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**TITLE 460 DIVISION OF DISABILITY, AGING, AND  
REHABILITATIVE SERVICES**

**Proposed Rule**  
LSA Document #01-337

**DIGEST**

Adds 460 IAC 1-8 concerning personal services attendants for individuals in need of self-directed in-home care. Effective 30 days after filing with the secretary of state.

**460 IAC 1-8**

SECTION 1. 460 IAC 1-8 IS ADDED TO READ AS FOLLOWS:

**Rule 8. Personal Services Attendant for Individuals in Need of Self-Directed In-Home Care**

**460 IAC 1-8-1 Definitions**

**Authority:** IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19

**Affected:** IC 12-10-10; IC 12-10-17; IC 12-15-34-1; IC 16-25; IC 25-1-9-2; IC 25-1-9-3

**Sec. 1. (a) The definitions in this section apply throughout this rule.**

**(b) “Ancillary services” means services ancillary to the basic services provided to an individual in need of self-directed in-home care who needs at least one (1) of the basic services listed in subsection (d). The term includes the following:**

- (1) Homemaker type services, including shopping, laundry, cleaning, and seasonal chores.**
- (2) Companion type services, including transportation, letter writing, mail reading, and escort services.**
- (3) Assistance with cognitive tasks, including managing finances, planning activities, and making decisions.**

**(c) “Attendant care services” means those basic and ancillary services, which the individual chooses to direct and supervise a personal services attendant to perform, that enable an individual in need of self-directed in-home care to live in the individual’s home and community rather than in an institution and to carry out functions of daily living, self-care, and mobility.**

**(d) “Basic services” means a function that could be performed by the individual in need of self-directed in-home care if the individual were not physically disabled. The term includes the following:**

- (1) Assistance in getting in and out of a bed, a wheelchair, and a motor vehicle.**
- (2) Assistance with routine bodily functions, including the following:**
  - (A) Health related services as defined in subsection (f).**
  - (B) Bathing and personal hygiene.**
  - (C) Dressing and grooming.**
  - (D) Feeding, including preparation and cleanup.**

**(e) “Geographic area” means one (1) county of the state.**

**(f) “Health related services” means those medical activities that, in the written opinion of the attending physician submitted to the case manager of the individual in need of self-directed in-home care, could be performed by the individual if the individual were physically capable, and if the medical activities can be safely performed in the home, and either are performed by a person who has:**

- (1) been trained or instructed on the performance of the medical activities by an individual in need of self-directed in-home care who is, in the written opinion of the attending physician submitted to the case manager of the individual in need of self-directed in-home care, capable of training or instructing the person who will perform the medical activities; or
- (2) received training or instruction from a licensed health professional, within the professional's scope of practice, in how to properly perform the medical activity for the individual in need of self-directed in-home care.

(g) "Individual in need of self-directed in-home care" means an individual with a disability, or person responsible for making health related decisions for the individual with a disability, who:

- (1) is approved to receive Medicaid waiver services under 42 U.S.C. 1396n(c), or is a participant in the community and home options to institutional care for the elderly and disabled program under IC 12-10-10;
- (2) is in need of attendant care services because of impairment;
- (3) requires assistance to complete functions of daily living, self-care, and mobility, including those functions included in attendant care services;
- (4) chooses to self-direct a paid personal services attendant to perform attendant care services; and
- (5) assumes the responsibility to initiate self-directed in-home care and exercise judgment regarding the manner in which those services are delivered, including the decision to employ, train, and dismiss a personal services attendant.

(h) "Licensed health professional" means the following:

- (1) A registered nurse.
- (2) A licensed practical nurse.
- (3) A physician with an unlimited license to practice medicine or osteopathic medicine.
- (4) A licensed dentist.
- (5) A licensed chiropractor.
- (6) A licensed optometrist.
- (7) A licensed pharmacist.
- (8) A licensed physical therapist.
- (9) A certified occupational therapist.
- (10) A certified psychologist.
- (11) A licensed podiatrist.
- (12) A licensed speech-language pathologist or audiologist.

(i) "Personal services attendant" means an individual who is registered to provide attendant care services under this rule and who has entered into a contract with an individual and acts under the individual's direction to provide attendant care services that could be performed by the individual if the individual were physically capable.

(j) "Self-directed in-home health care" means the process by which an individual, who is prevented by a disability from performing basic and ancillary services that the individual would perform if not disabled, chooses to direct and supervise a paid personal services attendant to perform those services in order for the individual to live in the individual's home and community rather than an institution. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-1*)

#### **460 IAC 1-8-2 Exclusions from rule**

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19

Affected: IC 12-15-34-1; IC 16-25; IC 25-1-9-2; IC 25-1-9-3

**Sec. 2. This rule does not apply to the following:**

- (1) An individual who provides attendant care services and who is employed by and under the direct control of a home health agency (as defined in IC 12-15-34-1).
- (2) An individual who provides attendant care services and who is employed by and under the direct control of a licensed hospice program under IC 16-25.
- (3) An individual who provides attendant care services and who is employed by and under the control of an

employer that is not the individual who is receiving the services.

(4) A practitioner (as defined in IC 25-1-9-2) who is practicing under the scope of the practitioner's license (as defined in IC 25-1-9-3).

*(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-2)*

#### **460 IAC 1-8-3 Attendant care service provider registration requirement; preclusion**

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19

Affected: IC 12-10-10; IC 12-10-17; IC 12-15

**Sec. 3. (a) An individual desiring to provide attendant care services must register with the division of disability, aging, and rehabilitative services (division).**

(b) An individual may not provide attendant care services for compensation from Medicaid or the community and home options to institutional care for the elderly and disabled program for an individual in need of self-directed in-home care services unless the individual seeking to provide attendant care services is registered with the division.

(c) An individual who is a legally responsible relative of an individual in need of self-directed in-home care, including a parent of a minor individual and a spouse, is precluded from providing attendant care services for that individual for compensation under this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-3)*

#### **460 IAC 1-8-4 Requirements to become registered as attendant care service provider; certificate**

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19

Affected: IC 5-2-5; IC 12-10-17; IC 16-28-13

**Sec. 4. (a) In order to be registered with the division of disability, aging, and rehabilitative services (division), an individual must submit the following:**

(1) A personal résumé containing information concerning the individual's qualifications, work experience, and any credentials the individual may hold. The individual must certify that the information contained in the résumé is true and accurate.

(2) The individual's limited criminal history check from the Indiana central repository for criminal history information under IC 5-2-5 or another source allowed by law.

(3) If applicable, the individual's state nurse aide registry report, referred to in IC 16-28-13, from the state department of health. This subdivision does not require an individual to be a nurse aide.

(4) Three (3) letters of reference.

(5) A registration fee of zero dollars (\$0).

(6) Proof that the individual is at least eighteen (18) years of age.

(7) Any other information required by the division.

(b) Subject to section 9(c) of this rule, if the requirements of subsection (a) are satisfactorily met, the division shall issue a certificate of registration for the period required under IC 12-10-17, effective on the date that the certificate of registration is issued. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-4)*

#### **460 IAC 1-8-5 File maintained by division**

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19

Affected: IC 12-10-17

**Sec. 5. The division shall maintain a file for each personal services attendant that contains the following:**

(1) Comments related to the provision of attendant care services, including periodic reports on the quality of services provided by the personal services attendant, submitted by an individual in need of self-directed in-home care who has employed the personal services attendant.

(2) The items described in section 4(a)(1) through 4(a)(4) of this rule.

*(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-5)*

#### **460 IAC 1-8-6 Renewal of registration**

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19

Affected: IC 12-10-17

**Sec. 6. (a) A personal services attendant may renew the personal services attendant's registration by doing the following:**

- (1) Updating any information in the file described in section 5 of this rule that has changed.
- (2) Paying the fee required under section 4(a)(5) of this rule.

**(b) The limited criminal history check required under section 4(a)(2) of this rule and the nurse aide registry report described in section 4(a)(3) of this rule must be updated every two (2) years.** *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-6)*

#### **460 IAC 1-8-7 Information available from division**

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19  
Affected: IC 5-14-3; IC 12-10-17

**Sec. 7. Upon request, an individual in need of self-directed in-home care shall receive from the division of disability, aging, and rehabilitative services (division) the following:**

- (1) Without charge, a list of personal services attendants who are registered with the division and available within the geographic area requested.
- (2) A copy of the information of a specified personal services attendant who is on file with the division under section 5 of this rule. The division may charge a fee in accordance with IC 5-14-3, not to exceed five dollars (\$5), for shipping, handling, and copying expenses.

*(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-7)*

#### **460 IAC 1-8-8 Contract required**

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19  
Affected: IC 12-10-17-16

**Sec. 8. The individual in need of self-directed in-home care and the personal services attendant must each sign a contract, in a form approved by the division of disability, aging, and rehabilitative services (division), that includes, at a minimum, the following:**

- (1) The responsibilities of the personal services attendant.
- (2) The frequency the personal services attendant will provide attendant care services.
- (3) The duration of the contract.
- (4) The hourly wage of the personal services attendant. The wage may not be less than the federal minimum wage or more than the rate that the recipient is eligible to receive under a Medicaid home and community based services waiver or the community and home options to institutional care for the elderly and disabled program for attendant care services.
- (5) Reasons and notice agreements for early termination of the contract.

*(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-8)*

#### **460 IAC 1-8-9 Appeals and review**

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-20  
Affected: IC 4-21.5-3; IC 4-21.5-5

**Sec. 9. (a) The division of disability, aging, and rehabilitative services (division), through designated representatives, shall investigate complaints by or on behalf of an individual in need of self-directed in-home care concerning the neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care by a personal services attendant.**

**(b) The division shall make a determination as to whether or not a personal services attendant neglected, abused or misappropriated the property of an individual in need of self-directed in-home care by a personal services attendant. The finding shall be entered into the personal services attendant's file with the division. The division shall give the personal services attendant notice of its determination.**

**(c) If the division determines that a personal services attendant neglected, abused, or misappropriated the**

property of an individual in need of self-directed care, the division may remove the personal services attendant from the list of registered personal services attendants and revoke or deny the certificate of registration.

(d) If the division determines that a personal services attendant neglected, abused, or misappropriated the property of an individual in need of self-directed care, the division shall give written notice to the personal services attendant of the procedures and time limit for seeking administrative review of the division's determination pursuant to this section.

(e) A personal services attendant found by representatives of the division to have committed neglect, abuse, mistreatment or misappropriation of property of an individual in need of self-directed in-home care and who disagrees with the decision may petition for administrative review of the decision. The petition must be in writing, show that the petitioner was directly affected by the decision, and contain the specific issues for review and the rationale for the petitioner's position. The petition must be filed within fifteen (15) days after the petitioner is given notice of the decision. The petition must be filed with the director of the division.

(f) Upon receiving timely notice of an appeal, the director or the director's designee shall appoint an administrative law judge to conduct the proceedings on review. The proceedings shall be conducted in accordance with IC 4-21.5-3.

(g) Upon exhaustion of the administrative remedies in subsections (c) and (d), a personal services attendant who is dissatisfied with the outcome may file a petition for judicial review pursuant to IC 4-21.5-5. The petition must be filed in a court of competent jurisdiction within thirty (30) days after receiving notice of the final agency decision. The petition must be served upon the director of the division, the attorney general, and any other party to the agency proceeding. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-9*)

#### **460 IAC 1-8-10 Nurse aide registry**

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-20

Affected: IC 16-28-13

**Sec. 10.** At the conclusion of all appeals taken, or if no appeal is taken, upon determination by the division of disability, aging, and rehabilitative services of the merits of a complaint, a personal services attendant found to have committed neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care shall be placed on the state nurse aide registry referred to in IC 16-28-13. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-10*)

#### ***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on May 23, 2002 at 2:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Room W451 Conference Room A, Indianapolis, Indiana the Division of Disability, Aging, and Rehabilitative Services will hold a public hearing on a proposed new rule concerning attendant care services for individuals in need of self-directed in-home care, requirements for registration as a personal services attendant, method of payment to a personal services attendant, record keeping requirements for a personal services attendant, the handling and investigation of complaints concerning the neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care by a personal services attendant, and corresponding notice, administrative hearing, and appeal procedures. If an accommodation is required to allow an individual with a disability to participate in this meeting, please contact Kevin Wild at (317) 233-2582 at least 48 hours prior to the meeting. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Karen Davis  
General Counsel  
Division of Disability, Aging, and Rehabilitative Services