

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2700 Session of  
2000

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REFERRED TO COMMITTEE ON AGING AND YOUTH, AUGUST 2, 2000

AN ACT

1 Relating to assisted living; promoting availability of  
2 affordable and safe assisted living services; and making  
3 repeals.

4 The General Assembly finds and declares as follows:

5 (1) Assisted living is an integral part of the continuum  
6 of long-term care and the availability of long-term care  
7 options must be increased to meet the growing demand. The  
8 General Assembly is committed to ensuring that all citizens  
9 have access to services that encourage and support  
10 individuals to live independently, provide individuals with  
11 privacy and dignity, support individuals living in the  
12 residential environment of their choice, promote the

1 integration of individuals into the community and  
2 participation in mainstream activities and maximize  
3 individual choice to promote and support changing needs and  
4 preferences, including the right of individuals to make  
5 decisions about their own care and to take responsibility for  
6 certain risks that may result from their decisions,  
7 consistent with the individual's capacity to make decisions  
8 and the provider's exercise of prudent risk management  
9 through negotiated risk agreements.

10 (2) This act promotes availability of affordable and  
11 safe assisted living services, makes such services available  
12 in a variety of housing settings and directs the Department  
13 of Health, Department of Public Welfare and Department of  
14 Aging to take necessary steps for the development and  
15 availability of such services.

16 (3) Adequate and accurate information about assisted  
17 living is essential for consumers. This act creates a clear  
18 and flexible statutory structure for assisted living to meet  
19 the needs of elderly persons and persons with disabilities of  
20 all income levels, regardless of payment source.

21 (4) Nationally and in this Commonwealth, a general  
22 concept of assisted living has emerged in recent years as an  
23 important link in the continuum of care for the elderly and  
24 adults with disabilities.

25 (5) Consumers needing assistance with activities of  
26 daily living prefer to age in place in a residential setting  
27 of their choice, supported by self-directed services  
28 responsive to their needs.

29 (6) Numerous establishments are operating in this  
30 Commonwealth that call themselves assisted living but which

1 provide disparate services and living arrangements and which  
2 may or may not be licensed by the Commonwealth.

3 (7) Low-income elderly and adults with disabilities are  
4 largely excluded from being able to receive assisted living  
5 services and from being served in such establishments due to  
6 their inability to privately pay for them.

7 (8) Due to the lack of standardized statutory and  
8 regulatory definition and agency oversight, frail and  
9 vulnerable elderly persons and adults with disabilities are  
10 confused by the many terms and names to promote adult  
11 residential services and are at risk.

12 (9) The Intra-Governmental Council on Long-Term Care has  
13 considered and evaluated the concept of assisted living and  
14 has recently issued a report on assisted living that includes  
15 recommendations that the Commonwealth define, license, fund  
16 and regulate assisted living services and residences.

17 (10) This act defines, licenses, funds and regulates  
18 assisted living services and assisted living residences to  
19 create a better balance of availability and public funding  
20 between institutional and community-based long-term care for  
21 the elderly and adults with disabilities.

22 The General Assembly of the Commonwealth of Pennsylvania  
23 hereby enacts as follows:

24 Section 1. Short title.

25 This act shall be known and may be cited as the Assisted  
26 Living Reform Act.

27 Section 2. 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 "Abuse." One or more of the following acts:

2 (1) infliction of injury, unreasonable confinement,  
3 intimidation or punishment with resulting physical harm, pain  
4 or mental anguish;

5 (2) willful deprivation of services by a caretaker or  
6 assisted living provider or direct service staff which are  
7 necessary to maintain physical or mental health;

8 (3) sexual harassment, rape or abuse, as defined in 23  
9 Pa.C.S. Ch.61 (relating to protection from abuse);

10 (4) exploitation by an act or a course of conduct,  
11 including misrepresentation or failure to obtain informed  
12 consent which results in monetary, personal or other benefit,  
13 gain or profit for the perpetrator or monetary or personal  
14 loss to the consumer;

15 (5) neglect of the consumer which results in physical  
16 harm, pain or mental anguish; or

17 (6) abandonment or desertion by a caretaker.

18 "Activities of daily living." Activities, including, but not  
19 limited to, eating, bathing, dressing, toileting, transferring  
20 in and out of bed or in and out of a chair and personal hygiene.

21 "Adult." A person who is 18 years of age or older.

22 "Aging in place." The process of providing increased or  
23 adjusted services to a person to compensate for the physical or  
24 mental decline that occurs with the aging process in order to  
25 maximize individual dignity and independence and permit the  
26 person to remain in a familiar, residential environment for as  
27 long as possible. Such services may be provided through facility  
28 staff, a third party, volunteers, friends or family.

29 "Areas of severe nursing facility bed shortage." A county  
30 which has a nursing bed shortage of more than 75 beds, as

1 determined by the Department of Health.

2 "Assisted living." Those assisted living services as  
3 determined and self-directed by the consumer or legal  
4 representative that permit and assist the consumer to live in  
5 the community. The term may also include such housing assistance  
6 or residency in an assisted living residence that permits  
7 consumers to safely be supported in residences in which their  
8 independence, dignity and ability to make choices are  
9 maintained, to the extent of their capabilities.

10 "Assisted living residence." A residential setting that:

11 (1) offers, provides or coordinates a combination of  
12 personal care services, activities, 24-hour supervision and  
13 assisted living services, whether scheduled or unscheduled,  
14 and health-related services for consumers;

15 (2) has a service program and physical environment  
16 designed to minimize the need for residents to move within or  
17 from the setting to accommodate changing needs and  
18 preferences; and

19 (3) has an organized mission, service programs and a  
20 physical environment designed to maximize residents' dignity,  
21 autonomy, privacy and independence and encourages family and  
22 community involvement.

23 Costs for housing and services are independent of one another  
24 and residents may choose their service provider and the services  
25 to be provided. Living units are single occupancy, except in  
26 situations where two residents choose to share a unit, and  
27 include, at a minimum, a private bathroom, bedroom, living  
28 space, kitchenette and food preparation area and lockable door.  
29 Assisted living residences have a goal of fostering aging in  
30 place and promoting resident self-direction and active

1 participation in decision making while emphasizing an  
2 individual's privacy and dignity through negotiated risk  
3 agreements.

4 "Assisted living residency agreement." The contract or  
5 contracts between a provider and a consumer regarding the  
6 consumer's residency at the assisted living residence. The term  
7 also includes the agreement between an assisted living residence  
8 and an entity contracting for assisted living residency for the  
9 consumer using public funding.

10 "Assisted living services." A combination of supportive  
11 services, personal care services, personalized assistance  
12 services, assistive technology and health-related services  
13 designed to respond to the individual needs of those who need  
14 assistance with activities of daily living and instrumental  
15 activities of daily living. The term includes publicly funded  
16 home-based services and community-based services available  
17 through the medical assistance program and the Federal Medicaid  
18 waiver program. The term also includes State-funded options for  
19 home-based services and community-based services funded through  
20 the Pennsylvania Department of Aging as defined in this act.

21 "Assisted living services agreement." The contract or  
22 contracts between a provider and a consumer regarding the  
23 provision and the terms of assisted living services, including  
24 contracts between assisted living service providers and entities  
25 contracting for services for consumers using public funding.

26 "Assisted Living Trust Account." All funds collected from  
27 the licensure and renewal fees shall be deposited into an  
28 Assisted Living Trust Account which shall be established to fund  
29 the enforcement and oversight required under this act. All fines  
30 collected under sections 7(b) and 8(b)(4) shall also be

1 deposited into this Assisted Living Trust Account and shall be  
2 used for the same purpose.

3 "Assistive technology." Those devices and services, whether  
4 medically necessary or not, that are used to increase, maintain,  
5 or improve the functional capabilities of individuals with  
6 disabilities which may or may not be needed to permit the person  
7 to live independently. The term shall include, but not be  
8 limited to, reachers, adapted telephones, reading aides and  
9 other nonmedical devices.

10 "Cognitive support services." Services provided as part of a  
11 coordinated care plan to individuals who have memory impairments  
12 and other cognitive problems that significantly interfere with  
13 their ability to carry out activities of daily living without  
14 assistance and who require that supervision, monitoring and  
15 programming be available to them 24 hours per day, seven days  
16 per week in order for them to reside safely in the setting of  
17 their choice, including the following: assessment, health  
18 support services and a full range of dementia-capable activity  
19 programming and crisis management.

20 "Complete compliance." When there are no Class I, II or III  
21 violations, an Assisted Living Residence or Assisted Living  
22 Services Provider shall be deemed in complete compliance.

23 "Comprehensive assessment." A thorough review of a  
24 consumer's status in a number of functional areas, including a  
25 brief personal history. The term includes physical health,  
26 emotional health, cognitive functioning, physical functioning,  
27 ability to carry out activities of daily living, informal  
28 supports, environmental factors and finances. Comprehensive  
29 assessment will be completed by options or the local area agency  
30 on aging. Comprehensive assessment will only be completed where

1 a consumer needs or is contracting for personal care services  
2 from an assisted living residence or assisted living services  
3 provider.

4 "Consumer." A person who receives or is in need of assisted  
5 living services, who lives in an assisted living residence or  
6 who is in need of supportive housing to remain in the community.

7 "Coordinated care plan." A plan designed to meet a  
8 resident's individual physical, mental, assistive technology,  
9 and psychosocial needs. They are to be completed within 15 days  
10 of admission or the start of service delivery and are reviewed  
11 every 3 months and, if necessary, revised. Care planning is done  
12 by an interdisciplinary team that includes the resident, the  
13 resident's legal representative, and/or the resident's family  
14 member; and services necessary shall be provided the consumer  
15 until the plan is finalized and in operation.

16 "Direct care staff." A person who directly assists residents  
17 with activities of daily living, provides services or is  
18 otherwise responsible for the health, safety and welfare of  
19 residents.

20 "EPSDT." Early and periodic screening diagnosis and  
21 treatment which is Federally mandated and medically necessary  
22 for medical assistance beneficiaries under 21 years of age.

23 "Federally funded home and community-based services waiver  
24 slots and services." The packages of services which are  
25 federally funded, in part, pursuant to a waiver of Title XIX of  
26 the Social Security Act (42 U.S.C. § 1396 et seq.) and which are  
27 available in designated numbers to individuals eligible for  
28 Pennsylvania medical assistance who qualify for the nursing  
29 facility level of care but who elect home and community-based  
30 services in lieu of institutionalization in a nursing facility.

1 "Financial management." A service provided by a  
2 representative payee or a guardian or power of attorney for a  
3 consumer or when a consumer needs assistance in budgeting and  
4 spending for his or her personal needs. Where funds are kept for  
5 the consumer by one of these people, written receipts must be  
6 obtained for all cash disbursements, including those to the  
7 consumer.

8 "Health Choices." The Pennsylvania medical assistance  
9 mandatory managed care program.

10 "Home Health Care." Intermittent or part-time nursing  
11 services or other therapeutic services furnished by a home  
12 health agency lawfully permitted to do so.

13 "Immobile person." An individual who is unable to move from  
14 one location to another or who has difficulty in understanding  
15 and carrying out instructions without the continual and full  
16 assistance of other persons or who is incapable of independently  
17 operating a device such as a wheelchair, prosthesis, walker or  
18 cane to exit a building.

19 "Instrumental activities of daily living." The term  
20 includes, but is not limited to, meal preparation, taking  
21 medication, using the telephone, handling finances, banking and  
22 shopping, light housekeeping, heavy housekeeping and getting to  
23 appointments.

24 "Legal representative." A person duly authorized by law to  
25 take certain action on behalf of a consumer, including, but not  
26 limited to, legal counsel, a court-appointed guardian, an  
27 attorney-in-fact under a durable power of attorney, an agent  
28 under a health care proxy or a representative payee, a spouse or  
29 an adult child of the consumer.

30 "Living unit." A room, apartment, cottage or other self-

1 contained unit which need not be shared except by choice of the  
2 resident and which is capable of being locked by the resident  
3 and which has its own bathroom, including a toilet, sink, shower  
4 or bath; its own kitchenette or food preparation area, including  
5 counter space, microwave, refrigerator, cabinet and sink or  
6 other food provision determined by choice of the resident; its  
7 own sleeping area and its own living area, unless adjustments  
8 have been made to accommodate persons who are significantly  
9 cognitively impaired.

10 "Long-term care nursing facility." A licensed facility that  
11 provides either skilled or intermediate nursing care or both  
12 levels of care to two or more patients unrelated to the licensee  
13 for a period exceeding 24 hours. Intermediate care facilities  
14 exclusively for the mentally retarded, commonly referred to as  
15 ICF/MR or ICF/ORC, personal care homes, domiciliary care homes  
16 and assisted living residences as defined by statute shall not  
17 be considered long-term care nursing facilities for the purpose  
18 of this act.

19 "Long-term care ombudsman." An agent of the Department of  
20 Aging who investigates and seeks to resolve complaints made by  
21 or on behalf of older individuals or adults with disabilities  
22 who are consumers of assisted living services, pursuant to  
23 section 2203-A of the act of April 9, 1929 (P.L.177, No.175),  
24 known as The Administrative Code of 1929. Complaints may relate  
25 to action, inaction or decisions of providers of assisted living  
26 services or residences, of public agencies or of social service  
27 agencies, or their representatives, which may adversely affect  
28 the health, safety, welfare, interests, preferences or rights of  
29 consumers.

30 "Managed care plan." A health care plan that uses a

1 gatekeeper to manage the utilization of health care services;  
2 integrates the financing and delivery of health care services to  
3 enrollees by arrangements with health care providers selected to  
4 participate on the basis of specific standards; and provides  
5 financial incentives for enrollees to use the participating  
6 health care providers in accordance with procedures established  
7 by the plan as is defined in section 2102 of the act of May 17,  
8 1921 (P.L.682, No.284), known as The Insurance Company Law of  
9 1921. The term includes an entity, including a municipality,  
10 whether licensed or unlicensed, that contracts with or functions  
11 as a managed care plan to provide health care services to  
12 enrollees. The term does not include ancillary service plans or  
13 an indemnity arrangement which is primarily based upon a fee for  
14 service method of payment.

15 "Medical assistance consumer." An individual who receives or  
16 is eligible to receive assisted living services through home and  
17 community-based services waivers funded by the Department of  
18 Public Welfare.

19 "Mobile person." An individual who is physically and  
20 mentally capable of vacating the home on the individual's own  
21 power or with limited assistance in the case of an emergency,  
22 including the capability to ascend or descend stairs if present  
23 on the exit path. The term includes a person who is able to  
24 effectively operate a device required for moving from one place  
25 to another and to understand and carry out instructions for  
26 vacating premises.

27 "Negotiated or shared risk." The process by which a consumer  
28 or his or her legal representative formally negotiates with  
29 assisted living providers about the risks he or she is willing  
30 to assume in providing services and in the resident's living

1 environment.

2 "Omission of a material fact." Failure to state a material  
3 fact required to be stated in any disclosure statement or  
4 filing.

5 "Options." The Long Term Care Pre-admission Assessment  
6 Program and the community services for nursing facility eligible  
7 persons administered by the Department of Aging and operated by  
8 Area Agencies on Aging.

9 "Personal care home" or "PCH." Premises on which food,  
10 shelter and personal assistance or supervision are provided for  
11 a period exceeding 24 hours for four or more adults who are not  
12 relatives of the operator, who do not require the services of a  
13 licensed long-term care nursing facility, except as provided in  
14 section 6(b), and who do require assistance or supervision in  
15 matters such as dressing, bathing, diet, financial management,  
16 evacuation of a residence in the event of an emergency or  
17 medication prescribed for self-administration.

18 "Personal care services." Assistance or supervision in  
19 matters such as dressing, bathing, diet, financial management,  
20 evacuation of the resident in the event of an emergency or  
21 medication prescribed for self-administration. For cognitively  
22 impaired individuals, personal care services shall include  
23 monitoring and routinely assessing individuals' health status  
24 with a focus on preventing unnecessary comorbidities.

25 "Providers." Individuals, organizations or entities who  
26 assume responsibility and contract with a consumer to provide  
27 assisted living services either in the consumer's home or in an  
28 assisted living residence. The term also includes individuals,  
29 organizations or entities who provide cognitive support  
30 services.

1 "Publicly funded assisted living" or "publicly funded home  
2 and community-based services." Assisted living funded through  
3 federally funded home and community-based services waiver slots,  
4 state-funded options home and community-based services slots,  
5 the supplemental security income paid to personal care boarding  
6 homes or publicly funded housing costs needed to avoid nursing  
7 facility placement as defined in section 9.

8 "Qualified couple for cost of living increase." Two  
9 qualified persons, living together, who are considered a couple  
10 under the Supplemental Security Income program, Title XVI of the  
11 Social Security Act (49 Stat. 620, U.S.C. § 301 et seq.).

12 "Qualified persons for cost of living increase." Persons  
13 meeting the nonfinancial, categorical eligibility requirements  
14 under Title XIX of the Social Security Act (49 Stat. 620, U.S.C.  
15 § 301 et seq.) as aged, blind or disabled and receiving or  
16 applying for long-term care services under a special income  
17 level.

18 "Restraint." A chemical or mechanical device used to  
19 restrict the movement or normal function of an individual or a  
20 portion of the individual's body, including geriatric chairs;  
21 posey; chest, waist, wrist or ankle restraints; locked  
22 restraints; and locked doors to prevent egress. The term does  
23 not include devices used to provide support for the achievement  
24 of functional body position or proper balance as long as the  
25 device can easily be removed by the resident.

26 "Skilled or intermediate nursing care." Professionally  
27 supervised nursing care and related medical and other health  
28 services provided directly or under the direction of the  
29 licensed entity for a period exceeding 24 hours to an individual  
30 not in need of hospitalization, but whose needs can only be met

1 in a long-term care nursing facility on an inpatient basis  
2 because of illness, disease, injury, convalescence or physical  
3 or mental infirmity. The term includes, but is not limited to,  
4 the provision of inpatient services that are needed on a daily  
5 basis by the resident, ordered by and provided under the  
6 direction of a physician, which require the skills of  
7 professional personnel, such as registered nurses, licensed  
8 practical nurses, physical therapists, occupational therapists,  
9 speech pathologists or audiologists.

10 "State-funded assisted living." State-funded options home  
11 and community-based services or publicly funded housing needed  
12 to avoid nursing facility placement as described in section  
13 5(o).

14 "State-funded options home and community-based services  
15 slots" and "State-funded home and community-based services."  
16 Packages of services funded without Federal money which are  
17 available in designated budgeted numbers to individuals with  
18 incomes under 400% of the Federal Supplemental Security Income  
19 (SSI) level who qualify for the nursing facility level of care.

20 "Substantial compliance." When there are no Class I or II  
21 violations and the number and nature of individual Class III  
22 violations when considered together do not comprise a  
23 substantial adverse risk to health, safety and well-being, an  
24 assisted living residence or assisted living services provider  
25 shall be deemed to be in substantial compliance.

26 Section 3. Assisted living services and residences authorized.

27 Assisted living services are authorized under this act  
28 subject to the standards set in section 4 and in the settings  
29 authorized under section 5. Not included in this act are adult  
30 residential facilities administered, approved and/or licensed by

1 agencies whose primary purpose is related to mental health,  
2 mental retardation or drug and alcohol.

3 Section 4. Standards for assisted living services.

4 The following standards for assisted living services shall  
5 apply:

6 (1) Assisted living encourages and supports individuals  
7 to live independently in the residential environment of their  
8 choice with privacy and dignity.

9 (2) Assisted living promotes integration of individuals  
10 into the community and participation in the mainstream of  
11 activities.

12 (3) Assisted living maximizes consumer choice to promote  
13 and support the consumer's changing needs and preferences.  
14 Consumer choice includes the right of individuals to make  
15 decisions about their own care and to take responsibility for  
16 certain risks that may result from their decisions,  
17 consistent with the individual's capacity to make decisions  
18 and the provider's exercise of prudent risk management  
19 through negotiated assisted living service and/or residency  
20 agreements.

21 (4) Assisted living services must be consumer oriented  
22 and meet professional standards of quality.

23 Section 5. Assisted living services.

24 (a) Licensure requirements.--An entity not already licensed  
25 by the Department of Health that either coordinates and provides  
26 or coordinates and subcontracts for assisted living services for  
27 payment must be licensed by the Department of Health as an  
28 assisted living service provider before it can and for so long  
29 as it does provide such services to call itself an assisted  
30 living provider or to otherwise hold itself out as providing

1 assisted living services. State-designated agency programs, such  
2 as Area Agencies on Aging and centers for Independent Living,  
3 guardians and family members and low-income housing as is  
4 described in section 9(b) are entities which are exempt from  
5 this requirement. Other entities providing separate components  
6 of assisted living services must be licensed by the appropriate  
7 authority to provide that care, as is required by law. Complete  
8 compliance with all regulations, including all training  
9 requirements, is required prior to licensure. Applications for  
10 licensure as an assisted living service provider shall include a  
11 fee of \$300 payable to the Commonwealth which shall be deposited  
12 into the Assisted Living Trust Account. Applications for bi-  
13 annual renewal of licensure shall include a fee of \$150 payable  
14 to the Commonwealth which shall be deposited into the Assisted  
15 Living Trust Account.

16 (b) Agreement.--All assisted living services provided by  
17 licensed assisted living service providers shall be provided  
18 pursuant to an assisted living service agreement. The Department  
19 of Health shall ensure the adequate staffing and training of  
20 personnel at the State, regional and county level necessary to  
21 adequately inspect assisted living residences and monitor and  
22 enforce final rules and regulations adopted by the Department of  
23 Health.

24 (c) Disclosure.--The Department of Health shall require full  
25 and fair advance disclosure of all terms and conditions of the  
26 provider-consumer assisted living services agreement to all  
27 consumers, including those whose services are publicly funded.  
28 Omission or misrepresentation of a material fact in the  
29 disclosure shall be a complete defense for the consumer against  
30 any claims for payment by the provider.

1 (d) Outcome measures.--The Department of Health shall  
2 establish outcome measures which shall include consumer  
3 satisfaction, quality of life and other measures consistent with  
4 the standards set forth in section 4(a) to utilize in oversight  
5 of entities with assisted living licenses.

6 (e) Regulations.--The Department of Health shall promptly  
7 develop regulations which shall apply to all assisted living  
8 services licensed providers without regard to whether their  
9 services are publicly funded. The regulations shall reflect the  
10 importance of the consumer in determining quality and shall set  
11 forth standards for shared risk consistent with this act. The  
12 regulations shall also require assisted living providers to  
13 submit information for the long-term care data base as is set  
14 forth in section 10.

15 (f) Services available.--Consumers who receive assisted  
16 living services may utilize the services of the Department of  
17 Aging Ombudsperson Program and the Department of Health's Long-  
18 Term Care 24-Hour Complaint Hot Line and shall be so notified in  
19 writing at the outset of their assisted living services  
20 agreement and then annually in writing by those providing  
21 assisted living services. Assisted living residences must  
22 prominently display notice of the availability of these services  
23 in common areas of the assisted living residence.

24 (g) Assisted living services.--Publicly funded assisted  
25 living services shall follow the individual to his/her residence  
26 of choice. Whether public payment is made in the form of  
27 subsidies to the individual or payment to the provider will  
28 depend on the circumstances and the funding constraints, but  
29 preference should be to empower the individual whenever  
30 possible.

1 (h) Medical assistance.--Assisted living services funded by  
2 the Pennsylvania Medical Assistance program shall be provided  
3 via federally funded home and community-based services slots.

4 (i) Limitation.--To provide the funds necessary to enhance  
5 the ability of Medical Assistance beneficiaries to receive  
6 assisted living services in locations other than nursing  
7 facilities, until section 5(j) is implemented, the Secretary of  
8 Public Welfare may only approve medical assistance payment of  
9 capital costs for new nursing facility beds or enter into new  
10 medical assistance provider agreements with nursing facilities  
11 in areas of severe nursing facility bed shortage. Although an  
12 adequate supply of nursing facility beds needs to be part of the  
13 continuum of long-term care services available to medical  
14 assistance providers, priority shall be given to creating a  
15 better balance of public funding between institutional and home  
16 and community-based services.

17 (j) Program expansion.--To expand the availability of  
18 community-based long-term care options for long-term care, the  
19 Department of Public Welfare shall undertake an expansion of  
20 publicly funded assisted living services through expansion of  
21 federally funded waiver slots. The Secretary of Public Welfare  
22 shall develop and implement a plan to provide increased access  
23 to federally funded home and community-based service slots by  
24 increasing the availability of these services by an additional  
25 5,000 slots in fiscal year 2000-2001; and by at least an  
26 additional 3,500 slots each year thereafter so that no fewer  
27 than 36,000 federally funded home and community-based waiver  
28 slots are available by fiscal year 2009-2010. These slots should  
29 be funded through intergovernmental transfers, or if these slots  
30 cannot be funded through intergovernmental transfers, then they

1 shall be funded through traditional Federal/State Medicaid  
2 funding.

3 (k) Mandatory choices.--The federally funded home and  
4 community-based services waiver slots shall, consistent with  
5 Federal cost caps, permit a medical assistance beneficiary to  
6 select from a full menu of assisted living services, including,  
7 but not limited to, cognitive support services, depending on the  
8 service needs of the consumer.

9 (l) Young adults.--The Secretary of Public Welfare shall  
10 ensure that young adults who age out of expanded EPSDT (Early  
11 and Periodic Screening Diagnosis and Treatment) services at age  
12 21 shall, consistent with Federal cost caps, have access to  
13 federally funded home and community-based waiver slots to permit  
14 them to remain at home in the community.

15 (m) Ceiling.--The financial eligibility ceiling for  
16 federally funded assisted living services shall be at 300% of  
17 the Federal SSI income level and satisfy other Department of  
18 Public Welfare income and asset requirements. If the Federal  
19 Government permits higher financial eligibility standards and  
20 the secretary determines that it would save State funding to  
21 provide federally funded assisted living services to those  
22 consumers with higher incomes as compared to the State cost of  
23 paying for that care in a nursing facility, the secretary shall  
24 seek approval from the Federal Government to increase the  
25 financial eligibility for those services.

26 (n) Criteria.--Functional eligibility criteria for federally  
27 funded assisted living services shall be measured by the same  
28 standard as is eligibility for nursing facility services.

29 (o) Assessment.--Mandatory assessment of any person who may  
30 need publicly funded nursing facility care within the next 18

1 months from the date of their admission to a long-term care  
2 facility shall be conducted by the Options Program as a  
3 condition of public funding of those services. Each person so  
4 assessed and found eligible for nursing facility care shall be  
5 provided information on the full range of long-term care options  
6 available, including assisted living services and home and  
7 community-based services. In addition, those consumers who may  
8 be eligible shall be provided with information on housing  
9 options, including the housing supplement described in section  
10 9, an SSI personal care boarding home supplement or payment for  
11 an assisted living residence to avoid nursing facility  
12 placement. If assisted living services are chosen and are  
13 available, consumers shall be given prompt assistance by their  
14 area agency on aging to put the services in place in order to  
15 avoid families turning to nursing facilities to meet the need.  
16 Options Program assessment staff shall be trained in the need,  
17 uses and benefits of assistive technology, including, but not  
18 limited to, the assistive technology options and the extent to  
19 which assistive technology can limit the need for attendant care  
20 services.

21 (p) Speed of options assessment, determination of medical  
22 assistance eligibility and receipt of assisted living  
23 services.--The General Assembly recognizes that prompt Options  
24 assessment, medical assistance eligibility determination and  
25 arrangement of home and community-based services are necessary  
26 to avoid unwanted nursing facility placement for consumers being  
27 discharged from hospitals or needing prompt assistance to remain  
28 in the community. Consumers seeking options assessment and/or  
29 determination of medical assistance eligibility shall be  
30 promptly assisted and assessed by the Options program and shall

1 have an eligibility determination made by the Department of  
2 Public Welfare within three business days of submission of the  
3 completed application containing all necessary verification. If  
4 it appears that the consumer meets or will meet the functional  
5 and financial eligibility requirement for publicly funded home  
6 and community-based services within the next 30 days, those  
7 services should be immediately arranged and provided at State  
8 cost pending final determination of eligibility. Prompt  
9 assistance with completion of the application, securing  
10 verification and provision of services based on presumptive  
11 eligibility should be given to consumers facing imminent  
12 discharge from a hospital.

13 (q) Nursing facility care.--The Secretary of Public Welfare  
14 shall require all managed care plans enrolled as medical  
15 assistance providers which participate as Health Choice  
16 providers to do the following if nursing facility care is  
17 prescribed for an enrollee:

18 (1) Arrange at once for the enrollee to be assessed by  
19 the Options program if it appears that a nursing facility  
20 admission is necessary for more than 30 days.

21 (2) If the enrollee wishes to receive federally funded  
22 home and community-based services, provide those needed  
23 services in the amount determined by the Options program if  
24 applicable, or in the amount needed to safely maintain the  
25 person in his or her residence as determined by the  
26 Department of Public Welfare until home and community-based  
27 services are in place and help arrange and coordinate those  
28 services. The department shall arrange for payment to the  
29 plans for the cost of such care not covered by the plan  
30 capitation agreement.

1           (3) If the enrollee wishes to be in a nursing facility,  
2           make all reasonable efforts to arrange placement in the  
3           nursing facility that the enrollee chooses, including  
4           offering to pay at least the medical assistance fee-for-  
5           service daily rate for the enrollee.

6           (r) Income levels.--The Department of Aging shall provide  
7           assisted living services/HCBS services for individuals found  
8           functionally eligible for nursing facility care who have incomes  
9           between 300% and 400% of the Federal SSI level, where the  
10          absence of such funding would require the person to be placed in  
11          a nursing facility at a greater cost to the State than the State  
12          cost of the assisted living services. The Department of Aging  
13          shall develop and implement a reasonable cost-sharing and  
14          sliding-scale fee schedule, not to exceed 35% of the cost of the  
15          services, for those individuals in this income level who are  
16          unable to pay the full cost of assisted living services.

17          (s) Payments.--The Department of Aging shall, consistent  
18          with funding levels, pay for assisted living services for  
19          consumers with incomes below 400% of the Federal poverty level  
20          who do not yet meet the functional definition for nursing  
21          facility placement, as determined by the Options program, but  
22          who need assistance with more than one activity of daily living,  
23          if it appears that it will be cost effective for the State to  
24          support the consumer in the community with assisted living  
25          services and prevent future nursing facility placement. In  
26          determining cost effectiveness, the Department of Aging should  
27          consider whether the consumer can be supported in the community  
28          with the consumer partially paying for the assisted living  
29          services as opposed to having the consumer's resources more  
30          quickly exhausted through payment for nursing facility care.

1 These services shall be provided based on a sliding-fee scale.

2 (t) Cost-of-living adjustments to countable resources for  
3 Medicaid eligibles.--In determining the countable resources of  
4 qualified persons for purposes of medical assistance  
5 eligibility, the Department of Public Welfare shall use a  
6 computation method which exempts an amount of otherwise  
7 countable resources which is equal to the difference between  
8 \$2000 and the amount of \$2000 multiplied by all the Social  
9 Security cost-of-living adjustments from January 1, 1990 to the  
10 present. For qualified couples, the Department of Public Welfare  
11 shall use a computation method which exempts an amount of  
12 otherwise countable resources which is equal to the difference  
13 between \$3000 and the amount of \$3000 multiplied by all the  
14 Social Security cost-of-living adjustments from January 1, 1990  
15 to present. These exempted amounts shall be adjusted annually  
16 when the new Social Security cost-of-living adjustments go into  
17 effect. In addition, if the consumer is receiving or will be  
18 receiving publicly funded assisted living services in his or her  
19 own home, he or she shall be eligible for an additional \$5,000  
20 exemption for home maintenance from otherwise countable  
21 resources.

22 (u) Case management.--The Department of Aging shall develop  
23 a process for providing each resident or recipient whose  
24 assisted living is publicly funded with a comprehensive case  
25 manager who is not an employee of or agent for the assistive  
26 living residence. Case management will also be provided to  
27 private pay residents or recipients who require assistance with  
28 three or more activities of daily living.

29 Section 6. Settings for assisted living services.

30 (a) General rule.--All assisted living services, including

1 publicly funded assisted living services, may be provided in the  
2 following settings:

- 3 (1) A consumer's home/residence.
- 4 (2) A family member's home.
- 5 (3) A friend's home.
- 6 (4) A licensed assisted living residence as defined in  
7 this act.

8 (b) Criteria.--Publicly funded assisted living services may  
9 also be provided in a personal care home (PCH) or a domiciliary  
10 care home where the Department of Aging has found that:

11 (1) The assisted living services are not required to be  
12 provided by the personal care home provider or domiciliary  
13 care home provider.

14 (2) The consumer has a choice of provider services.

15 (3) There are actually multiple providers available.

16 (4) The individual is not residing in the personal care  
17 home or domiciliary care home because he has been unable to  
18 obtain another appropriate placement.

19 (5) An outside agency, such as the Area Agency on Aging,  
20 is responsible for assessment and care management.

21 (6) The home and community-based services and the  
22 services provided by the personal care home or domiciliary  
23 care home are provided pursuant to a coordinated care plan  
24 based on the assessment and the individual needs and desires  
25 of the consumer, which are monitored by the Department of  
26 Aging.

27 (7) The waiver services supplement and do not supplant  
28 the personal care home or domiciliary care home services.

29 (8) Appropriate oversight and protections are in place,  
30 including an assessment by the Department of Aging of the

1 entity to determine capability to provide adequate care to  
2 individuals requiring higher acuity needs, including those  
3 with cognitive impairments.

4 (9) The personal care home or domiciliary care home  
5 provides consumer choice, independence, privacy and dignity  
6 to its residents.

7 (10) No restraints or locking the residents in a room or  
8 the building is permitted, under any circumstance.

9 (c) Regulations.--Within three months of the effective date  
10 of this act, the Department of Health shall determine if  
11 additional services, quality standards, staffing needs and  
12 qualifications or consumer protections need to be provided at  
13 personal care boarding homes or domiciliary care homes housing  
14 nursing facility eligible consumers, in addition to those  
15 routinely provided by the home and community-based service  
16 provider. If improvements are necessary, the Department of  
17 Health shall promptly implement regulations requiring such  
18 service requirements, standards and protections. The Department  
19 of Public Welfare shall establish a supplemental payment for  
20 personal care boarding homes reflecting the additional  
21 requirements imposed by the Department of Health for housing  
22 nursing facility eligible consumers at the personal care home.  
23 The Department of Aging shall establish a supplemental payment  
24 for domiciliary care homes reflecting the additional  
25 requirements imposed by the Department of Health for housing  
26 nursing facility eligible consumers at the domiciliary care  
27 home.

28 (d) Medical assistance consumers.--The Secretary of Public  
29 Welfare shall determine if it would be cost efficient and would  
30 further the goals of this act to permit medical assistance

1 consumers to remain in their communities, to amend the State  
2 plan to remove monthly limits on home health visits and to  
3 provide for personal care services in the menu of services  
4 available under medical assistance. The secretary shall issue a  
5 draft report for public comment within six months of the  
6 effective date of this act and provide it to the General  
7 Assembly within nine months of the effective date of this act.  
8 In so determining, the secretary shall review the experience of  
9 other states that have used these services more broadly to help  
10 Medicaid consumers remain in the community in lieu of placement  
11 in a nursing facility.

12 (e) Nursing homes.--The Department of Public Welfare shall  
13 evaluate the CCAP Nursing Home Diversification Project and  
14 develop and implement a plan within one year of the effective  
15 date of this act, which encourages nursing facilities in areas  
16 without a shortage of such facilities to take beds offline and  
17 replace them with home and community-based services and assisted  
18 living services.

19 Section 7. Assisted living residences.

20 (a) Licensure and fee requirements.--The Department of  
21 Health shall develop licensure requirements consistent with the  
22 definitions of assisted living services and assisted living  
23 residences and the assisted living standards set forth in  
24 section 4(a). Complete compliance with all regulations,  
25 including all training requirements, is required prior to  
26 licensure. A facility that is licensed as an assisted living  
27 residence need not also obtain a license as a personal care  
28 boarding home. Applications for licensure as an assisted living  
29 residence shall include a fee of:

30 (1) \$300 for residences with fewer than 10 residents,

1 with a \$150 biannual license renewal fee;  
2 (2) \$500 for residences with at least 10 but fewer than  
3 25 residents, with a \$250 biannual license renewal fee;  
4 (3) \$1000 for residences with at least 25 but fewer than  
5 100 residents, with a \$500 biannual license renewal fee; or  
6 (4) \$2000 for residences with 100 or more residents,  
7 with a \$1000 biannual license renewal feel  
8 payable to the Commonwealth which shall be deposited into the  
9 Assisted Living Trust Account.

10 (b) Unlicensed operation.--No place shall call itself an  
11 assisted living residence unless it is licensed as such. Any  
12 unlicensed residence or provider that holds itself out as an  
13 assisted living residence or purports to offer or does offer  
14 assisted living services shall be fined \$500 for each day it  
15 remains so labeled or continues to make such representations  
16 without an assisted living residence license unless otherwise  
17 exempt from such licensing requirements. The Department of  
18 Health shall seek to enjoin operation of any unlicensed  
19 residence until licensure requirements are met and license has  
20 been granted.

21 (c) Billing.--Housing services and assisted living services  
22 must be billed separately.

23 (d) Regulations.--Consistent with this act, the Department  
24 of Health shall establish health and safety regulations for  
25 assisted living residences to become effective within one year  
26 of the effective date of this act that include the following:  
27 physical accommodations and equipment, heat and air  
28 conditioning, sanitation, ventilation, lighting, communication  
29 systems, handrails and railings, indoor activity space, fire  
30 safety, staff hiring, including qualifications and background

1 checks, retention and utilization, supervision, staff training,  
2 reportable and recordable incidents, confidentiality of records,  
3 notification of rights and grievance procedures, prohibition  
4 against deprivation of rights, inspections, admissions,  
5 evictions under this section, involuntary or voluntary absence,  
6 medications, nutrition, staff health, services, residents'  
7 funds, staffing requirements and qualifications, administrator  
8 training and qualifications and other areas determined by the  
9 department.

10 (e) Restraints.--The Department of Health shall prohibit use  
11 of restraints. Restricting a person to the building or section  
12 of the building shall also be prohibited except under the  
13 following conditions:

14 (1) To restrict a consumer to the assisted living  
15 facility or a section thereof, the facility must have  
16 obtained legal authorization to do so from a court or  
17 guardian or legally responsible individual and so doing must  
18 be necessary in accordance with the coordinated care plan's  
19 identification of concerns about wandering or self-harm.

20 (2) Staff providing services to consumers who are  
21 restricted to the facility shall have completed Department of  
22 Health approved training within the current year on working  
23 with consumers who need to be so restricted.

24 (f) Written agreements.--The Department of Health shall  
25 require as a condition of licensure that all assisted living  
26 residences shall have an assisted living residence agreement in  
27 writing with each resident prior to admission, the resident's  
28 legal representative or the entity providing public funding for  
29 the consumer that in clear and simple language sets forth the  
30 following:

1           (1) The mutually agreed to acceptance of shared risk, if  
2 applicable, which is documented and made knowingly and freely  
3 and which maximizes consumer autonomy. The assisted living  
4 service provider or assisted living residence provider shall  
5 make no attempt to use the shared risk portion of the service  
6 agreement to abridge a consumer's rights, including those in  
7 section 8, or to avoid liability for harm caused to a  
8 consumer by the negligence of the assisted living provider  
9 and any such abridgment or disclaimer shall be void. If the  
10 agreement is between the entity providing public funding for  
11 the consumer, the consumer or his or her legal representative  
12 shall also sign the agreement indicating acceptance of the  
13 shared risk arrangement.

14           (2) Clear and specific occupancy criteria and  
15 procedures, including admission, transfer and right to  
16 legally enforce the terms of the agreement or of this act in  
17 eviction.

18           (3) The cost of the housing, services and any other  
19 charges and the method of payment, including the following:

20           (i) Regular and extra fees.

21           (ii) Fees and payment arrangement for any third-  
22 party providers.

23           (iii) The provision of at least 60 days' written  
24 notice of any rate increases or fee changes.

25           (iv) The minimum notification a consumer or legal  
26 representative, if the consumer is incapable of making a  
27 decision, must furnish when he or she plans to move out  
28 of the setting for reasons other than health emergencies.  
29 Notification requirements shall not exceed 60 days.

30           (v) The provisions regarding payment during

1           unavoidable or optional absences such as hospitalization,  
2           recuperation in a nursing facility or a vacation.

3           (4) A provision that consumers may void without penalty  
4           an assisted living residence agreement within 72 hours of  
5           signing. All agreements shall contain the following language  
6           prominently displayed:

7           You are not required to sign this agreement or accept  
8           this responsibility unless you wish to do so. You may  
9           change your mind within 72 hours of signing this  
10          agreement by notifying the facility that you wish to  
11          revoke this agreement. You may call the Long-Term  
12          Care Ombudsman Program at (insert telephone number  
13          here) for an explanation of your rights.

14          (5) Rights and responsibilities of the parties.

15          (6) Consumers' recourse if there are disputes or  
16          problems, including assistance from the Ombudsman Program,  
17          the Department of Health Long-Term Care Hot Line and court  
18          proceedings.

19          (g) Information to residents.--An information packet that  
20          includes the following information must be given to the consumer  
21          or the consumer's legal representative at the time of  
22          application:

23               (1) A copy of the assisted living residence's policies.

24               (2) Advance directive information including information  
25               on the right to have or not have an advance directive.

26               (3) Information regarding licensing status.

27               (4) Telephone number of the local Long-Term Care  
28               Ombudsman Program and of the Department of Health 24-hour hot  
29               line.

30               (5) A copy of the assisted living resident agreement

1 used by the assisted living residence and all rates charged.

2 (6) A copy of the internal complaint resolution  
3 mechanism used by the facility.

4 (7) A copy of the last inspection report and information  
5 on how to access prior and future inspection reports through  
6 the Department of Health.

7 (8) For consumers with Alzheimer's or dementia or where  
8 the assisted living residence holds itself out to the public  
9 as providing cognitive support services and/or housing for  
10 persons with cognitive impairments, the following shall be  
11 provided:

12 (i) The residence's written statement of its  
13 philosophy and mission that reflects the needs of  
14 individuals with cognitive impairments.

15 (ii) A description of the residence's physical  
16 environment and design features to support the  
17 functioning of adults with cognitive impairments.

18 (iii) A description of the frequency and types of  
19 individual and group activities designed specifically to  
20 meet the needs of residents with cognitive impairments.

21 (iv) A description of security measures provided by  
22 the residence.

23 (v) A description of training provided to staff  
24 regarding provision of care to consumers with cognitive  
25 impairments.

26 (vi) A description of availability of family support  
27 programs and family involvement.

28 (vii) The process used for assessment and  
29 establishment of a plan of services for the consumer,  
30 including methods by which the plan of services will

1 remain responsive to changes in the consumer's condition.

2 (h) Discharge.--

3 (1) Discharge of a consumer from an assisted living  
4 residence shall be allowed after at least 30 days' advance  
5 written notice to the consumer, his or her legally  
6 responsible party and the ombudsperson and only under the  
7 following circumstances:

8 (i) The eviction is necessary for the consumer's  
9 welfare and the consumer's needs cannot be met at the  
10 assisted living residence, even with additional assisted  
11 living services as confirmed in writing by the consumer's  
12 physician.

13 (ii) The consumer or legally responsible person has  
14 failed, after 30 days' written notice to pay for charges  
15 agreed to in the assisted living residency agreement.

16 (iii) The safety of other consumers in the assisted  
17 living residence is endangered.

18 (iv) The facility ceases to operate.

19 (v) The consumer's eviction would not put the  
20 consumer's health or safety in danger.

21 (2) A consumer shall not be discharged for exercise of  
22 his or her rights under this act or under any other Federal  
23 or State laws.

24 (3) Eviction of a consumer from an assisted living  
25 residence for one of the reasons under subsection (a) shall  
26 occur by the assisted living residence through a safe and  
27 appropriate means of discharge.

28 (i) Supplemental Security Income Recipients.--

29 (1) For residents eligible for Supplemental Security  
30 Income (SSI) benefits, actual rent and other charges shall

1 not exceed the residents' actual current monthly income  
2 reduced by a personal needs allowance for the resident in an  
3 amount to be determined by the Department of Public Welfare,  
4 but not less than \$75.

5 (2) An assisted living residence shall not seek or  
6 accept any payments from a resident who is an SSI recipient  
7 in excess of one-half of any funds received by the resident  
8 under the act of March 11, 1971 (P.L.104, No.3), known as the  
9 Senior Citizens Rebate and Assistance Act.

10 (3) An assisted living residence shall not seek or  
11 accept from a resident who is eligible for SSI benefits any  
12 payment from any funds received as lump sum awards, gifts or  
13 inheritance, gains from the sale of property or retroactive  
14 government benefits, provided, however, that an owner or  
15 operator may seek and accept payments from funds received as  
16 retroactive awards of Social Security or Supplemental  
17 Security Income (SSI) benefits, but only to the extent that  
18 the retroactive awards cover periods of time during which the  
19 resident actually resided in the assisted living residence.

20 (4) Each resident who is a recipient of, or an eligible  
21 applicant for, SSI benefits shall be provided, at no  
22 additional charge to the resident, necessary personal hygiene  
23 items and personal laundry services. This requirement does  
24 not include cosmetic items.

25 (j) Staffing.--Assisted living residences shall maintain a  
26 sufficient number of trained staff persons to provide the  
27 necessary level of care required by residents, as well as to  
28 ensure a safe and efficient evacuation of the facility in case  
29 of an emergency. The direct services staff persons who meet the  
30 training requirements and who work on the premises according to

1 a specific established schedule shall be sufficient to provide  
2 one and one-half hours per day of assisted living services to  
3 each mobile resident and three hours to each immobile resident  
4 for each resident who has contracted to receive personal care  
5 services. All assisted living services hours shall be provided  
6 during waking hours. All assisted living residences shall  
7 maintain coverage by awake, direct service staff on the premises  
8 24 hours a day. Additional staff hours, or contractual services,  
9 shall be provided as necessary to meet laundry, food service,  
10 housekeeping and maintenance needs of the assisted living  
11 residence.

12 Section 8. Requirements of all assisted living providers.

13 (a) Consumer protection.--The Department of Health shall  
14 promptly implement regulations prohibiting all assisted living  
15 providers from the following:

16 (1) Commingling consumers' personal funds with its own  
17 funds, obtaining power of attorney or guardianship from a  
18 consumer or requiring consumers to endorse checks over to the  
19 residence or provider, however, financial management by  
20 assisted living residence administrators for residents shall  
21 be permitted. The Department of Health shall develop a means  
22 of safeguarding residents' funds and requiring prompt  
23 repayment of funds that are stolen or otherwise mismanaged.

24 (2) Abusing, threatening, harassing or subjecting a  
25 consumer to corporal punishment.

26 (3) Discriminating against a consumer because of race,  
27 color, religious creed, disability, handicap, ancestry,  
28 sexual orientation, national origin, age or sex or source of  
29 payment.

30 (4) Retaliating against residents who have exercised

1 their rights under this act and the Department of Health  
2 regulations or under Federal or State law.

3 (5) Interfering with the consumer's rights to do the  
4 following:

5 (i) Leave and return to the consumer's residence,  
6 except in cases of consumers with cognitive impairments  
7 where freedom of egress could be dangerous for the  
8 consumer and the care plan allows for this restriction.

9 (ii) Receive visitors.

10 (iii) Receive or send mail.

11 (iv) Participate or refuse to participate in  
12 religious activities.

13 (v) Be unrestrained physically and chemically.

14 In addition to the requirements for assisted living residence  
15 agreements set forth in section 7, assisted living services and  
16 assisted living residence agreements shall be written in easy to  
17 understand, plain language; be available in the primary language  
18 of the consumer and in alternative formats for consumers with  
19 disabilities; contain the complete agreement between the parties  
20 thereto with no omission of material terms; use bold or larger  
21 font to make conspicuous material terms to the agreement as well  
22 as any exclusion or limitations of services from the agreement;  
23 not waive any of the requirements of this act or its  
24 regulations; state that for consumers with publicly funded  
25 assisted living services, assisted living residences or housing,  
26 the consumer is an intended third-party beneficiary of the  
27 agreement, who may seek to enforce their rights under the  
28 contract; and not be and state that it is not assignable absent  
29 consent of the consumer following full and fair disclosure and  
30 reasonable notice.

1 (b) Regulations.--The Department of Health shall establish  
2 regulations concerning training and staffing requirements for  
3 assisted living providers, including administrators for a  
4 minimum of 75 hours and for a minimum of 40 hours for direct  
5 care staff, as follows:

6 (1) Administrators and direct care staff must be  
7 educated and trained in matters relating to dementia,  
8 including normal aging, cognitive, psychological, and  
9 functional abilities of older persons; definition and  
10 diagnosis of dementia, description of reversible and  
11 irreversible causes, and explanations of differences between  
12 dementia, delirium and depression; explanation of dementia  
13 and related disorders, progression, stages and individual  
14 variability; communications techniques; description of  
15 behavioral symptoms of dementia and how to approach residents  
16 when they display challenging behaviors including conflict  
17 avoidance and conflict resolution techniques; the role of  
18 personality, culture and environmental factors in behavioral  
19 symptoms and dementia care; the assisted living residence  
20 philosophy of dementia care, including mission statement,  
21 goals policies and procedures; working with family members;  
22 community-based resources for consumers with dementia and  
23 their families; team building and stress reduction for  
24 assisted living residence staff; use and benefits of  
25 assistive technology and awareness, identification,  
26 prevention and reporting of abuse and neglect. Administrators  
27 must be over 21 years of age and have a high school diploma  
28 or a G.E.D. Direct care staff must be at least 18 years of  
29 age, have a high school diploma or a G.E.D. or have  
30 satisfactorily demonstrated a sixth grade reading level and

1 an ability to follow written instructions, particularly  
2 medication dispensing instructions.

3 (2) All cognitive support service providers must be  
4 educated and trained in the mission and purpose of services  
5 to individuals with cognitive impairments, consumer rights;  
6 fire and safety; first aid and CPR; basic  
7 nutrition/medication training; assisted living  
8 philosophy/mission; assessment and reporting of health  
9 problems; understanding dementia, including causes, symptoms,  
10 treatments and management techniques; changes in condition  
11 and appropriate responses; dementia-capable activity  
12 programming, communication skills and management of  
13 behavioral challenges; mental health issues; and awareness,  
14 identification, prevention and reporting of abuse and  
15 neglect.

16 (3) Within 90 days of the effective date of this act,  
17 the Department of Health shall determine what additional  
18 training, certification or accreditation shall be required  
19 for assisted living residence administrators; what additional  
20 training, certification or accreditation shall be required  
21 for in home care providers, what staffing levels and other  
22 requirements should be imposed for assisted living residences  
23 with immobile consumers and what components should be in the  
24 individualized service plan for each consumer and which of  
25 them should be reviewed and updated at least quarterly.  
26 Thereafter, the Department of Health shall issue draft  
27 regulations for public comment within six months of the  
28 effective date of this act and shall promptly finalize the  
29 regulations.

30 (4) Administrators and direct services staff shall meet

1 all the above requirements and qualifications prior to  
2 beginning work as administrators or direct services staff.  
3 The Department of Health shall develop objective measures of  
4 administrator and direct service staff knowledge of the  
5 required areas. Mere attendance at training sessions will not  
6 suffice. The objective measurement shall take the form of an  
7 oral, written and/or practical exam.

8 (c) Quality indicators.--Quality indicators to measure  
9 quality of life outcomes, including autonomy, independence and  
10 dignity, health and safety, should account for differences among  
11 settings and residents while accurately reflecting how well the  
12 facility provides for the autonomy, independence, dignity,  
13 integration with the community, food service, health and basic  
14 safety of residents. Those assisted living residences  
15 demonstrating the highest quality with no violations of  
16 regulations and basic standards shall be listed on the  
17 Department of Health's World Wide Web site pursuant to section  
18 8(f).

19 (d) Consumer information.--The Department of Health shall  
20 publish regional performance profiles of all assisted living  
21 residences and providers, listing the quality indicators, cost  
22 information, resident profile from the common data set, staff-  
23 to-consumer ratios, staff composition and violations of  
24 applicable acts and regulations, if any, for the public. This  
25 information shall be readily available through the options  
26 program and on the Department of Health World Wide Web site as  
27 set forth in section 10.

28 Section 9. Publicly funded housing.

29 (a) Subsidy of housing costs to avoid nursing facility  
30 placement.--The Department of Aging, through the options

1 program, may provide State-funded monthly housing and board  
2 subsidies, not to exceed PHFA's regional standards for operating  
3 costs for low-income housing, to individuals found eligible for  
4 nursing facility care, where:

5 (1) the total State cost of both a consumer's home and  
6 community-based services and his or her housing subsidy would  
7 not exceed the dollar amount which would represent the  
8 State's cost if the person were in a nursing facility;

9 (2) the housing subsidy is financially necessary to  
10 permit the person to remain in his or her current residence,  
11 live in the community or relocate to an assisted living  
12 residence; or

13 (3) a person is eligible for available publicly funded  
14 home and community-based services. In determining the amount  
15 of the subsidy, the Department of Aging shall ensure that  
16 consumers may retain an amount of not less than \$75 per month  
17 for personal needs, exclusive of housing, food or other  
18 related costs. Where home modifications are needed for  
19 Medicaid eligible individuals, in excess of the home and  
20 community-based services waiver cap, they may be paid for out  
21 of the subsidy if in the long term it would be more cost-  
22 effective to have the consumer supported in his or her  
23 modified residence.

24 (b) Low-income housing tax credits and loans.--

25 (1) Beginning in fiscal year 2001-2002 and continuing  
26 until fiscal year 2005-2006, at least 10% of the low income  
27 tax credits allocated to Pennsylvania for each of those years  
28 shall be earmarked to permit the development of at least 200  
29 assisted living residence units per year.

30 (2) Each year, the Pennsylvania Housing Financing

1 Authority, in consultation with the Department of Public  
2 Welfare, the Department of Aging and the Department of  
3 Community and Economic Development shall issue a request for  
4 proposals for assisted living residence units for persons  
5 qualifying for publicly funded home and community-based  
6 services and shall seek to facilitate the funding of the  
7 projects with moneys from low-income tax credits, community  
8 development block grants funds, neighborhood assistance  
9 program, the penn homes program, the home investments  
10 partnerships program, the Federal home loan bank affordable  
11 housing program, the mortgage insurance foundation or other  
12 funding.

13 (3) Within six weeks of the effective date of this act,  
14 the Department of Community and Economic Development shall  
15 develop and implement an education campaign focused on  
16 housing developers, which explains and promotes the use of  
17 existing housing financing programs for the development of  
18 assisted living residences for low-income and moderate-income  
19 persons.

20 (4) Housing funded through low-income tax credits does  
21 not require the operator to obtain a personal care or  
22 assisted living license.

23 (5) The Department of Community and Economic Development  
24 shall establish, within six months of the effective date of  
25 this act, a revolving loan fund to assist existing personal  
26 care home providers to make renovations and modifications to  
27 become assisted living residences and to assist existing home  
28 owners to renovate or modify their homes, where the lack of  
29 doing so would be the primary reason for someone in the  
30 household needing to go to a nursing facility. Loans to

1 personal care homes under this section shall require those  
2 newly renovated facilities to give priority for admission to  
3 the units to consumers who will receive publicly funded  
4 assisted living services while living there.

5 (6) A revolving loan program shall be established to  
6 assist persons who are otherwise ineligible for Medicaid or  
7 housing subsidies for home modifications to modify their  
8 personal residences where the financial inability to do so  
9 would be the primary reason for their needing to go to a  
10 nursing home.

11 (c) Minimum requirements for publicly funded housing.--Where  
12 public funds are used to develop or modify existing units to  
13 become assisted living residences, those units shall be designed  
14 and built to allow each person to live independently. Each  
15 residence shall:

16 (1) Include a self-contained unit, capable of being  
17 locked by the resident, which can be modified for persons  
18 with cognitive impairment.

19 (2) Allow sharing of units by residents only where both  
20 residents wish it; and

21 (3) Contain its own bathroom, kitchenette or food  
22 preparation area, sleeping area and living area.

23 (d) Equal opportunity for residency.--Any assisted living  
24 residence or personal care boarding home receiving housing  
25 subsidy payments pursuant to this act shall accept residents on  
26 a first-come-first-served basis, except where this provision is  
27 waived in writing by the options program because of an emergency  
28 need such as homelessness or medical need or where preference is  
29 to be given to low-income residents. The facilities shall  
30 maintain written records of applications, keep all applications

1 for admission in the order received for a period of five years  
2 and shall comply with all Federal and State laws prohibiting  
3 discrimination on the basis of race, religion, handicap or  
4 disability, ethnicity, national origin, gender or sexual  
5 orientation.

6 Section 10. Long-term care data base.

7 (a) Development of long-term care data system.--The Intra-  
8 governmental Long-Term Care Council shall develop a long-term  
9 care data system within six months of the effective date of this  
10 act, based on a common data set so that care can be tracked at  
11 each level of the long-term care continuum. Within nine months  
12 of the effective date of this act, all providers of home and  
13 community-based services or assisted living shall provide the  
14 common long-term data set information on every consumer to the  
15 Department of Health at intervals specified by the department.  
16 This information shall be integrated with the minimum data set  
17 information provided to the Department of Public Welfare with  
18 respect to nursing facilities.

19 (b) Confidentiality.--All information available to  
20 regulatory agencies shall be promptly available to consumers,  
21 providers, legislators and the general public, except that each  
22 department shall develop procedures to protect proprietary and  
23 confidential information and to protect the privacy of  
24 individuals receiving long-term care services.

25 (c) World Wide Web site.--The Department of Health shall  
26 include on its World Wide Web site information about the quality  
27 of assisted living services provided by assisted living service  
28 providers or assisted living residences, personal care homes and  
29 domiciliary homes. Information shall include available consumer  
30 satisfaction information, inspection data by the departments and

1 other relevant information that could assist consumers in  
2 choosing assisted living service providers, residences and other  
3 housing arrangements. All information available on the  
4 Department of Health World Wide Web site shall also be printed  
5 and made available to the public including those who do not have  
6 Internet access.

7 Section 11. Inspections.

8 (a) Initial licensure inspection.--Before a facility is  
9 licensed and permitted to open, operate or admit residents, and  
10 before an assisted living services provider is permitted to  
11 operate, it shall be inspected by the Department of Health and  
12 must be found in complete compliance with the requirements set  
13 forth in this act and the resulting regulations.

14 (b) Annual inspections.--After initial licensure inspection,  
15 assisted living residences and assisted living services  
16 providers shall, at a minimum, be inspected six months after  
17 initial licensure and annually thereafter on an unannounced  
18 basis. The Department of Health shall establish criteria for  
19 additional inspections as deemed necessary. When there is  
20 complete compliance, the Department of Health shall issue a full  
21 license for a period of one year.

22 (c) Classification of violations.--Within six months of the  
23 effective date of this section the Department of Health shall  
24 classify each violation of its regulations into one of the  
25 following categories:

26 (1) Class I. A violation which indicates a substantial  
27 probability that death or serious mental or physical harm to  
28 a consumer may result.

29 (2) Class II. A violation which has a substantial  
30 adverse effect upon the health, safety or well-being of a

1 consumer.

2 (3) Class III. A minor violation which has an adverse  
3 effect upon the health, safety or well-being of a consumer.  
4 Upon classifying the violations, the Department of Health shall  
5 publish the proposed classifications in the Pennsylvania  
6 Bulletin for public comment on the classifications prior to  
7 finalizing them. Final regulations and classifications shall be  
8 in effect within one year of passage of this act.

9 (d) Provisional licenses.--When there has been substantial  
10 compliance, but not complete compliance with all applicable  
11 statutes, ordinances and regulations, and, when the licensee has  
12 taken appropriate steps to correct deficiencies, the Department  
13 of Health shall issue a provisional license for a specified  
14 period of not more than six months which may be renewed one time  
15 if there has been substantial improvement since the last  
16 inspection. Upon complete compliance with respect to all prior  
17 violations and no additional Class I or Class II violations, a  
18 regular license shall be issued immediately. Newly discovered  
19 Class III violations will not prevent regular licensure provided  
20 an acceptable plan of correction has been submitted and the  
21 Department of Health has confirmed by onsite inspection that the  
22 correction steps outlined in the plan of correction have been  
23 taken.

24 (e) Notice.--Whenever the Department of Health, upon  
25 inspection or investigation, shall learn of violation of this  
26 act or of regulations adopted by the Department of Health  
27 pursuant to this act, they shall give notice thereof to the  
28 offending licensee. Such notice shall require the offending  
29 licensee to take action to bring a facility or service provider  
30 company into compliance with this act or with the relevant

1 regulations within a specified time.

2 (f) Plans of correction.--Within ten days of citation for  
3 any violations, an offending entity shall submit to the  
4 Department of Health a plan of correction outlining the action  
5 steps the person or entity will take to bring the facility or  
6 service provider company into compliance with this act or with  
7 the relevant regulations. The offending person or entity shall  
8 comply with the plan of correction and shall submit  
9 documentation of current compliance with the Department of  
10 Health within 20 days of citation for violation.

11 (1) Documentation of compliance shall include, but not  
12 be limited to:

13 (i) Receipts for work completed or items purchased.

14 (ii) Contracts for work to be completed or items to  
15 be delivered and/or installed.

16 (iii) Affidavit under penalty of perjury that  
17 violation has been corrected and how it has been  
18 corrected or that violation will be corrected and  
19 specific steps that have been taken to arrange the  
20 correction.

21 (iv) Certificate of completion of required  
22 education, training, first aid and CPR courses.

23 (2) The Department of Health shall verify that all  
24 promised corrections have actually been made within the time  
25 promised. If the corrections have not been made, the  
26 Department of Health shall initiate licensing action,  
27 including assessment of penalties and change of licensure  
28 status, for failure to comply with the plan of correction.

29 (g) No supersedeas.--An appeal from the decision of the  
30 Department of Health relating to the revocation or nonrenewal of

1 a license of an assisted living residence or assisted living  
2 services provider shall not act as a supersedeas, but, upon  
3 cause shown of substantial likelihood of prevailing on the  
4 merits and where circumstances require it, the reviewing  
5 authority shall have the power to grant a supersedeas. The  
6 supersedeas shall be revoked if the Department of Health  
7 presents evidence of any intervening Class I or II violations.

8 (h) Ban on new admissions.--While an assisted living  
9 residence or assisted living services provider may be permitted  
10 to continue operating with a supersedeas pending the outcome of  
11 the appeal, there shall be no new admissions to the assisted  
12 living residence and no new consumers contracted to receive  
13 services from an assisted living services provider pending the  
14 outcome of the appeal.

15 (i) Relocation and relocation assistance.--All residents of  
16 assisted living residences shall be notified by the Department  
17 of Health of its licensing actions, informed of their right to  
18 leave the assisted living residence and informed of their right  
19 to receive relocation assistance.

20 (1) The Department of Health shall relocate consumers  
21 from an assisted living residence if any of the following  
22 conditions exist:

23 (i) Shall immediately relocate consumers from an  
24 assisted living residence if the assisted living  
25 residence is operating without a license.

26 (ii) Shall immediately relocate consumers from an  
27 assisted living residence if the licensee is voluntarily  
28 closing an assisted living residence and relocation is  
29 necessary for the health and welfare of the consumers.

30 (iii) Shall immediately provide relocation

1 assistance where the assisted living residence has  
2 engaged in conduct that endangers the health and safety  
3 of its residents, leading a reasonable consumer to be  
4 concerned for his or her safety.

5 (iv) Shall promptly provide relocation assistance  
6 where the assisted living resident wishes to leave.

7 (2) The Department of Health shall offer relocation  
8 assistance to consumers of assisted living residences. This  
9 shall include:

10 (i) notifying residents of the availability of  
11 relocation assistance;

12 (ii) notifying residents of licensing violations  
13 that endanger resident health and safety and licensing  
14 actions taken by the Department of Health;

15 (iii) offering residents the opportunity to  
16 relocate;

17 (iv) providing residents with pertinent information,  
18 such as referrals to nearby social service agencies or  
19 assisted living residences in complete compliance with  
20 governing regulations;

21 (v) determining other options for relocation; and

22 (vi) assisting residents to make arrangements for  
23 relocation if family members are not available for this  
24 purpose.

25 (3) Except in an emergency, the consumer shall be  
26 involved in planning his transfer to another placement and  
27 shall have the right to choose among the available  
28 alternative placements. The department may make temporary  
29 placement until final placement can be arranged. Consumers  
30 shall be provided with an opportunity to visit alternative

1 placement before relocation or following temporary emergency  
2 relocation. Consumers shall choose their final placement and  
3 shall be given assistance in transferring to such place.

4 (4) Consumers shall not be relocated pursuant to this  
5 section if the Department of Health determines, in writing,  
6 and consistent with consumer preference, that such relocation  
7 is not in the best interest of the consumer.

8 (j) Transfer.--All consumers of assisted living services  
9 providers shall be notified by the Department of Health of its  
10 licensing actions, informed of their right to switch providers,  
11 and informed of their right to receive assistance in locating a  
12 new assisted living services provider. The Department of Health  
13 shall provide assistance to consumers of assisted living  
14 services providers who require assistance in transferring to  
15 other assisted living services providers. This assistance shall  
16 be consistent with the conditions for and forms of assistance  
17 stated in subsection (i).

18 (k) Interim inspection.--The Department of Health shall  
19 inspect a facility or assisted living services provider that has  
20 received a supersedeas at least monthly or more frequently to  
21 ensure residents' or recipients' safety and well-being. These  
22 inspection reports will be maintained as part of the public  
23 record for the assisted living residence or assisted living  
24 services provider.

25 (l) Interim violation.--Where a supersedeas has been  
26 granted, a Class I or II violation cited after the granting of  
27 the supersedeas shall lead to a revocation of the supersedeas.

28 (m) Appointment of master by court.--If, without good cause,  
29 one or more Class I or II violations remain uncorrected for more  
30 than 60 days from date of citation or when the assisted living

1 residence or assisted living services provider has demonstrated  
2 a pattern of episodes of noncompliance alternating with  
3 compliance over a period of at least two years such as would  
4 convince a reasonable person that any correction of violations  
5 would be unlikely to be maintained, the Department of Health may  
6 petition the court to appoint a master designated as qualified  
7 by the Department of Health to assume operation of the assisted  
8 living residence or assisted living services provider at the  
9 assisted living residence's or assisted living services  
10 provider's expense for a specified period of time or until all  
11 violations are corrected and all applicable laws and regulations  
12 are complied with. The fee for the master shall be set by the  
13 court.

14 (n) Expedited hearings.--The Department of Health shall make  
15 the assisted living residence or services provider appeals a  
16 priority, with no appeal outstanding more than 60 days beyond  
17 the date on which the appeal was filed.

18 (o) Expedited reconsideration.--The Secretary of Health  
19 shall complete reconsiderations within 60 days.

20 (p) Penalties.--The Department of Health shall assess a  
21 penalty for each violation of this act or regulations of the  
22 department. Penalties shall be assessed on a daily basis from  
23 the date on which the citation was issued until the date such  
24 violation is corrected except in the case of a Class II  
25 violation. In the case of a Class II violation, assessment of a  
26 penalty shall be suspended for a period of five days from the  
27 date of citation provided that, except for good cause, the  
28 provider has corrected the violation. If the violation has not  
29 been corrected within the five-day period, the fine shall be  
30 retroactive to the date of citation.

1 (1) The amount of penalties shall be as follows:

2 (i) The Department of Health shall assess a minimum  
3 penalty of \$50 per consumer per day for each Class I  
4 violation.

5 (ii) The Department of Health shall assess a minimum  
6 penalty of \$15 per consumer per day, up to a maximum of  
7 \$40 per consumer per day, for each Class II violation.

8 (iii) There shall be no monetary penalty for Class  
9 III violations unless the provider fails to correct the  
10 Class III violation within 15 days. Failure to correct  
11 the violation within 15 days may result in an assessment  
12 of up to \$10 per consumer per day for each Class III  
13 violation, retroactive to the date of citation.

14 (iv) An assisted living residence found to be  
15 operating without a license shall be assessed a penalty  
16 of \$1000. If, after 14 days, a provider of an assisted  
17 living residence cited for operating without a license  
18 fails to file an application for a license, the  
19 Department of Health shall assess an additional \$50 for  
20 each consumer for each day in which the assisted living  
21 residence fails to makes such application.

22 (v) An assisted living services provider shall be  
23 charged \$500 per day for each Class I violation, between  
24 \$200 and \$400 per day for each Class II violation and  
25 \$100 per day per Class III violation in accordance with a  
26 time frame as that in paragraph (3).

27 (2) A provider charged with a violation of this act  
28 shall have 30 days to pay the assessed penalty in full, or,  
29 if the provider wishes to contest either the amount of the  
30 penalty or the fact of the violation, the party shall forward

1 the assessed penalty to the Department of Health for  
2 placement in the assisted living trust account.

3 (i) If, through administrative hearing or judicial  
4 review of the proposed penalty, it is determined that no  
5 violation occurred or that the amount of the penalty  
6 should be reduced, the Secretary of Health shall within  
7 30 days remit the appropriate amount to the provider with  
8 any interest accumulated by the escrow deposit.

9 (ii) Failure to forward the payment to the  
10 Department of Health within 30 days shall result in a  
11 waiver of rights to contest the fact of the violation or  
12 the amount of the penalty.

13 (iii) The amount assessed after administrative  
14 hearing or a waiver of the administrative hearing shall  
15 be payable to the Commonwealth's Assisted Living Trust  
16 Account and shall be collectible in any manner provided  
17 by law for the collection of debts. If any provider  
18 liable to pay such penalty neglects or refuses to pay the  
19 same after demand, such failure to pay shall constitute a  
20 judgment in favor of the Commonwealth in the amount of  
21 the penalty, together with the interest and any costs  
22 that may accrue.

23 (3) Money collected by the Department of Health under  
24 this section shall be placed in the assisted living trust  
25 account and shall be first used to defray the expenses  
26 incurred by consumers relocated under this act. Any moneys  
27 remaining in this account shall annually be remitted to the  
28 Department of Health for enforcing the provisions of this  
29 act. Fines collected pursuant to this act shall not be  
30 subject to the provisions of 42 Pa.C.S. § 3733 (relating to

1 deposits into account).

2 (q) Revocation or nonrenewal of license.--

3 (1) The Department of Health shall temporarily revoke  
4 the license of or appoint a master to manage and operate an  
5 assisted living residence or assisted living provider if,  
6 without good cause, one or more Class I violations remain  
7 uncorrected 24 hours after the assisted living residence or  
8 assisted living services provider has been cited for such  
9 violation or if, without good cause, one or more Class II  
10 violations remain uncorrected 15 days after being cited for  
11 violation. Correction of violations shall be demonstrated by  
12 documentation of compliance. Where necessary, reinspections  
13 shall occur 15 days after citation to determine whether the  
14 violation has been corrected.

15 (2) Upon the revocation of a license pursuant to this  
16 subsection, all consumers shall be relocated.

17 (3) The revocation may terminate upon the Department of  
18 Health's determination that violations are corrected.

19 (4) If, after three months, the Department of Health  
20 does not issue a new license for an assisted living residence  
21 or assisted living services provider license revoked pursuant  
22 to this section:

23 (i) Such revocation or nonrenewal pursuant to this  
24 section shall be for a minimum period of five years.

25 (ii) No provider of an assisted living residence or  
26 assisted living services provider who has had a license  
27 revoked or not renewed pursuant to this section shall be  
28 allowed to operate or staff or hold an interest in an  
29 assisted living residence that applies for a license for  
30 a period of five years after such revocation or

1 nonrenewal. No provider who has had its license revoked  
2 or not renewed may transfer the assisted living residence  
3 or assisted living services company to a family member or  
4 member of their household for the five-year period.

5 (5) The Department of Health shall revoke or refuse to  
6 renew the license of an assisted living residence if, during  
7 any two-year period, the assisted living residence or  
8 assisted living services provider, without good cause, on two  
9 or more separate occasions, has been found to have violated a  
10 regulation of the Department of Health which has been  
11 categorized as Class I or has multiple Class II violations.

12 Section 12. Repeals.

13 The following acts and parts of acts are repealed insofar as  
14 they are inconsistent with this act:

15 Section 2102 of the act of May 17, 1921 (P.L.682, No.284),  
16 known as The Insurance Company Law of 1921.

17 Section 2203-A of the act of April 9, 1929 (P.L.177, No.175),  
18 known as The Administrative Code of 1929.

19 The definition of "personal care home" in section 1001 of the  
20 act of June 13, 1967 (P.L.31, No.21), known as the Public  
21 Welfare Code.

22 The definition of "long-term care nursing facility" in  
23 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),  
24 known as the Health Care Facilities Act.

25 Section 13. Effective date.

26 This act shall take effect in 60 days.