

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: March 12, 2019	<input type="checkbox"/>	Consent	<input type="checkbox"/>	Regular
	<input type="checkbox"/>	Ordinance	<input checked="" type="checkbox"/>	Public Hearing

Department: Department of Public Safety
Submitted By: Department of Public Safety
Submitted For: Division of Consumer Affairs

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 17, ARTICLE XV OF THE PALM BEACH COUNTY CODE, THE "PALM BEACH COUNTY HOME CAREGIVER ORDINANCE" (R2015-038); AMENDING SECTION 17-463 (DEFINITIONS); AMENDING SECTION 17-464 (HOME CAREGIVER ID BADGE); AMENDING SECTION 17-465 (DISQUALIFICATIONS); AMENDING SECTION 17-466 (ADMINISTRATIVE APPEAL); AMENDING SECTION 17-468 (PENALTIES); PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

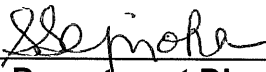
Summary: This item was continued from the February 5, 2019 Board of County Commissioners (BCC) meeting. Back in November 2018, an industry meeting was held with the home caregiver businesses to discuss proposed revisions to the Home Caregiver Ordinance. The proposed revisions were also presented to the League of Cities on November 28, 2018 and the Criminal Justice Commission on December 17, 2018 with no objection. A preliminary reading of the proposed ordinance revisions was presented to the BCC on January 15, 2019 and on February 5, 2019 a public hearing was held. The BCC continued the item to March 12, 2019 and directed staff to address concerns expressed by the industry. In follow up to the BCC's direction at the February 5, 2019 meeting, staff held a second industry meeting on February 22, 2019. At that meeting, there were representatives from three different home caregiver businesses as well as members from the County Attorney's Office, State Attorney's Office, and Palm Beach County Sheriff's Office. Agreement was reached at the meeting on the three items of concern which include: 1) allowing home caregivers to work up to 10 days of first assignment providing required documents are submitted to Consumer Affairs within 72 hours; 2) deferring monetary fines or penalties for eighteen months while home caregiver businesses transition home caregivers to Consumer Affairs for direct monitoring with AHCA and 3) removing the requirement for home caregiver agencies to advise Consumer Affairs that an employee or independent contractor has taken a leave of absence of more than 90 days. The three additional changes were not presented to the League of Cities or the Criminal Justice Commission since the working group was involved in the follow up meeting with the home caregiver businesses. Staff believes that with these three additional changes, all industry concerns have been addressed and recommend the BCC adopt the Ordinance as revised.

(Summary, Background and Policy Issues continued to page 3)

Attachments:

- 1) Proposed Home Caregiver Ordinance Amendment: Strike-through/Underlined Version
- 2) Proposed Home Caregiver Ordinance: Clean Version

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Recommended by: <u></u>	<u>3/4/19</u>
Department Director	Date

Approved By: <u></u>	<u>3/7/19</u>
Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	2019	2020	2021	2022	2023
Personal Services					
Operating Costs					
Capital Expenditures					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
Net Fiscal Impact	0*				

# ADDITIONAL FTE					
POSITIONS (Cumulative)	0	0	0	0	0

Is Item Included In Current Budget? Yes No
Does this item include the use of federal funds? Yes No X
Budget Account Exp No: Fund Department Unit Object
Rev No: Fund Department Unit RevSrc

B. Recommended Sources of Funds/Summary of Fiscal Impact:
*The fiscal impact is undetermined at this time.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Delegh Rauxer 3/5/19 J. J. Hawley 3/7/19
OFMB ASD 3/5 Contract Dev. And Control 3/6/19 FD
9/3/4 Jm 3/4

B. Legal Sufficiency:

ADC/An 3/5/19
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

(Summary, Background and Policy Issues continued from page 1)

As a recap, the other key revisions to the Ordinance include the following: 1) prohibiting the advertisement of caregiver services without a valid Home Caregiver ID badge, 2) defining the term Home Care Business, Partner and Home Caregiver ID Badge, 3) extending exemptions to court appointed guardians and persons working under the direction and control of a specified Florida Agency for Health Care Administration (AHCA) licensed facility, 4) including clerk/court staff, Florida Department of Children and Families, and Florida Department of Elder Affairs as personnel authorized to inspect the license, 5) adding language for processing civil citations, 6) creating a requirement for Home Care Businesses to require each Home Caregiver to provide proof of a valid Home Caregiver ID badge prior to assignment, 7) creating a violation for a Home Care Business to provide or make available the services of a Home Caregiver without having a Home Caregiver ID Badge, 8) creating a violation for the failure of the agency, registry or provider to notify the Division within 15 days of the caregiver's ineligibility or discontinuance from employment or placement, 9) replacing the term "license" with "Home Caregiver ID Badge," and 10) adding a verification option for level two (2) background checks using the Agency for Health Care Administration licensing database. Agenda item 5G1 is a companion item to this agenda item. Countywide (LDC)

Background and Policy Issues: In cooperation with the Palm Beach Sheriff's Office, the Board of County Commissioners enacted the Home Caregiver Ordinance on October 20, 2015 as a way to curtail abuse, neglect, and exploitation of the elderly and disabled persons by Home Caregivers. Issuing of ID Badges began in April of 2016 with nearly 11,000 applications processed. The ordinance requires individuals who receive compensation from a vulnerable adult in exchange for assisting with covered activities and/or instrumental activities of daily living to undergo a level 2 criminal background screening. The Ordinance exempts most relatives of the vulnerable adult, volunteers of charitable organizations, and specific licensed professionals. Once processed and no disqualifying offenses are identified, applicants are issued a photo ID and appear in a web-based look up tool available to the public. The ordinance aims to reduce abuse, neglect, and exploitation of vulnerable populations by requiring home caregivers to undergo a Level II criminal background screening and obtain an ID Badge. Over the course of administering the ordinance and with input from the Criminal Justice Commission Elder Abuse Prevention Task Force, several areas were identified that required revisions to improve the efficacy of the ordinance.

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WHEREAS, Chapter 17, Article XV of the Palm Beach County Code sets forth provisions requiring the licensing ID Badging of Home Caregivers; and

WHEREAS, the Board of County Commissioners finds that it is in the interest of public safety to protect Palm Beach County’s vulnerable adults and disabled citizens by enhancing the enforcement provisions of the Home Caregiver ordinance; and

WHEREAS, it is now necessary to amend Chapter 17, Article XV of the Palm Beach County Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Chapter 17, ARTICLE XV of the Palm Beach County Code is hereby amended as follows:

Section 1. Section 17-463. – Definitions.

As used in this Article, unless some other meaning is plainly intended:

Advertising means to advise, announce, give notice of, publish, or call attention by use of oral, written, or graphic statements made in newspaper, telephone directories or other publications or on radio or television, any electronic medium including but not limited to internet or website, or contained in any notice, handbill, catalog, newsletter, poster, sign, flyer, business card, or letter.

Board is the Palm Beach County Board of County Commissioners.

Covered Activities include Activities of Daily Living (bathing, grooming, shaving, oral care, using the toilet or other continence-related activities, dressing, eating, transferring from seated to standing position, getting in and out of bed); and Instrumental Activities of Daily Living (finding and utilizing resources such as making and keeping doctor's appointments, driving or arranging for travel - either by public transportation or private car, preparing meals, shopping, housework, managing medication, and managing finances).

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48 *Division* is the Palm Beach County Department of Public Safety Consumer Affairs Division.

49 *Home Care Business* means a nurse registry, home health agency, homemaker and companion
50 service, hospice provider, or any staffing agency, firm or person who makes Home Caregivers
51 available to provide services for Vulnerable Adults, regardless of whether the Home Caregiver is
52 an independent contractor, agent or employee.

53 *Home Caregiver* is a person who receives compensation directly or indirectly from a
54 "vulnerable adult" in exchange for assisting that vulnerable adult with one (1) or more "covered
55 activities."

56 *Home Caregiver ID Badge* means a Palm Beach County license issued by the Division to a
57 Home Caregiver permitting a Home Caregiver to provide services to a vulnerable adult pursuant
58 to this ordinance.

59 *Partner* means a person living with a Vulnerable Adult in a pre-existing, established
60 relationship with that Vulnerable Adult, sharing the same residence and holding themselves out to
61 others as though in a committed relationship in a manner similar to married couples.

62 *Vulnerable Adult* is a person eighteen (18) years of age or older whose ability to perform the
63 normal activities of daily living or to provide for his or her own care or protection is impaired due
64 to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or
65 brain damage, or the infirmities of aging.

66 **Section 2. Section 17-464. – Licensing – Home Caregiver ID Badge.**

67 1. It shall be unlawful and a violation of this Article for any person to act as a Home Caregiver
68 without first obtaining a Home Caregiver ~~license~~ ID Badge, unless exempt under this Article. ;
69 ~~however, this Article shall not apply to the following:~~

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71 (a) Exemptions. ~~however~~ This Article shall not apply to the following:

72 (1) The Vulnerable Adult's spouse, domestic partner, parents, step-parents, grandparents,
73 step-children, grandparents, children, step-children, grandchildren, step-
74 grandchildren, great grandchildren, siblings, ~~or~~ step-siblings, former spouse, or
75 Partner;

76 (2) Charitable and/or faith based organizations which are exempt from federal income tax
77 pursuant to 26 U.S.C. § 501(c)(3), and which serve Vulnerable Adults by making
78 referrals of volunteers to provide Covered Activities;

79 (3) People who receive compensation directly or indirectly from a Vulnerable Adults in
80 exchange for assisting that Vulnerable Adults with one (1) or more Covered Activities
81 on a non-recurring basis, not to exceed three (3) days in any calendar month or twenty-
82 four (24) days in any calendar year calculated by an accumulation of hours and days
83 of service provided by the caregiver for all Vulnerable Adults receiving services from
84 that Home Caregiver;

85 (4) People who are currently licensed in Florida as a: Registered Nurse (RN), Licensed
86 Practical Nurse (LPN), Certified Nursing Assistant (CNA), Clinical Nurse Specialist
87 (CNS), Advanced Registered Nurse Practitioner (ARNP), Physical Therapist (PT),
88 Physical Therapist Assistant (PTA), Occupational Therapist (OT), or Occupational
89 Therapist Assistant (OTA);

90 (5) People who are serving as court-appointed guardians or professional court guardians
91 are not required to obtain a home caregiver ID Badge to serve as a court appointed
92 guardian. This does not relieve home caregivers who are retained by or hired by court
93 appointed guardians from obtaining a Home Caregiver ID Badge.

(6) Employees working under the direction and control of businesses classified by the Agency for Health Care Administration (AHCA) as adult day care, adult family care homes, ambulatory surgery centers, assisted living facilities, birth center, clinical laboratory, community mental health partial hospital program, community residential home, comprehensive outpatient rehabilitation facility, crisis stabilization unit, health care clinic, home medical equipment providers, nursing home, rehabilitation agency, residential treatment center for children and adolescents, residential treatment facility, rural health clinic, skilled nursing unit, or transitional living facility. This exemption is limited to the services provided by a Home Caregiver as an employee of the business cited herein and not to services provided outside of that employment relationship. Persons employed or contracted by a Home Care Business and who are assigned to work with an entity listed herein, are not exempt from the ID Badge requirement.

2. Except for assignment during the Grace Period defined herein, Home Care Businesses shall require each Home Caregiver to provide proof of current ID Badge prior to assignment of the Home Caregiver, regardless of whether the Home Caregiver is an independent contractor, agent, or employee of the Home Care Business. A Home Care Business may permit an AHCA eligible Home Caregiver to work for up to ten (10) days from the date of the first assignment ("the Grace Period") providing the Home Caregiver submits, within 72 hours from the first assignment a completed Caregiver Application, AHCA Verification Form or Agency Affidavit, and schedules an appointment with the Division to obtain an ID Badge.

3. It is a violation of this section for any Home Care Business to provide or make available the services of a Home Caregiver who does not have a current ID Badge, unless the Home Caregiver is exempt from the ID Badge requirement of this Article.

4. A person who is not exempt who wishes to act as a Home Caregiver shall make application to the Division for a Home Caregiver ID Badge. All applicants for a Home Caregiver ID Badge or renewal shall conform to all of the following, and failure to meet each of these conditions is grounds for denial of a Home Caregiver ID Badge:

(a) Be at least eighteen (18) years of age.

(b) On initial application and on each subsequent renewal thereafter, the applicant must provide the original request form for his/her Florida Department of Law Enforcement (FDLE) criminal history/records report to the Division, as well as payment for the amount required to secure the criminal history/records report. The Division shall then be responsible for processing the request and payment to the FDLE. Prior to submitting a request for a criminal history record check pursuant to this Article, the Division shall notify each applicant to be fingerprinted that his or her fingerprints will be sent to the State Department of Law Enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check. The notification shall also state that the Home Caregiver ID Badge license applicant has a right to:

(1) Obtain a copy of his or her criminal history records;

(2) To challenge the completeness and accuracy of the criminal history records pursuant to state and federal law; and

(3) To request a correction, change or update to the criminal history records pursuant to state and federal law.

(c) Every application or renewal application for a Home Caregiver licenseID Badge shall be in writing and signed by the applicant and shall be filed with the Division on a form provided by the Division together with the nonrefundable licenseID Badge application fee which shall not be subject to proration. The licenseID Badge application fee shall be established by resolution of the Board.

(d) Applicants must submit to a full-face photograph or digital image prior to the issuance of the Home Caregiver licenseID Badge by the Division. The Home Caregiver licenseID Badge shall, at a minimum, contain the name of the Home Caregiver, date of expiration, and full-face photograph or digital image of the Home Caregiver.

(e) Applicants for initial or renewal licenseID Badge must complete the Home Caregiver licenseID Badge registration affidavits provided by the Division.

(f) The Division may issue a replacement Home Caregiver licenseID Badge to any Home Caregiver on application, payment of a nonrefundable replacement fee, presentation of proof or a sworn affidavit that the licenseID Badge has been lost, stolen, or for any other valid reason, and any other documentation or requirement requested by the Division. The replacement fee shall be established by resolution of the Board.

5. Applicants who are employed by, or are independent contractors placed through a Home Care Business, home health agencies, nurse registries, homemaker and companion services providers, and hospice providers which are licensed by the Florida Agency for Health Care Administration (AHCA), may comply with the fingerprinting and criminal history records screening requirement of this section by causing the applicant's AHCA licensed agency, registry, or provider to submit directly to the Division an affidavit on a form provided by the Division, in which the AHCA licensed agency, registry, or provider attests that the applicant has undergone a level two (2) criminal history records screening and is currently licensed by AHCA

6. (a) All AHCA licensed agencies, registries, and providers submitting such an affidavit on behalf of their employee or independent contractor are required to advise the Division, in writing, immediately on learning: 1) that the employee or independent contractor who is the subject of the affidavit has been designated by AHCA as "ineligible"; and/or 2) that the employee or independent contractor who is the subject of the affidavit is no longer employed by, or placed through, the AHCA licensed agency, registry, or provider which provided the affidavit; and 3) that the employee or independent contractor has taken a leave of absence for more than ninety (90) days. Failure of the Home Care Business to notify the Division within fifteen (15) days of the caregiver's ineligibility, discontinuance from employment or placement shall constitute a violation of this Article by the agency, registry or provider.

6. If the Division has direct access to the AHCA licensing database to enable the Division to validate that: 1) an applicant has undergone a level two (2) criminal history record screening; 2) AHCA deemed the Home Caregiver eligible; 3) AHCA agrees to notify the Division of changes to the applicant's eligibility status; and 4) the applicant's fingerprints are being retained and monitored by AHCA, then the Division will issue a Home Caregiver ID Badge directly to the applicant in the same manner as applicants submitting to and clearing a level (2) background check with the Division.

7. Upon notification that a Home Caregiver is no longer affiliated with an AHCA licensed Home Care Business or is deemed ineligible by AHCA, the Division will suspend the ID Badge of the Home Caregiver.

(a) The Division will reinstate the ID Badge of the Home Caregiver upon receipt of a replacement agency affidavit so long as the Home Caregiver ID Badge is not yet expired.

(b) An updated agency affidavit does not constitute an extension of the expiration date on the photo ID or term of the Home Caregiver ID Badge.

(c) The Division will contact the ID Badge holder informing him/her that their ID Badge is suspended and include information on how to reinstate the ID Badge.

8. Each Home Caregiver licenseID Badge shall be valid for a five-year period and must be renewed by the applicant every five (5) years from the date of the initial/renewal application. The

Division may deny a Home Caregiver ~~license~~ID Badge if it is determined that the applicant has misrepresented, omitted, or concealed a fact on the application, renewal application or replacement application. If the Home Caregiver ~~license~~ID Badge is denied, the Division shall not accept another application from that Home Caregiver for said ~~license~~ID Badge for one (1) year from the date the ~~license~~ID Badge is denied. Any person renewing a Home Caregiver ~~license~~ID Badge must file a renewal application, furnish the documentation requested by the Division, satisfy the background check requirements, and submit payment for the required nonrefundable renewal fee(s), not more than ninety (90) days before the expiration date of a Home Caregiver ~~license~~ID Badge. Persons who fail to reapply for their Home Caregiver ~~license~~ID Badge thirty (30) days prior to expiration, risk having a gap in their authorization to act as a Home Caregiver. Any applicant who fails to submit a renewal application within twenty (20) days of the expiration of a current ~~license~~ID Badge will be considered a new applicant when reapplying and no grandfathered provisions will apply. The ~~license~~ID Badge renewal fee shall be established by resolution of the Board.

89.— Home Caregivers shall maintain the ~~license~~ID Badge issued pursuant to this Article while acting as a Home Caregiver in such a manner as to make it available for inspection to the public, Division personnel, clerk/court staff, Florida Department of Children and Families, Florida Department of Elder Affairs, and all law enforcement officials.

910. It shall be unlawful for any Home Caregiver to advertise Home Caregiver services without first fulfilling and maintaining compliance with the requirements of this Article. Nevertheless, to the extent State law preempts a matter addressed in this Article, then that State law provision shall take precedence.

Section 3. Sec. 17-465. – Disqualifications.

1. An applicant for a Home Caregiver ~~license~~ID Badge shall be disqualified from receiving such a ~~ID Badge~~license, and a ~~licensed~~ Home Caregiver may have his or her ~~ID Badge~~license revoked, by reason of:

(7) Altering or otherwise changing the contents of the information included on the face of a Home Caregiver ~~license~~ID Badge; or

(9) Notification to the Division from AHCA that the applicant is no longer eligible.

Section 4. Sec. 17-466. – Administrative Appeal.

1. (a) If an applicant is disqualified from receiving a Home Caregiver ~~license~~ID Badge, or if a Home Caregiver ~~ID Badge~~license is revoked, the Division will serve written notice of disqualification or revocation by certified mail (return receipt requested) on the applicant or ~~ID Badge holder~~licensee. The written notice shall specify the grounds for the disqualification or revocation. On receipt of the written notice, a person shall be entitled to appeal such decision to the consumer affairs hearing board/special master

Section 5. Sec. 17-468. – Penalties.

1. In order to provide sufficient time to transition existing business operations and establish Division procedures for access to AHCA for direct monitoring of Home Caregivers, no monetary fines or penalties shall be assessed against Home Care Businesses for a period of eighteen months from the date of filing with the Department of State.

1.2. Pursuant to F.S. § 125.69, violations of county ordinances shall be prosecuted in the same manner as misdemeanors are prosecuted. Any person violating any of the provisions of this Article, any terms of a notice to appear citation, any notice to correct a violation, or any other lawful order of the Division Director; or who shall fail to abide by and obey all orders and resolutions promulgated as herein provided, shall, on conviction, be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not more than sixty (60) days, or both for each violation, payment of all costs and expenses involved in prosecuting the offense, and permanent disqualification from receiving a Home Caregiver ~~license~~ID Badge. Each day that a violation occurs shall constitute a separate violation.

3. In addition to all other means of enforcement, a violation of this Article is a civil infraction punishable by a fine not to exceed Five Hundred Dollars (\$500) pursuant to the provisions of Section 162.21, Florida Statutes, as may be amended. Specific fine amounts for violations shall be established by resolution of the Board of County Commissioners.

(a) A violation of this Article shall result in a warning notice or a citation from the Division by a law enforcement officer, or by a Division code enforcement officer, who based on personal investigation, has reasonable cause to believe that a violation of this Article has been committed.

(b) The County Court shall have jurisdiction over all violations of this Article.

(c) The County Clerk shall accept designated fines and issue receipts therefor.

(d) Violations of this Article shall be charged with a civil violation and violators shall comply with the directives on the citation.

(e) Payment shall be made, either by mail or in person, to the violations bureau within the time specified on the citation. If this procedure is followed, the violation shall be deemed to be admitted, and the right to a hearing on the issue of commission of the violation shall be waived.

(f) Pursuant to Florida Statutes, mandatory costs shall be assessed against every violator convicted of a violation of this Article.

(g) Failure to make payment within the specified period on the citation shall be deemed a waiver of the right to pay the civil penalty as set forth in the citation.

(h) Electing to appear before the court to contest the citation shall be a waiver of the right to pay the civil penalty.

(i) The court, after a hearing, shall make a determination as to whether a violation has occurred and may impose a civil penalty not to exceed five hundred dollars (\$500.00) plus court costs.

(j) If a violator fails to pay the civil penalty, or fails to appear in court to contest the citation, such failure shall be deemed a waiver of the right to contest the citation; and in such case, a default judgment may be entered and the judge shall impose a fine at that time. If the fine is paid, the case shall be dismissed. If the fine is not paid, judgment may be entered up to the maximum civil penalty.

(k) Upon receipt of a citation for an infraction under this Article, said citation shall be signed and accepted thereby indicating a promise to pay the fine or appear in court.

(l) Any person who willfully refuses to sign and accept a citation issued by an officer shall be guilty of a misdemeanor of the second degree, punishable as provided by Florida Statutes, §§ 775.082 or 775.083.

(m) Failure to comply with any provision of this Article shall constitute a separate and distinct violation.

-Section 6. Repeal of laws in conflict.

All local laws and ordinances applying to the unincorporated area of the county in conflict with any provision of this article are hereby repealed to the extent of any conflict.

Section 7. Savings clause.

Notwithstanding the section of this ordinance regarding repeal of laws in conflict, all administrative and court orders, fines, and pending enforcement issued pursuant to this authority and procedures established by Chapter 17, Article V, Division 1, Section 17-153 of the Palm Beach County Code shall remain in full force and effect.

Section 8. Severability.

 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 9. Inclusion in the Code of Laws and Ordinances.

 The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or re-lettered to accomplish such, and the word Ordinance may be changed to section, article, or other appropriate word.

Section 10. Captions.

 The captions, section headings, and section designations used in this Ordinance are for convenience only and have no effect on the interpretation of the provisions of this Ordinance.

Section 11. Effective Date.

 The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the _____ day of _____, 2019.

ATTEST:	
SHARON R. BOCK,	PALM BEACH FLORIDA BY ITS
CLERK & COMPTROLLER	BOARD OF COUNTY COMMISSIONERS

By: _____	By: _____
Deputy Clerk	Mack Bernard, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

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Division is the Palm Beach County Department of Public Safety Consumer Affairs Division.

Home Care Business means a nurse registry, home health agency, homemaker and companion service, hospice provider, or any staffing agency, firm or person who makes Home Caregivers available to provide services for Vulnerable Adults, regardless of whether the Home Caregiver is an independent contractor, agent or employee.

Home Caregiver is a person who receives compensation directly or indirectly from a "vulnerable adult" in exchange for assisting that vulnerable adult with one (1) or more "covered activities."

Home Caregiver ID Badge means a Palm Beach County license issued by the Division to a Home Caregiver permitting a Home Caregiver to provide services to a vulnerable adult pursuant to this ordinance.

Partner means a person living with a Vulnerable Adult in a pre-existing, established relationship with that Vulnerable Adult, sharing the same residence and holding themselves out to others as though in a committed relationship in a manner similar to married couples.

Vulnerable Adult is a person eighteen (18) years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

Section 2. Section 17-464. – Home Caregiver ID Badge.

1. It shall be unlawful and a violation of this Article for any person to act as a Home Caregiver without first obtaining a Home Caregiver ID Badge, unless exempt under this Article.

(a) Exemptions. This Article shall not apply to the following:

- (1) The Vulnerable Adult's spouse, domestic partner, parents, step-parents, grandparents, step-children, grandparents, children, step-children, grandchildren, step-grandchildren, great grandchildren, siblings, step-siblings, former spouse, or Partner;
- (2) Charitable and/or faith based organizations which are exempt from federal income tax pursuant to 26 U.S.C. § 501(c)(3), and which serve Vulnerable Adults by making referrals of volunteers to provide Covered Activities;
- (3) People who receive compensation directly or indirectly from Vulnerable Adults in exchange for assisting Vulnerable Adults with one (1) or more Covered Activities on a non-recurring basis, not to exceed three (3) days in any calendar month or twenty-four (24) days in any calendar year calculated by an accumulation of hours and days of service provided by the caregiver for all Vulnerable Adults receiving services from that Home Caregiver;
- (4) People who are currently licensed in Florida as a: Registered Nurse (RN), Licensed Practical Nurse (LPN), Certified Nursing Assistant (CNA), Clinical Nurse Specialist (CNS), Advanced Registered Nurse Practitioner (ARNP), Physical Therapist (PT), Physical Therapist Assistant (PTA), Occupational Therapist (OT), or Occupational Therapist Assistant (OTA);
- (5) People who are serving as court-appointed guardians or professional court guardians are not required to obtain a home caregiver ID Badge to serve as a court appointed guardian. This does not relieve home caregivers who are retained by or hired by court appointed guardians from obtaining a Home Caregiver ID Badge.
- (6) Employees working under the direction and control of businesses classified by the Agency for Health Care Administration (AHCA) as adult day care, adult family care homes, ambulatory surgery centers, assisted living facilities, birth center, clinical

laboratory, community mental health partial hospital program, community residential home, comprehensive outpatient rehabilitation facility, crisis stabilization unit, health care clinic, home medical equipment providers, nursing home, rehabilitation agency, residential treatment center for children and adolescents, residential treatment facility, rural health clinic, skilled nursing unit, or transitional living facility. This exemption is limited to the services provided by a Home Caregiver as an employee of the business cited herein and not to services provided outside of that employment relationship. Persons employed or contracted by a Home Care Business and who are assigned to work with an entity listed herein, are not exempt from the ID Badge requirement.

2. Except for assignment during the Grace Period defined herein, Home Care Businesses shall require each Home Caregiver to provide proof of current ID Badge prior to assignment of the Home Caregiver, regardless of whether the Home Caregiver is an independent contractor, agent, or employee of the Home Care Business. A Home Care Business may permit an AHCA eligible Home Caregiver to work for up to ten (10) days from the date of the first assignment (“the Grace Period”) providing the Home Caregiver submits, within 72 hours from the first assignment a completed Caregiver Application, AHCA Verification Form or Agency Affidavit, and schedules an appointment with the Division to obtain an ID Badge.

3. It is a violation of this section for any Home Care Business to provide or make available the services of a Home Caregiver who does not have a current ID Badge, unless the Home Caregiver is exempt from the ID Badge requirement of this Article.

4. A person who is not exempt who wishes to act as a Home Caregiver shall make application to the Division for a Home Caregiver ID Badge. All applicants for a Home Caregiver ID Badge or renewal shall conform to all of the following, and failure to meet each of these conditions is grounds for denial of a Home Caregiver ID Badge:

(a) Be at least eighteen (18) years of age.

(b) On initial application and on each subsequent renewal thereafter, the applicant must provide the original request form for his/her Florida Department of Law Enforcement (FDLE) criminal history/records report to the Division, as well as payment for the amount required to secure the criminal history/records report. The Division shall then be responsible for processing the request and payment to the FDLE. Prior to submitting a request for a criminal history record check pursuant to this Article, the Division shall notify each applicant to be fingerprinted that his or her fingerprints will be sent to the State Department of Law Enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check. The notification shall also state that the Home Caregiver ID Badge applicant has a right to:

(1) Obtain a copy of his or her criminal history records;

(2) To challenge the completeness and accuracy of the criminal history records pursuant to state and federal law; and

(3) To request a correction, change or update to the criminal history records pursuant to state and federal law.

(c) Every application or renewal application for a Home Caregiver ID Badge shall be in writing and signed by the applicant and shall be filed with the Division on a form provided by the Division together with the nonrefundable ID Badge application fee which shall not be subject to proration. The ID Badge application fee shall be established by resolution of the Board.

(d) Applicants must submit to a full-face photograph or digital image prior to the issuance of the Home Caregiver ID Badge by the Division. The Home Caregiver ID Badge shall, at a minimum, contain the name of the Home Caregiver, date of expiration, and full-face photograph or digital image of the Home Caregiver.

(e) Applicants for initial or renewal ID Badge must complete the Home Caregiver ID Badge registration affidavits provided by the Division.

(f) The Division may issue a replacement Home Caregiver ID Badge to any Home Caregiver on application, payment of a nonrefundable replacement fee, presentation of proof or a sworn affidavit that the ID Badge has been lost, stolen, or for any other valid reason, and any other documentation or requirement requested by the Division. The replacement fee shall be established by resolution of the Board. 5. Applicants who are employed by, or are independent contractors placed through a Home Care Business which is licensed by the Florida Agency for Health Care Administration (AHCA), may comply with the fingerprinting and criminal history records screening requirement of this section by causing the applicant's AHCA licensed agency, registry, or provider to submit directly to the Division an affidavit on a form provided by the Division, in which the AHCA licensed agency, registry, or provider attests that the applicant has undergone a level two (2) criminal history records screening and is currently licensed by AHCA (a) All AHCA licensed agencies, registries, and providers submitting such an affidavit on behalf of their employee or independent contractor are required to advise the Division, in writing, immediately on learning: 1) that the employee or independent contractor who is the subject of the affidavit has been designated by AHCA as "ineligible"; and/or 2) that the employee or independent contractor who is the subject of the affidavit is no longer employed by, or placed through, the AHCA licensed agency, registry, or provider which provided the affidavit. Failure of the Home Care Business to notify the Division within fifteen (15) days of the caregiver's ineligibility, discontinuance from employment or placement shall constitute a violation of this Article by the agency, registry or provider.

6. If the Division has direct access to the AHCA licensing database to enable the Division to validate that: 1) an applicant has undergone a level two (2) criminal history record screening; 2) AHCA deemed the Home Caregiver eligible; 3) AHCA agrees to notify the Division of changes to the applicant's eligibility status; and 4) the applicant's fingerprints are being retained and monitored by AHCA, then the Division will issue a Home Caregiver ID Badge directly to the applicant in the same manner as applicants submitting to and clearing a level (2) background check with the Division.

7. Upon notification that a Home Caregiver is no longer affiliated with an AHCA licensed Home Care Business or is deemed ineligible by AHCA, the Division will suspend the ID Badge of the Home Caregiver.

(a) The Division will reinstate the ID Badge of the Home Caregiver upon receipt of a replacement agency affidavit so long as the Home Caregiver ID Badge is not yet expired.

(b) An updated agency affidavit does not constitute an extension of the expiration date on the photo ID or term of the Home Caregiver ID Badge.

(c) The Division will contact the ID Badge holder informing him/her that their ID Badge is suspended and include information on how to reinstate the ID Badge.

8. Each Home Caregiver ID Badge shall be valid for a five-year period and must be renewed by the applicant every five (5) years from the date of the initial/renewal application. The Division may deny a Home Caregiver ID Badge if it is determined that the applicant has misrepresented, omitted, or concealed a fact on the application, renewal application or replacement application. If the Home Caregiver ID Badge is denied, the Division shall not accept another application from that Home Caregiver for said ID Badge for one (1) year from the date the ID Badge is denied. Any person renewing a Home Caregiver ID Badge must file a renewal application, furnish the documentation requested by the Division, satisfy the background check requirements, and submit payment for the required nonrefundable renewal fee(s), not more than ninety (90) days before the expiration date of a Home Caregiver ID Badge. Persons who fail to reapply for their Home Caregiver ID Badge thirty (30) days prior to expiration, risk having a gap in their authorization to

act as a Home Caregiver. Any applicant who fails to submit a renewal application within twenty (20) days of the expiration of a current ID Badge will be considered a new applicant when reapplying and no grandfathered provisions will apply. The ID Badge renewal fee shall be established by resolution of the Board.

9. Home Caregivers shall maintain the ID Badge issued pursuant to this Article while acting as a Home Caregiver in such a manner as to make it available for inspection to the public, Division personnel, clerk/court staff, Florida Department of Children and Families, Florida Department of Elder Affairs, and all law enforcement officials.

10. It shall be unlawful for any Home Caregiver to advertise Home Caregiver services without first fulfilling and maintaining compliance with the requirements of this Article. Nevertheless, to the extent State law preempts a matter addressed in this Article, then that State law provision shall take precedence.

Section 3. Sec. 17-465. – Disqualifications.

1. An applicant for a Home Caregiver ID Badge shall be disqualified from receiving such a ID Badge, and a Home Caregiver may have his or her ID Badge revoked, by reason of:

(7) Altering or otherwise changing the contents of the information included on the face of a Home Caregiver ID Badge; or

(9) Notification to the Division from AHCA that the applicant is no longer eligible.

Section 4. Sec. 17-466. – Administrative Appeal.

1. (a) If an applicant is disqualified from receiving a Home Caregiver ID Badge, or if a Home Caregiver ID Badge is revoked, the Division will serve written notice of disqualification or revocation by certified mail (return receipt requested) on the applicant or ID Badge holder. The written notice shall specify the grounds for the disqualification or revocation. On receipt of the written notice, a person shall be entitled to appeal such decision to the consumer affairs hearing board/special master

Section 5. Sec. 17-468. – Penalties.

1. In order to provide sufficient time to transition existing business operations and establish Division procedures for access to AHCA for direct monitoring of Home Caregivers, no monetary fines or penalties shall be assessed against Home Care Businesses for a period of eighteen months from the date of filing with the Department of State.

2. Pursuant to F.S. § 125.69, violations of county ordinances shall be prosecuted in the same manner as misdemeanors are prosecuted. Any person violating any of the provisions of this Article, any terms of a notice to appear citation, any notice to correct a violation, or any other lawful order of the Division Director; or who shall fail to abide by and obey all orders and resolutions promulgated as herein provided, shall, on conviction, be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for not more than sixty (60) days, or both for each violation, payment of all costs and expenses involved in prosecuting the offense, and permanent disqualification from receiving a Home Caregiver ID Badge. Each day that a violation occurs shall constitute a separate violation.

3. In addition to all other means of enforcement, a violation of this Article is a civil infraction punishable by a fine not to exceed Five Hundred Dollars (\$500) pursuant to the provisions of Section 162.21, Florida Statutes, as may be amended. Specific fine amounts for violations shall be established by resolution of the Board of County Commissioners.

(a) A violation of this Article shall result in a warning notice or a citation from the Division by a law enforcement officer, or by a Division code enforcement officer, who based on personal investigation, has reasonable cause to believe that a violation of this Article has been committed.

(b) The County Court shall have jurisdiction over all violations of this Article.

- 243 (c) The County Clerk shall accept designated fines and issue receipts therefor.
- 244 (d) Violations of this Article shall be charged with a civil violation and violators shall
245 comply with the directives on the citation.
- 246 (e) Payment shall be made, either by mail or in person, to the violations bureau within
247 the time specified on the citation. If this procedure is followed, the violation shall
248 be deemed to be admitted, and the right to a hearing on the issue of commission of
249 the violation shall be waived.
- 250 (f) Pursuant to Florida Statutes, mandatory costs shall be assessed against every
251 violator convicted of a violation of this Article.
- 252 (g) Failure to make payment within the specified period on the citation shall be deemed
253 a waiver of the right to pay the civil penalty as set forth in the citation.
- 254 (h) Electing to appear before the court to contest the citation shall be a waiver of the
255 right to pay the civil penalty.
- 256 (i) The court, after a hearing, shall make a determination as to whether a violation has
257 occurred and may impose a civil penalty not to exceed five hundred dollars
258 (\$500.00) plus court costs.
- 259 (j) If a violator fails to pay the civil penalty, or fails to appear in court to contest the
260 citation, such failure shall be deemed a waiver of the right to contest the citation;
261 and in such case, a default judgment may be entered and the judge shall impose a
262 fine at that time. If the fine is paid, the case shall be dismissed. If the fine is not
263 paid, judgment may be entered up to the maximum civil penalty.
- 264 (k) Upon receipt of a citation for an infraction under this Article, said citation shall be
265 signed and accepted thereby indicating a promise to pay the fine or appear in court.
- 266 (l) Any person who willfully refuses to sign and accept a citation issued by an officer
267 shall be guilty of a misdemeanor of the second degree, punishable as provided by
268 Florida Statutes, §§ 775.082 or 775.083.
- 269 (m) Failure to comply with any provision of this Article shall constitute a separate and
270 distinct violation.

271 **Section 6. Repeal of laws in conflict.**

272 All local laws and ordinances applying to the unincorporated area of the county in conflict
273 with any provision of this article are hereby repealed to the extent of any conflict.

274 **Section 7. Savings clause.**

275 Notwithstanding the section of this ordinance regarding repeal of laws in conflict, all
276 administrative and court orders, fines, and pending enforcement issued pursuant to this authority
277 and procedures established by Chapter 17, Article V, Division 1, Section 17-153 of the Palm Beach
278 County Code shall remain in full force and effect.

279

280 **Section 8. Severability.**

281 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
282 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such
283 holding shall not affect the remainder of this Ordinance.

284 **Section 9. Inclusion in the Code of Laws and Ordinances.**

285 The provisions of this Ordinance shall become and be made a part of the Palm Beach
286 County Code. The sections of this Ordinance may be renumbered or re-lettered to accomplish
287 such, and the word Ordinance may be changed to section, article, or other appropriate word.

288 **Section 10. Captions.**

289 The captions, section headings, and section designations used in this Ordinance are for
290 convenience only and have no effect on the interpretation of the provisions of this Ordinance.

291 **Section 11. Effective Date.**

292 The provisions of this Ordinance shall become effective upon filing with the Department
293 of State.

294 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm Beach
295 **County, Florida, on this the _____ day of _____, 2019.**

298 **ATTEST:**
299 **SHARON R. BOCK,**
300 **CLERK & COMPTROLLER**

**PALM BEACH FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS**

303 By: _____
304 Deputy Clerk

By: _____
Mack Bernard, Mayor

306 **APPROVED AS TO FORM AND**
307 **LEGAL SUFFICIENCY**

309 By: _____
310 County Attorney