Self-Directed In-Home Care

This Act provides that someone in need of self-directed in-home care who is a recipient approved to receive certain Medicaid waiver services, or a participant in the state Community and Home Options to Institutional Care for the Elderly And Disabled (CHOICE) program, may employ registered personal services attendants to provide attendant care services. It exempts from these provisions home health agencies, hospice programs, and health care professionals who practice within the scope of their license. It allows a personal services attendant to perform certain self-directed in-home services and medical activities that, in the opinion of the attending physician, meet certain conditions and for which the attendant has received training or instruction on how to properly perform the medical activity from a licensed health professional.

The Act requires an individual in need of in-home care and the individual’s case manager to develop an authorized care plan. It provides that procedures must be adopted to receive and adjudicate certain complaints against personal services attendants.

The law also establishes a Governor’s Commission on Caregivers to study issues regarding the availability and quality of caregivers in long-term care health settings. It requires the commission to submit a report to the governor and legislative council.

Submitted as:
Indiana
SB 215 (enrolled version)

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This Act may be cited as “The Self-Directed In-Home Care Act.”

2 Section 2. [Definitions.] As used in this Act:

3 “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 as defined in this Section. The term includes the following:

4 (1) Homemaker type services, including shopping, laundry, cleaning, and seasonal chores.

5 (2) Companion type services, including transportation, letter writing, mail reading, and escort services.

6 (3) Assistance with cognitive tasks, including managing finances, planning activities, and making decisions.

7 “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.

8 “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:

9 (1) Assistance in getting in and out of beds, wheelchairs, and motor vehicles.

10 (2) Assistance with routine bodily functions, including:

11 (A) health-related services;

12 (B) bathing and personal hygiene;

13 (C) dressing and grooming; and

14 (D) feeding, including preparation and cleanup.
“Commission” refers to the [Governor's Commission on Caregivers] established by Section 12 of this Act.

“Health Facility” has the meaning as defined under [insert citation].

“Health-Related Services” means those medical activities that:

1. In the opinion of the attending physician, could be performed by the individual if the individual were physically capable, and if the medical activity can be safely performed in the home; and
2. The person who performs the medical activity has received training or instruction from a licensed health professional, within the profession's scope of practice, in how to properly perform the medical activity for the individual in need of self-directed services.

“Individual In Need of Self-Directed In-Home Care” means a disabled individual, or person responsible for making health related decisions for the disabled individual, who:

1. Is approved to receive Medicaid waiver services under 42 U.S.C. 1396n(c), or is a participant in the state [Community and Home Options to Institutional Care Program] for the elderly and disabled under [insert citation];
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.

“Long Term Care Caregivers” means certified nurse aides, licensed practical nurses, and registered nurses employed in health facilities, home health care, and other community based settings as defined under [insert citations].

“Personal Services Attendant” means an individual who is registered to provide attendant care services under this Act and who has entered 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.

“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.

Section 3. [Responsibility for Hiring, Recruiting, Training, Payment for Self-Directed In-Home Care.]

(a) Except as provided in subsection (b), an individual in need of self-directed in-home care is responsible for recruiting, hiring, training, paying, certifying any employment related documents, dismissing, and supervising in the individual’s home during service hours a personal services attendant who provides attendant care services for the individual.

(b) If an individual in need of self-directed in-home care is:

1. Less than twenty-one (21) years of age; or
2. Unable to direct in-home care because of a brain injury or mental deficiency; the individual’s parent, spouse, legal guardian, or a person possessing a valid power of attorney may make employment, care, and training decisions and certify any employment-related documents on behalf of the individual.

(c) An individual in need of self-directed in-home care or an individual under subsection (b) and the individual’s case manager shall develop an authorized care plan. The authorized care plan must include a list of weekly services or tasks that must be performed to comply with the authorized care plan.

Section 4. [Employing Personal Services Attendants for Self-Directed In-Home Care.]
(a) A personal services attendant who is hired by the individual in need of self-directed in-home care is an employee of the individual in need of self-directed in-home care.

(b) The [division] is not liable for any actions of a personal services attendant or an individual in need of self-directed in-home care.

(c) A personal services attendant and an individual in need of self-directed in-home care are each liable for any negligent or wrongful act or omission in which the person personally participates.

Section 5. [Contracting for Self-Directed In-Home Care.] 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 [insert agency], that includes, at a minimum, the following provisions:

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.

Section 6. [Registration.]
(a) An individual who desires to provide attendant care services must register with the [insert agency] or with an organization designated by the [insert agency].
(b) The [insert agency] shall register an individual who provides the following:
1. A personal resume 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 resume is true and accurate.
2. The individual’s limited criminal history check from the state [central repository for criminal history information] under [insert citation] or another source allowed by law.
3. If applicable, the individual’s state [nurse aide registry] report 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. The [insert agency] shall establish the amount of the registration fee, not to exceed [thirty (30)] dollars.
6. Proof that the individual is at least [eighteen (18)] years old.
7. Any other information required by the [insert agency].
(c) A registration is valid for [one (1)] year. A personal services attendant may renew the personal services attendant’s registration by updating any information in the file that has changed and by paying the fee required under subsection (a)(5). The limited criminal history check and report required under subsection (a)(2) and (a)(3) must be updated every [two (2)] years.
(d) The [insert agency] shall maintain a file for each personal services attendant that contains:
1. Comments related to the provision of attendant care services submitted by an individual in need of self-directed in-home care who has employed the personal services attendant; and
2. The items described in subsection (a)(1) through (a)(4).
(d) Upon request, the [insert agency] shall provide to an individual in need of self-directed in-home care the following:
1. Without charge, a list of personal services attendants who are registered with the [insert agency] and available within the requested geographic area.
2. A copy of the information of a specified personal services attendant who is on file with the [insert agency] under subsection
3. The [insert agency] may charge a fee for shipping, handling, and copying expenses, not to exceed [five (5)] dollars per file.
Section 7. [Compensation for Self-Directed In-Home Care.]
(a) 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 is registered under Section 6 of this Act.
(b) An individual who is a legally responsible relative of an individual in need of self-directed in-home care, including a parent of minor individual and a spouse, is precluded from providing attendant care services for compensation under this Act.

Section 8. [Rules and Medicaid Waiver.]
(a) The [insert agency] shall apply for any federal waivers necessary to implement this Act.
(b) The [insert agency] shall amend the state [Home and Community Based Services] waiver program under the state Medicaid plan to provide for the payment for attendant care services provided by a personal services attendant for an individual in need of self-directed in-home care under this Act, including any related record keeping and employment expenses. However, the [insert agency] may not implement the provisions of this Act for Medicaid waiver recipients until:
(1) Any necessary waiver is approved; and
(2) The [insert agency] has filed an affidavit with the [governor] attesting that the appropriate federal waiver applied for under this Section is in effect. The [insert agency] shall file the affidavit not later than [five (5)] days after the [insert agency] is notified that the waiver is approved.
(c) If the [insert agency] receives a waiver under this Section from the United States Department of Health and Human Services, and the governor [receives] the affidavit filed under subsection (b), the [insert agency] shall implement the waiver not later than [sixty (60)] days after the [governor] receives the affidavit.

Section 9. [Self-Directed In-Home Care: Eligibility Under Medicaid; Payment, Record Keeping.]
(a) The [insert agency] shall not, to the extent permitted by federal law, consider as income money paid under this Act to or on behalf of an individual in need of self-directed in-home care to enable the individual to employ registered personal services attendants, for purposes of determining the individual’s income eligibility for services under this Act.
(b) The [insert agency] shall adopt rules concerning:
(1) The method of payment to a personal services attendant who provides authorized services under this Act; and
(2) Record keeping requirements for personal attendant services.
(c) The [insert agency] may adopt other rules under [insert citation] as necessary to implement this Act.

Section 10. [Demonstration Projects.] The [insert agency] may:
(1) Initiate demonstration projects to test new ways of providing attendant care services; and
(2) Research ways to best provide attendant care services in urban and rural areas.

Section 11. [Complaints Concerning Self-Directed In-Home Care.] The [insert agency] shall adopt rules under [insert citation] concerning the following:
(1) The receipt, review, 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.
(2) Establish notice and administrative hearing procedures in accordance with [insert citation].
(3) Appeal procedures, including judicial review of administrative hearings.
(4) Procedures to place a personal services attendant who has been determined to have been guilty of neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care on the state nurse aide registry.
Section 12. [Governor’s Commission on Caregivers.]

(a) The [Governor’s Commission on Caregivers] is established.
(b) The commission consists of the following members:

   (1) The [governor] or the governor’s designee, who shall serve as the chairperson.
   (2) The [state health commissioner] or the commissioner’s designee.
   (3) The [president of the state board of nursing] or the president’s designee.
   (4) The [secretary of family and social services] or the secretary’s designee.
   (5) The [chairman of the commission for higher education] or the chairman’s designee.
   (6) The [state superintendent of public instruction] or the superintendent’s designee.
   (7) The [commissioner of the department of workforce development] or the commissioner’s designee.
   (8) The [director of the department of commerce] or the director’s designee.
   (9) The [commissioner of the department of labor] or the commissioner’s designee.
   (10) [One (1)] member appointed by the [governor] to represent each of the following organizations:

      (A) The state [association of homes and services for the aging].
      (B) The state [health care association].
      (C) The state [association for home and hospice care].
      (D) The state [nurses association].
      (E) The state [health and hospital association].
      (F) The state [home care task force].
      (G) The state [association of area agencies on aging].
      (H) [United Senior Action].
      (I) The state [university school of nursing]
      (J) [Ivy Tech State College].
      (11) [One (1)] member appointed by the governor to represent a private postsecondary educational institution that offers nursing degrees.

(c) The commission shall do the following:

   (1) Review data and information on the availability of and need for long-term care caregivers.
   (2) Evaluate barriers to increasing the supply of long-term care caregivers.
   (3) Evaluate the adequacy of existing training programs in the state for long-term caregivers.
   (4) Develop recommendations to increase the supply of long-term care caregivers, including the following:

      (A) Welfare to work programs.
      (B) Worker recruitment and incentive programs.
      (C) Immigration.
      (D) Linkages between training programs and the long term care and senior services industries.
      (E) Cross-training of nurse aides across the continuum of long term care services.
      (F) Potential roles for various state agencies and educational institutions represented on the commission.

(d) [Eleven (11)] members of the commission constitute a quorum.
(e) The affirmative votes of at least [eleven (11)] members of the commission are required for the commission to take any action, including the approval of a final report.
(f) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by [insert citation].
(g) The commission may contract with a private individual or organization to provide the staff support necessary for the operation of the commission, including conducting research and developing the report required under subsection (h).
(h) The commission shall submit a report to the [governor] and the [legislative council] not later than [insert date].

Section 13. [Non-Applicability.] This Act does not apply to:
(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 under [insert citation].
(2) An individual who provides attendant care services and who is employed by and under the direct control of a licensed hospice program under [insert citation].
(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 under [insert citation], who is practicing under the scope of the practitioner’s license as defined under [insert citation].

Section 14. [Severability.] [Insert severability clause.]

Section 15. [Repealer.] [Insert repealer clause.]

Section 16. [Effective Date.] [Insert effective date.]