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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 354 Session of  
2007

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INTRODUCED BY SANTONI, BIANCUCCI, BISHOP, CALTAGIRONE, CAPPELLI,  
COHEN, EACHUS, FRANKEL, FREEMAN, GEIST, GOODMAN, GRUCELA,  
HENNESSEY, JAMES, KOTIK, MANN, MELIO, PETRONE, PRESTON,  
SCAVELLO, SOLOBAY, STABACK, THOMAS, WALKO, YOUNGBLOOD AND  
YUDICHAK, FEBRUARY 9, 2007

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REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,  
FEBRUARY 9, 2007

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AN ACT

1 Establishing the Center for Long-Term Care Technical Assistance  
2 and Resource Development; providing for its duties;  
3 prescribing powers and duties of the Department of Aging; and  
4 imposing a penalty.

5 The General Assembly finds and declares as follows:

6 (1) The Commonwealth recognizes the dignity of long-term  
7 care facility residents and staff and affirms their value to  
8 society.

9 (2) The Commonwealth seeks to ensure an enriched and  
10 life-enhancing long-term care environment for all  
11 Pennsylvanians.

12 (3) The Commonwealth is committed to assisting long-term  
13 care providers in the enhancement of the health, safety and  
14 social well-being of its senior population.

15 (4) The Commonwealth, through the Department of Aging,  
16 with the cooperation of the Department of Health and the  
17 Department of Public Welfare, provides a variety of special

1 services that enhance the quality of life for seniors.

2 (5) The Department of Aging, with the cooperation of  
3 other departments, also conducts studies and evaluations  
4 pertaining to the quality of care and related services for  
5 consumers of long-term care services and those living in  
6 long-term care facilities.

7 (6) The Commonwealth finds it beneficial to review the  
8 activities and environment of long-term care facilities in  
9 order to recommend and fully utilize Federal, State and  
10 community resources that enhance the quality of life for  
11 older persons.

12 (7) The Commonwealth seeks to promote best practices in  
13 long-term care by offering technical assistance to long-term  
14 care facilities.

15 (8) The creation of a Center for Long-Term Care  
16 Technical Assistance and Resource Development within the  
17 Department of Aging would maintain and improve long-term care  
18 physical settings while expanding the quality of life and  
19 care of residents in long-term care facilities.

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

22 Section 1. Short title.

23 This act shall be known and may be cited as the Long-Term  
24 Care Technical Assistance and Resource Program Act.

25 Section 2. Definitions.

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

29 "Center." The Center for Long-Term Care Technical Assistance  
30 and Resource Development.

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

2 "Facility." A long-term care facility that is licensed by  
3 the Commonwealth to provide long-term care. The term includes,  
4 but is not limited to, the following:

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

8 (2) A personal care home as defined in section 1001 of  
9 the act of June 13, 1967 (P.L.31, No.21), known as the Public  
10 Welfare Code.

11 "Surveyor." An individual employed by the Department of  
12 Aging and assigned to the Center for Long-Term Care Technical  
13 Assistance and Resource Development to conduct consultations and  
14 assessments at the request of a facility and offer  
15 recommendations in accordance with this act.

16 Section 3. Establishment of center.

17 The Center for Long-Term Care Technical Assistance and  
18 Resource Development is established within the Department of  
19 Aging.

20 Section 4. Duties of center.

21 The center shall have the following duties:

22 (1) Provide surveyors that will consult with a facility  
23 to identify existing safety and health care issues so the  
24 facility may improve the quality of its physical setting and  
25 the standard of care for the residents. The responsibility  
26 for any and all action or improvements either suggested by a  
27 surveyor or contained in a technical assistance report  
28 remains at the discretion of the facility.

29 (2) Assess a facility's compliance with current  
30 licensure rules and regulations. At no time may a surveyor

1 report any deficiencies to a department with licensing  
2 authority over the facility or impose any penalties for  
3 violations on behalf of a department.

4 (3) Assist facilities to identify existing State  
5 resources so the facilities may improve the quality of their  
6 physical setting and increase the standard of care for  
7 residents of the facility.

#### 8 Section 5. Surveyor qualifications.

9 (a) General rule.--A surveyor shall at a minimum possess:

10 (1) Prior experience that includes, but is not limited  
11 to, a thorough knowledge of the rules and regulations of the  
12 oversight department for a facility that the surveyor is  
13 assigned.

14 (2) Prior experience that includes, but is not limited  
15 to, a thorough knowledge of the assessment procedures  
16 performed by the oversight department for a facility that the  
17 surveyor is assigned.

18 (3) Experience with survey protocols. This paragraph  
19 shall not be construed to mean that a surveyor may conduct  
20 surveys on behalf of an oversight department.

21 (4) Prior experience with best practices in quality  
22 assurance, resident-centered care and staff empowerment.

23 (b) Additional consideration.--Prior employment in a nursing  
24 home, licensure as a nursing home administrator or experience as  
25 a consultant to nursing facilities in the area of quality  
26 improvement or regulatory compliance may be considered as  
27 qualifications in determining employment of a surveyor.

#### 28 Section 6. Responsibilities and duties of surveyor.

29 A surveyor shall:

30 (1) Provide an onsite visit and consultation to a

1 facility only upon request of a facility administrator, with  
2 no more than two onsite visits within a single calendar year.

3 (2) Offer to review facility survey information, minimum  
4 data set quality improvement indicators information,  
5 complaint and incident reports and other applicable data  
6 before making any recommendations.

7 (3) Consult with a facility's staff and residents.

8 (4) Offer technical assistance on quality improvement  
9 techniques based best practices identified by various bodies  
10 or agencies experienced in understanding techniques for  
11 quality improvement in clinical services, management,  
12 operations and labor practices.

13 (5) Identify possible Federal, State or community  
14 resources that may be available to a facility to resolve or  
15 improve its physical setting and enhance the delivery of care  
16 to its residents.

17 (6) Offer a regulatory point of view about how issues  
18 may be scrutinized by the department with licensure authority  
19 over a facility.

20 (7) Provide a technical assistance report only to the  
21 facility that requested the consultation. This paragraph  
22 shall not be construed to prevent a surveyor from providing  
23 information as required under section 8 or providing  
24 statistical information to the department for reporting  
25 requirements under section 9.

## 26 Section 7. Immunity.

27 A surveyor acting within the scope of this act shall not be  
28 personally liable for any citations or deficiencies filed  
29 against the facility by any department with licensing authority  
30 over the facility.

1 Section 8. Confidentiality.

2 (a) Technical assistance reports not public records.--

3 Technical assistance reports shall not be considered public  
4 records and shall not be provided to any person outside the  
5 center except:

6 (1) The facility that has requested the technical  
7 assistance.

8 (2) Whenever a surveyor, while acting within the scope  
9 of this act, discovers a condition during a consultation or  
10 assessment that poses a serious threat to a resident's health  
11 or safety at the facility, the surveyor shall report the  
12 condition to the local adult protective services agency  
13 utilizing procedures consistent with those contained in the  
14 act of November 6, 1987 (P.L.381, No.79), known as the Older  
15 Adults Protective Services Act, as well as any Federal and  
16 State regulatory procedures pertaining to the licensed  
17 facility.

18 (b) Records not subject to subpoena.--

19 (1) Under no circumstances shall the reports,  
20 information and records compiled by a surveyor during a  
21 consultation be subject to subpoena, discovery or  
22 introduction into evidence in any civil or criminal  
23 proceeding unless the reports, information and records show a  
24 condition that poses a serious threat to the health or safety  
25 of a resident.

26 (2) Nothing in this subsection shall be construed to  
27 prevent information, documents or records otherwise available  
28 from other sources and retained by a facility and only  
29 reviewed or presented to a surveyor to be subject to a  
30 subpoena, discovery or introduction into evidence in any

1 civil, administrative or criminal proceeding.

2 (c) Surveyors not subject to subpoena.--

3 (1) Surveyors shall not be subpoenaed, questioned or  
4 required to testify in any civil, administrative or criminal  
5 proceeding regarding information presented to the surveyor or  
6 opinions formed as a result of any consultation performed  
7 within the scope of the surveyor's duties under this act  
8 unless the information pertains to a condition that posed a  
9 serious threat to the health or safety of a resident.

10 (2) Nothing in this subsection shall be construed to  
11 prevent a surveyor from being subpoenaed, questioned or  
12 required to testify to information obtained independently  
13 from the duties of the surveyor or on information that is  
14 public.

15 (d) Penalty.--A person who violates the confidentiality  
16 provisions of this section commits a misdemeanor of the second  
17 degree.

18 Section 9. Report to General Assembly.

19 (a) Contents.--The center shall provide a report to the  
20 General Assembly that contains the following:

21 (1) The total number of facilities, by category, that  
22 requested a consultation.

23 (2) A list of various deficiencies found within  
24 facilities, by category.

25 (3) Information on the number of reports that were  
26 forwarded to the State Long-Term Care Ombudsman for  
27 conditions that posed a serious threat of harm to an  
28 individual.

29 (4) Information regarding best practices and innovative  
30 programs that ensure quality and recommendations for training

on those best practices.

(5) Recommendations for changing or modifying regulations that prevent or inhibit innovation.

(b) Identifying information.--At no time shall identifying information be contained in the report.

#### Section 10. Regulations.

Within one year of the effective date of this section, the department shall promulgate rules and regulations to administer and enforce this act. The provisions of this act and the rules and regulations adopted in accordance with this act shall not affect the authority granted to any licensing department in connection with a facility.

#### Section 11. Funding.

The Department of Aging shall employ, with such funds as may be annually appropriated by the General Assembly, sufficient staff and services to carry out the requirements of this act.

#### Section 12. Effective date.

This act shall take effect January 1, 2008, or immediately, whichever is later.