

CHAPTER 63
FORMERLY
HOUSE BILL NO. 110
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO COMMUNITY-BASED ATTENDANT SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 94, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 9403. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

(1) ~~"Ancillary services"~~ "Services" means any of the following supplemental support services, which may be provided only if an eligible participant qualifies for 1 or more basic support services whether meeting a basic or ancillary need:

- a. Homemaker-type services, including cleaning, laundry, shopping and ~~seasonal~~ chores;
- b. Companion-type services, including transportation, escort and facilitation of written, oral and electronic communication;
- c. Assistance with cognitive tasks, including bill payment and money management, planning activities and decision-making; ~~and,~~
- d. Assistance with transferring to and from a bed, wheelchair, vehicle, or other environmental setting.
- e. Help with the use of medical and non-medical equipment, devices, or assistive technology.
- f. Assistance with routine bodily functions, including:
 1. Health maintenance activities.
 2. Bathing and personal hygiene.
 3. Bowel or urinary evacuation.
 4. Dressing and grooming.
 5. Food consumption, preparation, and cleanup.

~~d.g.~~ Such other ~~supplemental~~ support services as may be adopted by the Department through regulation.

(2) "Attendant services" means those ~~basic and ancillary~~ services which compensate for an eligible participant's limitations in performing ~~essential~~ activities of daily living, self-care or mobility within home or community environments.

~~(3) "Basic services" means the following support services:~~

- ~~a. Assistance with transferring to and from a bed, wheelchair, vehicle, or other environmental setting;~~
- ~~b. Help with use of medical and non-medical equipment, devices, or assistive technology;~~
- ~~c. Assistance with routine bodily functions, including, but not limited to:~~
 - ~~1. Health maintenance activities;~~
 - ~~2. Bathing and personal hygiene;~~
 - ~~3. Bowel or urinary evacuation;~~
 - ~~4. Dressing and grooming; and~~
 - ~~5. Food consumption, preparation and cleanup; and~~

~~d. Such other core support services as may be adopted by the Department through regulation.~~

~~(4)~~(3) "Department" means the Department of Health and Social Services.

~~(5)~~(4) "Eligible participant" means a resident of the State with a severe, chronic mental or physical disability which precludes or significantly impairs the individual's ~~independent~~ performance of ~~essential~~ activities of daily living, self-care or mobility within home or community environments. For purposes of this paragraph, a

"chronic disability" is a medically determinable impairment which can be expected to last for a continuous period of not less than 12 months.

~~(6)~~(5) "Program" means the Community-Based Attendant Services Program.

§ 9404. Powers and duties.

In furtherance of the purposes of this chapter, and within the limits of appropriations and other available funds, the Department shall have the following powers and duties:

(1) Develop and implement a statewide community-based attendant services program either directly or through contractual arrangements with other public or private agencies;

(2) Establish and periodically revise an income-based sliding fee schedule for attendant services for eligible participants;

(3) Consistent with definitions in § 9403 of this title, clarify program eligibility and the scope of authorized services;

(4) Establish program operation standards which ensure prompt determination of applications, periodic review of eligibility, participant satisfaction assessment, ~~and~~ an impartial grievance system, and provider incentives to fully implement § 1921(a)(18) and (19) of Title 24.

(5) Ensure that the primary program service delivery model is participant-directed and includes the following features:

a. Eligible participant option to hire, supervise, ~~pay~~ authorize payment to and dismiss attendants;

b. Availability of eligible participant training to facilitate adoption of employer role; ~~and~~

c. Authorization of eligible participant to act through guardian or appointed representative;

(6) Ensure that attendant services are provided in conformity with a written individualized service plan, whose format shall be specifically prescribed by regulation, developed and approved as follows:

a. The plan shall be jointly prepared by the Department and eligible participant, and, in the participant's discretion, other persons with special expertise or interest, including family members;

b. The plan shall be based on an individualized needs assessment;

c. The contents of the plan shall be fully explained to the eligible participant and implemented only after written endorsement by both the Department and eligible participant;

d. In the event that endorsement is withheld, the plan shall be partially implemented in contexts in which consensus is achieved;

e. The plan shall describe the nature, frequency and financial aspects of itemized attendant services; ~~and~~

f. The plan shall include services onset, review, and ending dates;

(7) Prepare an annual report which describes the number of program participants; profiles of participants, including types of disabilities, geographical location and services provided; financial expenditures; participant satisfaction data; and such other information recommended by the Advisory Council;

(8) Investigate and assess the availability of federal and other funding to support implementation of this chapter.

§ 9405. Attendant screening.

(a) The Department shall safeguard participants through establishment of an attendant screening system which includes, but is not limited to, the following features:

(1) Standardized application comprehensively addressing each prospective attendant's background;

(2) Criminal background check at state expense; ~~and~~

(3) Check of sex offender registry and abuse, neglect, mistreatment and financial exploitation registries, including those authorized by Chapters 9 and 11 of this title and ~~Chapter~~ Chapters 41 and 85 of Title 11.

(b) To effectively implement the attendant screening system, the Department is vested with the following powers, duties and authority:

(1) The Department shall require any person seeking to provide attendant services under this chapter to share any and all information, including fingerprints, necessary to obtain a report of the person's Delaware criminal history record from the State Bureau of Identification and a report of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 [28 U.S.C. § 534]. The State Bureau of Identification shall be the intermediary for acquisition of the federal criminal history record.

(2) Notwithstanding any requirements of Chapter 85 of Title 11 to the contrary, the State Bureau of Identification shall furnish information pertaining to the entire Delaware and federal criminal history record of any person seeking to provide attendant services under this chapter. Such information shall be provided to the Department of Health and Social Services pursuant to the procedures established by the Superintendent of the State Police.

(3) Notwithstanding any contrary provision of Chapter 9 of this title, the Department is authorized to obtain child abuse and neglect registry information from the Department of Services for Children, Youth and Their Families pertaining to any person seeking to provide attendant services under this chapter.

(4) Notwithstanding any contrary provision of Chapter 11 of this title or Chapter 85 of Title 11, the Department is authorized to obtain adult abuse registry information from the Division of Long Term Care Residents Protection pertaining to any person seeking to provide attendant services under this chapter.

(5) Notwithstanding any contrary provision of Chapter 11 of this title, the Department is authorized to obtain nurse aide registry information from the Division of Long Term Care Residents Protection pertaining to any person seeking to provide attendant services under this chapter.

(6) Notwithstanding any contrary provision of Chapter 41 of Title 11, the Department is authorized to obtain sex offender registry information from the Superintendent of the Delaware State Police or DELJIS pertaining to any person seeking to provide attendant services under this chapter.

~~(4)~~(7) Notwithstanding any other provision of law, The the Department shall adopt the sole criteria through its regulations which shall disqualify a person from providing attendant services under this chapter. To the extent not otherwise prohibited by law, the Department shall provide a program participant with a summary report of a prospective attendant's screening results prior to employment.

~~(5)~~(8) The Department may adopt criteria through regulations authorizing exemption from this section for persons for whom a qualifying screening was conducted within the previous 5 years.

(c) Any person who either fails to make a full and complete disclosure on an application or a full and complete disclosure of any information required to obtain a registry or criminal background check as required in this section shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

§ 9406. Advisory Council.

The State Council for Persons with Disabilities, established by § ~~8813~~8210 of Title 29 shall serve as the Advisory Council to the Department in implementing this chapter. In furtherance of this role, the Council shall fulfill the following functions:

(1) Review and comment on regulations, policies, and guidelines issued or proposed by the Department;

(2) Review and comment on the Department's annual report developed in conformity with § 9404(7) of this title;

(3) Obtain and review information from the Department and other agencies pertaining to program operation, participant satisfaction and unmet needs;

(4) Study, research and advise the Department on national studies, projects, trends and funding initiatives pertaining to attendant care; ~~and~~

(5) Otherwise assess and assist the Department in implementation of this chapter.

§ 9407. Regulations.

(a) The Department shall prescribe such regulations as may be necessary to fully implement this chapter.

(b) Regulations prepared by the Department under this chapter shall be subject to review and comment by the Advisory Council and shall otherwise be promulgated in conformity with the Administrative Procedures Act, Chapter 101 of Title 29.

(c) The Department is authorized, by regulation, to incorporate features and components of this chapter.

Approved June 30, 2015