

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 413 Session of
1993

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FEBRUARY 10, 1993

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JANUARY 24, 1994

AN ACT

1 Requiring nursing homes to submit information annually to the
2 Department of Health; providing for certain duties to OF the <—
3 Department of Health and the Department of Aging; and <—
4 providing immunity for long-term care ombudsman and person
5 reporting thereto; AND PROVIDING FOR THE LICENSURE AND <—
6 REGULATION OF PERSONAL CARE HOMES.

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11 SECTION 901. REPEALS.

<—

12 Section ~~701~~ 902. Effective date.

<—

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 CHAPTER 1

16 NURSING HOME CONSUMER INFORMATION

17 Section 101. Short title of chapter.

18 This chapter shall be known and may be cited as the Nursing
19 Home Consumer Information Act.

20 Section 102. Definitions.

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

24 "Consumer Information Guide." The Nursing Home Consumer
25 Information Guide required to be published under the provisions
26 of this chapter.

27 "Elderly persons." Those persons residing within this
28 Commonwealth who are 60 years of age or older.

29 "Nursing home." A facility that provides either skilled or
30 intermediate nursing care or both levels of such care to two or

1 more elderly persons, who are unrelated to the licensee, for a
2 period exceeding 24 hours. Intermediate care facilities
3 exclusively for the mentally retarded, commonly called ICF/MR
4 shall not be considered nursing homes for the purpose of this
5 chapter.

6 Section 103. Nursing Home Consumer Information Report.

7 In addition to the information required by the Department of
8 Health on a form provided by the Department of Health pursuant
9 to the provisions of the act of July 19, 1979 (P.L.130, No.48),
10 known as the Health Care Facilities Act, and regulations
11 promulgated pursuant thereto, each nursing home shall provide to
12 the Department of Health no later than 90 days after the close
13 of each calendar year the following information ON THE ABOVE- <—
14 REFERENCED FORM:

15 (1) Nursing hours worked per patient per day and nursing
16 hours required BY THE DEPARTMENT OF HEALTH per patient per <—
17 day. Actual hours worked per patient per day are for the most
18 recently concluded fiscal or calendar year.

19 (2) Average length of service of professional nursing
20 staff and ~~nurse aide personnel~~. THE AVERAGE LENGTH OF SERVICE <—
21 OF NURSE AIDE PERSONNEL AT THE NURSING HOME COMPLETING THE
22 FORM.

23 (3) AVERAGE LENGTH OF LICENSURE AND/OR CERTIFICATION OF
24 PROFESSIONAL NURSING STAFF AND THE AVERAGE LENGTH OF
25 LICENSURE AND/OR CERTIFICATION OF NURSE AIDE PERSONNEL.

26 ~~(3)~~ (4) Nursing hours per patient per day of temporary <—
27 agency professional nursing staff and nurse aide personnel.

28 ~~(4)~~ (5) Whether a resident council exists and meets on a <—
29 regular basis.

30 ~~Section 104. Nursing Home Consumer Information Guide.~~ <—

~~(a) Guide. The Department of Aging shall produce an annual Nursing Home Consumer Information Guide which shall include, but not be limited to:~~

~~(1) The items listed in section 103.~~

~~(2) Information obtained from the annual Long Term Care Facilities Questionnaires submitted to the Department of Health.~~

~~(3) Information obtained from the Health Care Financing Administration Ownership Disclosure Form.~~

~~(4) A comparative list of nursing homes developed in the manner provided in subsection (b).~~

SECTION 104. NURSING HOME CONSUMER INFORMATION.

<—

(A) GUIDE.--

(1) THE DEPARTMENT OF AGING SHALL PRODUCE, IN A TIMELY MANNER, AN ANNUAL NURSING HOME CONSUMER GUIDE. IT SHALL INCLUDE:

(I) THE ITEMS LISTED IN SECTION 103.

(II) INFORMATION OBTAINED FROM THE ANNUAL LONG-TERM CARE FACILITIES QUESTIONNAIRES SUBMITTED TO THE DEPARTMENT OF HEALTH.

(III) INFORMATION OBTAINED FROM THE HEALTH CARE FINANCING ADMINISTRATION OWNERSHIP DISCLOSURE FORM.

(IV) A COMPARATIVE LIST OF NURSING HOMES DEVELOPED IN THE MANNER PROVIDED IN SUBSECTION (B).

(V) THE NURSING HOME CONSUMER INQUIRY HOTLINE TELEPHONE NUMBER REQUIRED UNDER SUBSECTION (C).

(2) IF ERRORS ARE FOUND IN THE NURSING HOME CONSUMER GUIDE, ALL FACILITIES SHALL BE SENT A CORRECTION SHEET WITHIN 30 DAYS OF THE DEPARTMENT OF AGING'S RECEIPT OF NOTIFICATION OF THE ERROR. FOR THE PURPOSES OF THIS SECTION, AN ERROR

1 SHALL BE DEFINED AS INFORMATION INCORRECTLY TRANSCRIBED FROM
2 THE FORMS PROVIDED TO THE DEPARTMENT OF HEALTH TO THE
3 CONSUMER GUIDE.

4 (3) THE DEPARTMENT OF AGING WILL SEND FINAL PROOFS TO
5 THE NURSING HOME OF ITS DATA PROFILE THAT WILL BE PUBLISHED
6 IN THE CONSUMER GUIDE PRIOR TO PUBLICATION. THE NURSING HOME
7 WILL HAVE FIVE DAYS TO NOTIFY THE DEPARTMENT OF AGING OF ANY
8 ERRORS TO BE CORRECTED. IF THE DEPARTMENT OF AGING RECEIVES
9 NO NOTIFICATION OF ERRORS, THE DATA PROFILE WILL BE
10 CONSIDERED ACCURATE AND WILL BE PUBLISHED.

11 (b) Comparative list.--The comparative list of nursing homes
12 shall be developed and included in the Consumer Information
13 Guide by the Department of Aging. It shall include, but not be
14 limited to, the following information:

15 (1) Name of facility.

16 (2) Facility address and phone number.

17 (3) Bed capacity.

18 (4) Owner of facility and managing company, if
19 applicable.

20 (5) Type of sponsorship, including, but not limited to,
21 governmental, nonprofit and for-profit.

22 (6) Payment sources accepted, including, but not limited
23 to, Medicare, Medicaid, VETERANS' ADMINISTRATION, LONG-TERM <—
24 CARE INSURANCE and private pay.

25 (7) Current license, deficiency and certification status
26 as determined by the Department of Aging; ~~whether the~~ <—
27 ~~facility has been subject to a provisional license within the~~
28 ~~previous five years, a ban on admissions, penalties imposed~~
29 ~~in connection with the licensure or certification process, a~~
30 ~~license revocation or appointment of a master to operate the~~

~~facility or Medicare or Medicaid decertification and the~~
~~dates of such status.~~ HEALTH; WHETHER, WITHIN THE PREVIOUS
FIVE YEARS, THE FACILITY HAS BEEN SUBJECT TO A PROVISIONAL
LICENSE, A BAN ON ADMISSIONS, PENALTIES IMPOSED IN CONNECTION
WITH THE LICENSURE OR CERTIFICATION PROCESS, A LICENSE
REVOCATION OR APPOINTMENT OF A TEMPORARY MANAGER TO OPERATE
THE FACILITY OR MEDICARE OR MEDICAID DECERTIFICATION AND THE
CORRESPONDING DATES.

(8) Nursing hours per patient per day and nursing hours
required BY THE DEPARTMENT OF HEALTH per patient per day.
Actual hours worked per patient per day are for the most
recently concluded fiscal or calendar year.

~~(9) Average length of service of professional nursing~~
~~staff and nurse aide staff.~~ AT THE NURSING HOME OF
PROFESSIONAL NURSING STAFF AND THE AVERAGE LENGTH OF SERVICE
OF NURSE AIDE STAFF.

(10) AVERAGE LENGTH OF LICENSURE AND/OR CERTIFICATION OF
PROFESSIONAL NURSING STAFF AND THE AVERAGE LENGTH OF
LICENSURE AND/OR CERTIFICATION OF NURSE AIDE PERSONNEL.

~~(10)~~ (11) Nursing hours per patient per day of temporary
agency professional nursing staff and nurse aid personnel.

~~(11) Availability and listing of specific~~ (12) A
LISTING OF EXISTENCE AND AVAILABILITY OF SPECIFIC therapy
services, including, but not limited to, physical therapy,
occupational therapy, speech therapy, AND respiratory therapy
and other specialties.

~~(12)~~ (13) Whether a resident council exists and meets on
a regular basis.

~~(13)~~ (14) Name and telephone number of a local
ombudsman.

1 (C) NURSING HOME CONSUMER INQUIRY TELEPHONE HOTLINE.--THE <—
2 DEPARTMENT OF AGING SHALL ESTABLISH A STATEWIDE TELEPHONE NUMBER
3 TO SERVE AS THE NURSING HOME CONSUMER INQUIRY TELEPHONE HOTLINE.
4 THIS NUMBER SHALL BE A TOLL-FREE NUMBER. THE PURPOSE OF THIS
5 TELEPHONE NUMBER IS TO RESPOND TO CALLS REGARDING THE CURRENT
6 LICENSURE, DEFICIENCY AND CERTIFICATION STATUS OF NURSING HOMES.
7 ALL DATA PROVIDED BY THE HOTLINE SHALL BE UPDATED EACH WEEK
8 USING INFORMATION PROVIDED BY THE DEPARTMENT OF HEALTH IN A
9 TIMELY FASHION. THIS TELEPHONE NUMBER SHALL BE PROMINENTLY
10 DISPLAYED IN THE ANNUAL NURSING HOME CONSUMER GUIDE.

11 ~~(c)~~ (D) Disclosure.--The State Long-Term Care Ombudsman in <—
12 the Department of Aging shall mail at least one copy of the
13 Nursing Home Consumer Information Guide to the local long-term
14 care ombudsman of each area agency on aging, to each nursing
15 home and to the Pennsylvania Council on Aging annually.

16 ~~(d)~~ (E) Availability.--Each nursing home shall post next to <—
17 its Department of Health license an exact copy of its listing as
18 found in the Consumer Information Guide. A nursing home shall
19 provide to each prospective resident and family member of such
20 prospective resident who visits the facility, or any member of
21 the public upon request, ~~an exact copy of it's~~ DURING NORMAL <—
22 BUSINESS OR VISITING HOURS, SUNDAY THROUGH SATURDAY, AN EXACT
23 COPY OF ITS listing as set forth in the Consumer Information
24 Guide.

25 ~~(e)~~ (F) Inspections.--The Department of Health shall verify <—
26 the availability of the listing during annual licensing surveys.
27 The Department of Health shall monitor compliance with the
28 requirements of this chapter for regular filing of the Long-Term
29 Care Facilities Questionnaire with the Department of Health.

30 ~~(f)~~ (G) Update.--The Department of Health shall issue <—

1 modifications to the Long-Term Care Facilities Questionnaire
2 resulting from changes in the reimbursement system for nursing
3 homes. Such modifications shall provide the same information in
4 an updated format.

5 ~~(g) Fees. There shall be no charge for any information~~ <—
6 ~~required to be distributed under this chapter.~~

7 Section 105. Complaints.

8 Complaints of noncompliance with this chapter shall be filed
9 with the Department of Aging. A complainant shall include, but
10 not be limited to, a local ombudsman, a nursing home resident, a
11 prospective nursing home resident, or any person representing
12 the interests of a nursing home resident or prospective nursing
13 home resident.

14 Section 106. Additional consumer information.

15 ~~Each nursing home shall provide additional consumer~~ <—
16 ~~information containing criteria to aid in the selection of a~~
17 ~~nursing home to each prospective resident or representative~~
18 ~~thereof at the time of initial inquiry. This guide can be either~~
19 ~~a publication of the Department of Aging, a camera ready copy of~~
20 ~~a publication provided by the Department of Aging or a~~
21 ~~publication approved by the Department of Aging.~~

22 EACH NURSING HOME SHALL PROVIDE TO EACH PROSPECTIVE RESIDENT <—
23 OR REPRESENTATIVE THEREOF AT THE TIME OF INITIAL INQUIRY, A
24 COMPANION CONSUMER GUIDE WHICH DESCRIBES HOW TO SELECT A NURSING
25 HOME. THIS INFORMATION CAN BE EITHER A PUBLICATION OF THE
26 DEPARTMENT OF AGING, A CAMERA-READY COPY OF A PUBLICATION
27 PROVIDED BY THE DEPARTMENT OF AGING OR A COMPARABLE PUBLICATION
28 THAT WILL INFORM THE CONSUMER ON HOW TO CHOOSE A NURSING HOME.

29 Section 107. Penalties.

30 The Department of Aging shall have the authority to assess a

1 \$5,000 fine for each violation of this chapter. Any person
2 aggrieved by an adjudication by the Department of Aging shall
3 have the right to appeal pursuant to 42 Pa.C.S. (relating to
4 judiciary and judicial procedure).

5 CHAPTER 3

6 OMBUDSMAN IMMUNITY

7 Section 301. Short title of chapter.

8 This chapter shall be known and may be cited as the Long-Term
9 Care Facilities Ombudsman Immunity Act.

10 Section 302. Definitions.

11 The following words and phrases when used in this ~~act~~ CHAPTER <—
12 shall have the meanings given to them in this ~~chapter~~ SECTION <—
13 unless the context clearly indicates otherwise:

14 "Ombudsman." An individual AUTHORIZED BY THE DEPARTMENT OF <—
15 AGING who investigates and resolves complaints made by or on
16 behalf of people 60 years of age and older who are consumers of
17 long-term care services which may adversely affect the health,
18 safety, welfare or rights of such residents.

19 Section 303. Immunity from liability.

20 An ombudsman shall be immune from civil and criminal
21 liability for any decision or action or resulting consequence of
22 a decision or action when acting in its official capacity and in
23 good faith performance of its duties.

24 Section 304. Retaliatory action.

25 An ombudsman shall be free from intimidating or retaliatory
26 action by any person for actions taken in performance of its
27 duties and from willful interference with the performance of its
28 duties.

29 Section 305. Immunity for reporting.

30 A person who takes a good faith report to an ombudsman, <—

~~cooperates in an investigation or testifies in any judicial proceeding relating to abuse, neglect or exploitation of a resident of a long term care facility~~ shall be free from intimidation or retaliation by any person, employer or entity and shall be immune from any civil or criminal liability unless the person acted in bad faith or with malicious purpose. Immunity shall not extend the liability for acts of abuse, neglect or exploitation even if the acts are the subject of the report or testimony.

Section 306. Damages.

Any person who violates this section by intimidating or taking retaliatory action against an ombudsman or person qualifying for immunity under section 305 shall be liable in a civil action in which the ombudsman or person is entitled to treble compensatory and punitive damages or \$5,000 whichever is greater.

CHAPTER 5

PERSONAL CARE HOMES

SECTION 501. LICENSURE OF PERSONAL CARE HOMES.

(A) TRANSFER OF LICENSING AND REGULATORY POWERS.--ALL LICENSING AND REGULATION OF PERSONAL CARE HOMES, PERSONNEL, SUPPLIES AND EQUIPMENT NOW BEING USED OR HELD IN CONNECTION WITH SUCH LICENSING AND REGULATION ARE HEREBY TRANSFERRED TO THE DEPARTMENT OF AGING.

(B) TRANSFER OF FUNDS.--ANY UNEXPENDED BALANCES OF APPROPRIATIONS, ALLOCATIONS AND OTHER FUNDS AVAILABLE OR TO BE MADE AVAILABLE FOR USE IN CONNECTION WITH SUCH LICENSING AND REGULATION ARE TRANSFERRED TO THE DEPARTMENT OF AGING.

(C) REGULATIONS.--THE DEPARTMENT OF AGING SHALL PROMULGATE REGULATIONS REGARDING THE LICENSURE OF PERSONAL CARE HOMES. ALL

1 EXISTING REGULATIONS FOR THE LICENSING AND REGULATION OF
2 PERSONAL CARE HOMES SHALL REMAIN IN EFFECT UNTIL AMENDED OR
3 DELETED BY THE DEPARTMENT OF AGING.

4 CHAPTER 7 9 <—

5 MISCELLANEOUS PROVISIONS

6 SECTION 901. REPEALS. <—

7 ALL ACTS AND PARTS OF ACTS ARE REPEALED INSOFAR AS THEY ARE
8 INCONSISTENT WITH CHAPTER 5.

9 Section ~~701~~ 902. Effective date. <—

10 This act shall take effect in 90 days.