

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

No. 113 Session of  
1989

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PRESTON, VEON, ADOLPH, STAIRS, KASUNIC AND HARPER,  
JANUARY 25, 1989

REFERRED TO COMMITTEE ON YOUTH AND AGING, JANUARY 25, 1989

AN ACT

1 Requiring the Department of Public Welfare to license providers  
2 of child day care; and providing a subsidy for child day care  
3 for certain low-income families.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Child Day  
8 Care Licensing and Subsidy Act.

9 Section 2. Legislative findings.

10 The General Assembly finds and declares that:

11 (1) An estimated 500,000 Pennsylvania children under six  
12 years of age have parents who work outside the home, and  
13 nearly three-fourths of all school age children will have  
14 working mothers by 1995.

15 (2) Women account for an estimated 50% of the work force  
16 in this Commonwealth, and many have dependent children in

1 need of child care.

2 (3) Safe, affordable child day care is a necessary  
3 component for economic development and an essential resource  
4 to assist parents in maintaining their independence.

5 (4) The goals of child day care are, first, for children  
6 to achieve their maximum functional potential and, second, to  
7 assist families in achieving a functional level which  
8 supports the child's growth and development.

9 (5) Quality child care is:

10 (i) Care in which children are progressing toward  
11 and reaching developmental goals and objectives  
12 appropriate to the achievement of their maximum  
13 potential.

14 (ii) Care which meets the needs of families.

15 (iii) Care which promotes the ability of parents,  
16 legal guardians and children to function as contributing  
17 members of society.

### 18 Section 3. Declaration of policy.

19 The General Assembly declares it is the policy of this  
20 Commonwealth that:

21 (1) Safe, affordable child day care that promotes the  
22 developmental potential of children shall be available in  
23 this Commonwealth.

24 (2) The department shall be responsible for licensing  
25 all child day-care settings and subsidizing child day care  
26 for eligible low-income families.

### 27 Section 4. Definitions.

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

1 "Approval." Certification of compliance with this act and  
2 regulations issued by the department under this act to a  
3 provider that is substantially in compliance with standards of  
4 care and operation and subject to departmental supervision.

5 "Child." A person under 16 years of age.

6 "Child day care." Care in lieu of parental care given for  
7 part of a 24-hour day to children under 16 years of age away  
8 from their homes. The term does not include child day care  
9 furnished in places of worship during religious services.

10 "Children with disabilities." Those children who do not  
11 function according to age-appropriate expectations in the areas  
12 of effective, cognitive, communicative, perceptual-motor,  
13 physical or social development to such an extent that they  
14 require special health, program adjustments and related services  
15 on a regular basis to function in an adaptive manner.

16 "Day-care center." A facility in which care is provided for  
17 seven or more children at any one time and in which the child-  
18 care areas are not being used as a family residence.

19 "Department." The Department of Public Welfare of the  
20 Commonwealth.

21 "Direct caregiving staff." Those persons who are, at a given  
22 time, providing direct care and supervision to children,  
23 implementing daily program activities and interacting with the  
24 children.

25 "Drop-in care." A day-care center, group day-care home or  
26 family day-care home which provides care for less than four  
27 consecutive hours on an intermittent basis for a child that is  
28 not a relative of the caregiver.

29 "Family day-care home." A location, other than the child's  
30 own home, operated for profit or not-for-profit, in which child

1 day care is provided at any one time to four, five or six  
2 children who are not relatives of the caregiver and in which the  
3 child-care areas are being used as a family residence.

4 "Group day-care home." A facility, other than the child's  
5 own home, operated for profit or not-for-profit, in which care  
6 is provided for more than six but less than 12 children at any  
7 one time and in which the child-care areas are being used as a  
8 family residence.

9 "Night-care program." A day-care center, group day-care home  
10 or family day-care home providing care for any child between the  
11 hours of 7 p.m. and 7 a.m.

12 "Provider." A public or private organization or individual  
13 who, for profit or not-for-profit, delivers day-care services  
14 for children either directly or through contract.

15 "Relative." A parent, child, stepparent, stepchild,  
16 grandparent, grandchild, mother, sister, half-brother, half-  
17 sister, aunt, uncle, niece or nephew.

18 "Secretary." The Secretary of Public Welfare of the  
19 Commonwealth.

20 "Subsidized child day care." A child day-care service for  
21 eligible children, paid for in part or in full with State money  
22 or Federal money, or both.

23 Section 5. General requirements for a license to offer child  
24 day care.

25 (a) General rule.--A person who offers child day care that  
26 meets the definition of a family day-care home, a group day-care  
27 home or a day-care center shall have a valid, current license  
28 from the department.

29 (b) Issuance.--The department shall issue a license, and  
30 shall keep a record of the application and license, when, after

1 investigation, the department is satisfied of the following:

2 (1) The applicant or applicants for a license are  
3 responsible persons.

4 (2) The place to be used as a family day-care home,  
5 group day-care home or day-care center is suitable for the  
6 purpose and is properly equipped and staffed.

7 (3) The applicant or applicants, the employees and the  
8 location to be used for child day care meet all the  
9 requirements of this act and of applicable statutes,  
10 ordinances and regulations.

11 (c) Provisional license.--When there has been substantial  
12 but not complete compliance with all the applicable statutes,  
13 ordinances and regulations and when the applicant has taken  
14 appropriate steps to correct deficiencies, the department shall  
15 issue a provisional license for a specified period of not more  
16 than six months which may be renewed three times. Upon full  
17 compliance, a regular license shall be issued immediately.

18 (d) Limitations on license.--All licenses issued by the  
19 department under this act shall expire one year next following  
20 the day on which issued, shall be on a form prescribed by the  
21 department, shall not be transferable, shall be issued only to  
22 the person for the premises and for the family day-care home,  
23 group day-care home or child day-care center named in the  
24 application and shall specify the maximum number of children who  
25 may be cared for at that location at any one time. The license  
26 shall at all times be posted in a conspicuous place on the  
27 applicant's premises.

28 (e) Investigations.--

29 (1) For the purpose of determining the suitability of  
30 the applicants and of the premises or whether or not any

1 location in fact qualifies as a location for a family day-  
2 care home or group day-care home or for child day care or for  
3 determining the continuing conformity of the licensees to  
4 this act and to the applicable regulations of the department,  
5 any authorized agent of the department shall have the right  
6 to enter, visit and inspect any facility licensed or  
7 requiring a license under this act and shall have full and  
8 free access to the records of the facility and to the  
9 individuals therein and full opportunity to interview,  
10 inspect or examine such individuals.

11 (2) Every person licensed under this act shall keep such  
12 records and make such reports as are required by the  
13 department.

14 (f) Unannounced inspection.--Each calendar year, the  
15 department shall conduct at least one unannounced inspection of  
16 every child day-care program requiring a license under this act.

17 (g) Regulatory power to department for licensing.--The  
18 department shall be authorized and empowered to adopt  
19 regulations establishing minimum licensing standards for staff  
20 to child ratios, for qualifications and training of staff,  
21 including direct care staff, and for program, buildings,  
22 equipment and operation.

23 (1) In developing regulations pursuant to this  
24 subsection, the department shall use nationally recognized  
25 standards and criteria as minimum guidelines for licensing  
26 Pennsylvania child day-care programs.

27 (2) Parents of children receiving child day-care  
28 services, as well as for-profit and not-for-profit child day-  
29 care providers in all settings, shall be consulted in  
30 developing regulations.

(3) The regulations shall address standards for programs serving children with disabilities, sick care, night care, direct-care staff training, and extended school day-care programs.

(4) The regulations shall address dual licensure of programs and coordination with the Department of Education and federally funded Head Start programs.

(h) Fee.--The department shall require an annual application fee for each applicant requesting a license, except that no employer shall be required to pay an application fee for child day care subsidized by the employer primarily for his or her employees. The fees shall be as follows:

| Facility              | Annual Application Fee |
|-----------------------|------------------------|
| Family day-care home  | \$ 5                   |
| Group day-care home   | \$10                   |
| Child day-care center | \$25                   |

(i) Violations.--Whenever the department, upon inspection or investigation, learns of a violation of this act or of regulations adopted by the department pursuant to this act, it shall notify the offending person in writing. The notice shall require the offending person to take action to bring the child day-care program into compliance with this act or the relevant regulations within a specified time.

(j) Denial of license.--

(1) The department shall refuse to issue a license or shall revoke a license for any of the following reasons:

(i) Violation of or noncompliance with the provisions of this act or regulations pursuant thereto.

(ii) Fraud or deceit in obtaining or attempting to obtain a license.

1 (iii) Lending, borrowing or using the license of  
2 another, or in any way knowingly aiding or abetting the  
3 improper granting of a license.

4 (iv) Gross incompetence, negligence or misconduct in  
5 operating the facility.

6 (v) Mistreating or abusing children cared for in the  
7 program.

8 (2) If the department revokes or refuses to issue a  
9 license, it shall give written notice thereof by certified  
10 mail. Such notice shall specify the reason for the refusal or  
11 revocation.

12 (k) Fine.--A person operating a child day-care program in  
13 this Commonwealth without a license required by this act shall  
14 be assessed a fine of \$500. If after 14 days a provider of child  
15 day care cited for operating without a license fails to file an  
16 application for a license, the department shall assess an  
17 additional \$20 per child for each day in which the child day-  
18 care program fails to make such application.

19 (l) Appeal of fine.--A provider charged with violations of  
20 this act shall have 30 days to pay the assessed penalty in full.  
21 If the provider wishes to contest either the amount of the  
22 penalty or the fact of the violation, the party shall forward  
23 the proposed amount to the secretary for placement in an escrow  
24 account with the State Treasurer.

25 (1) If through administrative hearing or judicial review  
26 of the fine it is determined that no violation occurred or  
27 that the amount is less than the amount required to be  
28 forwarded by the provider, the secretary shall remit the  
29 appropriate amount to the provider within 30 days, together  
30 with any interest accumulated on that amount by the escrow



1 deposit.

2 (2) Failure to forward the payment to the secretary  
3 within 30 days shall result in a waiver of rights to contest  
4 the fact of the violation or the amount of the penalty. The  
5 amount assessed after administrative hearing or a waiver of  
6 the administrative hearing shall be payable to the  
7 Commonwealth of Pennsylvania and shall be collectible in the  
8 manner provided by law for the collection of debts. If a  
9 provider liable to pay a penalty neglects or refuses to pay  
10 it after demand, failure to pay shall constitute a judgment  
11 in favor of the Commonwealth in the amount of the fine,  
12 together with the interest and any costs that may accrue.

13 (3) Fees or fines collected by the department from  
14 providers shall be placed in a special restricted receipt  
15 account and shall be used to provide technical assistance to  
16 providers to meet standards for child day care and to improve  
17 the quality of care provided in child day-care programs.

18 (m) Injunctive relief.--

19 (1) If a person, whether a licensee or not, violates the  
20 laws of this Commonwealth pertaining to the licensing of  
21 child day care or the rules and regulations adopted under  
22 this act, the department, upon advice of the Attorney  
23 General, may maintain an action in the name of the  
24 Commonwealth for an injunction or other process restraining  
25 or prohibiting such person from engaging in such activity. An  
26 action authorized under the provisions of this act shall be  
27 instituted in the court of common pleas in the county where  
28 the alleged unauthorized activity is committed.

29 (2) If the department refuses to grant or renew a  
30 license or revokes a license required by law to operate or

1 provide child day-care services, or orders a person to  
2 refrain from conduct violating the rules and regulations  
3 under this act, and the person deeming himself aggrieved by  
4 the denial appeals the action of the department, the court  
5 may issue, while the appeal is pending, a restraining order  
6 or injunction upon proof that the well-being and safety of  
7 the children would be harmed.

8 (3) If a person who is denied a license to operate or  
9 conduct child day-care programs or who has been ordered to  
10 refrain from conduct which violates the rules and regulations  
11 under this act fails to appeal, or if the appeal is decided  
12 finally in favor of the department, then the court shall  
13 issue a permanent injunction upon proof that the person is  
14 operating a child day-care program without a license as  
15 required by law or has continued to violate the rules and  
16 regulations of the department.

17 Section 6. Subsidized child day care.

18 (a) General rule.--In order to assure that safe affordable  
19 child day care is available to low-income families, the  
20 department shall provide a subsidy for children in licensed  
21 child day-care programs to enable the parents and caretakers of  
22 children to work or receive vocational training. Subsidized  
23 child day care shall be provided only to families determined  
24 eligible and only up to the limits of available subsidized child  
25 day-care funding.

26 (b) Program objectives.--The program and service goals of  
27 the child day-care subsidy shall be to:

28 (1) Maintain a safe and healthful environment for  
29 subsidized children that permits them to achieve their  
30 maximum developmental potential.

1           (2) Assist families in achieving a functional level  
2 which supports the growth and development of their children.

3           (3) Enable low-income parents and caretakers to work or  
4 receive vocational training to maximize and maintain their  
5 independence.

6           (c) Eligibility.--A family's eligibility for subsidized  
7 child day-care service depends on the following requirements:

8           (1) The family must reside in this Commonwealth.

9           (2) The family must meet income requirements as  
10 established by the department's regulations, consistent with  
11 the requirements of this act.

12           (3) The caretaker in the family must be working at least  
13 20 hours a week or be in an approved vocational training  
14 program.

15           (4) In families with two caretakers, each must be  
16 working 20 hours a week or more or be in an approved  
17 vocational training program, or one caretaker must have a  
18 permanent disability.

19           (5) A parent must need child day-care service three or  
20 more days a week.

21           (6) The children for whom service is needed may be  
22 served only from birth to the end of the summer following the  
23 school year during which the child reached his or her 12th  
24 birthday, or, if the child is physically or mentally  
25 disabled, his or her 16th birthday.

26           (d) Provider eligibility.--Prior to receiving a subsidy for  
27 an eligible child, a provider shall agree to the following  
28 conditions for participation in the subsidized child day-care  
29 system:

30           (1) The provider shall have a valid, current child day-

1 care license and comply with local and State law as  
2 appropriate.

3 (2) The provider shall agree to complete forms and  
4 maintain records as required by the department for licensing  
5 and receiving a child day-care subsidy.

6 (3) The provider shall not charge a fee for subsidized  
7 children in excess of the fee required by a sliding fee scale  
8 adopted by the department.

9 (4) The provider shall accept any eligible child when  
10 the provider has space available.

11 (5) A provider may terminate service to an eligible  
12 child only under the following circumstances:

13 (i) The department is unable to fulfill its  
14 financial commitment to the provider.

15 (ii) A provider's program is no longer appropriate  
16 for a child who has been receiving service because of a  
17 change in the child's age or level of development.

18 (iii) A parent has failed to pay fees, if required,  
19 on a timely basis or otherwise fulfill the requirements  
20 of client responsibility established by the department by  
21 regulation and uniformly enforced.

22 (e) Duties of department.--The department shall:

23 (1) Publish regulations to implement the provisions and  
24 requirements of this section.

25 (2) Establish eligibility guidelines for receiving  
26 benefits under this section.

27 (3) Establish a sliding fee schedule for parents for  
28 subsidized child day care.

29 (4) Establish fees for providers for services to  
30 eligible children using the following guidelines:

1           (i) The fees shall be related to the age of the  
2           child, the type of day-care setting and the costs of  
3           providing child day care in a given market area.

4           (ii) The fees shall be revised and adjusted annually  
5           to assure that quality child day care is available to  
6           eligible children.

7           (5) Establish an organized system of subsidized child  
8           day care through contracts with providers that meet the  
9           provider eligibility requirements of this act. Upon receipt  
10          of an application from county government, the department may  
11          subcontract for certain subsidized child day-care management  
12          functions. Delegation of child day-care management functions  
13          shall occur only under the following circumstances:

14          (i) The county has applied to become a local  
15          management agency either directly or on behalf of a  
16          qualified agency.

17          (ii) The county has established its ability to  
18          administer and monitor an organized system of subsidized  
19          day care for eligible providers.

20          (iii) The county has established that transfer of  
21          responsibility from the department to the county or  
22          qualified agency designated by the county will not  
23          disrupt child day care received by eligible children and  
24          families in service.

25          (iv) The county has established that it can maintain  
26          the same level of service to eligible children in the  
27          county as provided by the department through direct  
28          contacts with providers.

29          (6) Establish an appeal procedure for families and  
30          providers.

1           (7) Provide for service alternatives for eligible  
2 families who request an alternative provider, setting or  
3 location for subsidized child day care for their child or  
4 children.

5 Section 7. Enforcement.

6       The department shall promulgate rules and regulations to  
7 carry out this act within 12 months of its passage; however,  
8 there shall be no disruption of the department's current  
9 responsibility to license or register child day-care programs or  
10 manage a subsidized child day-care program consistent with  
11 existing laws and regulations.

12 Section 8. Repeals.

13       Articles IX and X of the act of June 13, 1967 (P.L.31,  
14 No.21), known as the Public Welfare Code, are repealed insofar  
15 as they relate to licensing child day care.

16 Section 9. Effective date.

17       This act shall take effect January 1, 1990.