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An Act To Enact the Home Care Consumer and Worker Protection Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA c. 37 is enacted to read:

CHAPTER 37

Home care consumer and worker protection act

§ 3211. Short title

This chapter may be known and cited as "the Home Care Consumer and Worker Protection Act."

§ 3212. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Activities of daily living. "Activities of daily living" means eating, dressing, grooming, bathing, use of the toilet, transferring or personal hygiene, including preparation and cleanup related to any of those activities.

2. Companion services. "Companion services" means those services that provide fellowship, care and protection for an individual. "Companion services" includes, but is not limited to, transportation, letter writing, mail reading and escort services.

3. Commissioner. "Commissioner" means the Commissioner of Labor.

4. Consumer. "Consumer" means either an individual who receives home care services in that individual's temporary or permanent residence through a home care services worker or an individual who pays for and directs the services, if not the person receiving services.

5. Consumer notice. "Consumer notice" means the notice provided to a consumer that must include, at a minimum, the following information:

A. A description of the duties, responsibilities, obligations and legal liabilities of the placement agency to the home care services worker and to the consumer. The description must clearly set forth the consumer's responsibility, if any, for:

(1) Day-to-day supervision of the home care services worker;

(2) Assigning duties to the home care services worker;

(3) Hiring, firing and disciplining the home care services worker;

(4) Provision of equipment or materials for use by the home care services worker;

(5) Performing a criminal background check on the home care services worker;

(6) Checking home care services worker references; and

(7) Ensuring credentials and appropriate licensure or certification of a home care services worker;

B. A statement identifying the placement agency as an employer, joint employer, leasing employer or nonemployer, as applicable, of the home care services worker along with the responsibility the placement agency will assume, if any, for the payment of the home care services worker's wages, including overtime pay for hours worked in excess of 40 hours in a workweek, taxes, social security, Medicare and workers' compensation and unemployment compensation payments;

C. A statement that, regardless of the placement agency's status, the consumer may be considered an employer under various state and federal employment laws, and that, if this is the case, the consumer may be held responsible for the payment of the home care services worker's federal, state and local taxes, social security, Medicare, overtime and minimum wages and unemployment and workers' compensation insurance payments;

D. A list of the forms that the consumer may be required by law to complete and submit as an employer;

E. The penalties that may be assessed against the consumer in the event that the consumer is determined to be an employer but has not fulfilled the consumer's obligations as an employer; and

F. The department's telephone number and address, in the event the consumer has questions concerning the content of the notice.

6. Department. "Department" means the Department of Labor.

7. Home care aide. "Home care aide" means an individual working for hire in a person's temporary or permanent place of residence to assist with activities of daily living.

8. Home care services. "Home care services" means skilled or nonskilled care, or both, provided to an individual in or at the individual's temporary or permanent residence for the purpose of enabling that individual to remain safely and comfortably in the individual's temporary or permanent residence. "Home care services" includes, but is not limited to, nursing services, home care aide services, companion services and homemaker services.

9. Home care services worker. "Home care services worker" means any individual performing home care services of any kind or character whatsoever for hire.

10. Homemaker services. "Homemaker services" means assisting with or performing household tasks, such as housekeeping, shopping, laundry, meal planning and preparation, cleaning, home repair services and seasonal chores.

11. Person. "Person" means any individual, firm, association, partnership, company or corporation or other legal entity.

12. Placement agency. "Placement agency" means any person engaged for gain or profit in the business of securing or attempting to secure home care services work for an individual or of securing or attempting to secure a home care services worker for a consumer. "Placement agency" includes, but is not limited to, employment agencies, nurse registries and any other entity that places a home care services worker for hire by a consumer in that consumer's temporary or permanent residence for purposes of providing home care services.

13. Worker notice. "Worker notice" means a form that contains, at a minimum, the following information:

A. The duties, responsibilities, obligations and legal liabilities of the placement agency, the consumer and the home care services worker, in the event that the home care services worker is determined to be an independent contractor. The description must include the following information:

(1) A statement as to the party responsible for the payment of the home care services worker's wages, including overtime pay for hours worked in excess of 40 hours in a workweek, taxes, social security, Medicare and unemployment and workers' compensation insurance;

(2) A statement identifying which party will be responsible for the homecare services worker's hiring, firing, discipline, day-to-day supervision, assignment of duties and provision of equipment or materials for use by the home care services worker.

B. The department's appropriate phone number and address, in the event the home care services worker has questions concerning the contents of the notice.

§ 3213. Consumer notice

1. Notice upon placement. A placement agency shall provide a consumer with a consumer notice each time a home care services worker is placed in the consumer's home. A separate consumer notice is not required in those instances when a home care services worker is temporarily covering or substituting for the consumer's regular home care services worker.

2. Form. A consumer notice must be on a form developed by the department.

3. Signature; retention. The consumer notice must be signed by the consumer and retained by the placement agency at its office for not less than 3 years.

4. Failure to provide notice to worker. A placement agency's failure to provide a consumer notice to a home care services worker subjects that agency to civil fines.

5. Failure to provide notice to consumer. A placement agency's failure to provide a consumer notice does not relieve a consumer of any duties or obligations as an employer. If a placement agency fails to provide a consumer notice and the consumer is determined by the department to be liable to the home care services worker for payment of wages, taxes, workers compensation or unemployment compensation, the consumer has a right of indemnification against the placement agency, which includes the actual amounts paid to or on behalf of the home care services worker, as well as the consumer's attorney's fees and costs.

§ 3214. Worker notice

1. Notice upon placement. A placement agency shall provide a worker notice to each home care services worker who is placed with a consumer that sets out the home care services worker's legal relationship with the placement agency and the consumer. The worker notice must be provided to the home care services worker upon the worker's placement in a consumer's home.

2. Form. The worker notice must be on a form developed by the department.

3. Signature; retention. The notice must be signed by the worker and retained by the placement agency at its office for not less than 3 years.

4. Failure to provide. A placement agency's failure to provide a worker notice to a home care services worker subjects that agency to civil fines set forth in this chapter.

§ 3215. Investigations; orders; civil penalties

1. Investigation. The department may at any time, and shall upon receiving a complaint from any interested person, investigate a placement agency's violation of this chapter.

2. Investigatory powers. The commissioner may examine the premises of any placement agency, may compel by subpoena for examination or inspection the attendance and testimony of witnesses and the production of books, payrolls, records, papers and other evidence in any investigation or hearing and may administer oaths or affirmations to witnesses.

3. Order to cease and desist. After appropriate notice and investigation, and if supported by the evidence, the department may issue and cause to be served on any person an order to cease and desist from violation of this chapter and to take any further action that is determined to be necessary to eliminate the effect of the violation.

4. Commence action. Whenever it appears that any person has violated a valid order of the department issued under this chapter, the commissioner may commence an action and obtain from the court an order directing the person to obey the order of the department or be subject to punishment for contempt of court.

5. Order enjoining violation. In addition to any order or action, the department may petition a court of competent jurisdiction for an order enjoining any violation of this chapter.

6. Penalty. A placement agency that violates this chapter is subject to a fine of \$100 per day per violation.

§ 3216. Rulemaking

The department shall adopt rules to implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill creates the Home Care Consumer and Worker Protection Act. The purpose of this bill is to ensure that both the consumer and the home care services worker are given the ability to make informed, knowledgeable decisions regarding their status as employees, independent contractors and employers.