

THE GOVERNOR

Title 4—ADMINISTRATION

PART I. GOVERNOR'S OFFICE

[4 PA. CODE CH. 7a]

[EXECUTIVE ORDER NO. 2015-05]

Participant-Directed Home Care Services

February 27, 2015

Whereas, the administration is committed to ensuring that Pennsylvania residents have access to quality home care services; and

Whereas, direct care workers are individuals who provide vital home care services to Pennsylvania's seniors and people with disabilities who require assistance; and

Whereas, without assistance from direct care workers who are paid through various programs administered by the Department of Human Services through its Office of Long Term Living, these residents otherwise would require institutional care, such as that provided in a nursing home; and

Whereas, residents who are consumers of in-home personal care services must maintain the right to select and direct the daily work of direct care workers who provide services through the programs administered by the Department of Human Services; and

Whereas, the average cost of providing in-home personal care services is typically much less than the cost of care provided in nursing homes or similar institutional settings, and Pennsylvania's home care services programs therefore save the Commonwealth millions of dollars per year; and

Whereas, the demand for direct home care services is expected to rise in the coming years in light of Pennsylvania's aging population; and

Whereas, the quality of life for Pennsylvania's seniors and people with disabilities is significantly improved by the option of received self-directed in-home care services; and

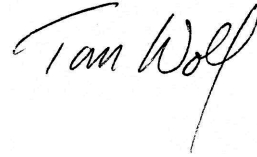
Whereas, direct care workers typically earn low wages and receive no benefits, paid time off, or standardized training; and

Whereas, as a result, the pool of direct care workers available for consumers of in-home care services in Pennsylvania suffers from high turnover and inconsistent quality; and

Whereas, reform of the Commonwealth's home care programs requires careful consideration of its economic impact and must ensure Pennsylvania's right to receive the maximum amount of federal funds to which it is entitled and, therefore, should be informed by input from all interested stakeholders; and

Whereas, the administration believes there is a need to improve both the quality of home care and the working conditions of direct care workers and that these two goals are related;

Now, Therefore, I, Thomas W. Wolf, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution and laws of the Commonwealth of Pennsylvania, do hereby direct the following.



Governor

Fiscal Note: 2015-05. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 7a. ADDITIONAL MISCELLANEOUS PROVISIONS

Subchapter J. PARTICIPANT-DIRECTED HOME CARE SERVICES

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§ 7a.111. Definitions.

As used in this subchapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

Department—The Department of Human Services.

Deputy Secretary—The Deputy Secretary of Human Services for Long Term Living.

Direct care worker—A person who provides participant-directed services in a participant's home under a home care service program.

Direct Care Worker List—A monthly list compiled at the direction of and maintained by the Department of the names and addresses of all direct care workers who have within the previous 3 months been paid through a home care service program that provides participant-directed services. The list shall specify the program through which each direct care worker is paid, but nothing that would identify the name of any participant.

Direct Care Worker Representative—The designated representative elected according to the procedure in § 7a.113 (relating to Direct Care Worker Representative).

Home care service programs—The following programs administered by the OLTL and any successor programs:

- (i) The Aging Waiver Program.
- (ii) The Attendant Care Waiver Program.
- (iii) The CommCare Waiver Program.
- (iv) The Independence Waiver Program.
- (v) The OBRA Waiver Program.
- (vi) The Act 150 Program.

OLTL—The Department's Office of Long Term Living.

Participant—A person who receives services from a direct care worker under a home care service program.

Participant-directed services—

(i) Personal assistance services, respite and participant-directed community supports or similar types of services provided to a senior or a person with a disability who requires assistance and wishes to hire, terminate, direct and supervise the provision of care under the home care service programs, provided now and in the future, to:

- (A) Meet the person's daily living needs.
- (B) Ensure the person may adequately function in the person's home.
- (C) Provide the person with safe access to the community.

(ii) The term does not include any care provided by a worker employed by an agency as defined in section 802.1 of the Health Care Facilities Act (35 P. S. § 448.802a).

*Secretary—*The Secretary of Human Services.

§ 7a.112. Governor's Advisory Group on Participant-Directed Home Care.

(a) The Governor's Advisory Group on Participant-Directed Home Care (Advisory Group) is established to ensure the quality of long-term participant-directed home care. The Advisory Group shall advise the Governor's Office and executive branch agencies and offices of the Commonwealth, including the Department, on ways to improve the quality of care delivered through the home care service programs.

(b) The Advisory Group shall be composed of seven members who shall serve at the pleasure of the Governor. The seven members include the Secretary, or a designee (who shall serve as Chairperson of the Advisory Group), and the Deputy Secretary, or a designee. The remaining five members of the Advisory Group will be appointed by the Governor and include both participants or their surrogates and advocates for seniors and people with disabilities.

(c) Beginning no later than June 30, 2015, the Advisory Group shall meet at least quarterly to study and discuss the experiences and best practices of other states that administer similar programs to provide participant-directed home care services. The Advisory Group shall review the following subjects:

(1) Establishment and maintenance of policies, practices and procedures designed to ensure that the Commonwealth continues its efforts to reduce the numbers of residents in this Commonwealth currently on waiting lists to receive services through the home care service programs.

(2) Evaluation of the work of the OLTL to ensure that the program standards of the home care service programs are being met as they apply to the provision of participant-directed services. The Advisory Group may not review the activities of the Department pertaining to pending reviews and investigations that involve potential fraud or criminal conduct unless the information is publicly available.

(3) Establishment and maintenance of policies, practices and procedures designed to ensure that the Commonwealth continues its efforts to rebalance resources for long-term care services from institutional care to home and community based services.

(4) Establishment and maintenance of policies, practices and procedures designed to ensure that the Commonwealth continues to adhere to the principles of participant-direction, independent living and consumer choice.

(5) Other issues that the Governor may deem appropriate.

§ 7a.113. Direct Care Worker Representative.

(a) *Recognition of representative.* The Secretary shall recognize a representative for the direct care workers for the purpose of discussing issues of mutual concern through a meet and confer process.

(b) *Election process.* The Secretary shall designate the American Arbitration Association to conduct an election and certify the election outcome pursuant to the following process:

(1) An election shall be conducted to designate a representative when an organization seeking to be so designated presents signed authorization cards to the Governor, or a designee, demonstrating that at least 10% of the providers identified on the most recent Direct Care Worker List choose to be represented by an organization.

(2) All direct care workers identified on the most recent Direct Care Worker List, at the time the election is requested, shall be eligible to vote in an election. If the majority of votes cast in the election are for the petitioning organization, the American Arbitration Association shall certify the election results and the Secretary shall recognize the organization as the Direct Care Worker Representative. There shall only be one Direct Care Worker Representative recognized at any time.

(3) The recognized Direct Care Worker Representative shall continue to act as long as the organization complies with its responsibilities concerning representation of direct care workers. Direct care workers who wish to remove the Direct Care Worker Representative shall seek removal in accordance with the election process in this subsection. Direct care workers may not seek removal earlier than 1 year after the organization is recognized as the Direct Care Worker Representative.

(c) *Meet and confer process.* The Secretary, the Deputy Secretary and the Direct Care Worker Representative shall meet and confer to address concerns of direct care workers and ways to improve the quality of care provided under the home care service programs.

(1) The Secretary, the Deputy Secretary and the Direct Care Worker Representative shall meet at least monthly on mutually agreeable dates and times.

(2) The Secretary, the Deputy Secretary and the Direct Care Worker Representative shall discuss relevant issues, including:

(i) The quality and availability of participant-directed services in this Commonwealth within the framework of principles of participant-direction, independent living and consumer choice.

(ii) The improvement of the recruitment and retention of qualified direct care workers.

(iii) The development of a direct care worker registry or worker-participant matching service to provide routine, emergency and respite referrals of qualified direct care workers to participants who are authorized to receive long-term, in-home care services under one of the home care service programs.

(iv) Standards for compensating direct care workers, including wage ranges, health care benefits, retirement benefits and paid time off.

(v) Commonwealth payment procedures relating to the home care service programs.

(vi) Development of an orientation program for direct care workers working in a home care service program.

(vii) Training and professional development opportunities for direct care workers.

(viii) Voluntary payroll deductions for direct care workers.

(3) The Direct Care Worker Representative shall have the opportunity to meet with the Governor, or a designee, at least once annually to discuss the outcome of the meet and confer sessions with the Secretary.

(d) *Memorandum of mutual understanding.*

(1) Mutual understandings reached during the meet and confer process shall be reduced to writing. When appropriate, and with the approval of the Governor, understandings reached through the meet and confer process will be implemented as the policy of the Department relating to direct care workers providing participant-directed services. If a mutual understanding requires legislation or rulemaking, the Direct Care Worker Representative may make recommendations for legislation or rulemaking to the relevant body.

(2) Nothing in this subchapter shall compel the parties to reach mutual understandings.

(3) In the event the parties are unable to reach mutual understandings, the Governor, or a designee, will convene a meeting of the parties to understand their respective positions and attempt to resolve the issues of disagreement.

§ 7a.114. Direct Care Worker List.

(a) The Secretary shall compile a list each month of the names and addresses of all direct care workers (DCW List) who, within the previous 3 months, have been paid through a home care service program that provides participant-directed services. The DCW List shall specify every program through which each direct care worker was paid. The DCW List may not include the name of any participant, any designation that a direct care worker is a relative of a participant or any designation that the direct care worker's home address is the same as a participant's address.

(b) An employee organization that has as one of its primary purposes the representation of direct care workers in their relations with this Commonwealth or other public entities may petition the Secretary to represent a particular unit of direct care workers.

(c) Upon a showing made to the Secretary by an employee organization described in subsection (b) that at least 50 direct care workers support the organization's petition to provide representation, the Secretary shall provide to the organization, within 7 days, the most recent DCW List and, for an additional 6 months thereafter, upon request shall supply subsequent monthly lists.

(d) Any vendor or contractor that provides financial management services for the Commonwealth in connection with any home care service program shall assist and cooperate with the Department in compiling and maintaining the DCW List. The Secretary shall ensure that all existing and future contracts with vendors or contractors providing financial management services for the Commonwealth require the fiscal intermediary to cooperate in the creation and maintenance of the DCW List.

§ 7a.115. Existing rights and relationships.

(a) Nothing in this subchapter shall be construed to limit communication between or among Commonwealth employees, representatives of employee associations, the heads of executive branch agencies and the Governor. This subchapter may not be construed or interpreted to diminish any rights, responsibilities, powers or duties of individual employees in their service to the Commonwealth. This subchapter does not diminish or infringe upon any rights, responsibilities, powers or duties conferred upon any officer or agency by the Constitution or laws of the Commonwealth.

(b) Nothing in this subchapter shall be interpreted to grant direct care workers the status of Commonwealth employees. The provisions of this subchapter may not be construed or interpreted to create collective bargaining rights or a collective bargaining agreement under any Federal or State law.

(c) Nothing in this subchapter or in any memorandum of mutual understanding that may be reached hereunder shall alter the unique relationship between the individual participants and direct care workers. Participants shall retain the rights to select, hire, terminate and supervise a

direct care worker. This subchapter is not intended to grant any right, or to imply that direct care workers have any right, to engage in a strike or other collective cessation of the delivery of services.

(d) Nothing in this subchapter, or in any memorandum of mutual understanding that is reached hereunder, shall alter the rights of direct care workers, including the right to become a member of a labor organization or to refrain from becoming a member of labor organization.

(e) In accordance with all applicable Federal and Commonwealth laws, all existing or future vendors or contractors providing financial management services for the Commonwealth shall refrain from interfering with a direct care worker's decision to join or refrain from joining a labor organization.

(f) This subchapter and any memorandum of mutual understanding reached hereunder may not be interpreted to require a direct care worker to support a labor organization in any way.

(g) Nothing in this subchapter, or in any memorandum of mutual understanding that is reached thereunder, shall limit a direct care worker's ability, individually or in concert with others, to petition the Commonwealth regarding any issue of concern.

§ 7a.116. Cooperation by Commonwealth agencies.

Agencies under the Governor's jurisdiction shall take all steps necessary to implement the provisions of this subchapter.

§ 7a.117. Effect and duration.

This subchapter shall be effective immediately and remain in effect until amended or rescinded by the Governor.

[Pa.B. Doc. No. 15-718. Filed for public inspection April 17, 2015, 9:00 a.m.]

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