

AMENDMENTS TO LB698

Introduced by Health and Human Services.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 6 of this act shall be known and may be
4 cited as the Home Care Consumer Bill of Rights Act.

5 Sec. 2. For purposes of the Home Care Consumer Bill of Rights Act:

6 (1) Home care consumer means any person who receives home care
7 services and who is (a) sixty years of age or older or (b) a person with
8 disabilities and is younger than sixty years of age. Home care consumer
9 shall also include the parent or guardian of the home care consumer when
10 the consumer is a minor child;

11 (2) Home care services means home and community-based services the
12 purposes of which are to promote independence and reduce the necessity
13 for residence in a long-term care facility, including, but not limited
14 to, personal care services designed to assist an individual in the
15 activities of daily living such as bathing, exercising, personal
16 grooming, and getting in and out of bed, and which are provided under the
17 medicare program under Title XVIII of the federal Social Security Act, as
18 amended, the medicaid program under Title XIX of the federal Social
19 Security Act, as amended, or any other public or private program
20 providing home care services; and

21 (3) Provider of home care services means a public or private
22 organization that provides home care services or arranges for the
23 provision of home care services by an independent contractor.

24 Sec. 3. (1) A home care consumer who is a minor child shall be
25 represented by his or her parent or guardian. Such parent or guardian
26 shall act on behalf of the minor child in securing the minor child's
27 rights under the Home Care Consumer Bill of Rights Act.

1 (2) A home care consumer who has been found by a court to be an
2 incapacitated person shall be represented by a guardian. Such guardian
3 shall act on behalf of the incapacitated person in securing the
4 incapacitated person's rights under the Home Care Consumer Bill of Rights
5 Act.

6 (3) A home care consumer or an incapacitated person who is not a
7 minor child has the right to the assistance of an agent, an attorney, an
8 individual designated pursuant to a power of attorney, or an individual
9 otherwise designated in writing by the home care consumer to act on
10 behalf of the home care consumer in securing his or her rights under the
11 act.

12 Sec. 4. In addition to any other rights recognized under state or
13 federal law, a home care consumer has the following rights:

14 (1) The right to confidentiality of all personal, financial, and
15 medical information which is disclosed to a provider of home care
16 services. A home care consumer also has the right of access to his or her
17 own records and all written information from those records;

18 (2) The right to receive disclosure from the provider of home care
19 services in writing and in plain language (a) whether the provider of
20 home care services is an employer, a joint employer, an employee leasing
21 company, or a contractor, as applicable, and (b) that the home care
22 consumer (i) may be considered an employer under law and, if the home
23 care consumer is so considered, may be held responsible for the payment
24 of federal and state taxes, including, but not limited to, federal and
25 state income taxes, taxes under the Federal Insurance Contributions Act
26 for purposes of social security and medicare, contributions under the
27 Federal Unemployment Tax Act and the Employment Security Law, payment of
28 overtime pay and minimum wage, workers' compensation insurance, and any
29 other applicable payments required under state or federal law and (ii)
30 should consult a tax professional if the home care consumer is uncertain
31 about his or her responsibility for such payments;

1 (3) The right to be informed of the home care consumer's rights
2 under the Home Care Consumer Bill of Rights Act by a provider of home
3 care services prior to receiving home care services. The provider of home
4 care services shall provide a copy of the rights guaranteed by the Home
5 Care Consumer Bill of Rights Act in the format accessible to the consumer
6 which may include paper, electronic, audio, large print, or braille;

7 (4) The right to be informed of the contact information for the
8 entities the home care consumer may contact if the home care consumer's
9 rights are violated, including the Consumer Protection Division of the
10 Office of the Attorney General, in order to have grievances addressed in
11 an appropriate and timely manner and without retaliation;

12 (5) The right to participate in the planning of his or her home care
13 services, including, but not limited to, the right to make choices about
14 aspects of the home care services that are important to him or her,
15 choosing providers and schedules to the extent practicable, receiving
16 reasonable accommodation of his or her needs and preferences, and
17 involving anyone he or she chooses to participate with him or her in that
18 planning;

19 (6) The right to receive sufficient information to make informed
20 decisions, to be fully informed in advance about any proposed changes in
21 home care services, and to be involved in the decisionmaking process
22 regarding those changes;

23 (7) The right to refuse home care services;

24 (8) The right to be informed of the cost of home care services prior
25 to receiving those services, whether the cost of home care services is
26 covered under health insurance, long-term care insurance, or other
27 private or public programs, and any charges the home care consumer will
28 be expected to pay for such home care services. A home care consumer has
29 the right to thirty days' advance notice of any changes to such costs or
30 services;

31 (9) The right to receive care and services provided in a way that

1 promotes his or her dignity and individuality; and

2 (10) The right to (a) express grievances about the quality of the
3 home care services, the number of hours of home care services, and any
4 violations of the home care consumer's rights under the Home Care
5 Consumer Bill of Rights Act and (b) assert the rights under the act
6 without retaliation.

7 Sec. 5. (1) When the Attorney General has cause to believe that any
8 provider of home care services is violating the Home Care Consumer Bill
9 of Rights, the Attorney General may enforce the Home Care Consumer Bill
10 of Rights Act.

11 (2) For purposes of the act, the Attorney General may:

12 (a) Require a provider of home care services to file a statement or
13 report in writing under oath or otherwise as to all facts and
14 circumstances concerning the provision of home care services to the home
15 care consumer;

16 (b) Examine under oath any person in connection with the provision
17 of home care services;

18 (c) Examine any property or sample thereof, record, book, document,
19 account, or paper as the Attorney General deems necessary; and

20 (d) Issue subpoenas to require the attendance of witnesses or the
21 production of documents.

22 (3) The Attorney General may bring a civil action in the district
23 court of any county in which a violation occurred, or in Lancaster
24 County, seeking injunctive relief and a monetary award for civil
25 penalties, attorney's fees, and costs. Any person who violates the act
26 shall be subject to a civil penalty of not more than two thousand dollars
27 for each violation.

28 (4) The Attorney General may also seek and recover actual damages
29 for each health care consumer injured by a violation of the act.

30 Sec. 6. Any home care consumer who suffers a loss or harm as a
31 result of a violation of the Home Care Consumer Bill of Rights Act may

- 1 file a civil action to recover actual damages, attorney's fees, court
- 2 costs, and any other remedies provided by law.