

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2480

Session of
1990

INTRODUCED BY STUBAN, JAROLIN, STISH, KASUNIC, HALUSKA, DALEY,
STAIRS, PETRARCA, KONDRICH, CARLSON, F. TAYLOR, WILLIAMS,
LEVANSKY, PHILLIPS, BOWLEY, OLASZ, LaGROTTA, MARKOSEK,
BISHOP, BORTNER, BLACK, SEMMEL, ARGALL, S. H. SMITH, TELEK,
D. F. CLARK AND ANGSTADT, APRIL 23, 1990

AS REPORTED FROM COMMITTEE ON YOUTH AND AGING, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 24, 1990

AN ACT

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

4 TABLE OF CONTENTS

5 Section 1. Short title.

6 Section 2. Definitions.

7 Section 3. Operation and maintenance without license
8 prohibited.

9 Section 4. License.

10 Section 5. Interim license.

11 Section 6. Provisional license.

12 Section 7. Term and content of license.

13 Section 8. Right to enter and inspect.

14 Section 9. Records.

15 Section 10. Regulations.

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

1 Section 12. Violation; penalty.
2 Section 13. Actions against unlicensed older adult daily living
3 centers.
4 Section 14. Actions against violations of laws and rules and
5 regulations.
6 Section 15. Jurisdiction.
7 Section 16. Injunction or restraining order when appeal is
8 pending.
9 Section 17. Injunction or restraining order when no appeal is
10 pending.
11 Section 18. Search warrants.
12 Section 19. Bonds and costs.
13 Section 20. Law supplementary.
14 Section 21. Repeals.
15 Section 22. Effect on issued certificates.
16 Section 23. Effective date.

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

19 Section 1. Short title.

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

22 Section 2. Definitions.

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

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

28 "Older adult daily living center." Any premises operated for
29 profit or not-for-profit in which older adult ~~day-care~~ DAILY
30 LIVING services are simultaneously provided for four or more

<—

1 adults who are not relatives of the operator.

2 "Older adult daily living services." Services provided OR <—
3 ARRANGED for part of a 24-hour day to ~~meet the personal care~~ <—
4 ~~needs, excluding skilled care~~ ASSIST IN MEETING THE NEEDS, <—
5 INCLUDING, BUT NOT LIMITED TO, PERSONAL CARE, SOCIAL,
6 NUTRITIONAL, HEALTH AND EDUCATIONAL NEEDS, of persons who are
7 predominantly 60 years of age or older or who are under 60 years
8 of age but who have a dementia-related disease, such as
9 Alzheimer's disease, as a primary diagnosis. THE TERM DOES NOT <—
10 INCLUDE SERVICES PROVIDED FOR PERSONS WHOSE NEEDS ARE SUCH THAT
11 THEY CAN ONLY BE MET IN A LONG-TERM CARE FACILITY OR ON AN
12 INPATIENT BASIS RECEIVING PROFESSIONALLY SUPERVISED NURSING CARE
13 AND RELATED MEDICAL AND OTHER HEALTH SERVICES.

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

17 ~~"Skilled care." Professionally supervised nursing care and~~ <—
18 ~~related medical and other health services provided for a period~~
19 ~~exceeding 24 hours to an individual not in need of~~
20 ~~hospitalization, but whose needs are such that they can only be~~
21 ~~met in a long term care facility on an inpatient basis, and who~~
22 ~~needs the care because of age, illness, disease, injury,~~
23 ~~convalescence or physical or mental infirmity. The term includes~~
24 ~~the provision of daily inpatient services that are needed on a~~
25 ~~daily basis by the patient, ordered by a physician, which~~
26 ~~require the skills of and are furnished directly by or under the~~
27 ~~supervision of technical or professional personnel, such as, but~~
28 ~~not limited to, registered nurses, licensed practical nurses,~~
29 ~~physical therapists, occupational therapists, speech~~
30 ~~pathologists or audiologists. The care would include skilled~~

1 ~~nursing, skilled rehabilitation or a personal care service that~~
2 ~~because of a special medical complication of the patient require~~
3 ~~that the personal care services be performed by or under the~~
4 ~~direct supervision of skilled nursing or rehabilitative~~
5 ~~personnel.~~

6 Section 3. Operation and maintenance without license
7 prohibited.

8 No person shall maintain, operate or conduct any older adult
9 daily living center without having a license issued by the
10 department.

11 Section 4. License.

12 (a) General rule.--The department shall, after an
13 investigation and after a departmental determination that the
14 applicant complies with the provisions of this section, ~~issued~~ <—
15 ISSUE to any applicant a license to operate an older adult daily <—
16 living center.

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

20 (1) The applicant for a license is ~~responsible~~ A <—
21 RESPONSIBLE PERSON.

22 (2) The place to be used as a facility is suitable for
23 the purpose.

24 (3) The facility is appropriately equipped.

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

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

30 (D) COOPERATION WITH DEPARTMENT OF PUBLIC WELFARE.--IT IS <—

1 THE INTENT OF THE GENERAL ASSEMBLY TO EMPOWER THE DEPARTMENT TO
2 LICENSE AND REGULATE OLDER ADULT DAILY LIVING CENTERS WHICH
3 PROVIDE A PROGRAM OF ACTIVITIES IN A PROTECTED, NONRESIDENTIAL
4 ENVIRONMENT TO ADULTS WHO ARE FUNCTIONALLY IMPAIRED BUT ARE
5 CAPABLE OF MAINTAINING INDEPENDENCE WITHIN THE COMMUNITY. THE
6 DEPARTMENT SHALL COORDINATE WITH THE DEPARTMENT OF PUBLIC
7 WELFARE TO REGULATE FACILITIES IN THOSE LIMITED CASES WHERE THE
8 FACILITY PROVIDES SERVICES TO PERSONS UNDER THIS ACT AND TO
9 PERSONS WHO RECEIVE SERVICES UNDER ARTICLES IX AND X OF THE ACT
10 OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE PUBLIC WELFARE
11 CODE.

12 Section 5. Interim license.

13 The department shall have the power to issue an interim
14 license, not exceeding six months, to an applicant seeking to
15 operate an older adult daily living center for the first time at
16 a specified location. The department may issue such license when
17 it is satisfied that the applicant is suitable, the premises are
18 safe and the applicant is likely to substantially comply with
19 applicable regulations prior to expiration of the interim
20 license. Interim licenses shall not be renewable.

21 Section 6. Provisional license.

22 When there has been substantial but not complete compliance
23 with all the applicable statutes, ordinances and regulations and
24 when the applicant has taken appropriate steps to correct
25 deficiencies, the department shall issue a provisional license,
26 not exceeding six months, which may be renewed two times. Upon a
27 departmental determination of full compliance, a regular license
28 shall be issued immediately.

29 Section 7. Term and content of license.

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

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

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

(3) Not be transferable.

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

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

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

Section 8. Right to enter and inspect.

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

(b) Conferences.--An authorized agent of the department shall also confer with the operators of facilities regarding the minimum standards of the department, encourage the adoption of higher standards and recommend methods of improving care and services.

Section 9. Records.

Every person licensed under this act to maintain, operate and conduct a facility shall keep such records and make such reports

1 as are required by the department.

2 Section 10. Regulations.

3 The department shall promulgate regulations to establish
4 minimum standards for building, equipment, operation, care,
5 program and services, to provide for the issuance of licenses
6 and for the licensing appeal process, and to establish and
7 collect fees to offset the cost of issuing licenses.

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

9 (a) Appeal.--Any applicant refused a license by the
10 department shall be prohibited from conducting an older adult
11 daily living center under this act. Any appeal of that
12 determination may be made to the department but in no event may
13 an applicant commence providing older adult daily living
14 services prior to licensure by the department. The court shall
15 enjoin, upon proof by the department, any activity by an
16 applicant refused a license pursuant to this subsection.

17 (b) Notice of violation.--Whenever the department, upon
18 inspection or investigation, learns of a violation of this act
19 or of regulations adopted by the department pursuant to this
20 act, it shall give written notice thereof to the offending
21 person. The notice shall require the offending person to take
22 action to bring the facility into compliance with this act or
23 with the relevant regulations within a specified time.

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

27 (1) Violation of or noncompliance with the provisions of
28 this act or the regulations.

29 (2) Fraud or deceit in obtaining or attempting to obtain
30 a license.

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

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

6 (5) Mistreating or abusing individuals cared for in the
7 facility.

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

12 Section 12. Violation; penalty.

13 Any person operating a facility within this Commonwealth
14 without a license required by this act commits a summary offense
15 and shall, upon conviction, be sentenced to pay a fine of not
16 less than \$50 nor more than \$300, and costs of prosecution, and
17 in default of the payment thereof to undergo imprisonment for
18 not less than ten days nor more than 30 days. Each day of
19 operating a facility without a license required by this act
20 shall constitute a separate offense.

21 Section 13. Actions against unlicensed older adult daily living
22 centers.

23 Whenever a license is required by law for the establishment,
24 operation or conduct of an older adult daily living center, the
25 department, upon advice of the Attorney General, may maintain an
26 action in the name of the Commonwealth for an injunction or
27 other process restraining or prohibiting any person from
28 establishing, conducting or operating any older adult daily
29 living center during any period after a license to engage in
30 such activity has been refused, has not been renewed or has been

1 revoked by the department.

2 Section 14. Actions against violations of laws and rules and
3 regulations.

4 Whenever any person, regardless of whether such person is a
5 licensee, has violated the laws of this Commonwealth pertaining
6 to the licensing of an older adult daily living center or the
7 rules and regulations adopted pursuant to such laws by the
8 department, the department, upon the advice of the Attorney
9 General, may maintain an action in the name of the Commonwealth
10 for an injunction or other process restraining or prohibiting
11 such person from engaging in such activity.

12 Section 15. Jurisdiction.

13 An action authorized under the provisions of this act shall
14 be instituted in the Commonwealth Court or court of common pleas
15 in the county where the alleged unauthorized activity is
16 committed.

17 Section 16. Injunction or restraining order when appeal is
18 pending.

19 Whenever the department has refused to renew a license or
20 revoked a license required by this act or has ordered the person
21 to refrain from conduct violating the rules and regulations of
22 the department and the person has appealed the action of the
23 department, the court shall, during pendency of the appeal,
24 issue a restraining order or injunction upon proof by the
25 department that the operation of the older adult daily living
26 center or its failure to comply with the order of the department
27 is a threat to the well-being and safety of the adults attending
28 the older adult daily living center.

29 Section 17. Injunction or restraining order when no appeal is
30 pending.

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

11 Section 18. Search warrants.

12 Upon a showing of reasonable cause to suspect that specified
13 premises are being used in violation of any provision of this
14 act or regulations adopted pursuant thereto, any district
15 justice in the district wherein the premises are located shall
16 issue an administrative search warrant to any authorized agent
17 of the department, identifying the premises to be searched, the
18 scope of the search and the hours during which the search may be
19 conducted.

20 Section 19. Bonds and costs.

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

23 Section 20. Law supplementary.

24 No action brought under the provision of this act shall
25 prevent the prosecution or institution of any civil or criminal
26 action otherwise provided by law for violation of any law
27 providing for licensing or departmental rules or regulations
28 promulgated thereunder.

29 Section 21. Repeals.

30 ~~All acts and parts of acts~~ ARTICLES IX AND X OF THE ACT OF

<—

1 JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE PUBLIC WELFARE CODE,
2 are repealed insofar as they are inconsistent with this act.

3 Section 22. Effect on issued certificates.

4 Any certificate of compliance issued by the Department of
5 Public Welfare with an effective date prior to January 1, 1991,
6 shall remain in effect until the expiration of ~~the current~~ THAT <—
7 certificate of compliance unless a ~~new certificate of compliance~~ <—
8 LICENSE is issued by the Department of Aging prior to the <—
9 expiration of the ~~current~~ certificate of compliance. <—

10 Section 23. Effective date.

11 This act shall take effect January 1, 1991.