

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2480

Session of  
1990

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AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF  
REPRESENTATIVES, AS AMENDED, JUNE 5, 1990

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## AN ACT

1 Authorizing the Department of Aging to license and inspect older  
2 adult daily living centers; imposing additional powers and  
3 duties on the Department of Aging; and making repeals.

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17 The General Assembly of the Commonwealth of Pennsylvania  
18 hereby enacts as follows:

19 Section 1. Short title.

20 This act shall be known and may be cited as the Older Adult  
21 Daily Living Centers Licensing Act.

22 Section 2. Definitions.

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

26 "Department." The Department of Aging of the Commonwealth.

27 "Older adult daily living center." Any premises operated for  
28 profit or not-for-profit in which older adult daily living  
29 services are simultaneously provided for four or more adults who  
30 are not relatives of the operator.

1 "Older adult daily living services." Services provided or  
2 arranged for part of a 24-hour day to assist in meeting the  
3 needs, including, but not limited to, personal care, social,  
4 nutritional, health and educational needs, of persons who are  
5 predominantly 60 years of age or older or who are under 60 years  
6 of age but who have a dementia-related disease, such as  
7 Alzheimer's disease, as a primary diagnosis. The term does not  
8 include services provided for persons whose needs are such that  
9 they can only be met in a long-term care facility ~~or~~ on an <—  
10 inpatient basis receiving professionally supervised nursing care  
11 and related medical and other health services.

12 "Relative." Any parent, child, stepparent, stepchild,  
13 grandparent, grandchild, brother, sister, half brother, half  
14 sister, aunt, uncle, niece or nephew.

15 Section 3. Operation and maintenance without license  
16 prohibited.

17 No person shall maintain, operate or conduct any older adult  
18 daily living center without having a license issued by the  
19 department.

20 Section 4. License.

21 (a) General rule.--The department shall, after an  
22 investigation and after a departmental determination that the  
23 applicant complies with the provisions of this section, issue to  
24 any applicant a license to operate an older adult daily living  
25 center.

26 (b) Requirements.--An applicant for a license to operate an  
27 older adult daily living center shall comply with all of the  
28 following requirements:

29 (1) The applicant for a license is a responsible person.

30 (2) The place to be used as a facility is suitable for

1 the purpose.

2 (3) The facility is appropriately equipped.

3 (4) The applicant and the place to be used as a facility  
4 meet all the requirements of this act or any other applicable  
5 statutes, ordinances and regulations.

6 (c) Record.--The department shall keep a record of all  
7 applications and all licenses issued under this act.

8 (d) Cooperation with Department of Public Welfare.--It is  
9 the intent of the General Assembly to empower the department to  
10 license and regulate older adult daily living centers which  
11 provide a program of activities in a protected, nonresidential  
12 environment to adults who are functionally impaired but are  
13 capable of maintaining independence within the community. The  
14 department shall coordinate with the Department of Public  
15 Welfare to regulate facilities in those limited cases where the  
16 facility provides services to persons under this act and to  
17 persons who receive services under Articles IX and X of the act  
18 of June 13, 1967 (P.L.31, No.21), known as the Public Welfare  
19 Code.

20 Section 5. Interim license.

21 The department shall have the power to issue an interim  
22 license, not exceeding six months, to an applicant seeking to  
23 operate an older adult daily living center for the first time at  
24 a specified location. The department may issue such license when  
25 it is satisfied that the applicant is suitable, the premises are  
26 safe and the applicant is likely to substantially comply with  
27 applicable regulations prior to expiration of the interim  
28 license. Interim licenses shall not be renewable.

29 Section 6. Provisional license.

30 When there has been substantial but not complete compliance

1 with all the applicable statutes, ordinances and regulations and  
2 when the applicant has taken appropriate steps to correct  
3 deficiencies, the department shall issue a provisional license,  
4 not exceeding six months, which may be renewed two times. Upon a  
5 departmental determination of full compliance, a regular license  
6 shall be issued immediately.

7 Section 7. Term and content of license.

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

9 (1) Be issued for a specified period of not more than 12  
10 months.

11 (2) Be on a form prescribed by the department.

12 (3) Not be transferable.

13 (4) Be issued only to the person for the premises and  
14 for the facility named in the application.

15 (5) Specify the maximum number of individuals who may be  
16 cared for in the facility at any one time.

17 (6) At all times be posted in a conspicuous place at the  
18 older adult daily living center.

19 Section 8. Right to enter and inspect.

20 (a) Inspection.--For the purpose of determining the  
21 suitability of the applicants and of the premises or whether or  
22 not any premises in fact qualifies as an older adult daily  
23 living center or the continuing conformity of the licensees to  
24 this act and to the applicable regulations of the department,  
25 any authorized agent of the department shall have the right to  
26 enter, visit and inspect any facility licensed or requiring a  
27 license under this act and shall have full and free access to  
28 the records of the facility and to the individuals and full  
29 opportunity to interview, inspect or examine such individuals.

30 (b) Conferences.--An authorized agent of the department

1 shall also confer with the operators of facilities regarding the  
2 minimum standards of the department, encourage the adoption of  
3 higher standards and recommend methods of improving care and  
4 services.

5 Section 9. Records.

6 Every person licensed under this act to maintain, operate and  
7 conduct a facility shall keep such records and make such reports  
8 as are required by the department.

9 Section 10. Regulations.

10 The department shall promulgate regulations to establish  
11 minimum standards for building, equipment, operation, care,  
12 program and services, to provide for the issuance of licenses  
13 and for the licensing appeal process, and to establish and  
14 collect fees to offset the cost of issuing licenses.

15 Section 11. Refusal to issue license; revocation; notice.

16 (a) Appeal.--Any applicant refused a license by the  
17 department shall be prohibited from conducting an older adult  
18 daily living center under this act. Any appeal of that  
19 determination may be made to the department but in no event may  
20 an applicant commence providing older adult daily living  
21 services prior to licensure by the department. The court shall  
22 enjoin, upon proof by the department, any activity by an  
23 applicant refused a license pursuant to this subsection.

24 (b) Notice of violation.--Whenever the department, upon  
25 inspection or investigation, learns of a violation of this act  
26 or of regulations adopted by the department pursuant to this  
27 act, it shall give written notice thereof to the offending  
28 person. The notice shall require the offending person to take  
29 action to bring the facility into compliance with this act or  
30 with the relevant regulations within a specified time.

1 (c) Reasons for refusal or revocation.--The department shall  
2 refuse to reissue a license or shall revoke a license for any of  
3 the following reasons:

4 (1) Violation of or noncompliance with the provisions of  
5 this act or the regulations.

6 (2) Fraud or deceit in obtaining or attempting to obtain  
7 a license.

8 (3) Lending, borrowing or using the license of another  
9 or in any way knowingly aiding or abetting the improper  
10 granting of a license.

11 (4) Gross incompetence, negligence or misconduct in  
12 operating the facility.

13 (5) Mistreating or abusing individuals cared for in the  
14 facility.

15 (d) Notice of refusal or revocation.--Whenever the  
16 department refuses to issue or revokes a license, it shall give  
17 written notice thereof by certified mail. The notice shall  
18 specify the reason for the refusal or revocation.

19 Section 12. Violation; penalty.

20 Any person operating a facility within this Commonwealth  
21 without a license required by this act commits a summary offense  
22 and shall, upon conviction, be sentenced to pay a fine of not  
23 less than \$50 nor more than \$300, and costs of prosecution, and  
24 in default of the payment thereof to undergo imprisonment for  
25 not less than ten days nor more than 30 days. Each day of  
26 operating a facility without a license required by this act  
27 shall constitute a separate offense.

28 Section 13. Actions against unlicensed older adult daily living  
29 centers.

30 Whenever a license is required by law for the establishment,

1 operation or conduct of an older adult daily living center, the  
2 department, upon advice of the Attorney General, may maintain an  
3 action in the name of the Commonwealth for an injunction or  
4 other process restraining or prohibiting any person from  
5 establishing, conducting or operating any older adult daily  
6 living center during any period after a license to engage in  
7 such activity has been refused, has not been renewed or has been  
8 revoked by the department.

9 Section 14. Actions against violations of laws and rules and  
10 regulations.

11 Whenever any person, regardless of whether such person is a  
12 licensee, has violated the laws of this Commonwealth pertaining  
13 to the licensing of an older adult daily living center or the  
14 rules and regulations adopted pursuant to such laws by the  
15 department, the department, upon the advice of the Attorney  
16 General, may maintain an action in the name of the Commonwealth  
17 for an injunction or other process restraining or prohibiting  
18 such person from engaging in such activity.

19 Section 15. Jurisdiction.

20 An action authorized under the provisions of this act shall  
21 be instituted in the Commonwealth Court or court of common pleas  
22 in the county where the alleged unauthorized activity is  
23 committed.

24 Section 16. Injunction or restraining order when appeal is  
25 pending.

26 Whenever the department has refused to renew a license or  
27 revoked a license required by this act or has ordered the person  
28 to refrain from conduct violating the rules and regulations of  
29 the department and the person has appealed the action of the  
30 department, the court shall, during pendency of the appeal,



1 issue a restraining order or injunction upon proof by the  
2 department that the operation of the older adult daily living  
3 center or its failure to comply with the order of the department  
4 is a threat to the well-being and safety of the adults attending  
5 the older adult daily living center.

6 Section 17. Injunction or restraining order when no appeal is  
7 pending.

8 Should a person, who is refused a license or the renewal of a  
9 license to operate or conduct an older adult daily living center  
10 or whose license is revoked or who has been ordered to refrain  
11 from conduct or activity which violates the rules and  
12 regulations of the department, fail to appeal or should such  
13 appeal be decided finally favorably to the department, then the  
14 court shall issue a permanent injunction upon proof that the  
15 person is operating or conducting an older adult daily living  
16 center without a license as required by law or has continued to  
17 violate the rules and regulations of the department.

18 Section 18. Search warrants.

19 Upon a showing of reasonable cause to suspect that specified  
20 premises are being used in violation of any provision of this  
21 act or regulations adopted pursuant thereto, any district  
22 justice in the district wherein the premises are located shall  
23 issue an administrative search warrant to any authorized agent  
24 of the department, identifying the premises to be searched, the  
25 scope of the search and the hours during which the search may be  
26 conducted.

27 Section 19. Bonds and costs.

28 No bond shall be required of and no costs shall be taxed  
29 against the department on account of any such action.

30 Section 20. Law supplementary.

1       No action brought under the provision of this act shall  
2 prevent the prosecution or institution of any civil or criminal  
3 action otherwise provided by law for violation of any law  
4 providing for licensing or departmental rules or regulations  
5 promulgated thereunder.

6       Section 21.   Repeals.

7       Articles IX and X of the act of June 13, 1967 (P.L.31,  
8 No.21), known as the Public Welfare Code, are repealed insofar  
9 as they are inconsistent with this act.

10      Section 22.   Effect on issued certificates.

11      Any certificate of compliance issued by the Department of  
12 Public Welfare with an effective date prior to January 1, 1991,  
13 shall remain in effect until the expiration of that certificate  
14 of compliance unless a license is issued by the Department of  
15 Aging prior to the expiration of the certificate of compliance.

16      Section 23.   Effective date.

17      This act shall take effect January 1, 1991.