
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2811 Session of
2020

INTRODUCED BY OTTEN, FIEDLER, MADDEN, GALLOWAY, SHUSTERMAN,
GREEN, ULLMAN, SCHWEYER, HANBIDGE, HARRIS, WEBSTER, ROZZI,
HILL-EVANS, DeLUCA, GAINEY, ZABEL, NEILSON, CIRESI AND DEASY,
AUGUST 21, 2020

REFERRED TO COMMITTEE ON HEALTH, AUGUST 21, 2020

AN ACT

1 Providing for public health emergency facility safety.

2 The General Assembly of the Commonwealth of Pennsylvania

3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Public Health
6 Emergency Facility Safety Act.

7 Section 2. Definitions.

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

11 "Agent of the resident." An individual who has a power of
12 attorney or health care power of attorney for a resident in
13 accordance with 20 Pa.C.S. Chs. 54 (relating to health care) and
14 56 (relating to powers of attorney).

15 "COVID-19." The coronavirus disease 2019, an infectious
16 disease caused by severe acute respiratory syndrome coronavirus

1 2 that was first identified during December 2019 in Wuhan,
2 China.

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

4 "Do-not-resuscitate order." As the term "out-of-hospital do-
5 not-resuscitate order" is defined in 20 Pa.C.S. § 5483 (relating
6 to definitions).

7 "Facility." Any of the following:

8 (1) Any of the following entities as defined in section
9 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as
10 the Health Care Facilities Act:

11 (i) A long-term care nursing facility.

12 (ii) A home health care agency.

13 (iii) A home care agency.

14 (iv) A hospice.

15 (2) Any of the following entities as defined in section
16 1001 of the act of June 13, 1967 (P.L.31, No.21), known as
17 the Human Services Code:

18 (i) A personal care home.

19 (ii) An assisted living residence.

20 (3) A veterans' home that is operated by the Department
21 of Military and Veterans Affairs.

22 (4) Domiciliary care as defined in section 2202-A of the
23 act of April 9, 1929 (P.L.177, No.175), known as The
24 Administrative Code of 1929.

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

28 "Facility outbreak." An outbreak of a disease within a
29 facility that has the following characteristics:

30 (1) Is believed to be caused by the emergence and spread

1 of a novel or previously eradicated infectious disease.

2 (2) Poses a high probability of any of the following in
3 the affected population:

4 (i) Death.

5 (ii) Serious or long-term disability.

6 (iii) Exposure to an infectious disease, which poses
7 a significant risk of substantial present or future harm
8 to the health and safety of the residents and staff of a
9 facility.

10 "Health information." Includes positive or presumed positive
11 infectious disease test results, additions of medical treatments
12 or interventions, changes in medications and medical
13 appointments.

14 "Health notification." An agreement between a facility and a
15 resident or an agent of the resident to address the types of
16 health information, methods and frequency of communications
17 provided by the facility to the resident or agent of the
18 resident regarding the health of the resident.

19 "Infectious disease." A contagious disease that is caused by
20 a microorganism, such as a bacterium, virus or protozoan, which
21 is not normally found in the human body and which is capable of
22 causing infection in humans.

23 "Long-term care facility. Any of the following:

24 (1) A long-term care nursing facility as defined in
25 section 802.1 of the Health Care Facilities Act.

26 (2) A personal care home as defined in section 1001 of
27 the Human Services Code.

28 (3) An assisted living residence as defined in section
29 1001 of the Human Services Code.

30 "POLST." A physician order for life-sustaining treatment in

1 which one or more medical orders are issued for the care of an
2 individual regarding cardiopulmonary resuscitation or other
3 medical interventions that are entered into agreement with the
4 voluntary consent of the individual or surrogate decision maker
5 and a health care practitioner.

6 "Public health emergency." A declaration of disaster
7 emergency in accordance with 35 Pa.C.S. Ch. 73 Subch. A
8 (relating to the Governor and disaster emergencies) of an
9 occurrence or imminent threat of a disease or condition of
10 critical public health importance or a declaration of disaster
11 emergency by a governing body of a political subdivision under
12 35 Pa.C.S. Ch. 75 (relating to local organizations and services)
13 of an occurrence or imminent threat of a disease within the
14 county that has the following characteristics:

15 (1) Is believed to be caused by any of the following:

16 (i) The emergence and spread of a novel or
17 previously controlled or eradicated infectious disease.

18 (ii) An infectious disease epidemic in this
19 Commonwealth or a pandemic.

20 (2) Poses a high probability of any of the following in
21 the affected population:

22 (i) Death.

23 (ii) Serious or long-term disability.

24 (iii) Widespread exposure to an infectious disease,
25 which poses a significant risk of substantial present or
26 future harm to health and safety.

27 "Relative of a resident." An individual who:

28 (1) is related to a resident;

29 (2) has assisted the resident in the admission into or
30 the receipt of services from a facility; and

1 (3) does not have a power of attorney or health care
2 power of attorney for the resident in accordance with 20
3 Pa.C.S. Chs. 54 and 56.

4 "Resident." A resident of a facility or a recipient of
5 services provided by a facility.

6 Section 3. Health notification protocols.

7 (a) Contents.--Within 30 days of the effective date of this
8 section, the appropriate State licensing department of a
9 facility shall establish protocols that provide for the
10 following:

11 (1) Requirements for the facility to:

12 (i) Communicate with a resident and an agent of the
13 resident within 72 hours of the declaration of a public
14 health emergency or a facility outbreak to:

15 (A) Review the current health notification
16 agreement and any current do-not-resuscitate order or
17 POLST for the resident.

18 (B) Inform the resident and agent of the
19 resident of additional health notifications that are
20 available for providing information regarding the
21 resident's health to the agent of the resident.

22 (C) Inform the resident and agent of the
23 resident of the option to change the do-not-
24 resuscitate order or POLST for the resident and the
25 risks involved with the available options.

26 (D) Notify the agent of the resident in the
27 event of a change in the resident's health status
28 within 24 hours of the health status change.

29 (ii) Make revisions to the following:

30 (A) The health notification agreement in

1 accordance with the selections made by a resident or
2 an agent of the resident under paragraph (2).

3 (B) The do-not-resuscitate order or POLST in
4 accordance with the decisions made by a resident or
5 an agent of the resident under paragraph (2).

6 (iii) Communicate with a resident and a relative of
7 a resident within 72 hours of the declaration of a public
8 health emergency or a facility outbreak to:

9 (A) Provide information regarding powers of
10 attorney and health care powers of attorney under 20
11 Pa.C.S. Chs. 54 (relating to health care) and 56
12 (relating to powers of attorney).

13 (B) Encourage the resident and relative of the
14 resident to consider using a power of attorney or
15 health care power of attorney.

16 (iv) Communicate with the resident, agent of the
17 resident and all staff working within the facility
18 regarding how the facility plans to implement the safety
19 guidelines offered by the Centers for Disease Control and
20 Prevention, the department and any executive order
21 offered by the Governor through all stages of the public
22 health emergency. Information, including, but not limited
23 to, staff-to-resident ratios, mitigation efforts utilized
24 and compliance with the safety protocols adopted by the
25 facility shall be published on the facility's publicly
26 accessible Internet website.

27 (2) The ability of a resident or an agent of the
28 resident to:

29 (i) Select additional or remove existing health
30 notifications under the health notification agreement.

1 (ii) Make changes to the do-not-resuscitate order or
2 POLST.

3 (b) Collaboration.--Each State licensing department of a
4 facility shall collaborate to establish uniform protocols to the
5 extent feasible.

6 (c) Fines.--Each State licensing department of a facility
7 shall establish an administrative fine of up to \$500 for each
8 instance of noncompliance with the provisions of this section.

9 (d) Compliance with other laws.--The protocols under this
10 section shall comply with all applicable Federal and State
11 health information privacy laws.

12 Section 4. Facilities with positive COVID-19 test results.

13 Within 30 days of the effective date of this section, the
14 department shall develop guidelines or revise current guidelines
15 to provide for all of the following:

16 (1) The safety and protection from COVID-19 of residents
17 and staff of a facility that is not subject to the measures
18 for the safety and protection of residents and staff in long-
19 term care facilities from COVID-19 as contained in the
20 guidance issued prior to the effective date of this section
21 by the Centers for Disease Control and Prevention and the
22 department. The guidelines under this paragraph shall
23 incorporate the measures to increase compliance addressed
24 under paragraph (2) for facilities that have one or more
25 confirmed positive or presumed positive tests of COVID-19.

26 (2) Measures to increase compliance with the guidance
27 issued prior to the effective date of this section by the
28 Centers for Disease Control and Prevention and the department
29 for the safety and protection of residents and staff in long-
30 term care facilities from COVID-19 for facilities that have

1 one or more residents or long-term care facility staff that
2 have confirmed positive or presumed positive tests of COVID-
3 19.

4 Section 5. Essential workforce and employee protections.

5 (a) Essential employee.--A direct care worker who is an
6 employee of a facility or a contracted professional shall be
7 considered an essential employee of the facility unless the
8 services or treatment provided by the individual can be
9 delivered through an alternative method that yields the same
10 quality of care to a resident of the facility.

11 (b) Retaliation prohibited.--An employee or contracted
12 professional working within a facility shall not be subject to
13 retaliation after reporting a facility for noncompliance with
14 this act or the guidelines issued by the Centers for Disease
15 Control and Prevention or the department.

16 Section 6. Inspections, assessments and audits.

17 (a) Duties.--Notwithstanding any provision of law, during a
18 public health emergency or a facility outbreak, the appropriate
19 State licensing department of a facility:

20 (1) Shall conduct regular in-person inspections of the
21 facility for compliance with guidelines from the Centers for
22 Disease Control and Prevention and the department for the
23 safety and protection of residents and staff in the facility.

24 (2) Shall conduct an inspection of the facility upon
25 receipt of a complaint from a resident, an agent of the
26 resident, a relative of the resident or a member of the
27 facility staff that the facility is not complying with the
28 guidance from the Centers for Disease Control and Prevention
29 and the department for the protection of residents and staff
30 in the facility and to further address additional safety

1 measures following the occurrence of positive or presumed
2 positive test results in the facility. The inspection shall
3 address the subject matter of the complaint.

4 (3) May conduct in-person spot assessments of the
5 facility to ensure compliance with the guidance from the
6 Centers for Disease Control and Prevention and the department
7 for the protection of residents and staff in the facility and
8 to further address additional safety measures following the
9 occurrence of positive or presumed positive test results in
10 the facility.

11 (4) May not waive the inspections or in-person spot
12 assessments of the facility under this subsection.

13 (b) Audit.--The Office of Auditor General shall regularly
14 audit the records of the department during a public health
15 emergency or facility outbreak to ensure the accurate and timely
16 dissemination of public information reported to the department
17 by facilities in compliance with the guidance from the Centers
18 for Disease Control and Prevention and the department for the
19 protection of people in a facility regarding an infectious
20 disease that is the subject of a public health emergency or a
21 facility outbreak. The following shall apply:

22 (1) The audit must also include thorough investigation
23 of the manner in which any Federal or State appropriation
24 made available after the declaration of a public health
25 emergency is utilized in the facility, to ensure that aid is
26 directly used for mitigation efforts, supplies and workforce
27 payroll to protect both employees and residents and ensure
28 safe staff-to-resident ratios in accordance with 28 Pa. Code
29 § 211.12 (relating to nursing services).

30 (2) The findings of the audit shall be made available on

1 the publicly accessible Internet website of the facility and
2 updated as necessary.

3 Section 7. Appropriation.

4 The General Assembly shall appropriate any additional funding
5 necessary from the General Fund to the department to carry out
6 the requirements of this act.

7 Section 8. Effective date.

8 This act shall take effect immediately.