

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1635 Session of
2005

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E. Z. TAYLOR, THOMAS, TIGUE, WALKO, YOUNGBLOOD AND YUDICHAK,
JUNE 6, 2005

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES, JUNE 6, 2005

AN ACT

1 Establishing procedures for the issuance of building and
2 occupancy permits for long-term care facilities, establishing
3 fire safety standards for the construction, renovation,
4 repair, occupancy and maintenance of long-term care
5 facilities; requiring the issuance of certificates of fire
6 safety compliance; requiring the installation of fire safety
7 improvements at existing long-term care facilities;
8 authorizing variances; establishing a long-term care facility
9 fire safety grant and loan program; providing for the
10 creation of a Long-Term Care Facility Fire Safety Advisory
11 Board; establishing emergency preparedness requirements for
12 long-term care facilities; providing for the inspection of
13 long-term care facilities; prescribing penalties; and making
14 repeals.

TABLE OF CONTENTS

15
16 Chapter 1. Preliminary Provisions
17 Section 101. Short title.
18 Section 102. Legislative findings.
19 Section 103. Definitions.
20 Chapter 3. Building Permits and Fire Safety Standards
21 Section 301. Building permits and fire safety standards.

1 Section 302. Certificate of fire safety compliance.

2 Section 303. Requirements for initial certificate of fire
3 safety compliance.

4 Section 304. Requirements for reissuance of certificate of
5 fire safety compliance.

6 Section 305. Variances.

7 Chapter 5. Long-Term Care Facility Fire Safety Grant and Loan
8 Program

9 Section 501. Program.

10 Section 502. Powers of the Department of Labor and Industry.

11 Section 503. Incurring indebtedness.

12 Section 504. Certification of question.

13 Section 505. Question to electorate.

14 Section 506. Conduct of election.

15 Section 507. Issuance of bonds.

16 Section 508. Funds or accounts.

17 Section 509. Continuing appropriation.

18 Chapter 7. Long-Term Care Facility Fire Safety Advisory Board

19 Section 701. Board.

20 Section 702. Powers and duties.

21 Chapter 9. Emergency Preparedness

22 Section 901. Fire drills.

23 Section 902. Staff training.

24 Section 903. Smoke alarms.

25 Section 904. Notification of local fire officials.

26 Chapter 11. Administration

27 Section 1101. Inspections.

28 Section 1102. Violations.

29 Section 1103. Plans of correction and civil penalties.

30 Section 1104. Review.

1 Section 1105. Effect of departmental orders.

2 Section 1106. Actions against violations of law, rules and
3 regulations.

4 Section 1107. Regulations and policies.

5 Chapter 13. Administration of Personal Care Homes

6 Section 1301. Inspections.

7 Section 1302. Violations.

8 Section 1303. Plans of correction and civil penalties.

9 Section 1304. Review.

10 Section 1305. Effect of departmental orders.

11 Section 1306. Actions against violations of law, rules and
12 regulations.

13 Section 1307. Regulations and policies.

14 Chapter 51. Miscellaneous Provisions

15 Section 5101. Effect on existing regulations.

16 Section 5102. Repeals.

17 Section 5103. Effective date.

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

20 CHAPTER 1

21 PRELIMINARY PROVISIONS

22 Section 101. Short title.

23 This act shall be known and may be cited as the Long-Term
24 Care Facilities Fire Safety Act.

25 Section 102. Legislative findings.

26 The General Assembly finds that:

27 (1) The need for adequate fire protection is a growing
28 concern among those responsible for a population at higher
29 risk for injury and death from fire and other hazards while
30 they reside in long-term care nursing or personal care

1 facilities.

2 (2) Among victims of fire, one large group stands out as
3 a special and growing concern: the occupants of nursing homes
4 and personal care homes.

5 (3) Factors such as limited mobility and coordination
6 and progressive degrees of mental impairment make residents
7 of these homes and facilities especially prone to
8 experiencing a tragic fire accident.

9 Section 103. Definitions.

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

13 "Authorized agent." A person authorized by the Department of
14 Health or the Department of Public Welfare to conduct
15 inspections or act on behalf of the department with respect to
16 the administration of this act, including code administrators
17 trained and certified pursuant to Chapter 7 of the act of
18 November 10, 1999 (P.L.491, No.45), known as the Pennsylvania
19 Construction Code Act.

20 "Board." The Long-Term Care Facility Fire Safety Advisory
21 Board established in Chapter 7 (relating to Long-Term Care
22 Facility Fire Safety Advisory Board).

23 "Long-term care facility." A long-term care nursing facility
24 or a personal care home.

25 "Long-term care nursing facility." A facility licensed as a
26 long-term care nursing facility pursuant to Chapter 8 of the act
27 of July 19, 1979 (P.L.130, No.48), known as the Health Care
28 Facilities Act.

29 "Pennsylvania Construction Code Act." The act of November
30 10, 1999 (P.L.491, No.45), known as the Pennsylvania

1 Construction Code Act.

2 "Personal care home." Premises licensed as a personal care
3 home pursuant to Article X of the act of June 13, 1967 (P.L.31,
4 No.21), known as the Public Welfare Code.

5 "Program." The Long-Term Care Facility Fire Safety Grant and
6 Loan Program established in Chapter 5.

7 CHAPTER 3

8 BUILDING PERMITS AND FIRE SAFETY STANDARDS

9 Section 301. Building permits and fire safety standards.

10 (a) Building permits.--Permits for the construction,
11 alteration, repair and occupancy of buildings licensed as long-
12 term care nursing facilities, as required by the Pennsylvania
13 Construction Code Act, shall be issued by the Department of
14 Health and permits for the construction, alteration, repair and
15 occupancy of buildings licensed as personal care homes, as
16 required by the Pennsylvania Construction Code Act, shall be
17 issued by the Department of Public Welfare. The Department of
18 Health and the Department of Public Welfare may delegate
19 responsibility for the review of plans or the conduction of
20 inspections to the Department of Labor and Industry or may
21 contract for services from any authorized agent, but the review
22 of plans and the conduct of inspections shall be coordinated to
23 the maximum extent practicable with proceedings relating to the
24 review of applications for and issuance or renewal of licenses
25 to operate long-term care facilities by the Department of Health
26 or to operate personal care homes by the Department of Public
27 Welfare.

28 (b) Adoption of fire safety standards.--Regulations
29 establishing standards for the issuance of permits for the
30 construction, alteration, repair, occupancy and maintenance of

1 buildings licensed as long-term care facilities, including
2 standards established for the issuance of certificates of fire
3 safety compliance as required by this act, shall be adopted and
4 enforced by the Department of Labor and Industry pursuant to the
5 requirements of the Pennsylvania Construction Code Act and in
6 accordance with the recommendations of the Long-Term Care
7 Facilities Fire Safety Advisory Board as provided by this act.

8 (c) Preemption.--The standards established by the Department
9 of Labor and Industry for the construction, alteration, repair,
10 occupancy and maintenance of long-term care facilities,
11 including standards established for the issuance of certificates
12 of fire safety compliance as required by this act, shall preempt
13 and supersede any standards established under any other statute,
14 local ordinance or regulation promulgated by any board,
15 department, commission, agency of State government or by any
16 agency of local government of this Commonwealth.

17 (d) Licensure.--

18 (1) Except as provided in paragraph (2), in addition to
19 complying with the requirements of this act, long-term care
20 nursing facilities shall continue to be licensed by the
21 Department of Health pursuant to Chapter 8 of the act of July
22 19, 1979 (P.L.130, No.48), known as the Health Care
23 Facilities Act and personal care homes shall continue to be
24 licensed by the Department of Public Welfare pursuant to
25 Article X of the act of June 13, 1967 (P.L.31, No.21), known
26 as the Public Welfare Code.

27 (2) On or after the effective date of this section,
28 standards for the construction, alteration, repair and
29 occupancy of buildings and for fire safety compliance shall
30 be established pursuant to this act.

1 Section 302. Certificate of fire safety compliance.

2 (a) Issuance of certificate.--Within 12 months of the
3 effective date of this section, or within six months of the
4 issuance of a certificate of occupancy for a new, renovated or
5 repaired long-term care facility, whichever occurs first, each
6 long-term care facility operating within this Commonwealth shall
7 be inspected to determine whether the facility conforms to and
8 satisfies fire safety standards as established pursuant to this
9 act. Upon the satisfactory completion of a fire safety
10 inspection, a certificate of compliance shall be issued by the
11 Department of Health for a long-term care nursing facility and
12 by the Department of Public Welfare for a personal care home.

13 (b) Reissuance of certificate.--Not later than the fifth
14 anniversary of the issuance of the initial certificate of fire
15 safety compliance required pursuant to this section, and upon
16 each fifth anniversary occurring thereafter, each long-term care
17 facility shall be reinspected and apply for the renewal of its
18 certificate of compliance with fire safety standards established
19 pursuant to this act.

20 (c) Operations prohibited without certificate.--Except to
21 the extent a provisional certificate of compliance is issued for
22 a period not to exceed six months, no long-term care facility
23 shall be operated in this Commonwealth without a certificate of
24 compliance as required by this section.

25 (d) Provisional certificate of compliance.--If a substantial
26 or imminent threat to the safety and welfare of patients does
27 not exist, a provisional certificate of compliance may be issued
28 to provide a long-term care facility a reasonable opportunity to
29 fully conform to the fire safety standards established by this
30 act or to continue operations for the minimum period of time

1 necessary to transfer patients to another facility. A
2 provisional certificate of compliance may be reissued upon its
3 expiration for a period not to exceed three months. Thereafter,
4 no further operations may be conducted at a long-term care
5 facility without a certificate of compliance.

6 Section 303. Requirements for initial certificate of fire
7 safety compliance.

8 To qualify for the issuance of an initial certificate of
9 compliance, a long-term care facility shall demonstrate the
10 ability to operate without an unreasonable risk to the health or
11 safety of residents associated with fires, including compliance
12 with the following requirements:

13 (1) Cooking and food preparation equipment shall be
14 inspected to ensure that the equipment is properly installed,
15 maintained and free from fire safety hazards.

16 (2) Heating, ventilation and air conditioning systems
17 shall be inspected to ensure that the equipment is properly
18 installed, maintained and free of fire safety hazards.

19 (3) Laundry equipment shall be inspected to ensure that
20 it is properly installed, maintained and free of fire safety
21 hazards.

22 (4) Electrical systems shall be inspected to ensure that
23 the systems are properly maintained and free of fire safety
24 hazards.

25 (5) Building furnishings, equipment and supplies shall
26 be stored and maintained in a manner that avoids fire safety
27 hazards.

28 (6) Buildings shall be inspected to ensure they are free
29 of the presence of highly flammable, explosive or hazardous
30 materials that create fire safety hazards except with proper

1 storage and maintenance of such materials as necessary to
2 minimize and avoid such risks.

3 (7) Means of egress shall be inspected to ensure that
4 doorways and openings function properly to allow the rapid
5 evacuation of patients to areas safe from fire or smoke.

6 (8) Evacuation plans and emergency management plans
7 shall be reviewed to ensure that the plans are complete,
8 effective and up-to-date.

9 (9) The facility shall comply with other reasonable fire
10 safety standards as adopted by the Department of Labor and
11 Industry pursuant to this act.

12 Section 304. Requirements for reissuance of certificate of fire
13 safety compliance.

14 (a) Requirements.--To qualify for the reissuance certificate
15 of compliance, a long-term care facility shall demonstrate
16 compliance with the requirements of section 303 (relating to
17 requirements for initial certificate of fire safety compliance)
18 and shall either be equipped with an automatic sprinkler system
19 or demonstrate that an equivalent degree of fire safety can be
20 accomplished by implementation of two or more of the following
21 modifications to existing buildings:

22 (1) Installation of a fire alarm system, portable fire
23 extinguishers, illuminated exit signs and an emergency
24 lighting system.

25 (2) The replacement of draperies, curtains, carpeting
26 and bedding with fire-retardant furnishings.

27 (3) The separation of corridors within the facility from
28 other areas by partition and doors that form a barrier to
29 limit the transfer of smoke.

30 (4) The subdivision of each floor housing more than 30

1 patients by partitions and doors that form a barrier to limit
2 the transfer of smoke.

3 (5) The protection of all stairways and shafts with
4 fire-rated enclosures.

5 (6) Other building modifications or improvements as
6 approved by the Department of Labor and Industry.

7 (b) Standards.--In addition to any other standards
8 established pursuant to this act to satisfy the requirements of
9 subsection (a), a long-term care facility shall be deemed to
10 have demonstrated an equivalent degree of fire safety as
11 obtained through the installation of an automatic sprinkler
12 system if the total general safety score calculated for the
13 facility utilizing the National Fire Protection Association's
14 Alternative Approaches to Life Safety (Standard 101A) is
15 equivalent to or greater than the total general safety score
16 that would otherwise be obtained by the installation of an
17 automatic sprinkler system and the facility otherwise
18 demonstrates a level of fire safety equivalent to that
19 prescribed by the National Fire Protection Association's Life
20 Safety Code (Standard 101).

21 (c) Exception.--The requirements of subsection (a) shall not
22 apply to a long-term care facility or portions of a facility for
23 which building and occupancy permits have been issued pursuant
24 to the Pennsylvania Construction Code Act.

25 Section 305. Variances.

26 (a) Requests.--A long-term care nursing facility may apply
27 to the Department of Health and a personal care home may apply
28 to the Department of Public Welfare for a variance from the
29 requirements for the re-issuance of a certificate of fire safety
30 compliance as provided by section 304 (relating to requirements

1 for reissuance of certificate of fire safety compliance).

2 (b) Requirements.--The Department of Health and the
3 Department of Public Welfare shall individually promulgate, by
4 regulation, requirements for the submission and consideration of
5 variance requests.

6 (c) Submission of requests.--A variance application must be
7 submitted no later than 36 months after the effective date of
8 this section.

9 (d) Approval of requests.--The Department of Health or the
10 Department of Public Welfare, respectively, may grant a variance
11 if it can be demonstrated that the applicant is acting in good
12 faith, that compliance with one or more of the requirements of
13 section 304 would impose an unreasonable hardship on the
14 applicant and that the variance will not expose residents of the
15 facility to unreasonable fire safety hazards. In considering a
16 request for a variance, the factors that may be considered by a
17 department shall include:

18 (1) The availability of qualified contractors.

19 (2) The availability of financial resources necessary to
20 comply with the requirements of section 304.

21 (3) The availability of needed beds in the area in which
22 the facility is located.

23 (4) The long-term care facility demonstrates a level of
24 fire safety equivalent to that obtained by compliance with
25 the National Fire Protection Association's Life Safety Code
26 (Standard 101) utilizing the National Fire Protection
27 Association's Alternative Approaches to Life Safety (Standard
28 101A).

29 (e) Term.--A variance approved pursuant to this section may
30 not extend the deadline for full compliance with requirements of

1 section 304 by more than two years.

2 CHAPTER 5

3 LONG-TERM CARE FACILITY FIRE SAFETY GRANT AND LOAN PROGRAM

4 Section 501. Program.

5 (a) Establishment.--There is established within the
6 Department of Labor and Industry a Long-Term Care Facility Fire
7 Safety Grant and Loan Program for the purpose of making grants
8 and loans to assist long-term care facilities to comply with the
9 requirements of this act.

10 (b) Eligibility.--Long-term care facilities in operation
11 upon the effective date of this section and not equipped to
12 comply with the requirements of section 304 (relating to
13 requirements for reissuance of certificate of fire safety
14 compliance) shall be eligible to apply to the Department of
15 Labor and Industry for grants or loans as authorized by this
16 chapter.

17 (c) Grants.--Grants may be awarded to long-term care
18 facilities to conduct studies and prepare plans as necessary to
19 comply with section 304 and shall not exceed 75% of the total
20 project cost or \$75,000, whichever is less.

21 (d) Grant reports.--A long-term care facility awarded a
22 grant pursuant to this section shall submit a report to the
23 Department of Labor and Industry within one year of the award of
24 funds and shall include, as a minimum, a summary of the plans
25 for fire safety improvements proposed to comply with the
26 requirements of section 304, including plans for any variances
27 proposed pursuant to section 305 (relating to variances).

28 (e) Loans.--Loans may be provided to long-term care
29 facilities to construct improvements and modifications to
30 buildings as necessary to comply with the requirements of

1 section 304. Loans shall bear interest at a rate established by
2 the Department of Labor and Industry, but not in excess of 3%,
3 and shall be repaid, either on an installment or lump-sum basis,
4 over a term not to exceed 15 years as determined by the
5 department.

6 (f) Loan reports.--A long-term care facility provided a loan
7 pursuant to this section shall submit annual reports to the
8 Department of Labor and Industry regarding the installation of
9 fire safety improvements as required by section 304 and upon
10 completion of the installation of the required improvements,
11 shall submit a final report to the Department of Labor and
12 Industry.

13 Section 502. Powers of the Department of Labor and Industry.

14 The Department of Labor and Industry shall administer the
15 Long-Term Care Facility Fire Safety Grant and Loan Program and
16 shall perform all of the following duties:

17 (1) In consultation with the board, establish standards,
18 procedures and application forms for the submission and
19 review of applications for grants and loans as authorized by
20 section 501 (relating to program).

21 (2) Review applications and make grants and loans to
22 long-term care facilities as authorized by section 501.

23 (3) In consultation with the board, prepare and deliver
24 to the Aging and Youth Committee and the Public Health and
25 Welfare Committee of the Senate and to the Health and Human
26 Services Committee and the Aging and Older Adult Services
27 Committee of the House of Representatives an annual report
28 for the prior calendar year no later than July 1 of the first
29 full calendar year after the effective date of this section
30 and each July 1 thereafter. The report shall address all of

1 the following:

2 (i) The issuance of building and occupancy permits
3 for long-term care facilities.

4 (ii) The issuance of certificates of fire safety
5 compliance to long-term care facilities.

6 (ii) The establishment of standards for the issuance
7 of building and occupancy permits and certificates of
8 fire safety compliance to long-term care facilities.

9 (iv) The receipt of applications and the award of
10 grants and loans pursuant to this chapter.

11 (v) The results of fire safety compliance
12 inspections and the installation of fire safety
13 improvements by long-term care facilities.

14 (vi) Any incidents of fires occurring at long-term
15 care facilities, including an assessment of injuries and
16 losses resulting from such fires, the causes thereof and
17 recommendations to avoid future fires at long-term care
18 facilities.

19 (4) Promulgate regulations as necessary to implement
20 this act.

21 Section 503. Incurring indebtedness.

22 Pursuant to the provisions of section 7(a)(3) of Article VIII
23 of the Constitution of Pennsylvania, the question of incurring
24 indebtedness of up to \$50,000,000 for loans to long-term care
25 facilities in order to comply with the provisions of this act,
26 subject to implementation pursuant to the act of March 1, 1988
27 (P.L.82, No.16), known as the Pennsylvania Infrastructure
28 Investment Authority Act, shall be submitted to the electors at
29 the next primary, municipal or general election following the
30 effective date of this section.

1 Section 504. Certification of question.

2 The Secretary of the Commonwealth shall certify the question
3 of incurring indebtedness to the county boards of elections.

4 Section 505. Question to electorate.

5 The question of incurring indebtedness shall be in
6 substantially the following form:

7 "Do you favor the incurring of indebtedness by the
8 Commonwealth in the amount of up to \$50,000,000 for use as
9 loans for fire safety improvements to long-term care nursing
10 facilities and personal care homes to protect senior citizens
11 of this Commonwealth subject to implementation pursuant to
12 the act of March 1, 1988 (P.L.82, No.16), known as the
13 Pennsylvania Infrastructure Investment Authority Act?"

14 Section 506. Conduct of election.

15 The election shall be conducted in accordance with the act of
16 June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania
17 Election Code, except that the time limits for advertisement of
18 notice of the election may be waived as to the question.

19 Section 507. Issuance of bonds.

20 As evidence of the indebtedness if authorized pursuant to
21 section 505 (relating to question to electorate), general
22 obligation bonds of the Commonwealth shall be issued from time
23 to time for the purposes of this act in accordance with section
24 17 of the act of March 1, 1988 (P.L.82, No.16), known as the
25 Pennsylvania Infrastructure Investment Authority Act.

26 Section 508. Funds or accounts.

27 The Pennsylvania Infrastructure Investment Authority may
28 establish separate funds and accounts when determined by the
29 authority to be necessary and convenient to deposit the proceeds
30 from the sale of bonds issued under section 507 (relating to

1 issuance of bonds). Payment of principal and interest on loans
2 made pursuant to this chapter shall be deposited into the
3 together with any civil penalties collected pursuant to section
4 1103 (relating to plans of correction and civil penalties).
5 Moneys in the fund shall be returned to the General Fund by the
6 authority as directed by the Department of Labor and Industry
7 whenever and to the extent the funds are not required for the
8 purposes of this act.

9 Section 509. Continuing appropriation.

10 The General Assembly appropriates on a continuing basis to
11 the Pennsylvania Infrastructure Investment Authority proceeds of
12 bonds issued pursuant to section 507 (relating to issuance of
13 bonds) and any amounts deposited into funds or accounts as
14 established pursuant to section 508 (relating to funds or
15 accounts), to carry out the purposes of this act.

16 CHAPTER 7

17 LONG-TERM CARE FACILITY FIRE SAFETY ADVISORY BOARD

18 Section 701. Board.

19 (a) Creation, appointment and terms.--There is created the
20 Long-Term Care Facility Fire Safety Advisory Board within the
21 Department of Labor and Industry, which shall consist of the
22 following members:

23 (1) The Secretary of Health, the Secretary of Labor and
24 Industry, the Secretary of Public Welfare and the State Fire
25 Commissioner, or their designees.

26 (2) Two members with particular expertise in the fire
27 safety arena appointed by the State Fire Commissioner as
28 follows:

29 (i) At least one fire safety expert shall be a local
30 emergency management coordinator.

(ii) At least one fire safety expert shall be associated with a fire department or ambulance service.

(3) Two members with particular expertise in the fire safety arena relating to the construction, alteration, repair and occupancy of buildings licensed as long-term care facilities appointed by the Secretary of Labor and Industry.

(4) Five persons appointed by the Governor representing the Pennsylvania Health Care Association, the Pennsylvania Association of Non-Profit Homes for the Aging, the Pennsylvania Association for County Affiliated Homes and the Hospital Association of Pennsylvania.

(5) Three consumers of services provided by long-term care facilities or family members of consumers appointed by the Governor.

(6) One member representing direct care workers that work in long-term care nursing facilities appointed by the Secretary of Health.

(7) One member representing direct care workers that work in personal care homes appointed by the Secretary of Public Welfare.

(b) Chairman.--The board shall select a chairman from its members biannually.

(c) Vacancies.--Vacancies in appointed positions shall be filled in the same manner as the original appointment. Members shall serve until their successors are appointed and qualified.

(d) Meetings.--The board shall meet at least quarterly. Additional meetings may be held upon reasonable notice at times and locations selected by the board. The board shall meet at the call of the chairman or upon written request of three members of the board. Eleven members shall constitute a quorum and a quorum

1 may act for the board in all matters.

2 (e) Time of appointment.--The members of the board shall be
3 appointed within three months of the effective date of this
4 section.

5 Section 702. Powers and duties.

6 (a) Powers and duties.--The board shall provide advice and
7 recommendations on issues of fire safety in the long-term care
8 facilities and shall develop recommendations regarding voluntary
9 best practices to supplement the standards adopted pursuant to
10 this act that can be used by long-term care nursing facilities
11 and personal care homes with respect to fire safety. The
12 Department of Labor and Industry shall provide administrative
13 support to the board and reimburse board members for reasonable
14 and necessary expenses incurred.

15 (b) Recommendations.--The board shall publish its
16 recommendations regarding best practices in a report in the
17 Pennsylvania Bulletin no later than three years from
18 establishment of the board. The report shall be distributed to
19 the Department of the Health, the Department of Labor and
20 Industry, the Department of Public Welfare, the Public Health
21 and Welfare Committee of the Senate and the Health and Human
22 Services Committee of the House of Representatives.

23 CHAPTER 9

24 EMERGENCY PREPAREDNESS

25 Section 901. Fire drills.

26 Announced fire drills as outlined by the International
27 Association of Fire Chiefs in their Health Care Fire Safety
28 Roundtable Forum Report of 2004, or pursuant to other standards
29 established pursuant to this act, shall be held by long-term
30 care facilities at a minimum of once every other month. Each

1 facility may decide to hold fire drills more frequently based
2 upon need. Fire drills shall not require the evacuation of
3 patients from facilities to the extent evacuation of residents
4 will pose health or safety risks to residents.

5 Section 902. Staff training.

6 All direct care staff persons of long-term care facilities,
7 including ancillary staff persons, substitute personnel and
8 volunteers shall have an orientation in general fire safety and
9 emergency preparedness that includes:

10 (1) Evacuation procedures.

11 (2) Staff duties and responsibilities during fire
12 drills.

13 (3) Designated meeting places.

14 (4) Location and use of fire extinguishers.

15 (5) Smoke detectors and fire alarms.

16 Section 903. Smoke alarms.

17 Each long-term care facility shall be equipped with operable
18 smoke alarms located within a reasonable distance of each
19 bedroom door. The following shall apply:

20 (1) Smoke detectors shall be tested during a time frame
21 established by the long-term care facility, which can be no
22 less than twice annually. A written record of the testing
23 shall be kept.

24 (2) Smoke detectors shall also be located in common
25 areas or hallways.

26 (3) If the long-term care facility serves nine or more
27 residents, there shall be at least one smoke detector on each
28 floor interconnected and audible throughout the long-term
29 care facility or an automatic fire alarm system that is
30 interconnected and audible throughout the long-term care

1 facility.

2 (4) If one or more residents or staff persons are not
3 able to hear the smoke detector or fire alarm system, a
4 signaling device approved by a fire safety expert shall be
5 used and tested so that each resident and staff person with a
6 hearing impairment will be alerted in the event of a fire.

7 Section 904. Notification of local fire officials.

8 Each long-term care facility shall at least annually notify
9 the local fire department in writing of the address of the
10 facility, location of the bedrooms and the assistance needed to
11 evacuate in an emergency. Documentation of the notification
12 shall be maintained by the facility.

13 CHAPTER 11

14 ADMINISTRATION OF LONG-TERM CARE NURSING FACILITIES

15 Section 1101. Inspections.

16 (a) Right to enter and inspect.--An authorized agent may
17 enter, visit and inspect the building and grounds of any long-
18 term care nursing facility and inspect the premises for
19 compliance with the requirements of this act and to ensure the
20 protection of residents from fire safety hazards. The authorized
21 agent shall be permitted to examine and copy the business and
22 financial records of a long-term care nursing facility for good
23 cause shown by an inspector designated by the Department of
24 Health to an independent official of the Department of Health.
25 Upon entering any long-term care nursing facility, the
26 authorized agent shall properly identify himself to the owner or
27 individual in charge of the facility, unless designated by the
28 Department of Health for good cause shown as necessary to
29 conduct confidential investigations essential to protecting
30 public health or safety. Information disclosed to or made

1 available to the Department of Health pursuant to this section
2 shall be deemed privileged and confidential and shall not be
3 disclosed to persons other than the Department of Health, the
4 owner or operator of the long-term care nursing facility or
5 other Federal or State agencies as necessary to investigate
6 compliance with legal and regulatory requirements.

7 (b) Inspection criteria.--The following criteria shall apply
8 to inspections under this section:

9 (1) Pursuant to section 1107(a) (relating to regulations
10 and policies), the Department of Health shall adopt
11 regulations and policies establishing objective criteria for
12 inspectors to employ in the inspection of long-term care
13 nursing facilities and procedures to ensure the consistent
14 application and interpretation of the criteria.

15 (2) The Department of Health shall develop a uniform
16 provider checklist in accordance with section 1107(a) based
17 upon the inspection criteria and provider surveys to be used
18 by inspectors during initial and subsequent inspections.

19 (c) Authorized agents.--

20 (1) The Department of Health shall ensure that
21 authorized agents conducting inspections are trained
22 regarding the application and interpretation of the
23 inspection criteria and quality indicators established
24 pursuant to this act and on the proper use of the inspection
25 checklist established under subsection (b)(2).

26 (2) Following notice of proposed rulemaking and public
27 comment, the Department of Health shall adopt regulations
28 regarding the training and continuing education curriculum
29 requirements for authorized agents conducting inspections.

30 (d) Complaint inspections and investigations.--

(1) The Department of Health shall establish standard procedures for conducting prompt investigations following the report of an alleged violation of the requirements of this act by a long-term care nursing facility. Complaint investigation inspections shall include an onsite inspection of buildings subject to complaints.

(2) The Department of Health shall conduct investigations of complaints within 48 hours of receipt of a complaint or, if a complaint alleges an immediate serious risk to residents of long-term care nursing facilities, within 24 hours.

Section 1102. Violations.

(a) Classification.--Within six months of the effective date of this section, the Department of Health shall develop guidelines, published pursuant to section 1107(a)(relating to regulations and policies), that classify alleged violations of the regulations into one of the following categories:

(1) Class I. Violations that cause death or serious physical harm to a resident of a long-term care nursing facility.

(2) Class II. Violations that cause harm or have a substantial probability of causing death or serious physical harm to a resident of a long-term care nursing facility.

(3) Class III. Violations other than Class I or Class II violations.

(b) Written notice of alleged violations.--Whenever the Department of Health shall, upon inspection, investigation or complaint, allege a violation of this act or regulations adopted by the Department of Health pursuant to this chapter, it shall give written notice of the violation specifying the violation or

1 violations found to the provider and, to the extent deemed
2 appropriate by the Department of Health, directing the provider
3 to take action or submit a plan of correction to bring its
4 operations or activities into compliance with applicable law or
5 regulation within a specified time or show cause why it is
6 unnecessary to do so.

7 (c) Contesting alleged violations.--

8 (1) The Department of Health shall establish an informal
9 dispute resolution process that allows long-term care nursing
10 facilities to contest any findings or determinations of
11 alleged violations made pursuant to this act. The process
12 must do all of the following:

13 (i) Create informal dispute resolution panels with
14 all of the following qualifications:

15 (A) Panel members may not serve within the
16 bureau responsible for licensure, survey and
17 certification of long-term care nursing facilities
18 and administrators.

19 (B) Panel members must be qualified as inspectors
20 for long-term care nursing facilities, including
21 satisfaction of continuing education and training
22 requirements of the Department of Health.

23 (ii) Afford the owners or operators of long-term
24 care nursing facilities the opportunity to be heard,
25 including presentation of written information and the
26 option of a face-to-face conference with the informal
27 dispute resolution panel prior to issuance of any
28 decision regarding a dispute.

29 (iii) Afford the owners or operators of long-term
30 care nursing facilities the opportunity to request

1 informal dispute resolution within ten calendar days
2 following receipt of any statement of deficiencies or
3 other statement of violation, if the long-term care
4 nursing facility also submits a timely written
5 certification or plan of correction as set forth in this
6 act.

7 (iv) Resolve any dispute within 30 calendar days of
8 any request for informal dispute resolution. If the
9 informal dispute resolution process results in a decision
10 in favor of the long-term care nursing facility, the
11 Department of Health must amend its statement of
12 deficiencies or other statement of violation within ten
13 calendar days following the resolution. If the informal
14 dispute resolution process results in a decision in favor
15 of the Department of Health, the provider may appeal the
16 determination de novo in the manner otherwise provided by
17 the Department of Health for the review of agency
18 actions.

19 (2) If the owner or operator of a long-term care nursing
20 facility, in good faith, seeks informal dispute resolution or
21 an administrative hearing concerning alleged violations of
22 this act or the regulations of the Department of Health, the
23 long-term care nursing facility may include a denial of the
24 violation in the written certifications or plans of
25 correction submitted to the Department of Health. The
26 Department of Health may not reject certifications or plans
27 of correction based on the denial of violations and may not
28 impose sanctions on a long-term care nursing facility for
29 denying that violations have occurred, although the
30 Department of Health may require the owner or operator of the

1 long-term care nursing facility to amend its written
2 certification or plan of correction and undertake corrective
3 action unless prevented from doing so by the issuance of a
4 supersedeas.

5 (3) The Department of Health may not disseminate
6 information concerning the results of inspections, including
7 a statement of deficiencies or other statement of violation,
8 during the pendency of any informal dispute resolution
9 process or administrative appeal.

10 Section 1103. Plans of correction and civil penalties.

11 (a) Submission.--

12 (1) The Department of Health shall provide reasonable
13 opportunity for a long-term care nursing facility alleged to
14 be in violation of this act or regulations of the Department
15 of Health to develop, submit and receive approval of a plan
16 of corrections or certification that corrections required by
17 the Department of Health have been implemented.

18 (2) Except as otherwise provided by this section, if a
19 long-term care nursing facility fails to submit a plan of
20 corrections or certification at the time of inspection, the
21 long-term care nursing facility may submit the plan or
22 certification to the Department of Health within 30 days of
23 receipt of the written notice of violation, or sooner if
24 directed to do so by the Department of Health where
25 circumstances involving resident safety warrant.

26 (b) Acceptance.--The Department of Health shall notify the
27 owner or operator of a long-term care nursing facility within
28 five business days whether a plan of correction or certification
29 is acceptable for bringing the long-term care nursing facility
30 into compliance with the requirements of this act and

1 regulations of the Department of Health and, if appropriate,
2 direct the long-term care nursing facility to prepare an
3 alternative plan of corrections or issue an administrative order
4 directing corrections deemed appropriate by the Department of
5 Health.

6 (c) Implementation.--Except as otherwise provided by this
7 section, a long-term care nursing facility shall implement an
8 approved plan of correction or comply with an administrative
9 order issued by the Department of Health and provide
10 verification to the Department of Health that it has done so.

11 (d) Failure to implement.--A long-term care nursing
12 facility's failure to meet deadlines for compliance with plans
13 of correction or administrative orders may result in suspension
14 or revocation of a license issued by the Department of Health
15 for the operation of the long-term care nursing facility. If
16 compliance with a plan of correction is not within the direct
17 control of the long-term care nursing facility, proof of
18 acceptable efforts to comply shall be treated as compliance. If,
19 at the next inspection, the violation remains uncorrected,
20 additional compliance efforts may be required by the Department
21 of Health.

22 (e) Civil penalties.--

23 (1) The Department of Health may assess civil penalties
24 not to exceed \$500 per day upon the owner or operator of any
25 long-term care nursing facility that fails to apply for and
26 obtain a permit for the construction, alteration, repair and
27 occupancy of buildings as required by the Pennsylvania
28 Construction Code Act or fails to apply for and obtain a
29 certificate of fire safety compliance as required by this
30 act.

1 (2) The Department of Health may assess civil penalties
2 of up to \$40 per resident per day for each Class I violation,
3 but total civil penalties shall not exceed \$10,000 for any
4 Class I violation or for multiple Class I violations arising
5 out of the same incident or event. Conditions resulting in
6 any Class I violation shall be corrected within 24 hours.

7 (3) The Department of Health may assess civil penalties
8 of up to \$30 per resident per day for each Class II
9 violation, but shall not exceed total civil penalties in
10 excess of \$5,000 for any Class II violation or for multiple
11 Class II violations arising out of the same incident or event
12 and may not assess civil penalties for any period following
13 the submission of a plan of corrections by the provider and
14 the Department of Health's completion of review of the plan.
15 The assessment of per diem civil penalties for a Class II
16 violation shall be suspended for five days from the date of
17 citation to permit sufficient time for the provider to
18 correct the violation or prepare a plan of correction. This
19 time period may be extended for good cause. If the violation
20 has not been corrected within the five-day period, civil
21 penalties may be assessed retroactive to the date of
22 citation.

23 (4) Civil penalties shall not be assessed for Class III
24 violations unless a long-term care nursing facility fails to
25 correct the violation within 15 days from the receipt of the
26 notice of violation. Failure to correct a Class III violation
27 within 15 days may result in the assessment of civil
28 penalties of up to \$6 per resident per day for each Class III
29 violation retroactive to the date of the citation. The
30 Department of Health shall not assess total civil penalties

1 in excess of \$2,500 for any Class III violation or for
2 multiple Class III violations arising out of the same
3 incident or event.

4 (5) The Department of Health shall develop guidelines to
5 determine whether and in what amount to assess civil
6 penalties up to the maximum amounts as authorized by this
7 subsection.

8 (6) A license deemed to be provisional because of
9 violations may not return to permanent status until the
10 provider pays any civil penalties or posts security for the
11 payment of penalties subject to review by the Department of
12 Health and provides evidence of compliance with all
13 requirements of this act and regulations of the Department of
14 Health.

15 Section 1104. Review.

16 (a) Review of agency action.--

17 (1) The owner or operator of a long-term care nursing
18 facility has the right to review of a final action or
19 decision of the Department of Health relating to any civil
20 penalty, license suspension, revocation or nonrenewal, plan
21 of correction or administrative order or cited violations,
22 including the appointment of a master or the imposition of a
23 ban on admissions pursuant to subsection (b), by the
24 Department of Health in accordance with 2 Pa.C.S. (relating
25 to Administrative Law and Procedures), and rules of procedure
26 established by the bureau by regulation.

27 (2) The Department of Health shall, prior to the
28 effective date of this section, establish a standing practice
29 order governing the review of actions of the Department of
30 Health pursuant to this act and shall publish proposed

1 regulations establishing rules of procedure within one year
2 of the effective date of this section and adopt final rules
3 of procedure within two years of the effective date of this
4 section. A long-term care nursing facility may seek review of
5 a decision of the Department of Health without first invoking
6 the informal dispute resolution process set forth in the act.

7 (b) Action pending appeal.--When the owner or operator of a
8 long-term care nursing facility requests review of an action of
9 the Department of Health with respect to the suspension,
10 revocation or nonrenewal of its license, the Department of
11 Health shall have the authority to take the following actions as
12 necessary to protect the residents:

13 (1) Appoint a master to supervise and control operations
14 of the licensee.

15 (2) Ban new admissions to the long-term care nursing
16 facility.

17 (c) Burden and standard for supersedeas.--A request for
18 review by a long-term care nursing facility of a final action or
19 decision of the Department of Health shall not act as an
20 automatic supersedeas, except that in lieu of paying any civil
21 penalties pending the outcome of an appeal, the owner or
22 operator of a long-term care nursing facility may post security
23 in a form acceptable to the Department of Health equal to the
24 amount of the penalties assessed, or show good cause why the
25 posting of security will pose an unreasonable financial hardship
26 upon the long-term care nursing facility. The owner or operator
27 of a long-term care nursing facility or other person adversely
28 affected by a final action taken by the Department of Health
29 pursuant to this act may request a supersedeas with respect to
30 any action taken by the Department of Health. To be granted a

1 supersedeas, the person requesting the supersedeas shall have
2 the burden of showing a substantial likelihood of prevailing on
3 the merits and that long-term care nursing facility residents
4 will be safe and receive adequate care pending a final decision
5 by the Department of Health. Where a supersedeas is granted, it
6 may be revoked if the Department of Health presents evidence of
7 any intervening Class I or Class II violations. Where
8 supersedeas is granted:

9 (1) The Department of Health shall inspect the long-term
10 care nursing facility at least monthly or more frequently to
11 ensure the residents' safety and well-being.

12 (2) Where a supersedeas has been granted, a Class I or
13 Class II violation cited after the granting of the
14 supersedeas may lead to a revocation of the supersedeas,
15 subject to further review by the Department of Health.

16 (d) Hearings.--The Department of Health shall schedule
17 hearings no more than 120 days beyond the date on which the
18 appeal was filed except with the consent of the Department of
19 Health and the owner or operator of the long-term care nursing
20 facility.

21 (e) Expedited reconsideration.--The Secretary of Health
22 shall rule on any requests for the reconsideration of actions
23 taken by hearing officers within 60 days.

24 (f) Admissibility.--Notwithstanding any other provision of
25 law, reports, surveys, certifications, statements of
26 deficiencies, data, materials or other information, opinions or
27 conclusions developed, compiled or collected pursuant to this
28 act shall not be subject to discovery or admitted into evidence
29 in any private civil action for damages against a long-term care
30 nursing facility, its owners, directors, officers, shareholders

1 or staff. No person shall be permitted or required to testify in
2 such an action as to any information, opinions or conclusions
3 developed, compiled or collected pursuant to this act. The
4 provisions of this subsection shall not apply if a final
5 decision has been rendered by the Department of Health, not
6 subject to a pending appeal, that the owner or operator of a
7 long-term care nursing facility committed a Class I or Class II
8 violation and a determination is made by the Department of
9 Health or a court that the violation occurred due to intentional
10 misconduct or gross negligence.

11 (g) Sanctions.--Any administrative appeal filed pursuant to
12 this section shall be accompanied by a statement signed by the
13 petitioner and counsel for any petitioner represented by counsel
14 that the petition is not being presented for any improper
15 purpose, such as to harass or cause unnecessary delay or
16 needlessly increase the costs of administrative proceedings,
17 that any claims, defenses, or other legal contentions are
18 warranted by existing law or by a nonfrivolous argument for the
19 extension, modification or reversal of existing law or the
20 establishment of new law and that any factual allegations are
21 warranted on the evidence or, if specifically so identified, are
22 reasonably based on a lack of information or belief. If, after
23 notice and a reasonable opportunity to respond, the Department
24 of Health determines that the requirements of this subsection
25 have been violated, it may impose sanctions upon the petitioners
26 or their counsel responsible for the violations, including the
27 assessment of attorney fees and costs and the dismissal with
28 prejudice of the petition. Upon appeal, any sanctions imposed
29 shall be subject to de novo review.

30 Section 1105. Effect of departmental orders.

1 Orders of the Department of Health from which no appeal is
2 taken are final orders and may be enforced in court.

3 Section 1106. Actions against violations of law, rules and
4 regulations.

5 (a) Actions.--Whenever any person has violated any of the
6 provisions of this act or the regulations issued by the
7 Department of Health pursuant to a final order subject to
8 judicial enforcement, the Department of Health may maintain an
9 action in the name of the Commonwealth for an injunction or
10 other process restraining or prohibiting the person from
11 engaging in the activity.

12 (b) Closure of long-term care nursing facilities for threat
13 to health and safety.--Whenever the Department of Health
14 determines that deficiencies pose an immediate and serious
15 threat to the health or safety of residents, the Department of
16 Health may direct the closure of a long-term care nursing
17 facility and the transfer of residents to other licensed
18 assisted living residences.

19 Section 1107. Regulations and policies.

20 (a) Authority.--The Department of Health shall adopt
21 regulations, policies and forms and other consumer and provider
22 publications as may be necessary to implement the provisions of
23 this act. In adopting regulations, policies and forms and
24 issuing other publications, the Department of Health shall seek
25 to promote and further the intent of this act as described in
26 section 102 (relating to legislative findings).

27 (b) Statements of policy.--No policy or guideline of the
28 Department of Health not published as a regulation or statement
29 of policy in the Pennsylvania Code and Bulletin may be used in
30 the implementation of this act. The full text of statements of

1 policy may be published in the Pennsylvania Bulletin.

2 (c) Electronic distribution.--All regulations, policies,
3 forms and other consumer and provider publications used by the
4 Department of Health in the implementation of this act shall be
5 made electronically available by the Department of Health
6 without charge to consumers, providers and members of the
7 public.

8 (d) Omission of notice of proposed rulemaking.--The
9 Department of Health may not omit notice of proposed rulemaking
10 in the issuance of regulations unless necessary to comply with a
11 court order, Federal law or avoid imminent and substantial
12 endangerment of the public health safety and welfare.

13 CHAPTER 13

14 ADMINISTRATION OF PERSONAL CARE HOMES

15 Section 1301. Inspections.

16 (a) Right to enter and inspect.--An authorized agent may
17 enter, visit and inspect the building and grounds of any
18 personal care home and inspect the premises for compliance with
19 the requirements of this act and to ensure the protection of
20 residents from fire safety hazards. The authorized agent shall
21 be permitted to examine and copy the business and financial
22 records of a personal care home for good cause shown by an
23 inspector designated by the Department of Public Welfare to an
24 independent official of the Department of Public Welfare. Upon
25 entering any personal care home, the authorized agent shall
26 properly identify himself to the owner or individual in charge
27 of the personal care home, unless designated by the Department
28 of Public Welfare for good cause shown as necessary to conduct
29 confidential investigations essential to protecting public
30 health or safety. Information disclosed to or made available to

1 the Department of Public Welfare pursuant to this section shall
2 be deemed privileged and confidential and shall not be disclosed
3 to persons other than the Department of Public Welfare, the
4 owner or operator of the personal care home or other Federal or
5 State agencies as necessary to investigate compliance with legal
6 and regulatory requirements.

7 (b) Inspection criteria.--The following criteria shall apply
8 to inspections under this section:

9 (1) Pursuant to section 1307(a) (relating to regulations
10 and policies), the Department of Public Welfare shall adopt
11 regulations and policies establishing objective criteria for
12 inspectors to employ in the inspection of personal care homes
13 and procedures to ensure the consistent application and
14 interpretation of the criteria.

15 (2) The Department of Public Welfare shall develop a
16 uniform provider checklist in accordance with section 1307(a)
17 based upon the inspection criteria and provider surveys to be
18 used by inspectors during initial and subsequent inspections.

19 (c) Authorized agents.--

20 (1) The Department of Public Welfare shall ensure that
21 authorized agents conducting inspections are trained
22 regarding the application and interpretation of the
23 inspection criteria and quality indicators established
24 pursuant to this act and on the proper use of the inspection
25 checklist established under subsection (b)(2).

26 (2) Following notice of proposed rulemaking and public
27 comment, the Department of Public Welfare shall adopt
28 regulations regarding the training and continuing education
29 curriculum requirements for authorized agents conducting
30 inspections.

(d) Complaint inspections and investigations.--

(1) The Department of Public Welfare shall establish standard procedures for conducting prompt investigations following the report of an alleged violation of the requirements of this act by a personal care home. Complaint investigation inspections shall include an onsite inspection of buildings subject to complaints.

(2) The Department of Public Welfare shall conduct investigations of complaints within 48 hours of receipt of a complaint or, if a complaint alleges an immediate serious risk to residents of personal care homes, within 24 hours.

Section 1302. Violations.

(a) Classification.--Within six months of the effective date of this section, the Department of Public Welfare shall develop guidelines, published pursuant to section 1307(a)(relating to regulations and policies), that classify alleged violations of the regulations into one of the following categories:

(1) Class I. Violations that cause death or serious physical harm to a resident of a personal care home.

(2) Class II. Violations that cause harm or have a substantial probability of causing death or serious physical harm to a resident of a personal care home.

(3) Class III. Violations other than Class I or Class II violations.

(b) Written notice of alleged violations.--Whenever the Department of Public Welfare shall, upon inspection, investigation or complaint allege a violation of this act or regulations adopted by the Department of Public Welfare pursuant to this chapter, it shall give written notice of the violation specifying the violation or violations found to the provider

1 and, to the extent deemed appropriate by the Department of
2 Public Welfare, directing the provider to take action or submit
3 a plan of correction to bring its operations or activities into
4 compliance with applicable law or regulation within a specified
5 time or show cause why it is unnecessary to do so.

6 (c) Contesting alleged violations.--

7 (1) The Department of Public Welfare shall establish an
8 informal dispute resolution process that allows personal care
9 homes to contest any findings or determinations of alleged
10 violations made pursuant to this act. The process must do all
11 of the following:

12 (i) Create informal dispute resolution panels with
13 all of the following qualifications:

14 (A) Panel members may not serve within the
15 bureau responsible for licensure, survey and
16 certification of personal care homes and
17 administrators.

18 (B) Panel members must be qualified as
19 inspectors for personal care homes, including
20 satisfaction of continuing education and training
21 requirements of the Department of Public Welfare.

22 (ii) Afford the owners or operators of personal care
23 homes the opportunity to be heard, including presentation
24 of written information and the option of a face-to-face
25 conference with the informal dispute resolution panel
26 prior to issuance of any decision regarding a dispute.

27 (iii) Afford the owners or operators of personal
28 care homes the opportunity to request informal dispute
29 resolution within ten calendar days following receipt of
30 any statement of deficiencies or other statement of

1 violation, if the personal care home also submits a
2 timely written certification or plan of correction as set
3 forth in this act.

4 (iv) Resolve any dispute within 30 calendar days of
5 any request for informal dispute resolution. If the
6 informal dispute resolution process results in a decision
7 in favor of the personal care home, the Department of
8 Public Welfare must amend its statement of deficiencies
9 or other statement of violation within ten calendar days
10 following the resolution. If the informal dispute
11 resolution process results in a decision in favor of the
12 Department of Public Welfare, the provider may appeal the
13 determination de novo in the manner otherwise provided by
14 the Department of Public Welfare for the review of agency
15 actions.

16 (2) If the owner or operator of a personal care home, in
17 good faith, seeks informal dispute resolution or an
18 administrative hearing concerning alleged violations of this
19 act or the regulations of the Department of Public Welfare,
20 the personal care home may include a denial of the violation
21 in the written certifications or plans of correction
22 submitted to the Department of Public Welfare. The Department
23 of Public Welfare may not reject certifications or plans of
24 correction based on the denial of violations and may not
25 impose sanctions on a personal care home for denying that
26 violations have occurred, although the Department of Public
27 Welfare may require the owner or operator of the personal
28 care home to amend its written certification or plan of
29 correction and undertake corrective action unless prevented
30 from doing so by the issuance of a supersedeas.

1 (3) The Department of Public Welfare may not disseminate
2 information concerning the results of inspections, including
3 a statement of deficiencies or other statement of violation,
4 during the pendency of any informal dispute resolution
5 process or administrative appeal.

6 Section 1303. Plans of correction and civil penalties.

7 (a) Submission.--

8 (1) The Department of Public Welfare shall provide
9 reasonable opportunity for a personal care home alleged to be
10 in violation of this act or regulations of the Department of
11 Public Welfare to develop, submit and receive approval of a
12 plan of corrections or certification that corrections
13 required by the Department of Public Welfare have been
14 implemented.

15 (2) Except as otherwise provided by this section, if a
16 personal care home fails to submit a plan of corrections or
17 certification at the time of inspection, the personal care
18 home may submit the plan or certification to the Department
19 of Public Welfare within 30 days of receipt of the written
20 notice of violation, or sooner if directed to do so by the
21 Department of Public Welfare where circumstances involving
22 resident safety warrant.

23 (b) Acceptance.--The Department of Public Welfare shall
24 notify the owner or operator of a personal care home within five
25 business days whether a plan of correction or certification is
26 acceptable for bringing the personal care home into compliance
27 with the requirements of this act and regulations of the
28 Department of Public Welfare and, if appropriate, direct the
29 personal care home to prepare an alternative plan of corrections
30 or issue an administrative order directing corrections deemed

1 appropriate by the Department of Public Welfare.

2 (c) Implementation.--Except as otherwise provided by this
3 section, a personal care home shall implement an approved plan
4 of correction or comply with an administrative order issued by
5 the Department of Public Welfare and provide verification to the
6 Department of Public Welfare that it has done so.

7 (d) Failure to implement.--A personal care home's failure to
8 meet deadlines for compliance with plans of correction or
9 administrative orders may result in suspension or revocation of
10 a license issued by the Department of Public Welfare for the
11 operation of the personal care home. If compliance with a plan
12 of correction is not within the direct control of the personal
13 care home, proof of acceptable efforts to comply shall be
14 treated as compliance. If, at the next inspection, the violation
15 remains uncorrected, additional compliance efforts may be
16 required by the Department of Public Welfare.

17 (e) Civil penalties.--

18 (1) The Department of Public Welfare may assess civil
19 penalties not to exceed \$500 per day upon the owner or
20 operator of any personal care home that fails to apply for
21 and obtain a permit for the construction, alteration, repair
22 and occupancy of buildings as required by the Pennsylvania
23 Construction Code Act or fails to apply for and obtain a
24 certificate of fire safety compliance as required by this
25 act.

26 (2) The Department of Public Welfare may assess civil
27 penalties of up to \$40 per resident per day for each Class I
28 violation, but total civil penalties shall not exceed \$10,000
29 for any Class I violation or for multiple Class I violations
30 arising out of the same incident or event. Conditions

1 resulting in any Class I violation shall be corrected within
2 24 hours.

3 (3) The Department of Public Welfare may assess civil
4 penalties of up to \$30 per resident per day for each Class II
5 violation, but shall not exceed total civil penalties in
6 excess of \$5,000 for any Class II violation or for multiple
7 Class II violations arising out of the same incident or event
8 and may not assess civil penalties for any period following
9 the submission of a plan of corrections by the provider and
10 the Department of Public Welfare's completion of review of
11 the plan. The assessment of per diem civil penalties for a
12 Class II violation shall be suspended for five days from the
13 date of citation to permit sufficient time for the provider
14 to correct the violation or prepare a plan of correction.
15 This time period may be extended for good cause. If the
16 violation has not been corrected within the five-day period,
17 civil penalties may be assessed retroactive to the date of
18 citation.

19 (4) Civil penalties shall not be assessed for Class III
20 violations unless a personal care home fails to correct the
21 violation within 15 days from the receipt of the notice of
22 violation. Failure to correct a Class III violation within 15
23 days may result in the assessment of civil penalties of up to
24 \$6 per resident per day for each Class III violation
25 retroactive to the date of the citation. The Department of
26 Public Welfare shall not assess total civil penalties in
27 excess of \$2,500 for any Class III violation or for multiple
28 Class III violations arising out of the same incident or
29 event.

30 (5) The Department of Public Welfare shall develop

1 guidelines to determine whether and in what amount to assess
2 civil penalties up to the maximum amounts as authorized by
3 this subsection.

4 (6) A license deemed to be provisional because of
5 violations may not return to permanent status until the
6 provider pays any civil penalties or posts security for the
7 payment of penalties subject to review by the Department of
8 Public Welfare and provides evidence of compliance with all
9 requirements of this act and regulations of the Department of
10 Public Welfare.

11 Section 1304. Review.

12 (a) Review of agency action.--

13 (1) The owner or operator of a personal care home has
14 the right to review of a final action or decision of the
15 Department of Public Welfare relating to any civil penalty,
16 license suspension, revocation or nonrenewal, plan of
17 correction or administrative order or cited violations,
18 including the appointment of a master or the imposition of a
19 ban on admissions pursuant to subsection (b), by the
20 Department of Public Welfare in accordance with 2 Pa.C.S.
21 (relating to administrative law and procedures), and rules of
22 procedure established by the bureau by regulation.

23 (2) The Department of Public Welfare shall, prior to the
24 effective date of this section, establish a standing practice
25 order governing the review of actions of the Department of
26 Public Welfare pursuant to this act and shall publish
27 proposed regulations establishing rules of procedure within
28 one year of the effective date of this section and adopt
29 final rules of procedure within two years of the effective
30 date of this section. A personal care home may seek review of

1 a decision of the Department of Public Welfare without first
2 invoking the informal dispute resolution process set forth in
3 the act.

4 (b) Action pending appeal.--When the owner or operator of a
5 personal care home requests review of an action of the
6 Department of Public Welfare with respect to the suspension,
7 revocation or nonrenewal of its license, the Department of
8 Public Welfare shall have the authority to take the following
9 actions as necessary to protect the residents:

10 (1) Appoint a master to supervise and control operations
11 of the licensee.

12 (2) Ban new admissions to the personal care home.

13 (c) Burden and standard for supersedeas.--A request for
14 review by a personal care home of a final action or decision of
15 the Department of Public Welfare shall not act as an automatic
16 supersedeas, except that in lieu of paying any civil penalties
17 pending the outcome of an appeal, the owner or operator of a
18 personal care home may post security in a form acceptable to the
19 Department of Public Welfare equal to the amount of the
20 penalties assessed, or show good cause why the posting of
21 security will pose an unreasonable financial hardship upon the
22 personal care home. The owner or operator of a personal care
23 home or other person adversely affected by a final action taken
24 by the Department of Public Welfare pursuant to this act may
25 request a supersedeas with respect to any action taken by the
26 Department of Public Welfare. To be granted a supersedeas, the
27 person requesting the supersedeas shall have the burden of
28 showing a substantial likelihood of prevailing on the merits and
29 that personal care home residents will be safe and receive
30 adequate care pending a final decision by the Department of

1 Public Welfare. Where a supersedeas is granted, it may be
2 revoked if the Department of Public Welfare presents evidence of
3 any intervening Class I or Class II violations. Where
4 supersedeas is granted:

5 (1) The Department of Public Welfare shall inspect the
6 personal care home at least monthly or more frequently to
7 ensure the residents' safety and well-being.

8 (2) Where a supersedeas has been granted, a Class I or
9 Class II violation cited after the granting of the
10 supersedeas may lead to a revocation of the supersedeas,
11 subject to further review by the Department of Public
12 Welfare.

13 (d) Hearings.--The Department of Public Welfare shall
14 schedule hearings no more than 120 days beyond the date on which
15 the appeal was filed except with the consent of the Department
16 of Public Welfare and the owner or operator of the personal care
17 home.

18 (e) Expedited reconsideration.--The Secretary of Public
19 Welfare shall rule on any requests for the reconsideration of
20 actions taken by hearing officers within 60 days.

21 (f) Admissibility.--Notwithstanding any other provision of
22 law, reports, surveys, certifications, statements of
23 deficiencies, data, materials or other information, opinions or
24 conclusions developed, compiled or collected pursuant to this
25 act shall not be subject to discovery or admitted into evidence
26 in any private civil action for damages against a personal care
27 home, its owners, directors, officers, shareholders or staff. No
28 person shall be permitted or required to testify in such an
29 action as to any information, opinions or conclusions developed,
30 compiled or collected pursuant to this act. The provisions of

1 this subsection shall not apply if a final decision has been
2 rendered by the Department of Public Welfare, not subject to a
3 pending appeal, that the owner or operator of a personal care
4 home committed a Class I or Class II violation and a
5 determination is made by the Department of Public Welfare or a
6 court that the violation occurred due to intentional misconduct
7 or gross negligence.

8 (g) Sanctions.--Any administrative appeal filed pursuant to
9 this section shall be accompanied by a statement signed by the
10 petitioner and counsel for any petitioner represented by counsel
11 that the petition is not being presented for any improper
12 purpose, such as to harass or cause unnecessary delay or
13 needlessly increase the costs of administrative proceedings,
14 that any claims, defenses, or other legal contentions are
15 warranted by existing law or by a nonfrivolous argument for the
16 extension, modification or reversal of existing law or the
17 establishment of new law and that any factual allegations are
18 warranted on the evidence or, if specifically so identified, are
19 reasonably based on a lack of information or belief. If, after
20 notice and a reasonable opportunity to respond, the Department
21 of Public Welfare determines that the requirements of this
22 subsection have been violated, it may impose sanctions upon the
23 petitioners or their counsel responsible for the violations,
24 including the assessment of attorney fees and costs and the
25 dismissal with prejudice of the petition. Upon appeal, any
26 sanctions imposed shall be subject to de novo review.

27 Section 1305. Effect of departmental orders.

28 Orders of the Department of Public Welfare from which no
29 appeal is taken are final orders and may be enforced in court.

30 Section 1306. Actions against violations of law, rules and

1 regulations.

2 (a) Actions brought by the department.--Whenever any person
3 has violated any of the provisions of this act or the
4 regulations issued by the Department of Public Welfare pursuant
5 to a final order of the Department of Public Welfare subject to
6 judicial enforcement, the Department of Public Welfare may
7 maintain an action in the name of the Commonwealth for an
8 injunction or other process restraining or prohibiting the
9 person from engaging in the activity.

10 (b) Closure of personal care homes for threat to health and
11 safety.--Whenever the Department of Public Welfare determines
12 that deficiencies pose an immediate and serious threat to the
13 health or safety of residents, the Department of Public Welfare
14 may direct the closure of a personal care home and the transfer
15 of residents to other licensed assisted living residences.
16 Section 1307. Regulations and policies.

17 (a) Authority.--The Department of Public Welfare shall adopt
18 regulations, policies and forms and other consumer and provider
19 publications as may be necessary to implement the provisions of
20 this act. In adopting regulations, policies and forms and
21 issuing other publications, the Department of Public Welfare
22 shall seek to promote and further the intent of this act as
23 described in section 102 (relating to legislative findings).

24 (b) Statements of policy.--No policy or guideline of the
25 Department of Public Welfare not published as a regulation or
26 statement of policy in the Pennsylvania Code and Bulletin may be
27 used in the implementation of this act. The full text of
28 statements of policy may be published in the Pennsylvania
29 Bulletin.

30 (c) Electronic distribution.--All regulations, policies,

1 forms and other consumer and provider publications used by the
2 Department of Public Welfare in the implementation of this act
3 shall be made electronically available by the department without
4 charge to consumers, providers and members of the public.

5 (d) Omission of notice of proposed rulemaking.--The
6 Department of Public Welfare may not omit notice of proposed
7 rulemaking in the issuance of regulations unless necessary to
8 comply with a court order, Federal law or avoid imminent and
9 substantial endangerment of the public health, safety and
10 welfare.

11 CHAPTER 51

12 MISCELLANEOUS PROVISIONS

13 Section 5101. Effect on existing regulations.

14 Regulations adopted by the Department of Health, the
15 Department of Labor and Industry and the Department of Public
16 Welfare relating to fire safety shall remain in effect except to
17 the extent the regulations are inconsistent with this act or
18 until the regulations are modified pursuant to this act.

19 Section 5102. Repeals.

20 The following acts and parts of acts are repealed to the
21 extent specified:

22 (a) Absolute.--Section 105(d) of the act of November 10,
23 1999 (P.L.491, No.45), known as the Pennsylvania Construction
24 Code Act is repealed.

25 (b) General.--All other acts and parts of acts are repealed
26 insofar as they are inconsistent with this act.

27 Section 5103. Effective date.

28 This act shall take effect as follows:

29 (1) Sections 304 and 305 shall take effect upon approval
30 of the referendum question set forth in section 505 by the

1 electorate.

2 (2) The remainder of this act shall take effect in 60
3 days.