

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1579

Session of
2003

INTRODUCED BY SAMUELSON, HESS, PISTELLA, WATSON, PALLONE,
GRUCELA, SATHER, YUDICHAK, MELIO, FREEMAN, SCRIMENTI, HABAY,
EACHUS, B. SMITH AND GINGRICH, JUNE 10, 2003

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 18, 2003

AN ACT

1 Relating to long-term care facility residents' rights; and
2 providing for requirements for admission, care, transfer,
3 discharge, funds and privacy of long-term care facility
4 residents and for remedies.

5 The General Assembly finds and declares as follows:

6 (1) Long-term care facilities are a critical part of
7 this Commonwealth's long-term care services system. It is the
8 intent of the General Assembly that individuals who reside in
9 long-term care facilities receive appropriate services, be
10 treated with courtesy and continue to enjoy their basic civil
11 and legal rights.

12 (2) It is further the intent of the General Assembly
13 that long-term care facility residents have the opportunity
14 to exercise reasonable control over life decisions. The
15 General Assembly finds that choice, participation, privacy
16 and the opportunity to engage in religious, political, civic,
17 recreational and other social activities foster a sense of
18 self-worth and enhance the quality of life for long-term care

1 residents.

2 (3) The public interest would be best served by
3 providing the same basic resident rights in all long-term
4 care settings. Residents in nursing facilities are guaranteed
5 certain rights by Federal law and regulation under section
6 1919 of the Social Security Act (49 Stat. 620, 42 U.S.C. §
7 1396r) and 42 CFR Pt. 483 (relating to requirements for
8 states and long-term care facilities). It is the intent of
9 the General Assembly to extend those basic rights to
10 residents in personal care homes, boarding homes and adult
11 day-care facilities.

12 (4) It is further the intent of the General Assembly
13 that a facility should care for its residents in a manner and
14 in an environment that promotes maintenance or enhancement of
15 each resident's quality of life. A resident should have a
16 safe, clean, comfortable and homelike environment allowing
17 the resident to use his or her personal belongings to the
18 extent possible. The rights set forth in this act are the
19 minimal rights guaranteed to all residents of long-term care
20 facilities and are not intended to diminish rights set forth
21 in Federal or State law that may contain additional rights.

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15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Short title.

18 This act shall be known and may be cited as the Long-Term
19 Care Residents' Rights Act.

20 Section 2. Definitions.

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

24 "Chemical restraint." A psychopharmacological drug that is
25 used for discipline or convenience and not required to treat a
26 resident's medical symptoms.

27 "Facility." The term may include any of the following:

28 (1) A long-term care nursing facility as defined in
29 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),
30 known as the Health Care Facilities Act.

1 (2) A personal care home as defined in section 1001 of
2 the act of June 13, 1967 (P.L.31, No.21), known as the Public
3 Welfare Code.

4 "Fundamental alteration." A change or modification to the
5 program or building that the facility can demonstrate would
6 cause it to suffer an undue hardship with regard to cost, nature
7 and scope.

8 "Physical restraint." A manual method, obstacle or physical
9 or mechanical device, material or equipment attached or adjacent
10 to the resident's body that restricts freedom of movement or
11 access to his or her body, is used for discipline or convenience
12 and not required to treat a resident's medical symptoms.

13 "Reasonable accommodation." In relation to a facility and
14 the needs of its prospective or current residents, the term has
15 the meaning given under the Americans with Disabilities Act of
16 1990 (Public Law 101-336, 104 Stat. 327) and other applicable
17 Federal or State antidiscrimination laws and regulations.

18 "Resident." A person receiving services in a facility. The
19 term also includes that resident's attorney-in-fact, guardian or
20 other legal representative acting within the scope of his or her
21 authority.

22 "Transfer and discharge." Includes movement of a resident to
23 a bed outside of the facility whether that bed is in the same
24 physical plant or not. Transfer and discharge do not refer to
25 movement of a resident to a bed within the same facility.

26 Section 3. Exercise of rights.

27 A resident has a right to a dignified existence, self-
28 determination and communication with and access to persons and
29 services inside and outside of the facility. A facility must
30 protect and promote the rights of each resident and assist the

1 resident as follows:

2 (1) The resident has the right to exercise his or her
3 rights as a resident of the facility and as a citizen of the
4 United States and a resident of this Commonwealth.

5 (2) The resident has the right to be free of
6 interference, coercion, discrimination and reprisal from the
7 facility, its staff and its residents in exercising his or
8 her rights.

9 (3) In the case of a resident that is judged incompetent
10 by a court of competent jurisdiction, the rights of the
11 resident are exercised by the person appointed to act on the
12 resident's behalf.

13 (4) In the case of a resident who has not been adjudged
14 incompetent by a court of competent jurisdiction, a
15 representative may exercise the resident's rights to the
16 extent provided by law.

17 Section 4. Rights and quality of life.

18 (a) General rule.--A facility must promote care for
19 residents in a manner and in an environment that maintains or
20 enhances each resident's dignity and respect in full recognition
21 of his or her individuality.

22 (b) Quality of life.--Within reasonable facility rules
23 designed to protect the rights and quality of life of residents,
24 a resident has the right to:

25 (1) Choose activities, schedules and health care service
26 and providers consistent with his or her interests,
27 assessments and plans of care.

28 (2) Interact with members of the community both inside
29 and outside of the facility.

30 (3) Make choices about aspects of his or her life in the

1 facility which are significant to the resident.

2 (4) Wear his or her own clothing and determine his or
3 her own dress, hair style or other personal effects according
4 to individual preference.

5 (5) Unless adjudged incompetent or otherwise found to be
6 incapacitated, participate in planning care and treatment or
7 changes in care and treatment.

8 (6) Unless adjudged incompetent or otherwise found to be
9 incapacitated, to direct his or her own service plan and
10 changes in the service plan and to refuse any particular
11 service so long as such refusal is documented in the record
12 of the resident.

13 (c) Resident groups.--A resident has the right to organize
14 and participate in resident groups in the facility. The
15 following shall apply:

16 (1) If a resident group is organized, the facility must
17 provide a meeting room if one exists.

18 (2) Staff or visitors may attend meetings at the
19 resident group's invitation.

20 (3) When a resident or family group exists, a facility
21 must listen to the views and act upon the grievances and
22 recommendations of residents and families concerning proposed
23 policy and operational decisions affecting resident care and
24 life in the facility.

25 (d) Services performed by resident.--A resident has the
26 right to refuse to perform services for the facility except as
27 voluntarily agreed by the resident and the facility in the
28 resident's service plan.

29 (e) Participation in certain activities.--A resident has the
30 right to participate in social, religious and community

1 activities that do not interfere with the rights of other
2 residents in the facility.

3 (f) Accommodation; room or roommate and ability of consumer
4 to arrange for supplemental services to permit aging in place.--
5 A resident has the right to:

6 (1) Reside and receive care and services in the facility
7 365 days a year with no planned or intermittent
8 interruptions. Nothing in this paragraph shall preclude
9 facilities from adjusting their staffing levels in accordance
10 with a resident being absent from a facility for holidays or
11 vacations.

12 (2) Reside and receive services in the facility with
13 reasonable accommodation of individual needs and preferences,
14 including the ability of the resident to arrange for
15 supplemental services to permit aging in place, except when
16 the health or safety of the individual or other residents
17 would be endangered.

18 (3) Receive notice before the resident's room or
19 roommate in the facility is changed.

20 (g) Spouses.--A resident has the right to share a double
21 room with his or her spouse when married residents live in the
22 same facility and both spouses consent to the arrangement.

23 (h) Public funding.--A resident has the right to apply for
24 and receive, if determined eligible, available public funding
25 for care and services at any time prior to or during residency.
26 An applicant who is eligible for public funding may not be
27 required to reside as a private pay resident for any duration of
28 time as a condition of admission or residency.

29 Section 5. Rights and services upon admission.

30 (a) Notification.--A facility must inform the resident both

1 orally and in writing in a language that the resident
2 understands of his or her rights and all rules and regulations
3 governing resident conduct and responsibilities during the stay
4 in the facility. The notification must be made prior to or upon
5 admission. Receipt of all the information under this section
6 must be acknowledged in writing.

7 (b) Access to records.--A resident or his or her legal
8 representative has the right:

9 (1) Upon an oral or written request, to access all
10 records pertaining to himself or herself, including clinical
11 records within 24 hours of the request.

12 (2) After receipt of his or her records for inspection,
13 to purchase, at a cost not to exceed the community standard
14 for photocopies, copies of the records or portions of them
15 upon request and ten working days' advance notice to the
16 facility.

17 (c) Admission.--A facility may only admit or retain
18 individuals whose needs it can safely and appropriately serve in
19 the facility with appropriate available staff and through the
20 provision of reasonable accommodations required by Federal or
21 State law. Except in cases of emergency, the facility may not
22 admit an individual before obtaining a thorough assessment by an
23 appropriate assessor as permitted by law. All applicants shall
24 be informed of their right to an independent assessment by an
25 appropriate assessor located at an area agency on aging or
26 another site not affiliated with the facility. The assessment
27 shall contain:

28 (1) A medical evaluation by the applicant's physician
29 indicating the resident's health status and certifying the
30 resident's level of care needs and appropriateness for the

1 facility type.

2 (2) Relevant medical history including:

3 (i) Necessary and contraindicated medications.

4 (ii) Relevant diagnosis and conditions.

5 (iii) Allergies.

6 (iv) Significant known behaviors or symptoms that
7 may cause concern or require special care.

8 (v) Dietary specifications.

9 (vi) Personal care needs as identified by the
10 evaluation and assessment.

11 (d) Retention.--A facility shall retain and not transfer or
12 discharge a resident unless:

13 (1) There is nonpayment of fees required under the
14 contract, after reasonable good faith efforts to obtain
15 payment, including, where appropriate, application for
16 available public funding.

17 (2) The resident develops a condition of a nature and
18 severity that the licensing department precludes by
19 regulation from being served in that facility type.

20 (3) The resident's needs cannot be met by the facility,
21 even with the resident bringing in supplemental services from
22 an outside provider, without a fundamental alteration to the
23 program or facility.

24 (e) Resident preferences.--A facility shall within five days
25 after admission of the resident complete a list of the following
26 preferences that shall become part of the resident's medical
27 record:

28 (1) Preferences as to daily social and visitation
29 activities.

30 (2) Service preferences.

1 (3) Preferences regarding other issues important to the
2 resident.

3 (f) Accommodation.--Resident preferences shall be reasonably
4 accommodated by the facility.

5 (g) Additional notifications.--A facility must provide each
6 resident, in writing in a language the resident or his or her
7 representative easily understands, before admission and at least
8 once every 18 months thereafter or if any of the following are
9 changed:

10 (1) A copy of the facility's admission and discharge
11 policies.

12 (2) A description of the facility internal grievance
13 process, including the names, office location and telephone
14 number of the facility personnel responsible for hearing and
15 resolving complaints. Each licensing entity shall determine
16 uniform standards for facilities to follow in resolving
17 internal grievances.

18 (3) Services, items and activities customarily available
19 in the facility or arranged for by the facility as permitted
20 by the facility's license.

21 (4) Advance directive information, including information
22 on the right to have or not to have an advance directive.

23 (5) A list of charges for those services, items and
24 activities, including charges for services, items and
25 activities not covered by the facility's per diem rate or
26 applicable public benefit programs.

27 (6) Changes in the availability or the charges for
28 services, items or activities or of changes in the facility's
29 rules. Except in emergencies, 30 days' advance notice must be
30 given prior to the change.

1 (7) A description of the manner of protecting personal
2 funds as provided in section 9.

3 (8) A written description of resident's rights that
4 include:

5 (i) Telephone numbers of the local long-term care
6 ombudsman program and the local area agency on aging.

7 (ii) A list of the names, addresses and telephone
8 numbers of the appropriate State licensing departments.

9 This same document shall include a statement that the
10 resident may file a complaint with the appropriate
11 departments or with the long-term care ombudsman
12 concerning alleged resident abuse, neglect and
13 misappropriation of resident property in the facility.

14 (h) Posting of information.--A facility shall also post all
15 the information provided to a resident in subsection (g)(5) and
16 (6) in a conspicuous location that is readily accessible. All
17 posted information shall be presented to the residents in a form
18 that is readable and easily understood.

19 Section 6. Admissions, disclosures and contracts.

20 (a) Disclosures required.--Prior to admission, a facility
21 that requires an admission fee, deposit or a minimum stay fee,
22 by or on behalf of a person seeking admission to the facility,
23 shall provide a resident or his or her representative, full
24 disclosure, in writing in a language the resident or his or her
25 representative understands, a statement of the amount of any
26 admission fees, deposits, prepaid charges or minimum stay fees.
27 The facility shall also disclose to the person or his or her
28 representative the facility's advance notice or transfer
29 requirements, which shall comply with section 5, prior to
30 admission. In addition, the facility shall also fully disclose

1 in writing prior to admission what portion of the deposits,
2 admission fees, prepaid charges, or minimum stay fees will be
3 refunded to the resident or his or her representative if the
4 resident leaves the facility. Receipt of the disclosures
5 required under this subsection must be acknowledged in writing.
6 If the facility does not provide these disclosures, the
7 deposits, admission fees, prepaid charges or minimum stay fees
8 may not be kept by the facility. If a resident dies or is
9 hospitalized or is transferred to another facility for more
10 appropriate care and does not return to the original facility,
11 the facility shall refund any deposit or charges already paid
12 less the facility's per diem rate for the days the resident
13 actually resided or reserved or retained a bed in the facility,
14 notwithstanding any minimum stay policy or discharge notice
15 requirements, except that the facility may retain an additional
16 amount to cover its reasonable, actual expenses incurred as a
17 result of a private-pay resident's move, not to exceed five
18 days' per diem charges, unless the resident has given advance
19 notice in compliance with the admission agreement. A facility
20 under this section is required to refund any and all refunds due
21 the resident or his or her representative within 30 days from
22 the resident's date of discharge from the facility. Nothing in
23 this section applies to provisions in contracts negotiated
24 between a facility and a certified health plan, health or
25 disability insurer, health maintenance organization, managed
26 care organization or similar entities.

27 (b) Admission contract.--Where the facility is required to
28 have an admission contract by or on behalf of an individual
29 seeking admission to the facility, the terms of the contract
30 shall be consistent with the requirements of this section and

1 other licensing requirements, and the terms of an admission
2 contract by a facility shall be consistent with the requirements
3 of this act.

4 Section 7. Notification of changes in resident's condition.

5 (a) Notifications.--

6 (1) A facility must immediately consult with the
7 resident's physician and, if known, make reasonable efforts
8 to notify the resident's legal representative or an
9 interested family member when there is:

10 (i) An accident involving the resident that requires
11 or has the potential for requiring physician
12 intervention.

13 (ii) A significant change in the resident's
14 physical, mental or psychosocial status such as
15 deterioration in health, mental or psychosocial status as
16 a result of a life-threatening condition or clinical
17 complication.

18 (2) The facility must promptly notify the resident or
19 the resident's representative and shall make reasonable
20 efforts to notify an interested family member, if known, when
21 there is a change in the resident's room or roommate
22 assignment.

23 (b) Recordkeeping.--The facility must record and update the
24 address and telephone number of a resident's representative or
25 interested family member, upon receipt of notice.

26 Section 8. Facility service capability, transfer and discharge.

27 (a) Service capability.--A facility shall fully disclose to
28 potential residents or their legal representative the service
29 capabilities of the facility prior to admission to the facility.
30 If the care needs of an applicant are in excess of the

1 facility's service capabilities, the respective licensing
2 department shall identify other care settings or residential
3 care options consistent with Federal law, notify the applicant
4 and legal representative of the facility's determination and
5 other care settings identified, refer the applicant and legal
6 representative to the county agency that can assist in placement
7 in other care settings.

8 (b) Facility obligations.--A facility must permit each
9 resident to remain in the facility and not transfer or discharge
10 a resident from the facility unless:

11 (1) The transfer or discharge is necessary for the
12 resident's welfare and the resident's needs cannot with
13 reasonable accommodation be met in the facility. Reasonable
14 accommodation shall include the allowance of obtaining
15 supplemental services from a provider outside of the long-
16 term care facility and shall preclude fundamental alterations
17 in the facility's basic program or building.

18 (2) The safety of other individuals in the facility is
19 endangered.

20 (3) The health of individuals in the facility would
21 otherwise be endangered.

22 (4) The facility has made a good faith effort to obtain
23 payment of contractual fees and the resident has failed to
24 make the required payment for his or her stay, provided that
25 the failure to make payment is not based on the resident's
26 failure to receive payment from a public benefit program.

27 (5) The facility ceases to operate.

28 (c) Transfer or discharge.--Before a long-term care facility
29 transfers or discharges a resident, a facility must:

30 (1) First attempt through reasonable accommodations to

1 avoid the transfer or discharge, unless agreed to by the
2 resident.

3 (2) Notify the resident and the legal representative of
4 the resident and make a reasonable effort to notify, if
5 known, an interested family member of the transfer or
6 discharge and the reasons for the move in writing and in a
7 language and manner they understand.

8 (3) Record the reasons in the resident's record.

9 (4) Include in the notice the items described in
10 subsection (d)(3).

11 (d) Notice procedure.--

12 (1) Except as provided under paragraph (2), the notice
13 of transfer or discharge required under subsection (c)(2)
14 must be made by the facility at least 30 days before the
15 resident is transferred or discharged.

16 (2) Notice may be made as soon as practicable before
17 transfer or discharge when:

18 (i) The safety of individuals in the facility would
19 be endangered.

20 (ii) The health of individuals in the facility would
21 be endangered.

22 (iii) An immediate transfer or discharge is required
23 by the resident's urgent medical needs.

24 (iv) A resident has not resided in the facility for
25 30 days.

26 (3) The written notice specified in subsection (c)(2)
27 must include the following:

28 (i) The reason for transfer or discharge.

29 (ii) The effective date of transfer or discharge.

30 (iii) The location to which the resident is

1 transferred or discharged.

2 (iv) The name, address and telephone number of the
3 State and local long-term care ombudsman.

4 (v) For residents with developmental disabilities,
5 the mailing address and telephone number of the agency
6 responsible for the protection and advocacy of
7 developmentally disabled individuals.

8 (vi) For residents who are mentally ill, the mailing
9 address and telephone number of the agency responsible
10 for the protection and advocacy of mentally ill
11 individuals.

12 (e) Preparation for transfer or discharge.--A facility must
13 provide sufficient preparation and orientation to residents to
14 ensure safe and orderly transfer or discharge from the facility.

15 (f) Readmission.--A resident discharged in violation of this
16 section has the right to be readmitted immediately upon the
17 first availability of a gender-appropriate bed in the facility.

18 (g) Discharge planning.--A facility must insure that a
19 transfer or discharge is safe, orderly and to a setting capable
20 of meeting the resident's needs. The following shall apply:

21 (1) A facility may not discharge a resident without
22 written notice pursuant to this act being provided to the
23 resident and legal representative indicating the reason for
24 the proposed transfer or discharge.

25 (2) A facility may not discharge a resident either with
26 or without consent unless and until a discharge plan has been
27 completed and signed by the resident or his legal
28 representative that lists:

29 (i) The name and address of the facility or other
30 residential setting to which the resident is being

transferred.

(ii) A list of medical or care needs that the resident will need until the transfer is complete and how those needs will be met by the facility.

(iii) A list of the medical and care needs that the resident will need after the transfer is complete and how they will be met.

(iv) The reason the facility is discharging or transferring the resident.

(v) Any other special needs or preferences that the resident has provided to the discharging facility.

(3) A copy of the discharge plan shall be forwarded to the facility or other service provider to which the resident is transferred. A copy of the medical or care needs of the resident shall be provided to the individual or entity that is transferring the individual.

Section 9. Protection of residents' funds.

(a) General rule.--A resident has the right to manage his or her financial affairs. A facility may not require residents to deposit their personal funds with the facility nor may a facility require a resident to make the facility the representative payee as a condition of admission or retention.

(b) Management of residents' funds.--Upon written authorization of a resident, if a facility agrees to manage the resident's personal funds, the facility must hold, safeguard, manage and account for the personal funds of the resident deposited with the facility as follows:

(1) The facility must deposit a resident's personal funds in excess of \$50 in an interest-bearing account that is separate from any of the facility's operating accounts and

1 that credits all interest earned on a resident's funds to
2 that account. In pooled accounts, there must be a separate
3 accounting for each resident's share.

4 (2) The facility must maintain a resident's personal
5 funds that do not exceed \$50 in a noninterest-bearing
6 account, interest-bearing account or petty cash fund.

7 (3) The facility must establish and maintain a system
8 that assures a full and complete and separate accounting of
9 each resident's personal funds entrusted to the facility on
10 the resident's behalf. The system must preclude any
11 commingling of resident funds with facility funds or with the
12 funds of any person other than another resident. The
13 administrator must insure that residents have prompt access
14 to their funds. The individual financial record must be
15 summarized in monthly statements provided to and otherwise
16 available on request to the resident or his or her legal
17 representative.

18 (4) Upon the death of a resident with personal funds
19 deposited with the facility, the facility must convey within
20 30 days an estimated accounting of the resident's funds
21 deposited at the facility, an estimate of the final charges
22 based on prior monthly charges and other available
23 information., and the amount of funds on deposit that exceed <—
24 the estimated final charges to the individual or probate
25 jurisdiction administering the resident's estate. Within 60
26 days of the death of a resident with personal funds deposited
27 with the facility, the facility must convey a final
28 accounting and disperse any remaining resident's funds to the
29 individual or probate jurisdiction administering the
30 resident's estate.

1 (5) In the case of a resident who received long-term
2 care services paid for by the Commonwealth, the facility
3 shall notify the Department of Public Welfare of the death
4 and the name of the person known to be executor of the
5 estate.

6 (C) PAYMENT REFUNDS.--

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7 (1) REFUNDS FROM A RESIDENT'S PERSONAL FUNDS SHALL BE
8 REIMBURSED IN THE FOLLOWING MANNER:

9 (I) A PERSONAL CARE HOME AS DEFINED IN SECTION 1001
10 OF THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE
11 PUBLIC WELFARE CODE, SHALL, WITHIN 30 DAYS FROM THE DATE
12 THAT THE LIVING UNIT IS CLEARED OF THE RESIDENT'S
13 PERSONAL PROPERTY AS A RESULT OF THE RESIDENT'S DEATH,
14 PAY THE PERSONAL REPRESENTATIVE OR GUARDIAN OF THE
15 RESIDENT THE AMOUNT OF THE DIFFERENCE BETWEEN ANY
16 PERSONAL FUNDS AND/OR PAYMENTS MADE, INCLUDING ANY UNPAID
17 INTEREST THEREON, AND THE COST OF CARE ACTUALLY PROVIDED
18 TO THE RESIDENT.

19 (II) A LONG-TERM CARE NURSING FACILITY AS DEFINED IN
20 SECTION 802.1 OF THE ACT OF JULY 19, 1979 (P.L.130,
21 NO.48), KNOWN AS THE HEALTH CARE FACILITIES ACT, SHALL,
22 WITHIN 60 DAYS FROM THE DATE OF THE DEATH OF THE
23 RESIDENT, PAY THE PERSONAL REPRESENTATIVE OR GUARDIAN OF
24 THE RESIDENT THE AMOUNT OF THE DIFFERENCE BETWEEN ANY
25 PERSONAL FUNDS AND/OR PAYMENTS MADE, INCLUDING ANY UNPAID
26 INTEREST THEREON, AND THE COST OF CARE ACTUALLY PROVIDED
27 TO THE RESIDENT.

28 (2) PAYMENTS MADE FOR ELDER CARE SERVICES SHALL BE
29 REIMBURSED IN ACCORDANCE WITH THE ACT OF DECEMBER 9, 2002
30 (P.L.1388, NO.171), KNOWN AS THE ELDER CARE PAYMENT

1 RESTITUTION ACT.

2 (3) ANY CLAUSE WITHIN A CONTRACTUAL AGREEMENT WHICH
3 IMPOSES ELDER CARE COSTS AND WHICH IS ENTERED INTO BETWEEN
4 THE RESIDENT AND THE FACILITY ON OR AFTER THE EFFECTIVE DATE
5 OF THIS ACT THAT DOES NOT MEET THE STANDARDS ESTABLISHED BY
6 THIS ACT SHALL BE NULL AND VOID.

7 (4) IF THE FACILITY FAILS TO PAY THE PERSONAL
8 REPRESENTATIVE OR GUARDIAN AS REQUIRED BY THIS SECTION, THE
9 FACILITY SHALL BE LIABLE TO THE PERSONAL REPRESENTATIVE OR
10 GUARDIAN FOR TWICE THAT PORTION OF THE PAYMENT, INCLUDING ANY
11 UNPAID INTEREST THEREON, THAT EXCEEDS THE COST OF THE CARE
12 ACTUALLY PROVIDED, AS DETERMINED BY A COURT HAVING
13 JURISDICTION IN CIVIL ACTIONS AT LAW.

14 (5) THIS SUBSECTION SHALL NOT APPLY IF THE FACILITY CAN
15 DEMONSTRATE THAT, AFTER GOOD FAITH EFFORTS, IT WAS UNABLE TO
16 CONTACT THE PERSONAL REPRESENTATIVE OR GUARDIAN AS REQUIRED
17 BY THIS ACT.

18 Section 10. Privacy of records.

19 A resident has the right to personal privacy and
20 confidentiality of his or her personal and clinical records.
21 Personal privacy includes accommodations, medical treatment,
22 written and telephone communications, personal care, visits and
23 meetings of family and resident groups. This does not require
24 the facility to provide a private room for each resident.
25 However, a resident may not be prohibited by the facility from
26 meeting with guests in his or her bedroom if no roommates
27 object. The resident may approve or refuse the release of
28 personal and clinical records to an individual outside the
29 facility unless otherwise provided by law.

30 Section 11. Grievances.

1 A resident has the right to:

2 (1) Voice grievances. Grievances include those with
3 respect to treatment that has been furnished as well as that
4 which has not been furnished.

5 (2) Prompt efforts by the facility to resolve grievances
6 the resident may have, including those with respect to the
7 behavior of other residents.

8 (3) Assurance that the focus is on his or her well-
9 being. It is essential that the focus in grievance resolution
10 remain on insuring the health, safety and well-being of the
11 residents in long-term care facilities in this Commonwealth.

12 (4) Protection against retaliating action. The facility
13 shall not take any action against a resident in retaliation,
14 including, but not limited to, threatening to transfer or
15 discharge, transferring or discharging, threatening to
16 infringe or infringing on any of the consumer rights
17 articulated in this act, for the resident's voicing of
18 grievances.

19 Section 12. Remedies.

20 The General Assembly intends that facility residents, their
21 family members or guardians, long-term care ombudsman,
22 protection and advocacy personnel identified in this act and
23 others who may seek to assist facility residents use the least
24 formal means available to satisfactorily resolve disputes that
25 may arise regarding the rights conferred by this act. Wherever
26 feasible, direct discussion with facility personnel or
27 administrators should be employed. Failing that, and where
28 feasible, recourse may be sought through Federal or State long-
29 term care or nursing home licensing or other regulatory
30 authorities. However, the procedures suggested in this section

1 are cumulative and shall not restrict an agency or person from
2 seeking a remedy provided by law or from obtaining additional
3 relief based on the same facts, including any remedy available
4 to an individual at common law.

5 Section 13. Examination of inspection results; contact with
6 advocates.

7 A resident has the right to:

8 (1) Examine the results of the most recent inspection of
9 the facility conducted by Federal or State inspectors and
10 plans of correction in effect with respect to the facility. A
11 notice that the results are available must be publicly posted
12 with the facility's license, and the results must be made
13 available for examination by the facility in a conspicuous
14 place readily accessible to residents.

15 (2) Receive information from departments, agencies or
16 programs acting as resident advocates and be afforded the
17 opportunity to contact these entities.

18 Section 14. Privacy in communications.

19 A resident has the right to privacy in communications,
20 including the right to:

21 (1) Send and promptly receive mail that is unopened.

22 (2) Have access to stationery, postage and writing
23 implements at the resident's own expense.

24 (3) Have reasonable access to the use of a telephone
25 where calls can be made without being overheard.

26 Section 15. Access and visitation.

27 (a) Access.--A resident has the right and a facility must
28 not interfere with access to any resident by the following:

29 (1) Any representative of the Commonwealth.

30 (2) The resident's individual physician.

1 (3) The long-term care ombudsman.

2 (4) A department responsible for the protection and
3 advocacy for mentally ill individuals.

4 (5) Subject to reasonable restrictions to protect the
5 rights of others and to the resident's right to deny or
6 withdraw consent at any time, immediate family or other
7 relatives of the resident and others who are visiting with
8 the consent of the resident.

9 (6) An agency responsible for the protection and
10 advocacy for individuals with disabilities.

11 (b) Access to services.--A facility must provide reasonable
12 access to a resident by his or her representative or an entity
13 or individual that provides health, social, legal or other
14 services to the resident, subject to the resident's right to
15 deny or withdraw consent at any time.

16 (c) Access to records.--A facility must allow
17 representatives of the long-term care ombudsman to examine a
18 resident's clinical records with the permission of the resident
19 or the resident's legal representative and consistent with
20 Federal and State law.

21 Section 16. Personal property.

22 (a) Personal property generally.--A resident has the right
23 to retain and use personal possessions, including some
24 furnishings, and appropriate clothing, as space permits, unless
25 to do so would infringe upon the rights or health and safety of
26 other residents.

27 (b) Storage.--A facility shall, upon request, provide the
28 resident with a lockable container or other lockable storage
29 space for small items of personal property, unless the
30 resident's individual room is lockable with a key issued to the

1 resident.

2 Section 17. Restraints.

3 A resident has the right to be free from physical restraint
4 and chemical restraint. This section does not require or
5 prohibit facility staff from reviewing the judgment of the
6 resident's physician in prescribing psychopharmacologic
7 medications.

8 Section 18. Abuse, punishment and seclusion.

9 A resident has the right to be free from verbal, sexual,
10 physical and mental abuse, neglect, financial exploitation,
11 corporal punishment and involuntary seclusion.

12 Section 19. Waiver of liability and residents' rights limited.

13 No facility shall request residents to sign waivers of
14 potential liability for losses of personal property or injury or
15 to sign waivers of residents' rights set forth in this act or in
16 applicable licensing or certification laws.

17 Section 20. Conflict with Federal requirements.

18 If any part of this act is found to be in conflict with
19 Federal requirements that are a prescribed condition to the
20 allocation of Federal funds to the Commonwealth, the conflicting
21 part of this act is inoperative solely to the extent of the
22 conflict and with respect to the agencies directly affected, and
23 this finding does not affect the operation of the remainder of
24 this act in its application to the agencies concerned. The rules
25 under this act shall meet Federal requirements that are a
26 necessary condition to the receipt of Federal funds by the
27 Commonwealth.

28 Section 50. Effective date.

29 This act shall take effect in 180 days.