

Regular Session, 2005

# ACT No. 451

HOUSE BILL NO. 697

BY REPRESENTATIVES M. GUILLORY, SALTER, ALARIO, DORSEY, HAMMETT,  
AND CURTIS AND SENATORS HINES, BAJOIE, MOUNT, AND HEITMEIER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To enact Chapter 11-A of Title 37 of the Louisiana Revised Statutes of 1950, to be  
3 comprised of Part I, R.S. 37:1021 through 1025, and Part II, R.S. 37:1031 through  
4 1034, relative to direct service workers and medication attendants; to provide for the  
5 authority, training, registration, and termination of direct service workers; and to  
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 11-A of Title 37 of the Louisiana Revised Statutes of 1950,  
9 comprised of Part I, R.S. 37:1021 through 1025, and Part II, R.S. 37:1031 through 1034, is  
10 hereby enacted to read as follows:

11 CHAPTER 11-A. MEDICATION ATTENDANTS AND  
12 DIRECT SERVICE WORKERS

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14 PART II. DIRECT SERVICE WORKERS

15 §1031. Applicability

16 A. The provisions of this Part shall not apply to gratuitous care provided by  
17 friends or members of the individual's family.

18 B. The provisions of this Part shall apply to all direct service workers  
19 employed by a licensed agency and who attend to individuals receiving state or  
20 federally funded home and community-based services. An individual being served  
21 shall meet the following criteria:

1                   (1) Is eligible for care in an intermediate care facility for the mentally  
 2                   retarded or be eligible for care in a nursing facility but has chosen to receive  
 3                   assistance in his residence.

4                   (2) Is able to self-direct the services or resides in a residence where there is  
 5                   daily monitoring by a family member, a direct service worker, or other health care  
 6                   provider.

7                   (3) Has a current plan of care.

8                   (4) Receives a periodic assessment by a registered nurse based on the  
 9                   individual's health status.

10                  B. As used in this Part, the term residence shall not include any intermediate  
 11                  care facility for the mentally retarded, any nursing home, or any other facility  
 12                  licensed by the Department of Health and Hospitals or the Department of Social  
 13                  Services.

14                  C. As defined in this Part, a direct service worker is an unlicensed person  
 15                  who provides personal care or other services and supports to persons with disabilities  
 16                  or to the elderly in order to enhance their well-being and which involves face-to-face  
 17                  direct contact with the person. Functions performed may include but are not limited  
 18                  to assistance and training in activities of daily living, personal care services, and job-  
 19                  related supports.

20                  D. The Department of Health and Hospitals, in conjunction with the  
 21                  Louisiana State Board of Nursing, shall promulgate rules and regulations necessary  
 22                  to enable the implementation of this Part, and other rules and regulations concerning  
 23                  direct service workers consistent with this Part.

24                  §1032. Authorized procedures

25                  Direct service workers may perform any or all of the following tasks for an  
 26                  individual who is in stable condition only when the task may be performed according  
 27                  to exact directions and there is no need to alter the standard procedure and the results  
 28                  are predictable.

29                  (1) Administration of oral and topical medication, ointments, suppositories,  
 30                  or a pre-measured dosage unit provided by the manufacturer of an oral inhalant

1           aerosol as ordered by an authorized prescriber. Any medication administered by a  
2           direct service worker under this Part shall be in a container which meets acceptable  
3           pharmaceutical standards and is marked with clear instructions, the prescriber's  
4           name, the prescription number, if any, and the name of medication, dosage, and  
5           route. Under no condition shall a direct service worker administer medications not  
6           in compliance with the provisions of this Section.

7                   (2) Provision of routine hydration, nutrition, or medication by way of an  
8                   established gastro-tube.

9                   (3) Other non-complex tasks which may be delegated by the registered nurse  
10                  to the direct service worker pursuant to rules promulgated pursuant to this Part.

11           §1033. Required training; registration

12                   A. In order to be authorized to perform the procedures specified in R.S.  
13                   37:1032, a direct service worker shall be employed by a licensed agency and shall  
14                   receive the following training:

15                          (1) All training required by agency licensing laws or the rules and  
16                          regulations for participating in Medicaid reimbursement or the requirements of the  
17                          state or federally funded home or community-based service.

18                          (2) In order to administer medications, at least sixteen hours of fundamentals  
19                          of medication administration training including but not limited to medication  
20                          administration, handling and storage of medications, side effects, and drug  
21                          interactions. This training may be a part of the training required in Paragraph (1) of  
22                          Subsection A of this Section.

23                          (3) At least six hours of person-specific training from a registered nurse who  
24                          has assessed the health status of the individual in the residence where the services  
25                          are to be performed and determined that the direct service worker can perform the  
26                          tasks in a safe, appropriate manner, with additional person-specific training by a  
27                          registered nurse whenever the tasks to be performed or the types of medications to  
28                          be administered are changed. Written documentation of training provided by the  
29                          registered nurse shall be submitted to and maintained by the direct service worker's  
30                          employing agency.

1                   (4) Current Cardio-Pulmonary Resuscitation certification.

2                   B. Any unlicensed person performing the procedures authorized by this Part  
 3                   on the effective date of this law shall complete the training required by this Section  
 4                   no later than twelve months after promulgation of the regulations required by this  
 5                   Part. Training specified in Subsection A of this Section shall be repeated if the  
 6                   registered nurse does not certify that the direct service worker has demonstrated a  
 7                   sufficient level of competency in subject matter.

8                   C. A direct service worker shall undergo an annual competency validation,  
 9                   specified in rules adopted by the Louisiana Board of Nursing and the Department of  
 10                  Health and Hospitals, performed by a registered nurse, to determine whether the  
 11                  direct service worker continues to perform the authorized, person-specific tasks  
 12                  appropriately. Documentation of the annual competency review provided by the  
 13                  registered nurse shall be submitted to and maintained by the direct service worker's  
 14                  employing agency.

15                  D.(1) Any registered nurse who has properly trained and documented that  
 16                  a direct service worker can perform the prescribed tasks shall not be liable for any  
 17                  civil damages as a result of any act or omission of the direct service worker.

18                  (2) A physician licensed to practice medicine by the Louisiana State Board  
 19                  of Medical Examiners, whether or not he developed the individual's current plan of  
 20                  care, including but not limited to the prescribed medication regime, who is rendering  
 21                  professional medical care services to the individual receiving assistance or services  
 22                  under the provisions of this Part shall not be liable for any civil damages as a result  
 23                  of any negligent or intentional act or omission of a direct service worker or a  
 24                  licensed agency.

25                  E. Notwithstanding any other provision of law, licensed agencies that  
 26                  employ direct service workers shall be liable for damages as a result of any act or  
 27                  omission of the direct service worker.

28                  F. Direct service workers performing tasks under this Part shall maintain  
 29                  current registration with the Department of Health and Hospital's Direct Service  
 30                  Worker Registry.

1           G.(1) Prior to providing personal care or other services as specified in this  
2           Part, a direct service worker shall provide a written disclaimer to the recipient of the  
3           care or to the legal guardian of the recipient, in the case of the incompetency of the  
4           recipient. The disclaimer shall include the following:

5                   (a) The length and scope of the worker's training, taking into consideration  
6                   the requirements of this Part and any regulations promulgated in accordance with this  
7                   Part.

8                   (b) Information regarding how to report care deficiencies, including any  
9                   applicable telephone numbers.

10                   (c) The signature of both the direct service worker and the recipient or the  
11                   legal guardian of the recipient where appropriate.

12                   (2) The original of the completed disclaimer shall be maintained in the  
13                   permanent files of the provider agency employing the direct service worker, one  
14                   copy shall be given to the recipient, and one copy shall be provided to the direct  
15                   service worker.

16                   (3) Failure to execute the disclaimer in accordance with this Subsection shall  
17                   serve as cause to terminate authorization of the direct service worker to provide  
18                   services.

19           §1034. Termination of authorization

20                   Authorization for a direct service worker to perform any of the tasks specified  
21                   in R.S. 37:1032 shall be terminated for any of the following reasons:

22                   (1) The condition of the individual for whom the direct service worker is  
23                   performing the tasks covered within this Part has become unstable.

24                   (2) A registered nurse certifies that the direct service worker can no longer  
25                   perform the prescribed tasks safely.

26                   (3) The direct service worker no longer maintains current registration in the  
27                   Direct Service Worker Registry.

28           Section 2. This Act shall become effective upon signature by the governor or, if not  
29           signed by the governor, upon expiration of the time for bills to become law without signature  
30           by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
2 effective on the day following such approval.

3 Section 3. The Louisiana State Law Institute shall redesignate and incorporate Part  
4 V of Chapter 11 of Title 37 of the Louisiana Revised Statutes of 1950, to be Part I of  
5 Chapter 11-A of Title 37 of the Louisiana Revised Statutes of 1950.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_