

1 providing penalties; providing for the recovery
2 of costs and attorney's fees; providing an
3 effective date.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

7 Section 1. Section 400.519, Florida Statutes, is
8 created to read:

9 400.519 Home care consumer and worker protection.--

10 (1) SHORT TITLE.--This section may be cited as the
11 "Home Care Consumer and Worker Protection Act."

12 (2) LEGISLATIVE INTENT.--The Legislature intends to
13 protect the consumer of home care services and those
14 individuals providing such private, individual services, by
15 ensuring that both the consumer and the home care services
16 worker are given the ability to make informed, knowing
17 decisions regarding their status as employees, independent
18 contractors, and employers.

19 (3) DEFINITIONS.--As used in this section, the term:

20 (a) "Consumer" means an individual who receives
21 skilled or unskilled care in his or her temporary or permanent
22 residence through a home care services worker or an individual
23 who pays for and directs the services, if not the person
24 receiving services.

25 (b) "Consumer notice" means the notice provided to a
26 consumer which must include, at a minimum:

27 1. The duties, responsibilities, obligations, and
28 legal liabilities of the organization to the home care
29 services worker and to the consumer. Such description must
30 clearly set forth the consumer's responsibility for:
31

- 1 a. Day-to-day supervision of the home care services
2 worker;
- 3 b. Assigning duties to the home care services worker;
- 4 c. Hiring, firing, and disciplining the home care
5 services worker;
- 6 d. Providing equipment or materials for use by the
7 home care services worker;
- 8 e. Performing level 2 background checks on the home
9 care services worker;
- 10 f. Checking the reference of a home care services
11 worker; and
- 12 g. Ensuring credentials and appropriate licensure or
13 certification of a home care services worker.
- 14 2. A statement that identifies the organization as an
15 employer, joint employer, leasing employer, or nonemployer, as
16 applicable, of the home care services worker, along with the
17 responsibility that the organization will assume, if any, for
18 the payment of the home care services worker's wages,
19 including overtime pay for hours worked in excess of 40 hours
20 in a workweek, taxes, social security, Medicare, workers'
21 compensation, and unemployment compensation payments.
- 22 3. A statement that, regardless of the organization's
23 status, the consumer may be considered an employer under state
24 and federal employment laws, and that, if this is the case, he
25 or she may be responsible for paying federal, state, and local
26 taxes, and for paying social security, Medicare, overtime and
27 minimum wages, and unemployment and workers' compensation
28 insurance for the home care services worker.
- 29 4. A list of the forms that the consumer may be
30 required by law to complete and submit as an employer.
- 31

1 5. The penalties that may be assessed against the
2 consumer if it is determined that he or she is an employer but
3 has not fulfilled his or her obligations as an employer.

4 6. The department's appropriate phone numbers and
5 addresses, if the consumer has questions concerning the
6 content of the notice.

7 (c) "Department" means the Department of Elderly
8 Affairs.

9 (d) "Home care services" means skilled or unskilled
10 care provided to an individual in or at his or her temporary
11 or permanent residence for the purpose of enabling that
12 individual to remain safely and comfortably in his or her
13 temporary or permanent residence.

14 (e) "Home care service worker" means any individual
15 performing home care services of any kind or character
16 whatsoever for hire.

17 (f) "Unskilled care" means services that are not
18 skilled care. Unskilled care includes, but is not not limited
19 to, homemaker services, companion services, and personal care.

20 (g) "Worker notice" means a form that contains, at a
21 minimum:

22 1. The duties, responsibilities, obligations, and
23 legal liabilities of the organization, the consumer, and the
24 home care services worker if the home care services worker is
25 determined to be an independent contractor. Such description
26 must include:

27 a. A statement as to the party responsible for paying
28 the home care services worker's wages, including overtime pay
29 for hours worked in excess of 40 hours in a workweek, taxes,
30 social security, Medicare, and unemployment and workers'
31 compensation insurance; and

1 b. A statement identifying which party is responsible
2 for the home care services worker's hiring, firing,
3 discipline, day-to-day supervision, assignment of duties, and
4 provision of equipment or materials for use by the home care
5 services worker.

6 2. The agency's appropriate phone numbers and
7 addresses if the home care services worker has questions
8 concerning the contents of the notice.

9 (4) APPLICATION OF THE ACT.--This section applies to
10 any organization that is licensed or registered under s.
11 400.506 or s. 400.509 and provides skilled or unskilled care.

12 (5) CONSUMER NOTICE.--

13 (a) An organization shall provide the consumer with a
14 consumer notice. The consumer notice must be provided to the
15 consumer each time a home care services worker is placed in
16 the consumer's home. A separate consumer notice is not
17 required in those instances where a home care services worker
18 is temporarily covering or substituting for the consumer's
19 regular home care service worker.

20 (b) The notice shall be on a form developed by the
21 agency.

22 (c) The notice must be signed by the consumer and
23 retained by the organization at its office for at least 3
24 years.

25 (d) An organization that fails to provide such a
26 notice to a consumer is subject to civil fines or penalties as
27 set forth in subsection (7).

28 (e) An organization's failure to provide a consumer
29 notice does not relieve a consumer of any of his or her duties
30 or obligations as an employer. However, if an organization
31 fails to provide a consumer notice and the consumer is

1 determined by the agency to be liable to the home care
2 services worker for payment of wages, taxes, and workers'
3 compensation or unemployment compensation, the consumer has a
4 right of indemnification against the organization, which
5 includes the actual amounts paid to or on behalf of the home
6 care services worker, as well as the consumer's attorney's
7 fees and costs.

8 (6) WORKER NOTICE.--

9 (a) An organization shall provide a worker notice to
10 each home care services worker who is placed with a consumer.
11 The worker notice must explain the home care services worker's
12 legal relationship with the organization and the consumer. The
13 worker notice must be provided to the home care service worker
14 upon his or her placement in a consumer's home.

15 (b) The notice must be on a form developed by the
16 agency.

17 (c) The notice must be signed by the worker and
18 retained by the organization at its office for at least 3
19 years.

20 (d) An organization that fails to provide such a
21 notice to a home care service is subject to civil fines or
22 penalties as set forth in subsections (7).

23 (7) INVESTIGATIONS; ORDERS; CIVIL PENALTIES.--

24 (1) At any time, the agency shall, upon receiving a
25 complaint from any interested person, investigate an
26 organization for any violation of this section.

27 (2) The agency may examine the premises of any
28 organization, may compel by subpoena for examination or
29 inspection, the attendance and testimony of witnesses and the
30 production of books, payrolls, records, papers, and other
31

1 evidence in any investigation or hearing, and may administer
2 oaths or affirmations to witnesses.

3 (3) After appropriate notice and investigation, and if
4 supported by the evidence, the agency may issue and cause to
5 be served on any person an order to cease and desist from a
6 violation of this section and to take any further action that
7 is determined to be necessary to eliminate the effect of the
8 violation.

9 (4) Whenever it appears that any person has violated a
10 valid order of the agency issued under this section, the
11 agency may commence an action and obtain from the court an
12 order directing the person to obey the order of the agency or
13 be subject to punishment for contempt of court.

14 (5) In addition to any order or action, the department
15 may petition a court of competent jurisdiction for an order
16 enjoining any violation of this section.

17 (6) Any organization that violates this section or the
18 rules adopted under this section is subject to a civil penalty
19 of \$500 per day per violation. Civil penalties may be assessed
20 by the agency in an administrative action and may, if
21 necessary, be recovered in a civil action brought by the
22 agency through the Office of the Attorney General or the state
23 attorney of any county in which the violation occurred. The
24 court may order that the civil penalties assessed for
25 violation of this section, together with any costs or
26 attorney's fees arising out of the action to collect the
27 penalties, be paid to the department. The fact that the
28 violation has ceased does not excuse any person from liability
29 for civil penalties arising from the violation.

30 Section 2. This act shall take effect July 1, 2007.
31

SENATE SUMMARY

1
2
3 Creates the "Home Care Consumer and Worker Protection
4 Act." Requires an organization that provides home care
5 services to provide its consumers with notice of certain
6 duties and obligations. Provides that an organization's
7 failure to provide notice subjects that organization to
8 fines and penalties. Requires that an organization that
9 provides home care services to provide notice to its home
10 care services workers. Provides that an organization's
11 failure to provide a worker with notice subjects that
12 organization to fines or penalties. Requires the Agency
13 for Health Care Administration to investigate any
14 violations of the act. Authorizes the agency to examine
15 the premises of any organization or any of its books,
16 payrolls, and records in any investigation or hearing.
17 Authorizes the agency to issue and serve an order to
18 cease and desist. Authorizes the agency to commence an
19 action. Authorizes the Department of Elderly Affairs to
20 petition a court for an order enjoining any violation of
21 the act. Provides penalties.
22
23
24
25
26
27
28
29
30
31