

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 184 Session of
1989

INTRODUCED BY EVANS, E. Z. TAYLOR, STUBAN, KUKOVICH, DeWEESE,
KASUNIC, JOSEPHS, LESCOVITZ, RYBAK, PERZEL, CAWLEY,
LETTERMAN, JAROLIN, WILLIAMS, THOMAS, DALEY, RITTER, HERMAN,
ANGSTADT, McHALE, HAYDEN, MAIALE, JACKSON, D. R. WRIGHT,
COWELL, FOX, TRELLO, MORRIS, NAHILL, RAYMOND, HAGARTY,
CAPPABIANCA, CARN, TIGUE, BLAUM, BORTNER, GIGLIOTTI, PRESTON,
MELIO, HOWLETT, PISTELLA, LaGROTTA, STISH, LEVDANSKY,
MARKOSEK, HALUSKA, HARPER, OLIVER, ROEBUCK, TRICH, BELARDI,
LINTON, RUDY, DOMBROWSKI, GLADECK AND KOSINSKI,
JANUARY 31, 1989

AS REPORTED FROM COMMITTEE ON YOUTH AND AGING,
HOUSE OF REPRESENTATIVES, AS AMENDED, JANUARY 31, 1989

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," further providing for the
4 regulation of family day-care providers, FOR INSPECTIONS AND <—
5 FOR PENALTIES; providing for certain expenditures; conferring
6 powers and duties upon the Department of Public Welfare; and
7 making repeals.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. The definition of "children's institutions" in
11 section 901 of the act of June 13, 1967 (P.L.31, No.21), known
12 as the Public Welfare Code, amended December 5, 1980 (P.L.1112,
13 No.193), is amended to read:

14 Section 901. Definitions.--As used in this article--

15 "Children's institutions" means any incorporated or
16 unincorporated organization, society, corporation or agency,

1 public or private, which may receive or care for children, or
2 place them in foster family homes, either at board, wages or
3 free; or any individual who, for hire, gain or reward, receives
4 for care a child, unless he is related to such child by blood or
5 marriage within the second degree; or any individual, not in the
6 regular employ of the court or of an organization, society,
7 association or agency, duly certified by the department, who in
8 any manner becomes a party to the placing of children in foster
9 homes, unless he is related to such children by blood or
10 marriage within the second degree, or is the duly appointed
11 guardian thereof. [The term shall not include a family day care
12 home in which care is provided in lieu of parental care to six
13 or less children for part of a twenty-four hour day.]

14 * * *

15 Section 2. ~~Section 1001 of the act~~ THE DEFINITION OF <—
16 "FACILITY" IN SECTION 1001 IS AMENDED AND THE SECTION is amended
17 by adding definitions to read:

18 Section 1001. Definitions.--As used in this article--

19 * * *

20 "Agency-affiliated family day care home" means a family day
21 care home which operates under the auspices of a family day care
22 agency through a contractual arrangement with a family day care
23 home.

24 * * *

25 "FACILITY" MEANS AN ADULT DAY CARE CENTER, AGENCY-AFFILIATED <—
26 FAMILY DAY CARE HOME, CHILD DAY CARE CENTER, FAMILY DAY CARE
27 AGENCY, FAMILY DAY CARE HOME, BOARDING HOME FOR CHILDREN, MENTAL
28 HEALTH ESTABLISHMENT, PERSONAL CARE HOME, NURSING HOME, HOSPITAL
29 OR MATERNITY HOME, AS DEFINED HEREIN, AND SHALL NOT INCLUDE
30 THOSE OPERATED BY THE STATE OR FEDERAL GOVERNMENTS OR THOSE

1 SUPERVISED BY THE DEPARTMENT.

2 "Family day care agency" means a social service agency which
3 administers family day care programs, including the recruitment,
4 screening and selection of family day care homes, and which,
5 through contractual arrangements with family caregivers,
6 performs administrative functions that include, but are not
7 limited to, training of caregivers; technical assistance; intake
8 and referral of children to family day care homes; monitoring
9 and inspection of the agency's family day care homes; evaluation
10 of children's development, the family caregiver's daily program
11 and the family caregiver; consultation and assistance to parents
12 and children; referral of children and parents to health and
13 social services when appropriate; and furnishing child care
14 equipment to family day care homes.

15 "Family day care home" means any home in which child day care
16 is provided at any one time to four through six children who are
17 not relatives of the caregiver.

18 * * *

19 Section 3. The act is amended by adding sections to read:

20 Section 1010. Additional Requirements for Family Day Care
21 Homes.--(a) In a family day care home, all of the following
22 apply:

23 (1) There may be no more than six children under six years
24 of age in care. This clause includes foster children and
25 relatives of the caregiver.

26 (2) There may be no more than two children under 18 months
27 of age in care. This clause includes foster children and
28 relatives of the caregiver.

29 (3) During the school year, a family day care home may
30 provide care for an additional three ~~school-aged~~ SCHOOL-AGE

<—

children, unrelated to the caregiver, who are under 13 years of age.

(4) Each floor level used by children in a family day care home must have at least two exits, one of which may be a window. At least one exit from each floor level must provide a direct means of unobstructed travel to the outside at street or ground level.

(5) A window of a type which may be readily opened and of proper size and design to allow for evacuation must be provided as a second exit. The window shall be kept unlocked and unobstructed.

(6) A room or space, including an attic, which is accessible only by a ladder, folding stairway or through a trap door may not be used by children.

(7) A family day care home caregiver shall have an initial health assessment structured to identify health conditions which would adversely affect the caregiver's ability to provide child care. The same health requirements shall apply to other members of the caregiver's household who have direct contact with any child in care. The caregiver shall be required to report to the department any significant changes in health status that would adversely affect the caregiver's ability to provide child care.

(8) A family day care home caregiver must be at least 21 years of age.

(b) Family day care homes shall comply with regulations promulgated by the department under section 1013.

(c) An agency-affiliated family day care home is not required to apply for a separate license as a family day care home. Under the supervision of a family day care agency, an agency-affiliated family day care center HOME shall comply with

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1 this section.

2 Section 1011. Regulations.--(a) The department has the
3 power and duty to promulgate regulations to provide for
4 licensing of family day care homes and family day care agencies
5 to provide for their operation under standards set forth in
6 section 1010(a).

7 (b) In the development of regulations, the department shall
8 ~~use as a guideline~~ CONSIDER standards and recommendations on <—
9 family day care and family day care home providers that have
10 been developed by the Child Welfare League of America and the
11 National Association for the Education of Young Children.

12 Section 1012. Public Information.--The department shall take
13 initiatives to educate the citizens of this Commonwealth to look
14 for and use licensed day care facilities.

15 SECTION 4. SECTION 1016 OF THE ACT, AMENDED JULY 15, 1976 <—
16 (P.L.993, NO.202), IS AMENDED TO READ:

17 SECTION 1016. RIGHT TO ENTER AND INSPECT.--FOR THE PURPOSE
18 OF DETERMINING THE SUITABILITY OF THE APPLICANTS AND OF THE
19 PREMISES OR WHETHER OR NOT ANY PREMISES IN FACT QUALIFIES AS A
20 FACILITY AS DEFINED IN SECTION 1001 OF THIS ACT OR THE
21 CONTINUING CONFORMITY OF THE LICENSEES TO THIS ACT AND TO THE
22 APPLICABLE REGULATIONS OF THE DEPARTMENT, ANY AUTHORIZED AGENT
23 OF THE DEPARTMENT SHALL HAVE THE RIGHT TO ENTER, VISIT AND
24 INSPECT ANY FACILITY LICENSED OR REQUIRING A LICENSE UNDER THIS
25 ACT AND SHALL HAVE FULL AND FREE ACCESS TO THE RECORDS OF THE
26 FACILITY AND TO THE INDIVIDUALS THEREIN AND FULL OPPORTUNITY TO
27 INTERVIEW, INSPECT OR EXAMINE SUCH INDIVIDUALS.

28 AN AUTHORIZED AGENT OF THE DEPARTMENT SHALL ALSO CONFER WITH
29 THE OPERATORS OF FACILITIES REGARDING THE MINIMUM STANDARDS OF
30 THE DEPARTMENT, ENCOURAGE THE ADOPTION OF HIGHER STANDARDS AND

1 RECOMMEND METHODS OF IMPROVING CARE AND SERVICES.

2 IF AN AUTHORIZED AGENT OF THE DEPARTMENT IS REFUSED ACCESS
3 FOR AN INVESTIGATION UNDER THIS SECTION, THE DEPARTMENT MAY
4 APPLY TO A COURT OF COMPETENT JURISDICTION FOR AN ADMINISTRATIVE
5 INSPECTION WARRANT. FOR PURPOSES OF A WARRANT UNDER THIS
6 SECTION, PROBABLE CAUSE THAT THIS ARTICLE HAS BEEN VIOLATED
7 CONSISTS OF A STATEMENT BY THE AUTHORIZED AGENT OF THE
8 DEPARTMENT THAT ACCESS FOR AN INSPECTION UNDER THIS SECTION HAS
9 BEEN SOUGHT AND REFUSED. AN ADMINISTRATIVE INSPECTION WARRANT IS
10 ENFORCEABLE AS ANY OTHER WARRANT ISSUED BY A COURT.

11 SECTION 5. SECTION 1031 OF THE ACT IS AMENDED TO READ:

12 SECTION 1031. VIOLATION; PENALTY.--(A) ANY PERSON OPERATING
13 A FACILITY WITHIN THIS COMMONWEALTH WITHOUT A LICENSE REQUIRED
14 BY THIS ACT, SHALL UPON CONVICTION THEREOF IN A SUMMARY
15 PROCEEDING BE SENTENCED TO PAY A FINE OF NOT LESS THAN TWENTY-
16 FIVE DOLLARS (\$25) NOR MORE THAN THREE HUNDRED DOLLARS (\$300),
17 AND COSTS OF PROSECUTION, AND IN DEFAULT OF THE PAYMENT THEREOF
18 TO UNDERGO IMPRISONMENT FOR NOT LESS THAN TEN DAYS NOR MORE THAN
19 THIRTY DAYS. EACH DAY OF OPERATING A FACILITY WITHOUT A LICENSE
20 REQUIRED BY THIS ACT SHALL CONSTITUTE A SEPARATE OFFENSE.

21 (B) IN ADDITION TO THE CRIMINAL PENALTY IN SUBSECTION (A),
22 THE DEPARTMENT MAY ASSESS A CIVIL PENALTY OF \$500 AGAINST A
23 PERSON FOUND TO BE OPERATING A FACILITY WITHIN THIS COMMONWEALTH
24 WITHOUT A LICENSE REQUIRED BY THIS ACT. PENALTY ASSESSMENT UNDER
25 THIS SUBSECTION SHALL CONFORM TO 2 PA.C.S. CH. 5 SUBCH. A
26 (RELATING TO PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES)
27 AND CH. 7 SUBCH. A (RELATING TO JUDICIAL REVIEW OF COMMONWEALTH
28 AGENCY ACTION).

29 Section 4 6. Sections 1070, 1071, 1072, 1073, 1074, 1075,
30 1076, 1077, 1078, 1079 and 1080 of the act are repealed.

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1 Section ~~5~~ 7. The Department of Public Welfare shall comply <—
2 with the following time schedules:

3 (1) Within 90 days of the effective date of this
4 section, the department shall submit proposed rulemaking
5 under section 3 (section 1011) to the Legislative Reference
6 Bureau for publication in the Pennsylvania Bulletin.

7 (2) Within 180 days of the effective date of this
8 section, the department shall submit final rulemaking on the
9 proposal under paragraph (1) to the Legislative Reference
10 Bureau for publication in the Pennsylvania Bulletin. The
11 regulation shall take effect within one year of the effective
12 date of this section.

13 Section ~~6~~ 8. This act shall take effect as follows: <—

14 (1) Section 3 (section 1011) ~~and section 5~~, SECTION 4 <—
15 (SECTION 1016), SECTION 5 (SECTION 1031), SECTION 7 AND THIS
16 SECTION shall take effect immediately.

17 (2) Section ~~4~~ 6 (sections 1070 through 1080) shall take <—
18 effect upon the effective date of the regulations promulgated
19 under section ~~5~~ 7. <—

20 (3) The remainder of this act shall take effect in one
21 year.