

OLDER ADULT DAILY LIVING CENTERS LICENSING ACT

Act of Jul. 11, 1990, P.L. 499, No. 118

Cl. 67

AN ACT

Authorizing the Department of Aging to license and inspect older adult daily living centers; imposing additional powers and duties on the Department of Aging; and making repeals.

Compiler's Note: Section 1101 of Act 45 of 1999 provided that Act 45 shall not repeal or in any way affect Act 118.

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

Section 1. Short title.

This act shall be known and may be cited as the Older Adult Daily Living Centers Licensing Act.

Section 2. 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:

"Department." The Department of Aging of the Commonwealth.

"Older adult daily living center." Any premises operated for profit or not-for-profit in which older adult daily living services are simultaneously provided for four or more adults who are not relatives of the operator.

"Older adult daily living services." Services provided or arranged for part of a 24-hour day to assist in meeting the needs, including, but not limited to, personal care, social, nutritional, health and educational needs, of a population of persons who are predominantly 60 years of age or older or who

are under 60 years of age but who have a dementia-related disease, such as Alzheimer's disease, as a primary diagnosis. The term does not include services provided for persons whose needs are such that they can only be met in a long-term care facility on an inpatient basis receiving professionally supervised nursing care and related medical and other health services.

"Relative." Any parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half brother, half sister, aunt, uncle, niece or nephew.

Section 3. Operation and maintenance without license prohibited.

No person shall maintain, operate or conduct any older adult daily living center without having a license issued by the department.

Section 4. License.

(a) General rule.--The department shall, after an investigation and after a departmental determination that the applicant complies with the provisions of this section, issue to any applicant a license to operate an older adult daily living center.

(b) Requirements.--An applicant for a license to operate an older adult daily living center shall comply with all of the following requirements:

(1) The applicant for a license is a responsible person.

(2) The place to be used as a facility is suitable for the purpose.

(3) The facility is appropriately equipped.

(4) The applicant and the place to be used as a facility meet all the requirements of this act or any other applicable statutes, ordinances and regulations.

(c) Record.--The department shall keep a record of all applications and all licenses issued under this act.

(d) Cooperation with Department of Public Welfare.--It is the intent of the General Assembly to empower the department to license and regulate older adult daily living centers which provide a program of activities in a protected, nonresidential environment to adults who are functionally impaired but are capable of maintaining independence within the community. The department shall coordinate with the Department of Public Welfare to regulate facilities in those limited cases where the facility provides services to persons under this act and to persons who receive services under Articles IX and X of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

Compiler's Note: The short title of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, referred to in this section, was amended by the act of December 28, 2015 (P.L.500, No.92). The amended short title is now the Human Services Code.

Compiler's Note: The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Section 5. Interim license.

The department shall have the power to issue an interim license, not exceeding six months, to an applicant seeking to operate an older adult daily living center for the first time at a specified location. The department may issue such license when it is satisfied that the applicant is suitable, the premises are safe and the applicant is likely to substantially

comply with applicable regulations prior to expiration of the interim license. Interim licenses shall not be renewable.

Section 6. Provisional license.

When there has been substantial but not complete compliance with all the applicable statutes, ordinances and regulations and when the applicant has taken appropriate steps to correct deficiencies, the department shall issue a provisional license, not exceeding six months, which may be renewed two times. Upon a departmental determination of full compliance, a regular license shall be issued immediately.

Section 7. Term and content of license.

A license issued by the department under this act shall:

(1) Be issued for a specified period of not more than 12 months.

(2) Be on a form prescribed by the department.

(3) Not be transferable.

(4) Be issued only to the person for the premises and for the facility named in the application.

(5) Specify the maximum number of individuals who may be cared for in the facility at any one time.

(6) At all times be posted in a conspicuous place at the older adult daily living center.

Section 8. Right to enter and inspect.

(a) Inspection.--For the purpose of determining the suitability of the applicants and of the premises or whether or not any premises in fact qualifies as an older adult daily living center or the continuing conformity of the licensees to this act and to the applicable regulations of the department, any authorized agent of the department shall have the right to enter, visit and inspect any facility licensed or requiring a license under this act and shall have full and free access to the records of the facility and to the individuals and full opportunity to interview, inspect or examine such individuals.

(b) Conferences.--An authorized agent of the department shall also confer with the operators of facilities regarding the minimum standards of the department, encourage the adoption of higher standards and recommend methods of improving care and services.

Section 9. Records.

Every person licensed under this act to maintain, operate and conduct a facility shall keep such records and make such reports as are required by the department.

Section 10. Regulations.

The department shall promulgate regulations to establish minimum standards for building, equipment, operation, care, program and services, to provide for the issuance of licenses and for the licensing appeal process and to establish and collect fees to offset the cost of issuing licenses.

Section 11. Refusal to issue license; revocation; notice.

(a) Appeal.--Any applicant refused a license by the department shall be prohibited from conducting an older adult daily living center under this act. Any appeal of that determination may be made to the department but in no event may an applicant commence providing older adult daily living services prior to licensure by the department. The court shall enjoin, upon proof by the department, any activity by an applicant refused a license pursuant to this subsection.

(b) Notice of violation.--Whenever the department, upon inspection or investigation, learns of a violation of this act or of regulations adopted by the department pursuant to this act, it shall give written notice thereof to the offending person. The notice shall require the offending person to take

action to bring the facility into compliance with this act or with the relevant regulations within a specified time.

(c) Reasons for refusal or revocation.--The department shall refuse to reissue a license or shall revoke a license for any of the following reasons:

(1) Violation of or noncompliance with the provisions of this act or the regulations.

(2) Fraud or deceit in obtaining or attempting to obtain a license.

(3) Lending, borrowing or using the license of another or in any way knowingly aiding or abetting the improper granting of a license.

(4) Gross incompetence, negligence or misconduct in operating the facility.

(5) Mistreating or abusing individuals cared for in the facility.

(d) Notice of refusal or revocation.--Whenever the department refuses to issue or revokes a license, it shall give written notice thereof by certified mail. The notice shall specify the reason for the refusal or revocation.

Section 12. Violation; penalty.

Any person operating a facility within this Commonwealth without a license required by this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$50 nor more than \$300, and costs of prosecution, and, in default of the payment thereof, to undergo imprisonment for not less than ten days nor more than 30 days. Each day of operating a facility without a license required by this act shall constitute a separate offense.

Section 13. Actions against unlicensed older adult daily living centers.

Whenever a license is required by law for the establishment, operation or conduct of an older adult daily living center, the department, upon advice of the Attorney General, may maintain an action in the name of the Commonwealth for an injunction or other process restraining or prohibiting any person from establishing, conducting or operating any older adult daily living center during any period after a license to engage in such activity has been refused, has not been renewed or has been revoked by the department.

Section 14. Actions against violations of laws and rules and regulations.

Whenever any person, regardless of whether such person is a licensee, has violated the laws of this Commonwealth pertaining to the licensing of an older adult daily living center or the rules and regulations adopted pursuant to such laws by the department, the department, upon the advice of the Attorney General, may maintain an action in the name of the Commonwealth for an injunction or other process restraining or prohibiting such person from engaging in such activity.

Section 15. Jurisdiction.

An action authorized under the provisions of this act shall be instituted in the Commonwealth Court or court of common pleas in the county where the alleged unauthorized activity is committed.

Section 16. Injunction or restraining order when appeal is pending.

Whenever the department has refused to renew a license or revoked a license required by this act or has ordered the person to refrain from conduct violating the rules and regulations of the department and the person has appealed the action of the department, the court shall, during pendency of the appeal,

issue a restraining order or injunction upon proof by the department that the operation of the older adult daily living center or its failure to comply with the order of the department is a threat to the well-being and safety of the adults attending the older adult daily living center.

Section 17. Injunction or restraining order when no appeal is pending.

Should a person who is refused a license or the renewal of a license to operate or conduct an older adult daily living center or whose license is revoked or who has been ordered to refrain from conduct or activity which violates the rules and regulations of the department fail to appeal or should such appeal be decided finally favorably to the department, then the court shall issue a permanent injunction upon proof that the person is operating or conducting an older adult daily living center without a license as required by law or has continued to violate the rules and regulations of the department.

Section 18. Search warrants.

Upon a showing of reasonable cause to suspect that specified premises are being used in violation of any provision of this act or regulations adopted pursuant thereto, any district justice in the district wherein the premises are located shall issue an administrative search warrant to any authorized agent of the department, identifying the premises to be searched, the scope of the search and the hours during which the search may be conducted.

Compiler's Note: Section 28 of Act 207 of 2004 provided that any and all references in any other law to a "district justice" or "justice of the peace" shall be deemed to be references to a magisterial district judge.

Section 19. Bonds and costs.

No bond shall be required of and no costs shall be taxed against the department on account of any such action.

Section 20. Law supplementary.

No action brought under the provision of this act shall prevent the prosecution or institution of any civil or criminal action otherwise provided by law for violation of any law providing for licensing or departmental rules or regulations promulgated thereunder.

Section 21. Repeals.

Articles IX and X of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, are repealed insofar as they are inconsistent with this act.

Compiler's Note: The short title of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, referred to in this section, was amended by the act of December 28, 2015 (P.L.500, No.92). The amended short title is now the Human Services Code.

Section 22. Effect on issued certificates.

Any certificate of compliance issued by the Department of Public Welfare with an expiration date after December 31, 1990, and before July 1, 1991, shall remain in effect until a licensing decision is made by the Department of Aging.

Compiler's Note: The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Section 23. Effective date.

This act shall take effect as follows:

(1) Section 10 and this section shall take effect immediately.

(2) The remainder of this act shall take effect January 1, 1991.