insurance covering injury to the home care worker.

(c) A statement that, notwithstanding the employment status of the home care worker specified in the notice, the home care consumer may be determined to be the employer of the home care worker for purposes of certain state and federal labor laws and that, if that is the case, the home care consumer may be held responsible for paying the wages or salary of the home care worker, paying federal social security taxes and state and federal unemployment contributions or taxes with respect to the home care worker, procuring worker's compensation or liability insurance covering injury to the home care worker, and complying with various other state and federal labor laws.

(cm) A list, by county, of the telephone numbers provided under s. 46.90 (3) (c) that a person may call to report suspected cases of abuse, material abuse, neglect, or self-neglect under the elder abuse reporting system.

(cn) A telephone number at the department of health and family services that a person may call to report suspected cases of abuse or neglect of a client or of misappropriation of a client's property under s. 146.40 (4r) (a).

(d) A telephone number and address at which the home care consumer may contact the department if he or she has any questions about the contents of the notice.

(e) A statement acknowledging that the home care consumer has received and understands the notice provided under this subsection and a line for the home care consumer's signature located immediately below that statement. The home care placement agency shall give the home care consumer one copy of the notice signed by the home care consumer and shall retain one copy in its files.

(3) NOTICE TO HOME CARE WORKERS. Whenever a home care placement agency places a home care worker in the temporary or permanent residence of a home care consumer, the home care placement agency shall provide the home care worker with a notice stating the employment status of the home care worker, specifically, whether the home care worker is an employee of the home care placement agency or of the home care consumer or is an independent contractor. The notice shall be on a form prescribed by the department and shall include, at a minimum, all of the following:

(a) A statement that, notwithstanding the employment status of the home care worker specified in the notice, the home care worker may be determined to be an independent contractor for purposes of certain state and federal labor laws and, if that is the case, a description of the duties, responsibilities, and liabilities of the home care placement agency and the home care consumer with respect to the home care worker and the duties, responsibilities, and liabilities of the home care worker as a result of that independent contractor status. That description shall include, at a minimum, all of the following information:

1. A statement identifying which party is responsible for paying the wages or salary of the home care worker, paying federal social security taxes and state and federal unemployment contributions or taxes with respect to the home care worker, and procuring worker's compensation or liability insurance covering injury to the home care worker.

2. A statement identifying which party is responsible for the day-to-day supervision of the home care worker, assigning duties to the home care worker, hiring, firing, and discipline of the home care worker, and providing equipment or materials for use by the home care worker.

(b) A telephone number and address at which the home care worker may contact the department if he or she has any questions about the contents of the notice.

(c) A statement acknowledging that the home care worker has received and understands the notice provided under this subsection and a line for the home care work-

er's signature located immediately below that statement. The home care placement agency shall give the home care worker one copy of the notice signed by the home care worker and shall retain one copy in its files.

(4) INVESTIGATIONS, REMEDIES, AND PENALTIES. (a) A home care consumer who is not provided with the notice required under sub. (2) or a home care worker who is not provided with the notice required under sub. (3) may either file a complaint with the department or commence an action in circuit court to recover from the home care placement agency the payment under par. (b) or (c) no later than 3 years after the date on which the home care placement agency was required to provide the notice. If the department receives a complaint that is timely filed, the department shall investigate the complaint and attempt, on behalf of the home care consumer or home care worker, to recover the payment under par. (b) or (c). In investigating a complaint filed under this paragraph, the department shall have the right of entry and audit under ss. 105.08 and 105.09 as to the home care placement agency.

(b) 1. If the department finds that a home care placement agency has failed to provide a home care consumer with the notice required under sub. (2) and that the home care consumer is liable for the payment of federal social security taxes or state or federal unemployment contributions or taxes with respect to the home care worker, for the provision of worker's compensation or liability insurance covering injury to the home care worker, for the payment of any fine or penalty imposed on the home care consumer for noncompliance with any state or federal labor law with respect to the home care worker, or for any injury to the home care worker, the department may recover from the home care placement agency, on behalf of the home care consumer, an amount equal to the total cost of those liabilities.

2. If the home care placement agency does not pay the amount specified in subd. 1. within 30 days after demand by the department, the department may commence a civil action on behalf of the home care consumer to collect that amount, and the circuit court may order the home care placement agency to pay to the home care consumer that amount, plus an additional amount equal to 50 percent of that amount, together with costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

3. In the case of a home care consumer who commences an action in circuit court under par. (a), if the circuit court finds that the home care placement agency has failed to provide the home care consumer with the notice required under sub. (2) and that the home care consumer is liable for the payment of federal social security taxes or state or federal unemployment contributions or taxes with respect to the home care worker, for the provision of worker's compensation or liability insurance covering injury to the home care worker, for the payment of any fine or penalty imposed on the home care consumer for

noncompliance with any state or federal labor law with respect to the home care worker, or for any injury to the home care worker, the court may order the home care placement agency to pay to the home care consumer an amount equal to the total cost of those liabilities, together with costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(c) 1. If the department finds that a home care placement agency has failed to provide a home care worker with the notice required under sub. (3), that the home care worker is an independent contractor, and that the home care worker is liable for the payment of federal self-employment social security taxes or has sustained an injury as a result of performing home care services, the department may recover from the home care placement agency, on behalf of the home care worker, an amount equal to the total cost of that liability or the total amount of damages sustained as a result of that injury.

2. If the home care placement agency does not pay the amount specified in subd. 1. within 30 days after demand by the department, the department may commence a civil action on behalf of the home care worker to collect that amount, and the circuit court may order the home care placement agency to pay to the home care worker that amount, plus an additional amount equal to 50 percent of that amount, together with costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

3. In the case of a home care worker who commences an action in circuit court under par. (a), if the circuit court finds that the home care placement agency has failed to provide the home care worker with the notice required under sub. (3), that the home care worker is an independent contractor, and that the home care worker is liable for the payment of federal self-employment social security taxes or has sustained an injury as a result of performing home care services, the court may order the home care placement agency to pay to the home care worker an amount equal to the total cost of that liability or the total amount of damages sustained as a result of that injury, together with costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(5) RULES. The department shall promulgate rules to implement this section.

SECTION 2. 105.15 of the statutes is amended to read:
105.15 General powers of department applicable; penalties. Such investigations, classifications, and orders shall be made as provided in s. 103.005 and the penalties specified in s. 103.005 (12) shall apply to and be imposed for any violation of ss. 105.01 to ~~105.11~~ 105.115 or 105.13 to 105.15. The department may also order a person who operates an employment agency in violation of s. 105.05 (1) to make refunds as provided under s. 105.16 (2). Orders issued under this section are subject to review in the manner provided in ch. 227.

SECTION 3. 893.99 of the statutes is created to read:

893.99 Home care consumer notification. An action arising under s. 105.115 (4) (a) is subject to the limitations under s. 105.115 (4) (a).

SECTION 4. Nonstatutory provisions.

(1) HOME CARE CONSUMER AND WORKER NOTICE; RULES; ECONOMIC IMPACT REPORT EXCEPTION. The department of workforce development shall submit in proposed form the rules required under section 105.115 (5) of the statutes, as created by this act, to the legislative council staff under section 227.15 of the statutes no later than the first day of the 6th month beginning after the effective date of this subsection. Notwithstanding section 227.137 (2) of the statutes, the secretary of administration may not require the department of workforce development to prepare an economic impact report for the rules required

under section 105.115 (5) of the statutes, as created by this act.

SECTION 5. Initial applicability.

(1) HOME CARE CONSUMER AND WORKER NOTICE. This act first applies to a home care worker, as defined in section 105.115 (1) (e) of the statutes, as created by this act, who is placed in the residence of a home care consumer, as defined in section 105.115 (1) (b) of the statutes, as created by this act, on the effective date of this subsection.

SECTION 6. Effective date.

(1) HOME CARE CONSUMER AND WORKER NOTICE. This act takes effect on the first day of the 12th month beginning after publication.
