

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1935 Session of
2005

INTRODUCED BY PISTELLA, DeWEESE, BIANCUCCI, FABRIZIO, KOTIK,
BEBKO-JONES, BELFANTI, CALTAGIRONE, CAPPELLI, CAWLEY, COHEN,
CORRIGAN, CRUZ, DALEY, DeLUCA, FRANKEL, GOODMAN, GRUCELA,
HARHAI, HERMAN, KIRKLAND, LEACH, LEDERER, MANN, McGEEHAN,
REED, ROONEY, SIPTROTH, SHANER, STABACK, WALKO, WOJNAROSKI,
YOUNGBLOOD AND YUDICHAK, AUGUST 24, 2005

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
AUGUST 24, 2005

AN ACT

1 Establishing the Enhanced Senior Services Demonstration Program;
2 and conferring powers and imposing duties on the Department
3 of Aging, the Department of Public Welfare and the
4 Pennsylvania Housing Finance Agency.

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 Enhanced
9 Senior Services Demonstration Program Act.

10 Section 2. Declaration of policy.

11 The General Assembly finds and declares that:

12 (1) Pennsylvania has one of the highest proportions of
13 elderly individuals in the nation. Persons 85 years of age
14 and older are the fastest growing segment of this
15 Commonwealth's population.

16 (2) A significant number of elderly residents of this

1 Commonwealth have difficulty carrying out basic life
2 activities, and many are at high risk for
3 institutionalization due to chronic illness and disability.

4 (3) There is a growing consumer preference for more
5 housing and care alternatives designed specifically for
6 persons who need assistance with basic life activities but do
7 not need the level of skilled nursing care and therapy that
8 nursing homes provide.

9 (4) There are few private sector initiatives creating
10 long-term living options that are affordable to low-income
11 and moderate-income frail elderly individuals.

12 (5) It is imperative for State government and long-term
13 health providers to develop cost-effective means of caring
14 for at-risk elderly individuals and in particular those low-
15 income and moderate-income frail elderly individuals whose
16 needs are appropriate for supportive housing placement but
17 who cannot afford the costs of market rate, private pay
18 assisted living and personal care home facilities.

19 (6) An alternative form of housing and care must be
20 developed in this Commonwealth for low-income and moderate-
21 income frail elderly individuals to enable them to live in a
22 residential setting as independently as possible while
23 achieving cost savings to Medicaid.

24 (7) An Enhanced Senior Services Demonstration Program,
25 administered by the Pennsylvania Housing Finance Agency in
26 collaboration with the Department of Aging and the Department
27 of Public Welfare, will allow this Commonwealth to provide
28 appropriate housing and care needed by frail elderly
29 individuals in this Commonwealth and to evaluate the cost
30 savings and other benefits of enhanced senior services.

(8) The purpose of this act is to provide long-term living alternatives to low-income and moderate-income elderly individuals who are chronically impaired or disabled and who are in nursing homes or at risk of placement in nursing facility care.

Section 3. Definitions.

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

"Agency." The Pennsylvania Housing Finance Agency.

"Demonstration program." The Enhanced Senior Services Demonstration Program established under section 4.

"Enhanced senior services unit." An apartment unit in a Pennsylvania Housing Finance Agency-approved facility.

"Facility." A facility that is approved by the Pennsylvania Housing Finance Agency under section 5.

"Government funds." Funds provided under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

"Long-term living assessment." A program, approved by the Department of Aging and the Department of Public Welfare, that provides a uniform health, social and functional assessment of persons in need of long-term living services due to chronic impairment or disability.

"Resident." A person residing in a Pennsylvania Housing Finance Agency-approved facility. The term includes the resident's attorney-in-fact, guardian or other legal representative acting within the scope of the resident's authority.

"Supportive services." Personal care and services, homemaker, chore, attendant care and companion services,

1 medication oversight, to the extent permitted under law, and
2 therapeutic social and recreational programming, provided in a
3 home-like environment in a Pennsylvania Housing Finance Agency-
4 approved facility.

5 Section 4. Demonstration program.

6 (a) Approval.--The Secretary of Public Welfare and the
7 Secretary of Aging, in consultation with the executive director
8 of the agency, shall cooperate and collaborate in designating
9 waiver slots to fund the demonstration program for up to 1,800
10 persons residing in agency-approved facilities.

11 (b) Long-term living services initiatives.--The Secretary of
12 Public Welfare and the Secretary of Aging, in cooperation with
13 the Governor's Office of Health Care Reform, shall consider and
14 incorporate where appropriate all applicable long-term living
15 services initiatives into the demonstration program, including
16 the nursing home transition project, which provides assistance
17 to nursing home residents who wish to relocate from a nursing
18 home to the community.

19 (c) Cooperation.--The Secretary of Public Welfare and the
20 Secretary of Aging shall cooperate in assuring that:

21 (1) Waiver budgeting is secured on an annual basis.

22 (2) Ongoing waiver reporting requirements are met.

23 (3) Waivers are available for the term of the
24 demonstration program.

25 (d) Allocation.--Waivers may be allocated on a project basis
26 and may be allocated to approved facilities for the term of the
27 demonstration program.

28 (e) Periodic review.--The demonstration program shall be
29 reviewed periodically by the Department of Aging and the
30 Department of Public Welfare in consultation with the executive

1 director of the agency. The program may be expanded as funding
2 for additional waivers is made available.

3 Section 5. Agency-approved facilities.

4 The agency may approve a facility for participation in the
5 demonstration program if the facility:

6 (1) Provides lodging, meals and supportive services to
7 two or more households.

8 (2) Receives funding through one of the agency's
9 multifamily programs and receives funding through:

10 (i) the Federal public housing program, including
11 private developments receiving public housing capital
12 funds or Annual Contributions Contract (ACC) funds;

13 (ii) section 202 of the National Housing Act (48
14 Stat. 1246, 12 U.S.C. § 1701 et seq.) or any successor
15 program providing rental subsidy for qualified residents;
16 or

17 (iii) project-based rental assistance through either
18 the Housing Choice Voucher Program or a comparable rental
19 subsidy program as determined by the agency.

20 (3) Contains full, independent housing units that meet
21 the requirements of the applicable agency program.

22 (4) Does not contain congregate and single room
23 occupancy housing.

24 (5) Contains the common spaces necessary in order to
25 provide supportive services. Required common spaces include:

26 (i) A common dining room.

27 (ii) A commercial kitchen or kitchen area for
28 catered food delivery.

29 (iii) Activity space.

30 (iv) A private room for clinical examinations.

1 (v) Office space for demonstration program
2 personnel.

3 Section 6. Supportive services.

4 (a) Funding.--Supportive services paid for with government
5 funds in an agency-approved facility shall be provided to those
6 residents whose long-term living assessment indicates the
7 resident can receive appropriate care in the agency-approved
8 facility.

9 (b) Nonaffiliated service providers.--Persons and agencies
10 other than those affiliated with or related to the owner and/or
11 resident management of the agency-approved facility may furnish
12 supportive services, either directly or under arrangement with
13 the agency-approved facility, but the services provided by these
14 persons or agencies shall be under the direction and control of
15 the resident provided that:

16 (1) The agency-approved facility is not required to
17 fundamentally change its program or facility to accommodate
18 the delivery of supportive services by nonaffiliated service
19 providers to the resident.

20 (2) The resident's receipt of supportive services by
21 nonaffiliated service providers does not create an undue
22 burden on the agency-approved facility.

23 (c) Screening and access.--The agency-approved facility may
24 screen nonaffiliated service providers. An agency-approved
25 facility shall not unreasonably deny a nonaffiliated service
26 provider access to a resident's enhanced senior services unit.

27 (d) Civil immunity.--Except as set forth in subsection (e),
28 the following are immune from civil liability for a claim
29 arising from an act or omission related to supportive services
30 by nonaffiliated service providers:

1 (1) An agency-approved facility.

2 (2) The owner of an agency-approved facility which is a
3 sole proprietorship.

4 (3) The partners of an agency-approved facility which is
5 a partnership.

6 (4) The members of an agency-approved facility which is
7 an unincorporated association.

8 (5) The stockholders, officers and directors of an
9 incorporated agency-approved facility.

10 (6) A parent or subsidiary of an incorporated agency-
11 approved facility.

12 (7) The resident management company that provides
13 overall management services to an agency-approved facility.

14 (e) Exceptions.--Subsection (d) does not apply if any of the
15 following apply:

16 (1) The person charged with the act or omission acts in
17 bad faith.

18 (2) The person charged with the act or omission knows or
19 has reason to know that the act or omission poses a
20 substantial danger to the health, safety or welfare of the
21 resident.

22 (f) Transportation services.--Supportive services may
23 include transportation services specified in the plan of care.

24 (g) Nursing and skilled therapy services.--Nursing and
25 skilled therapy services except periodic nursing evaluations
26 specified within this act are not integral to the provision of
27 supportive services.

28 (h) Certain skilled care or supervision.--Payment shall not
29 be made for supportive services that include 24-hour skilled
30 care or supervision.

1 (i) Long-term living assessment.--A long-term living
2 assessment for purposes of this act shall be completed by staff
3 of the area agency on aging office in the locality of the
4 agency-approved facility.

5 (j) Reassessment.--Continued provision of supportive
6 services paid for with government funds in an agency-approved
7 facility shall be based on a reassessment of the recipient's
8 care needs to be performed at least once every 180 days.

9 (k) Notification.--If, as a result of the reassessment, it
10 is determined that the recipient no longer qualifies for the
11 payment of supportive services to be paid for with government
12 funds, the agency-approved facility shall be notified of the
13 determination at least 40 days prior to termination of payment
14 under the waiver and shall be afforded an opportunity to request
15 reconsideration of the determination prior to cancellation of
16 payment on behalf of any resident in the agency-approved
17 facility.

18 Section 7. Duties of secretary and department.

19 (a) Use of medical assistance funds.--Notwithstanding any
20 inconsistent provision of law but subject to the expenditure
21 limitations of this act, the Secretary of Public Welfare,
22 subject to the approval of the Secretary of the Budget, shall
23 authorize the utilization of medical assistance funds to pay for
24 supportive services provided by agency-approved facilities. The
25 medical assistance funds shall be utilized to pay for supportive
26 services, in addition to those services included in the medical
27 assistance program under the act of June 13, 1967 (P.L.31,
28 No.21), known as the Public Welfare Code, so long as Federal
29 financial participation is available for those services.

30 Expenditures made under this section shall be deemed payments

1 for medical assistance for needy persons.

2 (b) Payments under Social Security Act.--The Department of
3 Public Welfare shall not make payments pursuant to Title XIX of
4 the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et
5 seq.), for benefits available under Title XVIII of the Social
6 Security Act (49 Stat. 620, 42 U.S.C. § 1395 et seq.), without
7 documentation that Title XVIII claims have been filed and
8 denied.

9 (c) Payments under other waiver program.--The Department of
10 Public Welfare shall not make payments for a person receiving
11 supportive services while payments are being made for that
12 person under another Medicaid waiver program or for inpatient
13 care in a skilled nursing and intermediate care facility or
14 hospital. However, this shall not affect monthly payments made
15 under prospective reimbursement contracts.

16 (d) Reimbursement rate.--Reimbursement to agency-approved
17 facilities for supportive services shall be \$43.18 per day per
18 eligible service recipient. This rate shall be adjusted annually
19 by the Department of Public Welfare based upon the Consumer
20 Price Index.

21 Section 8. Selection of agency-approved facility sites.

22 Agency-approved facilities shall be selected through a
23 competitive process designed and administered by the agency in
24 consultation with the Department of Public Welfare and the
25 Department of Aging. Priority in the award of demonstration
26 program resources shall be given to existing or proposed
27 facilities which are, or are projected to be, newly constructed
28 or substantially rehabilitated, in which a minimum of 70% of the
29 units are restricted to low-income elderly households, and which
30 otherwise meet the requirements of this act.

1 Section 9. Evaluation of demonstration program.

2 Upon implementation of the demonstration program and
3 occupancy of agency-approved facilities by low-income and
4 moderate-income persons, the agency in collaboration and
5 cooperation with the Department of Aging and the Department of
6 Public Welfare shall evaluate the qualitative benefits and cost
7 effectiveness of the program.

8 Section 10. Effective date.

9 This act shall take effect immediately.