

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 670 Session of
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INTRODUCED BY MURPHY, WHITE, COSTA, BODACK, TOMLINSON, WAGNER,
BOSCOLA, BELL, KUKOVICH, WOZNIAK, STAPLETON, SCHWARTZ, MUSTO,
MADIGAN, LAVALLE, SLOCUM, BRIGHTBILL AND HART, MARCH 24, 1999

REFERRED TO PUBLIC HEALTH AND WELFARE, MARCH 24, 1999

AN ACT

1 Relating to the licensure and regulation of prescribed pediatric
2 extended care centers in this Commonwealth.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Prescribed
9 Pediatric Extended Care Centers Act.

10 Section 2. Legislative intent.

11 It is the intent of the General Assembly to develop,
12 establish and enforce licensure and basic standards for
13 prescribed pediatric extended care centers in order to assure
14 that the centers provide the necessary family-centered medical,
15 developmental, physiological, nutritional, psychosocial and
16 family training services.

17 Section 3. Definitions.

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

21 "Basic services." The term includes, but is not limited to,
22 development, implementation and monitoring of a comprehensive
23 protocol of care, developed in conjunction with the parent or
24 guardian, which specifies the medical, nursing, psychological
25 and developmental therapies required by the medically dependent
26 or technologically dependent child served as well as the
27 caregiver training needs of the child's legal guardian.

28 "Department." The Department of Health of the Commonwealth.

29 "Medical records." Medical records maintained in accordance
30 with accepted professional standards and practices as specified

1 in the rules implementing this act.

2 "Medically dependent" or "technologically dependent child."

3 A child who because of a medical condition requires continuous
4 therapeutic interventions or skilled nursing supervision which
5 must be prescribed by a licensed physician and administered by
6 or under the direct supervision of, a licensed registered nurse.

7 "Owner" or "operator." Any individual who has general
8 administrative charge of a prescribed pediatric extended care
9 center.

10 "Prescribed pediatric extended care center" or "PPEC center."
11 Any building or buildings, or other place, whether operated for-
12 profit or not-for-profit, which undertakes through its ownership
13 or management to provide basic nonresidential services to three
14 or more medically dependent or technologically dependent
15 children who are not related to the owner or operator by blood,
16 marriage or adoption and who require such services. Infants and
17 children considered for admission to a prescribed pediatric
18 extended care center must have complex medical conditions that
19 require continual care. Prerequisites for admission are a
20 prescription from the child's attending physician and consent of
21 a parent or guardian.

22 "Supportive services" or "contracted services." The term
23 includes, but is not limited to, speech therapy, occupational
24 therapy, physical therapy, social work, developmental, child
25 life and psychological services.

26 Section 4. PPEC centers to be licensed; exemptions.

27 (a) Licensing.--The facilities to be licensed by the
28 department shall include all PPEC centers which are not
29 otherwise exempt as provided by subsection (b).

30 (b) Exemption.--A facility, institution or other place

1 operated by the Federal Government or agency thereof is exempt
2 from the provisions of this act.

3 Section 5. License required; fee; exemptions; display.

4 (a) Licensure required.--It is unlawful to operate or
5 maintain a PPEC center without first obtaining from the
6 department a license authorizing such operation. The department
7 is responsible for licensing PPEC centers in accordance with the
8 provisions of this act.

9 (b) Offenses.--Any person who violates subsection (a)
10 commits a felony of the third degree.

11 (c) Premises to be licensed.--Separate licenses are required
12 for PPEC centers maintained on separate premises, even though
13 they are operated under the same management. Separate licenses
14 are not required for separate buildings on the same grounds.

15 (d) Fees.--The annual license fee required of a PPEC center
16 shall be in an amount determined by the department to be
17 sufficient to cover the agency's costs in carrying out its
18 responsibilities under this act, but shall not be less than \$500
19 or more than \$1,500.

20 (e) Exemption from fees.--County-operated or municipally
21 operated PPEC centers applying for licensure under this section
22 are exempt from the payment of license fees.

23 (f) Display of license.--The license shall be displayed in a
24 conspicuous place inside the PPEC center.

25 (g) License transfer.--A license shall be valid only in the
26 possession of the individual, firm, partnership, association or
27 corporation to whom it is issued and shall not be subject to
28 sale, assignment or other transfer, voluntary or involuntary nor
29 shall a license be valid for any premises other than that for
30 which originally issued.

1 (h) Facility capacity.--Any license granted by the agency
2 shall state the maximum capacity of the facility, the date the
3 license was issued, the expiration date of the license and any
4 other information deemed necessary by the department.

5 Section 6. Initial application for license.

6 (a) Application.--Application for a license shall be made to
7 the agency on forms furnished by it and shall be accompanied by
8 the appropriate license fee unless the applicant is exempt from
9 payment of the fee as provided in section 4.

10 (b) Contents of application.--The application shall be under
11 oath and shall contain the following:

12 (1) The name and address of the applicant and the name
13 by which the facility is to be known.

14 (i) If the applicant is a firm, partnership or
15 association, the application shall contain the name and
16 address of every member thereof.

17 (ii) If the applicant is a corporation, the
18 application shall contain its name and address, the names
19 and addresses of its directors and officers and the name
20 and address of each person having at least a 10% interest
21 in the corporation.

22 (2) Information which provides a source to establish the
23 suitable character and competency of the applicant and, if
24 applicable, of the owner or operator, including the name and
25 address of any licensed facility with which the applicant or
26 owner or operator has been affiliated through ownership or
27 employment within five years of the date of the application
28 for a license.

29 (3) The names and addresses of other persons of whom the
30 agency may inquire as to the character and reputation of the

1 applicant and, if applicable, of the owner or operator.

2 (4) The names and addresses of other persons of whom the
3 agency may inquire as to the financial responsibility of the
4 applicant.

5 (5) Such other reasonable information as may be required
6 by the agency to evaluate the ability of the applicant to
7 meet the responsibilities entailed under this act.

8 (6) The location of the facility for which a license is
9 sought and documentation, signed by the appropriate local
10 government official, which states that the applicant has met
11 local zoning requirements.

12 (7) Satisfactory proof of financial ability of the
13 applicant to operate and conduct the PPEC center in
14 accordance with the requirements of this act.

15 (c) Proof of insurance.--The applicant for licensure shall
16 furnish proof of adequate liability insurance coverage or
17 protection.

18 (d) Requirement.--Each applicant for licensure must comply
19 with the following requirements:

20 (1) Upon receipt of a completed, signed and dated
21 application, the department shall require background
22 screening of the operator, and of the financial officer or
23 other similarly titled individual who is responsible for the
24 financial operation of the center, including billings, for
25 patient care and services.

26 (2) The department may require background screening of
27 any other individual who is an applicant if the department
28 has a reasonable basis for believing that he or she has been
29 convicted of a crime.

30 (e) Provisional license.--A provisional license may be

1 granted to an applicant when each individual required by this
2 section to undergo background screening has applied for a report
3 of Federal Criminal history record information but the
4 department has not yet received background screening results
5 from the Federal Bureau of Investigation. A standard license may
6 be granted to the applicant upon the department's receipt of a
7 report of the results of the Federal Bureau of Investigation
8 background screening for each individual required by this
9 section to undergo background screening which confirms that all
10 standards have been met.

11 (f) Proof of compliance.--Each applicant must submit to the
12 department, with its application, a description and explanation
13 of any exclusions, permanent suspension or termination of the
14 applicant from the Medicare or Medicaid programs. Proof of
15 compliance with the requirements for disclosure of ownership and
16 control interests under the Medicaid or Medicare program shall
17 be accepted in lieu of this submission.

18 (g) Requirements for board of directors.--Each applicant
19 must submit to the agency a description and explanation of any
20 conviction of a criminal offense by a member of the board of
21 directors of the applicant, its officers or any individual
22 owning 5% or more of the applicant. This requirement does not
23 apply to a director of a not-for-profit corporation or
24 organization if the director serves solely in a voluntary
25 capacity for the corporation or organization, does not regularly
26 take part in the day-to-day operational decisions of the
27 corporation or organization, receives no remuneration for his or
28 her services on the corporation or organization's board of
29 directors and has no financial interest and has no family
30 members with a financial interest in the corporation or

1 organization, provided that the director and the not-for-profit
2 corporation or organization include in the application a
3 statement affirming that the director's relationship to the
4 corporation satisfies the requirements of this subsection.

5 (h) Revocation.--The department may deny or revoke licensure
6 if the applicant:

7 (1) Has falsely represented a material fact in the
8 application required by subsection (f) or (g), or has omitted
9 any material fact from the application required by subsection
10 (f) or (g).

11 (2) Has had prior action taken against the applicant
12 under the Medicaid or Medicare program as set forth in
13 subsection (f).

14 Section 7. Denial, suspension or revocation of licensure;
15 grounds.

16 (a) Action by department.--The department may deny, revoke
17 or suspend a license or impose an administrative fine for a
18 violation of this act.

19 (b) Grounds for department action.--Any of the following
20 actions by a PPEC center or its employee is grounds for action
21 by the department against a PPEC center or its employee:

22 (1) An intentional or negligent act materially affecting
23 the health or safety of children in the PPEC center.

24 (2) A violation of the provisions of this act or of any
25 standards or rules and regulations adopted pursuant to this
26 act.

27 (3) Multiple and repeated violations of this act or of
28 minimum standards or rules and regulations adopted pursuant
29 to this act.

30 (c) Investigations.--The department shall be responsible for

1 all investigations and inspections conducted pursuant to this
2 act.

3 Section 8. Administrative fines; disposition of fees and fines.

4 (a) Compliance.--If the department determines that a PPEC
5 center is being operated without a license or is otherwise not
6 in compliance with rules adopted under this act, the department,
7 notwithstanding any other administrative action it takes, shall
8 make a reasonable attempt to discuss each violation and
9 recommended corrective action with the owner of the PPEC center
10 prior to written notification thereof. The department may
11 request that the PPEC center submit a corrective action plan
12 which demonstrates a good faith effort to remedy each violation
13 by a specific date, subject to the approval of the department.

14 (b) Fines.--The department may fine a PPEC center or
15 employee found in violation of rules adopted pursuant to this
16 act in an amount not to exceed \$500 for each violation. Such
17 fine may not exceed \$5,000 in the aggregate.

18 (c) Correction of violation.--The failure to correct a
19 violation by the date set by the department, or the failure to
20 comply with an approved corrective action plan is a separate
21 violation for each day such failure continues, unless the
22 department approves an extension to a specific date.

23 (d) Interest.--If a PPEC center desires to appeal any
24 department action under this section and the fine is upheld, the
25 violator shall pay the fine, plus interest at the legal rate,
26 for each day beyond the date set by the agency for payment of
27 the fine.

28 (e) Amounts of fine.--In determining if a fine is to be
29 imposed and in fixing the amount of any fine, the department
30 shall consider the following factors:

1 (1) The gravity of the violation, including the
2 probability that death or serious physical or emotional harm
3 to a child will result or has resulted, the severity of the
4 actual or potential harm and the extent to which the
5 provisions of the applicable statutes or rules were violated.

6 (2) Actions taken by the owner operator to correct
7 violations.

8 (3) Any previous violations.

9 (4) The financial benefit to the PPEC center of
10 committing or continuing the violation.

11 Section 9. Expiration of license; renewal; conditional license
12 as permit.

13 (a) Renewal.--A license issued for the operation of a PPEC
14 center, unless sooner suspended or revoked, shall expire one
15 year after the date of issuance. At least 60 days before the
16 expiration date, an application for renewal shall be submitted
17 to the department. The department shall renew the license, upon
18 the filing of an application on forms furnished by the
19 department, if the applicant has first met the requirements
20 established under this act and all rules adopted pursuant to
21 this act. The PPEC center shall file with the application
22 satisfactory proof of financial ability to operate and conduct
23 the facility in accordance with this act.

24 (b) Action pending.--A licensee against whom a revocation or
25 suspension proceeding is pending at the time of license renewal
26 may be issued a conditional license effective until final
27 disposition by the department of such proceedings. If judicial
28 relief is sought from the final disposition, the court having
29 jurisdiction may issue a conditional permit for the duration of
30 the judicial proceeding.

1 Section 10. Injunction proceedings authorized.

2 (a) Institution of proceedings.--The department may
3 institute injunction proceedings in a court of competent
4 jurisdiction to:

5 (1) Enforce the provisions of this act or any standard,
6 rule or order issued or entered into pursuant thereto.

7 (2) Terminate the operation of a PPEC center if the
8 licensee has:

9 (i) Not taken preventive or corrective measures in
10 accordance with any order of the department.

11 (ii) Failed to abide by any final order of the
12 department once it has become effective and binding.

13 (iii) Committed a violation of any provision of this
14 act or of any rule adopted pursuant thereto, which
15 violation constitutes an emergency requiring immediate
16 action.

17 (b) Duration of relief.--Such injunctive relief may be
18 temporary or permanent.

19 Section 11. Closing of PPEC center.

20 (a) Notice.--Whenever a PPEC center voluntarily discontinues
21 operation, it shall inform the department in writing at least 30
22 days before the discontinuance of operation. The PPEC center
23 shall also, at such time, inform each child's legal guardian of
24 the fact and the proposed time of such discontinuance.

25 (b) Surrender license.--Immediately upon discontinuance of
26 the operation of a PPEC center, the owner or operator shall
27 surrender the license therefor to the department, and the
28 license shall be canceled.

29 Section 12. Right of entry and inspection.

30 Any duly designated officer or employee of the department

1 have the right to enter upon and into the premises of any PPEC
2 center licensed pursuant to this act, at any reasonable time, in
3 order to determine the state of compliance with the provisions
4 of this act and of rules or standards in force pursuant thereto.
5 The right of entry and inspection shall also extend to any
6 premises which the department has reason to believe are being
7 operated or maintained as a PPEC center without a license, but
8 no such entry or inspection of any premises shall be made
9 without the permission of the owner or operator in charge
10 thereof unless a warrant is first obtained from the circuit
11 court authorizing the entry and inspection. Any application for
12 PPEC center license or renewal made pursuant to this act shall
13 constitute permission for and complete acquiescence in any entry
14 or inspection of the premises for which the license is sought in
15 order to facilitate verification of the information submitted on
16 or in connection with the application.

17 Section 13. Rules establishing standards.

18 (a) Standards.--Pursuant to the intention of the General
19 Assembly to provide safe and sanitary facilities and healthful
20 programs, the department shall adopt and publish rules and
21 regulations to implement the provisions of this act, which shall
22 include reasonable and fair standards. Any conflict between
23 these standards and those that may be set forth in local, county
24 or city ordinances shall be resolved in favor of those having
25 Statewide effect. Such standards shall relate to:

26 (1) The assurance that PPEC services are family centered
27 and provide individualized medical, developmental and family
28 training services.

29 (2) The maintenance of PPEC centers based upon the size
30 of the structure and number of children, relating to

1 plumbing, heating, lighting, ventilation and other building
2 conditions, including adequate space, which will ensure the
3 health, safety, comfort and protection from fire of the
4 children served.

5 (3) The appropriate provisions of the most recent
6 edition of the "Life Safety Code" (NFPA-101).

7 (4) The number and qualifications of all personnel who
8 have responsibility for the care of the children served.

9 (5) All sanitary conditions within the PPEC center and
10 its surroundings, including water supply, sewage disposal,
11 food handling and general hygiene, and maintenance thereof,
12 which will ensure the health and comfort of children served.

13 (6) Programs and basic services promoting and
14 maintaining the health and development of the children served
15 and meeting the training needs of the children's legal
16 guardians.

17 (7) Supportive, contracted, other operational and
18 transportation services.

19 (8) Maintenance of appropriate medical records, data and
20 information relative to the children and programs. Such
21 records shall be maintained in the facility for inspection by
22 the department.

23 (b) Rules and regulations.--The department shall adopt rules
24 to ensure that:

25 (1) No child attends a PPEC center for more than 12
26 hours within a 24-hour period.

27 (2) No PPEC center provides services other than those
28 provided to medically or technologically dependent children.

29 Section 14. Construction and renovation; requirements.

30 The requirements for the construction or renovation of a PPEC

1 center shall comply with:

2 (1) all applicable building construction standards,
3 including plumbing, electrical code, glass, manufactured
4 buildings, accessibility for the physically disabled; and

5 (2) the standards or rules and regulations adopted
6 pursuant to this act.

7 Section 15. Prohibited acts; penalty for violation.

8 (a) Prohibited acts.--It is unlawful for any person or
9 public body to offer or advertise to the public, in any way or
10 by any medium, basic services as defined in this act without
11 obtaining a valid current license. It is unlawful for any holder
12 of a license issued pursuant to this act to advertise or hold
13 out to the public that it holds a license for a PPEC center
14 other than that for which it actually holds a license.

15 (b) Penalty.--Any person who violates the provisions of
16 subsection (a) commits a misdemeanor of the second degree. Each
17 day of continuing violation shall be considered a separate
18 offense.

19 Section 16. Effective date.

20 This act shall take effect in 180 days.