

HOUSE BILL 968

By Hill M

AN ACT to amend Tennessee Code Annotated, Title 63;
Title 68 and Title 71, relative to individuals
performing health maintenance tasks.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 1, Part 1, is amended by
adding the following language as a new section:

(a) For purposes of this section:

(1) "Caregiver" means a person who is:

(A) Directly and personally involved in providing care for a minor
child or incompetent adult; and

(B) The parent, foster parent, family member, friend, or legal
guardian of such minor child or incompetent adult;

(2) "Competent adult" means a person eighteen (18) years of age or
older who has the capability and capacity to evaluate knowledgeably the options
available and the risks attendant upon each and to make an informed decision,
acting in accordance with the person's own preferences and values. A person is
presumed competent unless a determination to the contrary is made;

(3) "Health maintenance task" means a healthcare task that:

(A) A person without a functional disability or a caregiver would
customarily and personally perform without the assistance of a licensed
healthcare provider;

(B) The person is unable to perform for the person's own self due to a functional or cognitive limitation;

(C) The licensed healthcare provider determines can be safely performed in the home for the person by a paid personal aide acting under the direction of a competent adult with a functional disability or caregiver;

(D) Enables the person to maintain independence, personal hygiene, and safety in the person's own home; and

(E) Includes, but is not limited to, administration of glucometer tests, administration of eye or ear drops, nebulizer treatment, and ostomy care, including skin care and changing appliance;

(4) "Home" means the dwelling in which the person resides, whether the person owns, leases, or rents such residence or whether the person resides in a dwelling owned, leased, or rented by someone else;

(5) "Licensed healthcare provider" means the treating physician licensed under title 63, chapter 6 or 9, or a registered nurse; and

(6) "Paid personal aide" is any person providing paid home care services, such as personal care or homemaker services, that enable the person receiving care to remain at home whether the paid personal aide is employed by the person receiving care, a caregiver, or by a contracted provider agency that has been authorized to provide home care services to that person.

(b) Notwithstanding any law or rule to the contrary, a competent adult with a functional disability living in the adult's own home or a caregiver acting on behalf of a minor child or incompetent adult living in the minor child's or the incompetent adult's own home may choose to direct and supervise a paid personal aide in the performance of a health maintenance task subject to the aide having been taught, evaluated, and supervised as required by subsection (d).

(c) A paid personal aide may perform health maintenance tasks required by an individual receiving long-term services and support and be paid to provide those tasks while performing services constituting home based long term care, as defined in § 71-2-103, under a private pay arrangement or under a program operated pursuant to title 71, chapter 5.

(d) If a licensed healthcare provider, after completing an assessment of an individual's healthcare needs, determines health maintenance tasks can be performed by paid personal aides, the licensed healthcare provider shall evaluate the ability of the paid personal aide to perform the health maintenance task, teach the health maintenance task to the paid personal aide, ensure supervision of the paid personal aide, and re-evaluate the health maintenance task performed by the paid personal aide at regular intervals.

(e) A licensed healthcare provider acting with ordinary and reasonable care under the circumstances and within the protocols of the provider's authority who has ordered treatment to be provided by a paid personal aide, shall not be individually liable for the negligence or intentional acts of such paid personal aide when such negligence or intentional acts are outside the scope of the health maintenance tasks to be performed.

SECTION 2. The Tennessee commission on aging and disabilities shall, after consultation with the bureau of TennCare, the board of nursing, the department of intellectual and developmental disabilities, and stakeholder groups representing older persons and people with disabilities, promulgate rules implementing this act. These rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 3. For the purpose of rule promulgation, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2018, the public welfare requiring it.