

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 420 Session of
2003

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AND REICHLEY, FEBRUARY 24, 2003

AS REPORTED FROM COMMITTEE ON AGING AND OLDER ADULT SERVICES,
HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 4, 2003

AN ACT

1 Providing for the licensure and regulation of adult living
2 residences; conferring powers and duties on the Department of
3 Public Welfare; adding members to the Intra-Governmental
4 Council on Long-Term Care; providing for an increase to State
5 supplemental assistance for persons in personal care homes;
6 and providing for penalties.

7 The General Assembly finds and declares as follows:

8 (1) Assisted living residences and services are a
9 rapidly growing long-term care alternative across the nation.

10 (2) Assisted living residences are a combination of
11 housing and supportive services as needed. They are widely
12 accepted by the general public because they allow people to
13 age in place, maintain their independence and exercise
14 decision making and personal choice.

15 (3) Consumers continue to say that the three things they
16 want most are:

(i) to stay independent and live at home and in their community as long as possible;

(ii) respect and dignity for the individual; and

(iii) a choice of long-term care and supportive services options.

(4) In Pennsylvania, assisted living residences and supportive services are a private market phenomenon. There is:

(i) no uniform definition of assisted living residence;

(ii) no public oversight of entities which hold themselves out as assisted living residences, although many are licensed as personal care homes;

(iii) no uniform way of assuring quality; and

(iv) limited access for persons with lower incomes.

(5) It is in the best interest of all Pennsylvanians that a system of licensure and regulation be established for assisted living residences in order to ensure accountability and a balance of availability between institutional and home-based and community-based long-term care for older persons and persons with disabilities.

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1 persons in personal care homes.

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5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Adult Living
9 Residence License Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Activities of daily living." Activities including eating,
15 bathing, dressing, toileting, transferring in and out of bed or
16 a chair and personal hygiene.

17 "Adult." A person who is 18 years of age or older.

18 "Adult living residence." A residential premises that
19 provides housing, food, assistance with activities of daily
20 living and scheduled or unscheduled supervision available on a
21 24-hour basis, through contract for more than three adults who
22 are unrelated to the operator of the residential premises and
23 who do not require care in a licensed long-term care nursing
24 facility as that term is defined in the act of July 19, 1979
25 (P.L.130, No.48), known as the Health Care Facilities Act,
26 regardless of whether the operator provides or allows
27 supplemental services such as additional assistance with
28 activities of daily living and intermittent health care services
29 provided by certified, registered or licensed health care
30 professionals. The term shall include a personal care home that

1 has a Category I license and an assisted living residence that
2 has a Category II license. The term shall not include
3 intermediate care facilities exclusively for the mentally
4 retarded, commonly referred to as ICF/MR.

5 "Adult living residency contract." A written agreement, in
6 the form of a contract or contracts between a provider and a
7 consumer needing adult living residence services, regarding the
8 provision and terms of those services.

9 "Aging in place." The process of providing increased or
10 adjusted supportive services to a consumer to compensate for the
11 physical or mental decline that occurs with the aging process
12 over time in order to maximize individual dignity and
13 independence and to permit the person to remain in a familiar,
14 living environment of the person's choice for as long as
15 possible, where such supportive services are provided by a
16 licensed facility or a third party, in a home or community or
17 through volunteers, friends or family.

18 "Area agency on aging." The single local agency designated
19 by the Department of Aging within each planning and service area
20 to administer the delivery of a comprehensive and coordinated
21 plan of social and other services and activities.

22 "Assisted living." Activities as determined and self-
23 directed by a consumer or by a legal representative that permit
24 and assist the consumer to live in a community, including such
25 housing assistance or residency in an assisted living residence
26 that permits the consumer to safely be supported in a residence
27 in which the consumer's independence, dignity and ability to
28 make choices are maintained, to the extent of the consumer's
29 capabilities.

30 "Assisted living residence." A residential setting that:

1 (1) Offers, provides or coordinates a combination of
2 personal care services, recreation and social activities, 24-
3 hour supervision and assisted living services, whether
4 scheduled or unscheduled and that coordinates other health-
5 related services for consumers.

6 (2) Has a supportive service program and physical
7 environment designed to MINIMIZE THE NEED FOR CONSUMERS TO <—
8 MOVE WITHIN OR FROM THE SETTING IN ORDER TO accommodate
9 changing needs and preferences.

10 (3) Has an organized mission, service programs and a
11 physical environment designed to maximize consumer dignity,
12 autonomy, privacy and independence and encourages family and
13 community involvement.

14 ~~(4) Provides that costs for housing and services are <—~~
15 ~~independent of one another and that provides consumers with~~
16 ~~the ability to choose their service provider and the services~~
17 ~~to be provided.~~

18 (4) PROVIDES THAT COSTS FOR HOUSING AND SERVICES MAY BE <—
19 INDEPENDENT OF ONE ANOTHER.

20 (5) PROVIDES CONSUMERS WITH THE ABILITY TO CHOOSE THE
21 SERVICES TO BE PROVIDED, THEIR SERVICE PROVIDER AND THE
22 SERVICES TO THE EXTENT THAT THE ASSISTED LIVING RESIDENCE
23 DOES NOT OFFER PARTICULAR SERVICES TO CONSUMERS.

24 ~~(5)~~ (6) Has a goal of fostering aging in place and <—
25 promoting consumer self-direction and active participation in
26 decision making while emphasizing consumer privacy and
27 dignity.

28 (7) WILL DISCLOSE SERVICES OFFERED, PROVIDED OR <—
29 COORDINATED AND THE COSTS THEREOF.

30 This term does not include a residential living unit maintained

1 by a continuing care provider who is certified by the Insurance
2 Department, a residential unit in a subsidized housing
3 apartment, unless required to be licensed under the Department
4 of Housing and Urban Development Assisted Living Conversion
5 Program, or a boarding home which merely provides room, board
6 and laundry services to persons who do not need personal care
7 services.

8 "Assisted living services." A combination of supportive
9 services, personal care services, personalized assistance
10 services, assistive technology and health-related services
11 designed to respond to the individual needs of consumers who
12 need assistance with activities of daily living and instrumental
13 activities of daily living. The ~~terms includes~~ TERM MAY INCLUDE <—
14 publicly funded home-based and community-based services
15 available through the medical assistance program and the Federal
16 Medicaid Waiver Program and State-funded options for home-based
17 and community-based services ~~funded~~ AUTHORIZED through the <—
18 Department of Aging and the Department of Public Welfare.

19 "Assisted living services agreement." The contract or
20 contracts between a provider and a consumer needing assisted
21 living services regarding the provision and terms of the
22 assisted living services. This term includes contracts between
23 assisted living service providers and entities contracting for
24 services for consumers using public funding.

25 "Assistive technology." Devices and services, whether
26 medically necessary or not, that are used to increase, maintain
27 or improve the functional capabilities of persons with
28 disabilities which may or may not be needed to permit the
29 persons to live independently. The term shall include, but not
30 be limited to, reachers, adapted telephones, reading aids and

1 other nonmedical devices.

2 "Board." The Board of Hearings and Appeals within the
3 Department of Public Welfare of the Commonwealth.

4 "Category I license." An adult living residence license
5 issued under this act to a personal care home.

6 "Category II license." An adult living residence license
7 issued under this act to an assisted living residence.

8 "Cognitive support services." Services provided as part of a
9 comprehensive plan of care to individuals who have memory
10 impairments and other cognitive problems which significantly
11 interfere with their ability to carry out activities of daily
12 living without assistance and who require that supervision,
13 monitoring and programming be available to them 24 hours a day,
14 seven days a week, in order for them to reside safely in the
15 setting of their choice. The term includes assessment, health
16 support services and a full range of dementia-capable activity
17 programming and crisis management.

18 ~~"Compliance." A facility or assisted living services~~ <—
19 ~~provider that is found in compliance with the requirements of~~
20 ~~this act and its regulations except for isolated Class III~~
21 ~~violations, for which the assisted living residence~~
22 ~~administrator has provided written certification of correction~~
23 ~~of the isolated Class III violations within 30 days of the date~~
24 ~~of the inspection and it has met all other requirements of this~~
25 ~~act and its regulations.~~

26 "Comprehensive assessment." A thorough review and analysis
27 of a consumer's functional status. The term includes a personal
28 history, assessment of physical and emotional health, ability to
29 carry out activities of daily living, informal supports,
30 environmental factors and cognitive functioning, including

1 immobility assessment.

2 "Comprehensive service plan." A plan developed to meet a
3 consumer's individual needs, as determined by a comprehensive
4 assessment, and that is developed by an interdisciplinary team
5 that includes the consumer, the consumer's legal representative
6 and the consumer's family member.

7 "Consumer." A person who receives services in an adult
8 living residence, is in need of assisted living services or
9 personal care services and who lives in either an adult living
10 residence with a Category I license or a Category II license.

11 "Department." The Department of Public Welfare of the
12 Commonwealth.

13 "Direct service staff." A person who provides services in an
14 adult living residence, is 18 years of age or older and meets
15 the requirements of this act.

16 "Immobile person." An individual who is unable to move from
17 one location to another or has difficulty in understanding and
18 carrying out instructions without the continued full assistance
19 of another person or is incapable of independently operating a
20 device such as a wheelchair, prosthesis, walker or cane to exit
21 to a point of safety.

22 "Instrumental activities of daily living." The term
23 includes, but is not limited to, meal preparation, using the
24 telephone, handling finances, banking and shopping, light
25 housekeeping, heavy housekeeping and getting to appointments.

26 ~~"Isolated Class III violations." A finding by the Department~~ <—
27 ~~of Public Welfare at the annual inspection of less than three~~
28 ~~Class III violations that had not been previously cited at the~~
29 ~~last inspection and that related to the services provided to an~~
30 ~~individual or did not present a threat to the health and well-~~

1 ~~being of consumers.~~

2 "License." A Category I license or a Category II license.

3 "Long-term care ombudsman." An agent of the Department of
4 Aging who, pursuant to section 2203-A of the act of April 9,
5 1929 (P.L.177, No.175), known as The Administrative Code of
6 1929, investigates and seeks to resolve complaints made by or on
7 behalf of older individuals or adults with disabilities who are
8 consumers of adult living residences, which complaints may
9 relate to action, inaction or decisions of providers of assisted
10 living services or residences or of personal care homes or of
11 public agencies or of social service agencies or their
12 representatives and which complaints may adversely affect the
13 health, safety, welfare, interests, preferences or rights of
14 consumers.

15 "Options." The Long-Term Care Pre-Admission Assessment
16 Program and the Community Services for Nursing Facility
17 Eligibility Program administered by the Department of Aging and
18 operated by the local area agencies on aging.

19 ~~"Pattern of violations." A finding by the Department of~~ <—
20 ~~Public Welfare at the annual inspection of violations that had~~
21 ~~been cited at one or both of the last two annual inspections.~~

22 "Personal care home." A premises in which food, shelter and
23 personal assistance or supervision are provided for a period
24 exceeding 24 hours for four or more consumers who are not
25 relatives of the operator of the premises, who do not require
26 the services in or of a licensed long-term care facility, but
27 who require assistance or supervision in such matters as
28 dressing, bathing, diet, financial management, evacuation of a
29 residence in the event of an emergency or medication prescribed
30 for self-administration.

1 "Personal care services." Assistance or supervision in
2 dressing, bathing, diet, financial management or evacuation of a
3 consumer in a personal care home, in the event of an emergency,
4 or medication prescribed for self-administration.

5 Section 3. Intra-Governmental Council on Long-Term Care.

6 (a) Additional members.--In addition to the members
7 appointed to the Intra-Governmental Council on Long-Term Care in
8 accordance with section 212 of the act of June 13, 1967 (P.L.31,
9 No.21), known as the Public Welfare Code, the Governor shall
10 appoint four representatives of the assisted living community,
11 one of whom shall be an owner or administrator of a licensed
12 assisted living residence and one of whom shall be a consumer of
13 a licensed assisted living residence, one of whom shall be a
14 licensed provider of assisted living services and one of whom
15 shall be a consumer of assisted living services from a licensed
16 provider of assisted living services.

17 (b) Recommendations to be considered.--In developing rules
18 and regulations for licensure of assisted living residences, the
19 Department of Public Welfare shall work in cooperation with the
20 Department of Aging and shall take into consideration
21 recommendations of the Intra-Governmental Council on Long-Term
22 Care.

23 Section 4. Powers and duties of Commonwealth departments AND
24 AGENCIES.

25 (a) General rule.--Within one year of the effective date of
26 this act, the following Commonwealth departments shall work in
27 consultation and in cooperation with each other to develop a
28 program of licensure and regulation to govern adult living
29 residences in this Commonwealth:

30 (1) The Department of Public Welfare shall serve as the

1 lead agency in the development and implementation of a
2 program for licensing and regulating adult living residences,
3 to include a Category I license and a Category II license.

4 The department shall coordinate with other State and local
5 agencies having statutory responsibilities relating to adult
6 living residences and providers of assisted living services.

7 (2) The Department of Aging shall formulate and provide
8 to the Aging and Youth Committee of the Senate and the Aging
9 and Older Adult Services Committee of the House of
10 Representatives, within one year of the effective date of
11 this act, recommendations for changes in existing State law
12 and regulations to extend provisions of the act of November
13 6, 1987 (P.L.381, No.79), known as the Older Adults
14 Protective Services Act, to adult living residences AND <—
15 PROVIDERS OF ASSISTED LIVING SERVICES and the consumers
16 thereof.

17 ~~(3) Within six months of the effective date of this act, <—~~
18 ~~the Department of Health shall promulgate rules and~~
19 ~~regulations to license providers of assisted living services~~
20 ~~who are not already licensed by that department. Such~~
21 ~~licensure system shall include the following components:~~

22 ~~(i) (A) Within nine months of the effective date of~~
23 ~~this act, the Department of Health shall license~~

24 (3) THE DEPARTMENT OF HEALTH SHALL FORMULATE AND PROVIDE <—
25 TO THE AGING AND YOUTH COMMITTEE OF THE SENATE AND THE AGING
26 AND OLDER ADULT SERVICES COMMITTEE OF THE HOUSE OF
27 REPRESENTATIVES, WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF
28 THIS ACT, RECOMMENDATIONS FOR CHANGES IN EXISTING STATE LAW
29 AND REGULATIONS TO LICENSE PROVIDERS OF ASSISTED LIVING
30 SERVICES WHO ARE NOT ALREADY LICENSED BY THE DEPARTMENT. SUCH

1 CHANGES SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING
2 COMPONENTS:

3 (I) THE DEPARTMENT OF HEALTH SHALL LICENSE assisted
4 living services providers.

5 ~~(B) Direct care~~ (II) DIRECT SERVICE staff <—
6 employed by assisted living services providers or
7 providing direct care services to consumers in their
8 homes shall meet all training and testing
9 requirements in this act relating to assisted living
10 residences that are not specific to assisted living
11 residence care. Prior to start of training and
12 testing, the applicant shall pass a criminal history
13 background check conducted by the training and
14 testing agency. Direct ~~care~~ SERVICE staff shall <—
15 present to assisted living services recipients
16 documentation from the Department of Health that they
17 have passed a criminal history check and have
18 completed the required training.

19 ~~(C)~~ (III) Entities that do not provide personal <—
20 care services, but that solely provide assistance
21 with instrumental activities of daily living shall be
22 exempt from the requirements of this act.

23 ~~(ii) (A) Assisted living services providers shall~~ <—
24 ~~meet the following provisions of this act, except to~~
25 ~~the extent that the Department of Health deems the~~
26 ~~provisions applicable only to residents of assisted~~
27 ~~living residences.~~

28 ~~(B) Direct care staff shall provide assisted~~
29 ~~living services consumers with 30 days' advance~~
30 ~~written notice, where possible, of interruption or~~

1 ~~termination of service delivery, except where the~~
2 ~~safety of the direct care staff is at risk. Direct~~
3 ~~care staff shall be included under the reporting~~
4 ~~requirements of review under the Older Adults~~
5 ~~Protective Services Act. Direct care staff found to~~
6 ~~be in violation of the advance notice provision of~~
7 ~~this section may be sanctioned by the Department of~~
8 ~~Health and have their documentation of training~~
9 ~~necessary for employment withdrawn.~~

10 ~~(iii) The Department of Health shall conduct annual~~
11 ~~unannounced inspections of assisted living services~~
12 ~~providers and shall include visits to a random sample of~~
13 ~~consumers as part of the inspection process.~~

14 (4) Within one year of the effective date of this act,
15 the Department of Labor and Industry shall promulgate rules
16 and regulations applicable to assisted living residences in
17 accordance with the act of November 10, 1999 (P.L.491,
18 No.45), known as the Pennsylvania Construction Code Act, and
19 in accordance with this section. The regulations shall apply
20 to all assisted living residences not currently licensed by
21 the Department of Public Welfare as a personal care home and
22 to all personal care homes making an application to the
23 department for a Category II license. A personal care home
24 making an application for a Category II license shall have
25 three years from the effective date of this act to comply
26 with the Department of Labor and Industry rules and
27 regulations under this act.

28 ~~(b) Consumer rights. All consumer rights specified in this~~
29 ~~act shall apply to consumers of assisted living services~~
30 ~~providers, unless the right is specific to residency.~~

1 (B) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE <—
2 CONSTRUED TO PRECLUDE THE ROLE OF ANY ADDITIONAL COMMONWEALTH
3 DEPARTMENTS OR AGENCIES IN THE LICENSING AND REGULATION OF ADULT
4 LIVING RESIDENCES, AS DESIGNATED BY THE GOVERNOR.

5 Section 5. Rules and regulations.

6 The department shall promulgate rules and regulations for
7 adult living residences that:

8 (1) Provide that any regulations specifically related to
9 personal care homes, adopted prior to the effective date of
10 this act, set forth in 55 Pa. Code Ch. 2620 (relating to
11 personal care home licensing), and promulgated in accordance
12 with the act of June 13, 1967 (P.L.31, No.21), known as the
13 Public Welfare Code, shall continue to be applied to an owner
14 or administrator of a personal care home under a Category I
15 license. The department shall ensure consistency between such
16 currently existing regulations governing personal care homes
17 and any regulations promulgated in accordance with this act.

18 (2) Develop standards for a Category II license for
19 assisted living residences.

20 ~~(3) Require personal care homes licensed by the <—~~
21 ~~department prior to the effective date of this act and that~~
22 ~~intend to obtain a Category II license to come into~~
23 ~~compliance with department rules and regulations and to~~
24 ~~obtain a Category II license as an assisted living residence~~
25 ~~no later than three years after the effective date of this~~
26 ~~act.~~

27 ~~(4)~~ (3) Within 90 days of the effective date of this <—
28 act, adopt rules relating to the conduct of owners and
29 employees of assisted living residences relative to the
30 endorsement or delivery of public or private welfare, pension

1 or insurance checks by a consumer ~~or~~ OF an assisted living <—
2 residence.

3 ~~(5)~~ (4) Within 90 days of the effective date of this <—
4 act, and in consultation with the Department of Aging, the
5 Department of Health, the Intra-Governmental Council on Long-
6 Term Care and the Personal Care Home Advisory Committee,
7 adopt rules for: classification of violations; enforcement
8 measures for violations, including closure of adult living
9 residences with extensive patterns of serious violations or
10 those which are found to have severe violations which
11 constitute a risk to safety of current or potential
12 residents; closure of adult living residences that have
13 failed to obtain a license and that have residents receiving
14 services covered by this act; responding to the needs of
15 residents with cognitive impairments; and protecting
16 residents' rights. Such rules shall be in effect until the
17 adoption of final regulations that cover the same subject
18 matter.

19 ~~(6)~~ (5) Exempt from regulation under this act boarding <—
20 homes which merely provide room, board and laundry services
21 to persons who do not need adult living residence services.

22 ~~(7)~~ (6) Promote the cost efficiency and effectiveness of <—
23 visitations and inspections.

24 ~~(8) Delegate to other State and local agencies~~ <—

25 (7) DELEGATE TO OTHER STATE AND LOCAL AGENCIES, AS <—
26 APPROPRIATE, responsibility for visitations, inspections,
27 referral, placement and protection of consumers residing in
28 adult living residences or receiving assisted living services
29 from a provider of assisted living services.

30 ~~(9)~~ (8) Evaluate the State's fire and panic laws as <—

1 applied to adult living residences.

2 ~~(10)~~ (9) Create a uniform standard policy for the <—
3 discharge of a consumer from an adult living residence,
4 including, at a minimum, advance notice provisions for the
5 consumer.

6 ~~(11)~~ (10) Create a listing of medical conditions or care <—
7 needs that shall preclude adult living residences from
8 ~~admitting or retaining consumers.~~ <—

9 ~~(12) Provide for the implementation of fire and safety~~
10 ~~and consumer care standards relating to adult living~~
11 ~~residences by cities of the first class, second class and~~
12 ~~second class A.~~

13 ~~(13) (i) Establish a process for promptly relocating~~
14 ~~consumers of adult living residences by the department if~~
15 ~~the assisted living residence is operating without a~~
16 ~~license, is voluntarily closing and residents are being~~
17 ~~displaced, is being involuntarily closed, or has engaged~~
18 ~~in conduct that endangers the health and safety of its~~
19 ~~residents, which shall include providing consumers with~~
20 ~~referrals, options assessment and moving assistance.~~

21 ~~(ii) Except in an emergency, the consumer shall be~~
22 ~~involved in planning his transfer to another placement~~
23 ~~and shall have the right to choose among the available~~
24 ~~alternative placements. The department may make temporary~~
25 ~~placement until final placement can be arranged.~~
26 ~~Consumers shall be provided with an opportunity to visit~~
27 ~~alternative placement before relocation or following~~
28 ~~temporary emergency relocation. Consumers shall choose~~
29 ~~their final placement and shall be given assistance in~~
30 ~~transferring to such place.~~

~~(iii) Consumers shall not be relocated pursuant to this section if the department determines in writing, and consistent with consumer preference, that such relocation is not in the best interest of the consumer.~~

~~(14) Ensure that any regulations established in~~
ADMITTING OR RETAINING CONSUMERS WHOSE SERVICE NEEDS EXCEED <—
THE LEVEL OF THOSE SERVICES AVAILABLE AT CATEGORY I OR
CATEGORY II RESIDENCES.

(11) PROVIDE FOR THE IMPLEMENTATION OF FIRE AND SAFETY
AND CONSUMER CARE STANDARDS RELATING TO ADULT LIVING
RESIDENCES BY CITIES OF THE FIRST CLASS, SECOND CLASS AND
SECOND CLASS A.

(12) ENSURE THAT ANY REGULATIONS ESTABLISHED IN
accordance with this section shall be consistent with
regulations of the department relating to the funding of
residential care for the mentally ill or mentally retarded
adults and any regulations of the Department of Aging
relating to domiciliary care.

~~(15)~~ (13) Develop standards and qualifications for <—
assisted living residence administrators.

~~(16)~~ (14) Develop standards for orientation and training <—
for all direct service staff in an assisted living residence.

~~(17)~~ (15) Provide for the posting in adult living <—
residences of information regarding the Long-Term Care
Ombudsman Program, including the process whereby the services
of the local ombudsman ~~care~~ CAN be readily accessed including <—
the telephone number, and name of the contact person. Such
information shall be posted in a conspicuous location that is
readily accessible and shall be presented in a form easily
understood and read by consumers.

1 ~~(18)~~ (16) Develop standards, for admission to adult <—
2 living residences and for provision of assisted living
3 services, including:

4 (i) Completion of a comprehensive assessment process
5 and development of a comprehensive service plan for each
6 consumer.

7 (ii) Requirements for information which must be
8 provided to consumers of adult living residences and
9 assisted living services.

10 (iii) Requirements for adult living residency
11 contracts, including development of a standardized adult
12 living residency contract.

13 Section 6. Criminal history and reporting of suspected abuse.

14 The requirements of Chapters 5 and 7 of the act of November
15 6, 1987 (P.L.381, No.79), known as the Older Adults Protective
16 Services Act, shall apply to adult living residences AND <—
17 PROVIDERS OF ASSISTED LIVING SERVICES.

18 Section 7. License required.

19 No person shall establish, maintain, operate or hold itself
20 out as authorized to establish, maintain or operate:

21 (1) A personal care home without first having obtained a
22 Category I license issued by the department.

23 (2) An assisted living residence without first having
24 obtained a Category II license issued by the department.

25 Section 8. Application for license.

26 (a) Submission to department.--Any provider desiring to
27 secure a Category I license or Category II license shall submit
28 an application on a form prescribed by the department and shall
29 submit any other information required by the department.

30 (b) Fees.--The following fee shall accompany an application

1 for a license or for renewal of a license until modified by the
2 department by regulation:

3 (1) Residences with less than 20 beds - \$50.

4 (2) Residences with 20-50 beds - \$100.

5 (3) Residences with 51-100 beds - \$250.

6 (4) Residences with more than 100 beds - \$500.

7 Section 9. Issuance of licenses.

8 A license issued by the department under this act shall:

9 (1) Be issued for a period not to exceed one year.

10 (2) Be issued only to the applicant.

11 (3) Be issued only when the applicant has achieved
12 compliance with the rules and regulations of the Commonwealth
13 departments provided for under sections 4 and 5.

14 (4) Not be transferable unless the department approves
15 the transfer of license. The department may deny transfers to
16 friends, relatives or business associates, if it appears that
17 the purpose of the transfer is to avoid licensure action or
18 if it appears that the previous owner will continue to have
19 involvement in the ~~facility~~ RESIDENCE or business. <—

20 (5) Be posted at all time in a conspicuous and readily
21 accessible place on the premises of the adult living
22 residence.

23 ~~(6) There shall be four classes of licensure:~~ <—

24 ~~(i) Exceptional quality licensure shall be awarded~~
25 ~~to assisted living residences and assisted living~~
26 ~~services providers based on a finding by a panel~~
27 ~~established by the department that the provider is in~~
28 ~~compliance with licensure requirements and should be~~
29 ~~recognized for its use of best practices and high~~
30 ~~consumer satisfaction, and positive outcomes. Assisted~~

~~living residences with this licensure classification may advertise and the department shall post names of those assisted living residences with this licensure classification on its World Wide Web site.~~

~~(ii) Compliance licensure shall be provided to assisted living residences with either no violations or isolated Class III violations which the administrator has certified in writing to the department have been corrected within 30 days of the date of the annual licensure inspection.~~

~~(iii) Provisional licensure shall be given to assisted living residences or assisted living services providers with a pattern of Class III violations or isolated Class II violations for a period of six months. Substantial improvement must be demonstrated for assisted living residences to receive a second six month provisional license. Those assisted living residences or assisted living services providers which do not meet the standards for a compliance license at the next scheduled inspection shall have their licenses revoked by the department.~~

~~(iv) Provisional licensure with ban on admissions shall be given for a six month period to assisted living residences or assisted living services providers with a pattern of Class II, isolated Class I or a pattern of Class I violations.~~

Section 10. Standards for admission.

The rules and regulations for the licensing of adult living residences promulgated by the department not later than one year after the effective date of this act shall provide that:

1 (1) Prior to admission to an adult living residence, an
2 initial standardized screening instrument shall determine the
3 appropriateness of the admission and shall be completed for
4 all consumers. This standardized screening instrument shall
5 be developed by the Department of Public Welfare, in
6 cooperation with the Department of Aging, the Department of
7 Health and the Intra-Governmental Council on Long-Term Care.
8 In no way shall the utilization of this standardized
9 instrument be in lieu of an options assessment for any
10 consumer who may need publicly funded services.

11 (2) In addition to the screening, a medical evaluation
12 shall be completed and signed by a physician prior to
13 admission to an adult living residence, using a form approved
14 ~~by the department. Thereafter, each consumer shall receive a~~ <—
15 ~~screening and an annual evaluation or an evaluation upon a~~
16 ~~significant change in condition of the consumer.~~ BY THE <—
17 DEPARTMENT. THEREAFTER, AN ANNUAL SCREENING AND A MEDICAL
18 EVALUATION SHALL BE ADMINISTERED TO EACH CONSUMER ANNUALLY
19 AND WHEN THERE IS A SIGNIFICANT CHANGE IN CONDITION OF THE
20 CONSUMER. A SUBSEQUENT SCREENING AND EVALUATION MAY BE
21 PROMPTED BY A REQUEST FROM THE CONSUMER, THE RESIDENCE, THE
22 CONSUMER'S FAMILY OR THEIR LEGAL REPRESENTATIVE, WHERE
23 APPLICABLE.

24 (3) Following completion of a comprehensive assessment,
25 an appropriately trained person at the residence shall work
26 in cooperation with an interdisciplinary team that includes
27 the consumer, the consumer's legal representative or the
28 consumer's family member to develop a written comprehensive
29 service plan consistent with the consumer's unique physical
30 and psychosocial needs with recognition of the consumer's

1 capabilities and preferences.

2 (4) Adult living residences may not admit a consumer
3 before a determination has been made that the needs of the
4 consumer can be met based upon:

5 (i) The completed screening instrument.

6 (ii) The medical evaluation report.

7 (iii) An interview between the adult living
8 residence and the consumer, AND IF APPLICABLE, THE
9 CONSUMER'S FAMILY, LEGAL REPRESENTATIVE, OR BOTH.

<—

10 (5) Assisted living residences with a Category II
11 license shall:

12 (i) Foster aging in place and promote consumer self-
13 direction and active participation in decision making
14 while emphasizing a consumer's privacy and dignity.

15 (ii) Permit consumers to live independently in the
16 residential environment of their choice with privacy and
17 dignity.

18 (iii) Promote integration of consumers into the
19 community and participation in the mainstream of
20 activities.

21 (iv) Maximize consumer choice to promote and support
22 the consumer's changing needs and preferences.

23 (v) Be consumer oriented and meet professional
24 standards of quality.

25 (6) An assisted living residence administrator shall
26 refer a consumer whose needs cannot be met by an assisted
27 living residence for a standardized screening.

28 (7) A comprehensive service plan shall be on file for
29 each consumer and shall be strictly adhered to in the
30 provision of care and services provided to the consumer.

1 (8) Each consumer, or the consumer's legal
2 representative, shall receive an information packet at the
3 time of application which shall include the following items,
4 to be presented in a form easily understood and read by the
5 consumer:

6 (i) A copy of the adult living residence's policies.

7 (ii) Advance directive information, including
8 information on the right to have or not have an advance
9 directive.

10 (iii) Information regarding licensure status.

11 (iv) Telephone numbers of the local long-term care
12 ombudsman program and the local area agency on aging.

13 (v) A copy of the adult living residency contract
14 used by the adult living residence and all rates charged.

15 (vi) A copy of the internal complaint resolution
16 mechanism used by the adult living residence.

17 (vii) A disclosure stating the rights of consumers
18 under this act.

19 (viii) Information regarding the discharge policy of
20 the adult living residence.

21 (9) All consumers shall receive a standard written adult
22 living residency contract which shall include the actual rent
23 and other charges for services provided by the adult living
24 residence. The contract shall also include a disclosure
25 statement which shall include the following:

26 (i) That the consumer shall have 24 hours from the
27 time of presentation to sign the contract.

28 (ii) That if the contract is signed upon
29 presentation, the consumer shall have 72 hours to rescind
30 the contract.

(10) A consumer shall have the right to leave and return to the adult living residence, receive visitors, have access to a telephone and mail and participate in religious activities.

(11) Adult living residence owners, administrators and direct service staff shall be prohibited from being assigned power of attorney or guardianship for consumers.

~~Section 11. (Reserved)~~

<—

Section 12 11. Right to enter and inspect.

<—

(a) General rule.--The department shall have the right to enter and inspect any adult living residence that is licensed or required to be licensed under this act, with or without prior notice. The department shall have the right to free and full access to inspect and examine the assisted living residence and its grounds and the records of the residence and the licensee. The department shall also have immediate and full opportunity to privately interview any member of the direct service staff. The department shall contact the Long-Term Care Ombudsman and shall utilize any consumer-related information available to be provided by that office when conducting inspections under this section.

(b) Initial licensure inspection.--Before ~~a facility~~ AN ADULT LIVING RESIDENCE is licensed and permitted to open, operate or admit residents and before assisted living services are provided to consumers, it shall be inspected by the department and be found in compliance with the requirements set forth in this act and the resulting regulations.

<—

(c) Annual unannounced inspections required.--The department shall annually conduct at least one onsite, unannounced inspection of each adult living residence.

1 (d) Special unannounced inspections.--Within 24 hours, upon
2 receipt of a complaint from any person alleging an immediate
3 serious risk to the health or safety of a consumer in an adult
4 living residence, the department shall conduct an onsite
5 unannounced inspection of the adult living residence. Complaints
6 prompting an inspection pursuant to this subsection may include
7 severe injury or death of a consumer in the adult living
8 residence, reports of abuse or conditions or practices that
9 create an immediate and serious risk to a consumer.

10 (e) Time period for unannounced inspections.--Except for
11 complaints under subsection (d), the department shall determine
12 the acceptable time period in which complaints shall be
13 investigated based upon the seriousness of the complaint.

14 ~~(f) Surveys. The department shall develop:~~ <—

15 ~~(1) A process for implementing an abbreviated survey and~~
16 ~~inspection process for good performers and an intensified~~
17 ~~survey and inspection process for poor performers.~~

18 ~~(2) A process for incorporating outcomes and consumer~~
19 ~~satisfaction into the survey process.~~

20 ~~(3) A process for determining and communicating provider~~
21 ~~satisfaction with the survey and inspection process.~~

22 ~~(4) A process that requires administrator certification~~
23 ~~of the truth of the statements made on all plans of~~
24 ~~correction and reports of corrective steps taken with the~~
25 ~~administrator at risk of fine and loss of ability to be an~~
26 ~~administrator for false statements.~~

27 ~~(5) An appeal process that is expeditious with no appeal~~
28 ~~or request for reconsideration outstanding for more than 60~~
29 ~~days and that precludes the granting of a supersedeas unless~~
30 ~~the provider demonstrates a substantial likelihood of~~

1 ~~prevailing on the merits.~~

2 ~~(6) The department shall develop a uniform survey tool~~
3 ~~to be used by inspectors.~~

4 ~~(g)~~ (F) Annual report.--The department shall submit on an <—
5 annual basis a report to the Aging and Youth Committee of the
6 Senate and the Aging and Older Adult Services Committee of the
7 House of Representatives regarding the findings of the
8 inspections required by this section.

9 ~~(h)~~ (G) Administrative search warrants.--Notwithstanding the <—
10 inspection and access powers of the department under subsection
11 (a), upon showing probable cause that there is a violation of
12 this act or regulations under this act, a court of competent
13 jurisdiction or a district justice where the residence is
14 located shall issue an administrative search warrant to the
15 department. The warrant shall identify the address of the adult
16 living residence to be searched, the hours during which the
17 search will occur and any documents or objects to be seized.

18 Section ~~13~~ 12. Relocation of consumers in assisted living <—
19 residences.

20 (a) Conditions.--Except as provided in subsection (c), the
21 department, in conjunction with appropriate local authorities,
22 shall relocate consumers from an assisted living residence if
23 any of the following conditions exist:

24 (1) The assisted living residence is operating without a
25 license.

26 (2) The licensee is voluntarily closing the assisted
27 living residence and relocation is necessary for the health
28 and safety of the consumers.

29 (3) THE LICENSEE IS BEING INVOLUNTARILY CLOSED OR HAS <—
30 ENGAGED IN CONDUCT THAT ENDANGERS THE HEALTH AND SAFETY OF

1 CONSUMERS.

2 (b) Assistance.--The department shall offer relocation
3 assistance to consumers relocated under this section. Except in
4 an emergency, consumers shall be involved in planning their
5 transfer to another placement and shall have the right to choose
6 among the available alternative placements. The department may
7 make temporary placement until final placement can be arranged.
8 Consumers shall be provided with an opportunity to visit
9 alternative placement before relocation or following temporary
10 emergency relocation. Consumers shall choose their final
11 placement and shall be given assistance in transferring to such
12 place.

13 (c) When prohibited.--Consumers may not be relocated
14 pursuant to this section if the department determines in writing
15 that such relocation is not in the best interest of the
16 consumers.

17 Section ~~14~~ 13. Assisted living residence administrators. <—

18 ~~(a) Appointment. Ninety days after the effective date of~~ <—

19 (A) APPOINTMENT.--NO LATER THAN 90 DAYS AFTER THE EFFECTIVE <—
20 DATE OF this act, all assisted living residences shall identify
21 and appoint an assisted living residence administrator or
22 administrators who meet, within one year of the effective date
23 of the regulations promulgated under section 5, at a minimum,
24 the qualifications provided in this section.

25 (b) Qualification.--An assisted living residence
26 administrator shall satisfy either of the following
27 qualifications:

28 (1) (i) be 21 years of age or older and be of good
29 moral character;

30 (ii) have a high school diploma or a GED

1 equivalency; and

2 (iii) have knowledge, education and training, as it
3 pertains to assisted living residences, in all of the
4 following:

5 (A) Fire prevention and emergency planning.

6 (B) First aid and cardiopulmonary resuscitation
7 (CPR) certification, medications, medical terminology
8 and personal hygiene.

9 (C) Federal, State and local laws and
10 regulations.

11 (D) Nutrition, food handling and sanitation.

12 (E) Recreation.

13 (F) Matters relating to dementia, including
14 normal aging, cognitive, psychological and function
15 abilities of older persons.

16 (G) Mental health issues.

17 (H) Assisted living philosophy.

18 (I) Use and benefits of assistive technology.

19 (J) Team building and stress reduction for
20 assisted living residence staff.

21 (K) Working with family members.

22 (L) Awareness, identification, prevention and
23 reporting of abuse and neglect.

24 (M) Mission and purpose of services to
25 individuals with cognitive impairments.

26 (N) Communication skills and management of
27 behavioral challenges.

28 (O) Community resources and social services.

29 (P) Staff supervision, budgeting, financial
30 recordkeeping and training; or

(2) Be a licensed nursing home administrator or certified personal care home administrator who has completed a course of instruction in the administration of an assisted living residence, including instruction in all areas enumerated under paragraph (1)(iii).

(c) Training.--All administrators shall complete a department-approved training course of a minimum of 120 hours. All administrators shall pass a test which has been approved by the department and administered by an entity approved by the department at the end of training to demonstrate proficiency in the application of skills and knowledge.

(d) Continuing education.--Every two years, all administrators shall complete 36 hours of continuing education that has been approved by the department and is applicable to the practice of assisted living administrators.

~~Section 15~~ 14. Staff orientation and training in assisted living residences.

(a) General rule.--The department shall promulgate regulations, not later than ~~60~~ 90 days after the effective date of ~~this act, that require orientation and training for all~~ ~~direct~~ THIS ACT TO DEVELOP STANDARDS FOR ORIENTATION AND TRAINING FOR ALL DIRECT service staff in assisted living residences. Such orientation and training shall include the following areas:

- (1) Fire prevention and emergency planning.
- (2) First aid and CPR certification, medications, medical terminology and personal hygiene.
- (3) Federal, State and local laws and regulations.
- (4) Nutrition, food handling and sanitation.
- (5) Recreation.

1 (6) Matters relating to dementia, including normal
2 aging, cognitive, psychological and functional abilities of
3 older persons.

4 (7) Mental health issues.

5 (8) Assisted living philosophy.

6 (9) Use and benefits of assistive technology.

7 (10) Team building and stress reduction for assisted
8 living residence staff.

9 (11) Working with family members.

10 (12) Awareness, identification, prevention and reporting
11 of abuse and neglect.

12 (13) Mission and purpose of services to individuals with
13 cognitive impairments.

14 (14) Communication skills and management of behavioral
15 challenges.

16 (15) Community resources and social services.

17 ~~(b) Standards. Not later than 90 days after the effective~~ <—
18 ~~date of this act, the department shall, by regulation, develop~~
19 ~~such standards for knowledge, education or training to meet the~~
20 ~~requirements of this section.~~

21 ~~(c) Department administered training. If not otherwise~~
22 ~~available, the department shall schedule and offer, at cost,~~
23 ~~training and educational programs for a person to meet the~~
24 ~~knowledge, educational and training requirements established by~~
25 ~~this act.~~

26 (B) DEPARTMENT-ADMINISTERED TRAINING.--IF NOT OTHERWISE <—
27 AVAILABLE, THE DEPARTMENT SHALL SCHEDULE AND OFFER, AT COST,
28 TRAINING AND EDUCATIONAL PROGRAMS FOR A PERSON TO MEET THE
29 KNOWLEDGE, EDUCATIONAL AND TRAINING REQUIREMENTS ESTABLISHED BY
30 THIS ACT.

1 Section ~~15.1~~ 15. Staffing levels and training. <—

2 (a) General rule.--The department shall establish staffing
3 levels for assisted living residences depending upon the
4 facility population, mobility of residents and cognitive
5 impairments to insure:

6 ~~(1) Twenty four hour a day awake direct care staff to~~ <—
7 ~~meet the unplanned and unscheduled needs of consumers.~~

8 ~~(2) Direct care staff to meet consumers' planned and~~
9 ~~scheduled needs as required in their comprehensive service~~
10 ~~plans.~~

11 ~~(3) Additional staff or contracted services to meet~~
12 ~~laundry, food service, housekeeping, transportation and~~
13 ~~maintenance needs of the assisted living residence.~~

14 ~~(b) Training. All direct care staff shall complete a~~
15 ~~department approved education and training program which has~~
16 ~~been approved by the department for a minimum of 40 hours and~~
17 ~~obtain a certificate of completion. Direct care staff shall~~
18 ~~complete training and demonstrate proficiency in a manner~~
19 ~~approved by the department in each training component prior to~~
20 ~~independent work in that area.~~

21 Section ~~16.~~ Persons with special needs.

22 ~~(a) Immobile persons. The department shall not prohibit~~
23 ~~immobile persons who do not require the services of a licensed~~
24 ~~long term care facility, but who require assisted living~~
25 ~~residence services, from residing in an adult living residence~~

26 (1) DIRECT SERVICE STAFF TO MEET THE UNPLANNED AND <—
27 UNSCHEDULED NEEDS OF CONSUMERS.

28 (2) DIRECT SERVICE STAFF TO MEET CONSUMERS' PLANNED AND
29 SCHEDULED NEEDS AS REQUIRED IN THEIR COMPREHENSIVE SERVICE
30 PLANS.

(3) ADDITIONAL STAFF OR CONTRACTED SERVICES TO MEET LAUNDRY, FOOD SERVICE, HOUSEKEEPING, TRANSPORTATION AND MAINTENANCE NEEDS OF THE ASSISTED LIVING RESIDENCE.

(B) TRAINING.--ALL DIRECT SERVICE STAFF SHALL COMPLETE A DEPARTMENT APPROVED EDUCATION AND TRAINING PROGRAM AND OBTAIN A CERTIFICATE OF COMPLETION. DIRECT SERVICE STAFF SHALL COMPLETE TRAINING AND DEMONSTRATE PROFICIENCY IN A MANNER APPROVED BY THE DEPARTMENT IN EACH TRAINING COMPONENT PRIOR TO INDEPENDENT WORK IN THAT AREA.

SECTION 16. PERSONS WITH SPECIAL NEEDS.

(A) IMMOBILE PERSONS.--IMMOBILE PERSONS WHO DO NOT REQUIRE THE SERVICES OF A LICENSED LONG-TERM CARE FACILITY, BUT WHO REQUIRE ASSISTED LIVING RESIDENCE SERVICES, SHALL BE PERMITTED TO RESIDE IN AN ADULT LIVING RESIDENCE with a Category II license, provided that the design, construction, staffing or operation of the assisted living residence allows for safe emergency evacuation.

(b) Alzheimer's disease, dementia and cognitive impairment.--For consumers with Alzheimer's disease or dementia or where the adult living residence holds itself out to the public as providing services or housing for persons with cognitive impairments, adult living residences shall disclose to consumers and provide:

(1) the residence's written statement of its philosophy and mission which reflects the needs of individuals with cognitive impairments;

(2) a description of the residence's physical environment and design features to support the functioning of adults with cognitive impairments;

(3) a description of the frequency and types of

individual and group activities designed specifically to meet the needs of residents with cognitive impairments;

(4) a description of security measures provided by the facility;

(5) a description of training provided to staff regarding provision of care to consumers with cognitive impairments;

(6) a description of availability of family support programs and family involvement; and

(7) the process used for assessment and establishment of a plan of services for the consumer, including methods by which the plan of services will remain responsive to changes in the consumer's condition.

(c) Cognitive support services.--

(1) An adult living residence shall provide to a cognitively impaired consumer cognitive support services, including dementia-specific activity programming.

(2) Within 30 days of admission of a cognitively impaired consumer, the adult living residence shall register the consumer with the Commonwealth's Safe Return Program for individuals with cognitive impairments and tendencies to wander.

~~Section 17. Violations.~~

~~(a) Classification of violations. There shall be three classes of violations:~~

~~(1) Class I. A violation including failure to or negligent provision of services in the service plan, which indicates a substantial probability that death or serious mental or physical harm to a consumer may result or death actually results.~~

~~(2) Class II. A violation including failure to or negligent provision of services in the service plan, which has a potential or actual substantial adverse effect upon the health, safety or well being of a consumer.~~

~~(3) Class III. A minor violation which has an adverse effect upon the health, safety or well being of a consumer.~~

~~(b) Notice of violations. If the department, whether upon inspection, investigation or complaint, finds a violation of this act or regulations promulgated under this act, it shall give written notice to the licensee specifying the violation or violations found. The notice shall require the licensee to take action or to submit a plan of correction to bring the adult living residence into compliance with applicable law or regulation within a specified time.~~

~~(c) Remedies and penalties. The remedy and penalty for violations shall depend on the violation as follows:~~

~~(1) Isolated Class III violations. Within 30 days of the date of the citation, the assisted living residence administrator or assisted living services provider must correct the violation and certify in writing to the department that the violation has been corrected.~~

~~(2) Pattern of Class III violations. Within ten days of the date of the citation, the assisted living residence administrator or assisted living services provider must submit a plan of correction for departmental approval. Within 30 days of the date of the citation, the assisted living residence administrator or assisted living services provider must correct the violations and certify in writing that corrections have been made. The department shall issue fines and grant a provisional license which shall be in effect only~~

1 ~~until written certification of corrections has been received~~
2 ~~by the department. Immediate correction of the violation to~~
3 ~~the inspector's satisfaction during the survey process will~~
4 ~~preclude the application of a penalty under this subsection.~~

5 ~~(3) Isolated Class II violations. Within ten days of the~~
6 ~~date of the citation, the assisted living residence~~
7 ~~administrator or assisted living services provider must~~
8 ~~submit a plan of correction for departmental approval. Within~~
9 ~~30 days of the date of citation, the assisted living~~
10 ~~residence administrator or assisted living services provider~~
11 ~~shall correct the violations and certify in writing to the~~
12 ~~department that corrections have been made. The department~~
13 ~~shall fine the assisted living residence or assisted living~~
14 ~~services provider and issue a provisional license until~~
15 ~~certification of corrections has been received by the~~
16 ~~department. Immediate correction of violation to the~~
17 ~~inspector's satisfaction during the survey process will~~
18 ~~preclude the application of a penalty under this subsection.~~

19 ~~(4) Pattern of Class II violations. Within ten days of~~
20 ~~the date of the citation, the assisted living residence~~
21 ~~administrator or assisted living services provider shall~~
22 ~~submit a plan of correction for departmental approval. Within~~
23 ~~30 days of the date of the citation, the assisted living~~
24 ~~residence administrator or assisted living services provider~~
25 ~~shall correct the violations and shall certify in writing to~~
26 ~~the department that all corrections have been made. The~~
27 ~~department shall fine the provider and issue a provisional~~
28 ~~license with a ban on admissions or service until written~~
29 ~~certification of corrections has been received and~~
30 ~~corrections have been verified by the department. The~~

1 ~~department shall conduct an onsite inspection to verify~~
2 ~~corrections within two business days of receipt of the~~
3 ~~certification of correction. The department shall conduct~~
4 ~~intensified inspections of the provider with more numerous~~
5 ~~unannounced inspections.~~

6 ~~(5) Isolated Class I violations. Upon a finding by the~~
7 ~~department of a Class I violation, the department shall~~
8 ~~immediately decide whether:~~

9 ~~(i) to give a provisional license with a ban on~~
10 ~~admissions or services and allow the assisted living~~
11 ~~residence or assisted living services provider to correct~~
12 ~~the violation;~~

13 ~~(ii) to require the appointment of a master at the~~
14 ~~assisted living residence's expense to oversee the~~
15 ~~immediate correction of the violations; or~~

16 ~~(iii) to revoke the license and arrange for the~~
17 ~~immediate relocation or transfer of consumers.~~

18 ~~The department shall fine the provider and should the~~
19 ~~provider remain in operation, subject it to intensified and~~
20 ~~more numerous unannounced inspections.~~

21 ~~(6) Pattern of Class I violations. Upon a finding by the~~
22 ~~department that a provider has a pattern of Class I~~
23 ~~violations, the department shall immediately revoke the~~
24 ~~provider's license and arrange for relocation or transfer of~~
25 ~~the consumers or appoint a master at the assisted living~~
26 ~~residence's expense to bring the assisted living residence~~
27 ~~into compliance within 30 days. The department shall issue a~~
28 ~~provisional license with a ban on admissions or service if~~
29 ~~the provider is permitted to continue in operation and shall~~
30 ~~fine the provider. Should the provider remain in operation,~~

1 ~~the department shall conduct intensified and more numerous~~
2 ~~inspections.~~

3 ~~(7) Any administrator who falsely certifies to the~~
4 ~~department that violations have been corrected shall be fined~~
5 ~~by the department and shall lose the administrator license.~~

6 ~~(8) Within six months of the date of this act, the~~
7 ~~department shall issue regulations governing this section.~~
8 ~~The regulations shall ensure that inspections are not~~
9 ~~invasive of consumer's privacy or dignity, support the~~
10 ~~principles of assisted living and can be uniformly and~~
11 ~~consistently applied by the department.~~

12 ~~(9) The department may revoke a license before providing~~
13 ~~notice or before a plan of correction is submitted whenever a~~
14 ~~violation poses a significant threat to the health or safety~~
15 ~~of the consumers in an adult living residence.~~

16 ~~(d) Administrative fines.—~~

17 ~~(1) If the department determines that an adult living~~
18 ~~residence has failed to comply with the provisions of this~~
19 ~~act or the regulations promulgated under this act, it may~~
20 ~~assess an administrative fine of not more than \$1,000 per day~~
21 ~~per violation. In setting the fine, the department shall~~
22 ~~consider the severity of the violation and whether there is a~~
23 ~~pattern of violations.~~

24 ~~(2) Money collected by the department under this section~~
25 ~~shall be first used to defray the expenses incurred by~~
26 ~~consumers relocated under this act. Any moneys remaining~~
27 ~~shall be used by the department for enforcing the provisions~~
28 ~~of this act. Fines collected pursuant to this act shall not~~
29 ~~be subject to the provisions of 42 Pa.C.S. § 3733 (relating~~
30 ~~to deposits into account).~~

~~(e) Criminal penalties. A licensee that intentionally commits a violation or continues to operate an adult living residence without a license by the department commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of \$5,000 or to imprisonment for not more than two years, or both.~~

~~(f) Appeal of violations.~~

~~(1) A provider appealing a departmental ban on admissions or license revocation or nonrenewal shall be denied a supersedeas unless the provider demonstrates substantial likelihood of prevailing on the merits.~~

~~(2) Where a supersedeas is granted, it shall be revoked if the department presents evidence of any intervening Class I or II violations.~~

~~(3) Where a supersedeas is granted:~~

~~(i) The department shall inspect a facility or assisted living services provider at least monthly or more frequently to ensure residents' or recipients' safety and well being. Those inspection reports shall be maintained as part of the public record for the assisted living residence or assisted living services provider.~~

~~(ii) Where a supersedeas has been granted, a Class I or II violation cited after the granting of the supersedeas shall lead to a revocation of the supersedeas.~~

~~(g) Expedited hearings. The department's Bureau of Hearings and Appeals shall make the assisted living residence or assisted living services provider appeals a priority, with no appeal outstanding more than 60 days beyond the date on which the appeal was filed.~~

1 ~~(h) Expedited reconsideration. The secretary shall rule on~~
2 ~~reconsiderations within 60 days.~~

3 SECTION 17. VIOLATIONS. <—

4 (A) NOTICE OF VIOLATIONS.--

5 (1) IF THE DEPARTMENT, WHETHER UPON INSPECTION,
6 INVESTIGATION OR COMPLAINT, FINDS A VIOLATION OF THIS ACT OR
7 REGULATIONS PROMULGATED UNDER THIS ACT, IT SHALL GIVE WRITTEN
8 NOTICE TO THE LICENSEE SPECIFYING THE VIOLATION OR VIOLATIONS
9 FOUND. THE NOTICE SHALL REQUIRE THE LICENSEE TO TAKE ACTION
10 OR TO SUBMIT A PLAN OF CORRECTION TO BRING THE LICENSEE INTO
11 COMPLIANCE WITH APPLICABLE LAW OR REGULATION WITHIN A
12 SPECIFIED TIME.

13 (2) THE LICENSEE SHALL, WITHIN 15 DAYS OF RECEIPT OF THE
14 WRITTEN NOTICE OR SOONER IF DIRECTED TO DO SO BY THE
15 DEPARTMENT, SUBMIT A PLAN OF CORRECTION.

16 (3) THE DEPARTMENT MAY REVOKE A LICENSE BEFORE PROVIDING
17 NOTICE OR BEFORE A PLAN OF CORRECTION IS SUBMITTED WHENEVER A
18 VIOLATION POSES A SIGNIFICANT THREAT TO THE HEALTH OR SAFETY
19 OF THE CONSUMERS IN AN ADULT LIVING RESIDENCE.

20 (B) ADMINISTRATIVE FINES.--IF THE DEPARTMENT DETERMINES THAT
21 AN ADULT LIVING RESIDENCE HAS FAILED TO COMPLY WITH THE
22 PROVISIONS OF THIS ACT OR THE REGULATIONS PROMULGATED UNDER THIS
23 ACT, IT MAY ASSESS AN ADMINISTRATIVE FINE OF NOT MORE THAN
24 \$1,000 PER DAY PER VIOLATION. IN SETTING THE FINE, THE
25 DEPARTMENT SHALL CONSIDER THE SEVERITY OF THE VIOLATION AND
26 WHETHER THERE IS A PATTERN OF VIOLATIONS. MONEY COLLECTED BY THE
27 DEPARTMENT UNDER THIS SECTION SHALL BE USED TO DEFRAY THE
28 EXPENSES INCURRED BY CONSUMERS RELOCATED UNDER THIS ACT. ANY
29 MONEYS REMAINING SHALL BE USED BY THE DEPARTMENT FOR ENFORCING
30 THE PROVISIONS OF THIS ACT. FINES COLLECTED PURSUANT TO THIS ACT

1 SHALL NOT BE SUBJECT TO THE PROVISIONS OF 42 PA.C.S. § 3733
2 (RELATING TO DEPOSITS INTO ACCOUNT).

3 (C) CRIMINAL PENALTIES.--A LICENSEE THAT INTENTIONALLY
4 COMMITS A VIOLATION OR CONTINUES TO OPERATE AN ADULT LIVING
5 RESIDENCE WITHOUT A LICENSE BY THE DEPARTMENT COMMITS A
6 MISDEMEANOR OF THE SECOND DEGREE AND SHALL, UPON CONVICTION, BE
7 SENTENCED TO PAY A FINE OF \$5,000 OR TO IMPRISONMENT FOR NOT
8 MORE THAN TWO YEARS, OR BOTH.

9 Section 18. Reasons for denial, nonrenewal or revocation of a
10 license.

11 The department may deny, refuse or renew or revoke a license
12 for all or any portion of an adult living residence or may
13 suspend or restrict admissions to the residence for any of the
14 following reasons:

15 (1) Failure of a licensee to submit an acceptable plan
16 of correction with a reasonable timetable to correct
17 violations.

18 (2) The existence of a pattern of violations.

19 (3) Failure to comply with a plan of correction or to
20 report violations in accordance with a timetable submitted by
21 the applicant and agreed upon by the department.

22 (4) Fraud or deceit in obtaining or attempting to obtain
23 a license.

24 (5) Lending, borrowing or using the license of another
25 or in any way knowingly aiding or abetting the improper
26 granting of a license.

27 (6) Incompetence, negligence or misconduct in operating
28 the adult living residence.

29 (7) Mistreatment or abuse of a consumer of the adult
30 living residence.

(8) Violation of the provisions of this act or the regulations promulgated under this act.

(9) Violation of other applicable Federal or State laws.
Section 19. Licensure appeals.

(a) Nature of proceeding.--A licensee aggrieved by a decision of the department under this act shall have the right to an appeal. The appeal shall be conducted in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) to the board.

(b) Time for hearing.--

(1) Except as provided in paragraph (2), a hearing shall be held by the board within 90 days of receipt of the notice of request for a hearing.

(2) If the board determines that continued operation, pending administrative review, poses an immediate threat to the consumers in the assisted living residence or if the department has implemented an emergency action pursuant to section 21(c) and a timely request for a hearing has been made, a hearing shall be held within 15 days after the receipt of the response or request for a hearing.

(3) Hearing dates specified in this subsection may be extended by the board for good cause if agreed to by all parties.

(c) Decisions.--A decision shall be issued within 60 days after the final day of the hearing. In the case of an expedited hearing under subsection (b)(2), a decision shall be issued within five days after the final date of the hearing.

(d) Subpoenas.--The presiding officer may issue a subpoena at the request of either party.

(e) Discovery.--Discovery shall be limited to reasonable

1 requests for production of documents and identification of
2 witnesses. All other discovery shall be by mutual agreement of
3 the parties.

4 Section 20. Effect of departmental orders.

5 Orders of the department from which no appeal is taken to the
6 board and orders of the board from which no timely appeal is
7 taken to the court shall be final orders and may be enforced by
8 a court of competent jurisdiction.

9 Section 21. Actions against violations of law and regulations.

10 (a) Violations.--Whenever any person, regardless of whether
11 such person is a licensee, has violated any of the provisions of
12 this act or the regulations issued pursuant thereto, the
13 department may maintain an action in the name of the
14 Commonwealth for an injunction or other process restraining or
15 prohibiting such person from engaging in such activity.

16 (b) Residence closure for threat to health or safety.--

17 Whenever the department determines that a violation poses an
18 immediate and serious threat to the health or safety of the
19 consumers of an adult living residence, the department may

20 ~~direct the closure of the assisted living residence and the~~ <—

21 ~~transfer of the consumers to other adult living residences with~~

22 ~~a Category II license or other appropriate locations. The DIRECT~~ <—

23 THE CLOSURE OF THE RESIDENCE AND THE TRANSFER OF THE CONSUMERS

24 TO OTHER ADULT LIVING RESIDENCES WITH EITHER A CATEGORY I OR A

25 CATEGORY II LICENSE OR OTHER LOCATIONS THAT ARE DETERMINED TO

26 APPROPRIATELY MEET THE CARE NEEDS OF THE DISPLACED CONSUMERS.

27 THE department may petition the Commonwealth Court or the court

28 of common pleas of the county in which the adult living

29 residence is located to appoint the department temporary

30 management of the adult living residence. If granted, the

1 department shall assume operation of the adult living residence
2 at the licensee's expense until there is an orderly closure of
3 the adult living residence.

4 (c) Unlicensed adult living residences.--

5 (1) Whenever a license is required by this act, the
6 department may maintain an action in a court of competent
7 jurisdiction in the name of the Commonwealth for an
8 injunction or other process restraining or prohibiting any
9 person from establishing, maintaining or operating an adult
10 living residence that does not possess a Category I license
11 or Category II license.

12 (2) If a person who is refused a license or the renewal
13 of a license to operate or conduct an adult living residence,
14 or whose license to operate or conduct an adult living
15 residence is revoked, fails to appeal, or should such appeal
16 be decided finally favorable to the department, then the
17 court shall issue a permanent injunction upon proof that the
18 person is operating or conducting an adult living residence
19 without a license as required by this act.

20 Section 22. Injunction or restraining order when appeal is
21 pending.

22 Whenever the department refuses to renew or revokes a license
23 or orders a person to refrain from violating this act or the
24 regulations promulgated under this act and the person, deeming
25 himself aggrieved by the refusal, revocation or order, appeals
26 from the action of the department to the board or from the order
27 of the board to the court, the court may during pendency of the
28 appeal:

29 (1) issue a restraining order or injunction upon a
30 showing that the continued operation of the adult living

1 residence adversely affects the health, safety or care of the
2 consumers of the adult living residence; or

3 (2) authorize continued operation of the residence or
4 make such other order, pending final disposition of the case,
5 as justice and equity require.

6 Section 23. Annual report.

7 (a) Contents of.--The Department of Public Welfare shall,
8 after consulting with the Department of Aging and the Department
9 of Health, provide an annual report to the Intra-Governmental
10 Council on Long-Term Care. The annual report shall include, at a
11 minimum, the following:

12 (1) The total number of adult living residences and
13 assisted living services providers in this Commonwealth as
14 well as the numbers of residences and providers newly
15 licensed within the previous year. Such report shall also
16 include information presented separately regarding Category I
17 Personal Care Homes and Category II Assisted Living
18 Residences.

19 (2) Complaints received by the licensing departments,
20 the ombudsman program or the protective services units in
21 each area agency on aging and the outcome of any
22 investigations.

23 (3) Commonwealth costs associated with the licensing,
24 inspection and payment of assisted living services.

25 (4) The availability of assisted living residences and
26 assisted living services to consumers and any barriers
27 experienced by consumers in accessing assisted living
28 residences and assisted living services.

29 (5) General profile information regarding the types of
30 consumers accessing assisted living residences and assisted

1 living services.

2 (6) The costs experienced by consumers in assisted
3 living residences and by consumers using assisted living
4 services.

5 (7) Recommendations for additional legislative or
6 regulatory action to improve the quality, affordability or
7 accessibility of assisted living in this Commonwealth.

8 (b) Review process.--The Intra-Governmental Council on Long-
9 Term Care shall have 30 days to review the report and to prepare
10 written comments thereto. Such comments shall include
11 recommendations regarding legislation or regulations and
12 reporting methods. After the 30-day review and comment period,
13 the council shall forward the department's report and their
14 written comments to the Governor, the Aging and Youth Committee
15 of the Senate and the Aging and Older Adult Services Committee
16 of the House of Representatives.

17 Section 24. Legislative Budget and Finance Committee study.

18 Within nine months after the effective date of this act, the
19 Legislative Budget and Finance Committee shall report to the
20 General Assembly on existing Federal and other states'
21 initiatives and programs that provide financial assistance for
22 assisted living. This study shall include information on other
23 Federal or state assisted living programs that are effectively
24 administered and can be considered a model.

25 Section 25. Committee regulation review.

26 In accordance with the act of June 25, 1982 (P.L.633,
27 No.181), known as the Regulatory Review Act, all regulations
28 promulgated pursuant to this act shall be referred to the Aging
29 and Youth Committee of the Senate and the Aging and Older Adult
30 Services Committee of the House of Representatives.

1 Section 26. Increase to State supplemental assistance for
2 persons in personal care homes.

3 (a) General rule.--Notwithstanding any other provision of
4 the act of June 13, 1967 (P.L.31, No.21), known as the Public
5 Welfare Code, or regulations of the department to the contrary,
6 the amount of the State supplemental assistance payable to a
7 person who is eligible under section 432(2)(ii) of the Public
8 Welfare Code and who is a resident of a personal care home shall
9 be increased by an amount of \$15 per day.

10 (b) Consumer Price Index Adjustment.--The amount of State
11 supplemental assistance payable under subsection (a) shall be
12 increased beginning July 1, ~~2002~~ 2004, by an amount equal to the <—
13 increase in the Consumer Price Index for Urban Wage Earners for
14 the immediately preceding calendar year, which amount shall be
15 published in the Pennsylvania Bulletin annually by the
16 department on or before the preceding November 30.

17 Section 27. Severability.

18 If any provision of this act or the application thereof to
19 any person or circumstances is held invalid, such invalidity
20 shall not affect other provisions or applications of the act
21 which can be given effect without the invalid provision or
22 application, and to this end the provisions of this act are
23 declared to be severable.

24 Section 28. Repeal.

25 All acts and parts of acts are repealed insofar as they are
26 inconsistent with this act.

27 Section 29. Effective date.

28 This act shall take effect in one year.