

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2055

Session of
2001

INTRODUCED BY B. SMITH, SCHULER, PISTELLA, THOMAS, NAILOR,
MARKOSEK, ZIMMERMAN, BROWNE, JAMES, ALLEN, BLAUM, CAPPELLI,
CLARK, CLYMER, CORRIGAN, CREIGHTON, CURRY, DeLUCA, DeWEESE,
FREEMAN, GEORGE, GODSHALL, GRUCELA, HARHAI, HARHART,
KIRKLAND, MAITLAND, McCALL, R. MILLER, PALLONE, PRESTON,
ROBERTS, ROEBUCK, RUBLEY, SAYLOR, SHANER, SOLOBAY, STABACK,
TANGRETTI, E. Z. TAYLOR, TIGUE, TRICH, WANSACZ, WASHINGTON,
WATERS, WATSON, C. WILLIAMS, WILT, WOJNAROSKI, YOUNGBLOOD,
STEELMAN, HABAY, SAMUELSON AND PICKETT, OCTOBER 22, 2001

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MAY 6, 2002

AN ACT

1 Requiring certain elder care facilities to provide refunds and
2 payments in certain circumstances; PROVIDING FOR INVENTORY OF <—
3 PERSONAL PROPERTY; AUTHORIZING THE STORAGE OF PERSONAL
4 PROPERTY BY ELDER CARE FACILITIES; AND IMPOSING A PENALTY.

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 Elder Care
9 Payment Restitution Act.

10 Section 2. Definitions.

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

14 "Consumer." A person who IS AT LEAST 60 YEARS OLD AND <—
15 receives elder care in or from a facility.

1 "Elder care." Services or treatment provided to meet a
2 consumer's need for personal care or health care, including, but
3 not limited to, homemaker services, assistance with activities
4 of daily living, physical therapy, occupational therapy, speech
5 therapy, medical social services, home care aide services,
6 companion care services, private duty nursing services,
7 respiratory therapy, intravenous therapy and in-home dialysis
8 and durable medical equipment services, which are routinely
9 provided unsupervised and require interaction with the consumer.
10 The term does not include durable medical equipment delivery.

11 "Facility." Any of the following:

12 (1) A home which provides domiciliary care as defined in
13 section 2202-A of the act of April 9, 1929 (P.L.177, No.175),
14 known as The Administrative Code of 1929.

15 (2) A home health care agency.

16 (3) A personal care home as defined in section 1001 of
17 the act of June 13, 1967 (P.L.31, No.21), known as the Public
18 Welfare Code.

19 (4) A long-term care nursing facility as defined in
20 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),
21 known as the Health Care Facilities Act.

22 (5) An older adult daily living center as defined in
23 section 2 of the act of July 11, 1990 (P.L.499, No.118),
24 known as the Older Adult Daily Living Centers Licensing Act.

25 "Home health care agency." Any of the following:

26 (1) A home health care organization or agency licensed
27 by the Department of Health.

28 (2) A public or private agency or organization, or part
29 of an agency or organization, which provides elder care to a
30 person in the person's place of residence.

1 "Payment." A transfer of ~~a sum of money, including any~~ <—
2 ~~application fee, security deposit~~ ANY OR ALL MONEYS or other <—
3 property transferred or promised to be transferred as full or
4 partial consideration for elder care of a specified consumer by
5 a facility. THE TERM SHALL NOT INCLUDE ANY COPAYMENT OR PARTIAL <—
6 PAYMENT MADE BY A CONSUMER FOR PUBLICLY FUNDED ELDER CARE NOR A
7 PAYMENT MADE BY A FEDERAL OR STATE PROGRAM ON BEHALF OF A
8 CONSUMER.

9 Section 3. Payment refunds.

10 (a) Refunds required.--

11 (1) A "personal care home," as defined in section 1001
12 of the act of June 13, 1967 (P.L.31, No.21), known as the
13 Public Welfare Code, that collects payment from a consumer
14 shall, within 30 days from the date that the living unit is
15 cleared of the consumer's personal property as a result of
16 the consumer's death, pay the personal representative or
17 guardian of the consumer the amount of the difference between
18 any payment made, including any unpaid interest thereon, and
19 the cost of elder care actually provided to the consumer.

20 (2) A "long-term care nursing facility," as defined in
21 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),
22 known as the Health Care Facilities Act, that collects
23 payment from a consumer shall, within 60 days from the date
24 of the death of the consumer, pay the personal representative
25 or guardian of the consumer the amount of the difference
26 between any payment made, including any unpaid interest
27 thereon, and the cost of elder care actually provided to the
28 consumer.

29 (3) A facility, except for a facility subject to
30 paragraph (1) or (2), that collects payment from a consumer

1 shall, within 30 days from the date of the death of the
2 consumer, pay the personal representative or guardian of the
3 consumer the amount of the difference between any payment
4 made, including any unpaid interest thereon, and the cost of
5 elder care actually provided to the consumer.

6 (4) Any CLAUSE WITHIN A contractual agreement which <—
7 imposes such ELDER CARE costs and which is entered into <—
8 between the consumer and the facility on or after the
9 effective date of this act THAT DOES NOT MEET THE STANDARDS <—
10 ESTABLISHED BY THIS ACT shall be null and void.

11 (b) Liability for noncompliance.--If the facility fails to
12 pay the personal representative or guardian as required by this
13 section, the facility shall be liable to the personal
14 representative or guardian for twice that portion of the
15 payment, including any unpaid interest thereon, that exceeds the
16 cost of the elder care actually provided, as determined by a
17 court having jurisdiction in civil actions at law.

18 SECTION 4. INVENTORY. <—

19 A FACILITY SHALL CONTACT THE CONSUMER'S PERSONAL
20 REPRESENTATIVE OR GUARDIAN WITHIN 24 HOURS AFTER THE CONSUMER'S
21 DEATH TO ARRANGE FOR AN INVENTORY OF THE CONSUMER'S PERSONAL
22 PROPERTY.

23 SECTION 5. STORAGE.

24 A FACILITY, AFTER THE DEATH OF THE CONSUMER AND AFTER
25 COMPLETING AN INVENTORY, MAY PLACE A CONSUMER'S PERSONAL
26 PROPERTY INTO STORAGE. ANY FACILITY THAT PLACES ITEMS INTO
27 STORAGE SHALL DO SO WITHOUT CHARGING A FEE TO THE CONSUMER'S
28 ESTATE OR THE CONSUMER'S FAMILY. THE FACILITY SHALL HOLD ITEMS
29 UNDER THIS SECTION FOR A PERIOD UP TO 30 DAYS. IF THE ITEMS HELD
30 IN STORAGE ARE NOT CLAIMED BY THE CONSUMER'S ESTATE OR THE

1 CONSUMER'S FAMILY AT THE END OF THE 30-DAY PERIOD, THE FACILITY
2 SHALL SEND NOTICE BY CERTIFIED MAIL TO THE PERSONAL
3 REPRESENTATIVE STATING THAT IF ITEMS IN STORAGE ARE NOT REMOVED
4 WITHIN 14 DAYS, THE FACILITY MAY DISPOSE OF THE PROPERTY.

5 Section 4 6. Penalty for noncompliance.

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6 The owner of a facility that intentionally or willfully fails
7 to comply with this act commits a misdemeanor of the third
8 degree and shall, upon conviction, be sentenced to pay a fine of
9 \$2,500 or imprisonment for not more than one year, or both.

10 Section 5 7. Effective date.

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11 This act shall take effect in 60 days.