
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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INTRODUCED BY HOFFEL, LASHINGER, MAIALE, CORNELL, E. Z. TAYLOR,
SAURMAN, GREENWOOD, McVERRY, MARMION, MORRIS, KOWALYSHYN,
J. L. WRIGHT, ARTY AND KUKOVICH, APRIL 6, 1983

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, APRIL 6, 1983

AN ACT

1 Regulating Life Care Facilities.

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

9 Section 1. Short title.

10 This act shall be known and may be cited as the Life Care
11 Facilities Act.

12 Section 2. Legislative intent.

13 The purpose of this act is to provide for full disclosure by
14 life care facilities for the purpose of protecting the interests
15 of the residents of such facilities and authorizing the
16 Department of Insurance to adopt such regulations as are
17 necessary to carryout the purpose of this act.

18 Section 3. Definitions.

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

22 "Application fee." The sum of money which may be charged to
23 a prospective resident, regardless of whether the individual
24 becomes a resident, to cover the provider's costs in processing
25 the application.

26 "Commissioner." The Insurance Commissioner.

27 "Department." The Insurance Department.

28 "Entrance fee." A sum of money, real property or any other
29 consideration transferred to a provider by a resident in order
30 to assure a place in a life care facility for a term of years or

1 for life.

2 "Life care agreement." A contract written in nontechnical
3 language, easily understood by a layperson, between the resident
4 and the provider setting forth all services to be furnished by
5 the provider to the resident, the charges for these services and
6 all legal obligations imposed on the residents.

7 "Life care facility." A place of residence in which shelter,
8 food, medical, nursing and such other services as are set forth
9 in a life care agreement are furnished to residents for life or
10 a term of years in return for payment to the provider of an
11 entrance fee and such other periodic charges as are set forth in
12 the aforementioned agreement. The term life care facility shall
13 not apply to a facility which is conducted by a religious
14 organization for the purpose of providing services exclusively
15 to clergy men or other persons in a religious profession who are
16 members of a religious denomination.

17 "Provider." The person, corporation, partnership,
18 association or other legal entity which agrees to provide
19 continuing care to residents in a home and includes a provider
20 establishing a new home even though the provider has previously
21 been registered with respect to other homes.

22 "Resident." A person who enters into a life care agreement
23 with a provider or who is designated in a life care agreement to
24 be provided with shelter, food, medical, nursing and other
25 services at a life care facility.

26 Section 4. Administration of the act.

27 The administration of this act is vested in the Insurance
28 Department which shall:

29 (1) Prepare and furnish all forms necessary or desirable
30 under the provisions of this act.

1 (2) Establish and collect filing fees reasonably
2 necessary for the administration of this act, including late
3 fees for failure to file required reports in a timely manner.

4 (3) Adopt rules and regulations necessary to enforce
5 this act.

6 (4) Prepare and distribute such informational materials
7 as necessary to advise the public and the providers of their
8 rights and responsibilities under this act.

9 Section 5. Certificate of registration.

10 (a) Registration.--No provider shall solicit, enter into or
11 renew a life care agreement in this Commonwealth without a
12 certificate of registration issued by the commissioner.

13 (b) Notice of intent.--Any provider who is offering life
14 care agreements when this act takes effect shall file written
15 notice of intent to comply with the act and shall be given a
16 reasonable time, not to exceed one year from the date of the
17 issuance of the regulations pursuant to this act, within which
18 to comply with this act and the regulations.

19 (c) Statement.--Any provider who has offered life care
20 agreements prior to the effective date of this act and who
21 intends not to offer new life care agreements or to renew such
22 agreements shall file a statement to that effect with the
23 department.

24 (d) Regulations.--Any provider who is offering life care
25 agreements under this act shall be in compliance with the
26 applicable long term care regulations promulgated and enforced
27 by the Department of Health, and the personal care boarding home
28 regulations promulgated and enforced by the Department of Public
29 Welfare as a condition of registration.

30 Section 6. Application for certificate of registration.

1 (a) Form.--A provider shall file an application for a
2 certificate of registration with the commissioner on a form
3 prescribed by the department. The application shall contain at
4 least the following information:

5 (1) The name and address of the life care facility and a
6 description of the physical property of the facility.

7 (2) The estimated number of residents of the facility to
8 be provided services pursuant to the life care contracts.

9 (3) The name and address of any affiliated, parent or
10 subsidiary corporation, partnership or association.

11 (4) A biographical statement for the provider if the
12 provider is an individual, for each of the partners or
13 members if the provider is a partnership or other
14 unincorporated association, for each stockholder owning a 10%
15 or greater interest in a stock corporation or each of the
16 members in a nonstock corporation if the provider is a
17 corporation and for each of the members of the board of
18 directors or other governing body. The biographical statement
19 shall include name and address, a description of each
20 individual's duties on behalf of the provider and the name of
21 any entity in which the individual holds a 10% or greater
22 ownership or beneficial interest or of which he is an
23 officer, director or employee and which the provider may
24 employ to provide goods, services or other things of value.

25 (5) A copy of the corporate charter, partnership
26 agreement, articles of association, membership agreement or
27 trust agreement under which the applicant is organized.

28 (6) A statement certified by an independent public
29 auditor of the applicant's financial condition, including a
30 balance sheet and income statements for the two most recent

1 fiscal years. If the applicant's fiscal year ended more than
2 120 days prior to the date of filing, there shall also be
3 included an income statement, which need not be certified,
4 covering the period between the date the fiscal year ended
5 and a date not more than 120 days prior to the date the
6 application is filed.

7 (7) A statement as to whether the provider is or, within
8 the last three years, was affiliated with any religious,
9 charitable or other nonprofit organization, the nature of
10 that affiliation and the extent to which such organization
11 will be responsible for the financial and contractual
12 obligations of the applicant.

13 (8) A copy of the life care agreement to be entered into
14 between the applicant and residents. A copy of any subsequent
15 amendments or addenda to the agreement shall be filed with
16 the department prior to their use or application to the
17 agreement.

18 (9) A statement of the facility's fee schedule,
19 including entrance fees, periodic charges and method of
20 payment of such fees and charges and indicating any index,
21 escalator or other automatic adjustment provisions and the
22 services to be provided under the life care contract.

23 (10) A statement of the role of any publicly-funded
24 benefit or insurance program in the financing of the life
25 care for residents.

26 (11) A copy of each published advertisement or circular
27 for the facility during the past three years and a copy of
28 each advertisement or circular planned for use within the
29 next year.

30 (12) Evidence of compliance with the applicable long

1 term care regulations promulgated and enforced by the
2 Department of Health, and the personal care boarding home
3 regulations promulgated and enforced by the Department of
4 Public Welfare.

5 (b) Annual financial statement.--Annually thereafter, within
6 120 days after the end of its fiscal year, the provider shall
7 file a certified financial statement for the preceding fiscal
8 year and notify the commissioner of any changes in or any
9 additions to the information required by subsection (a). Failure
10 to file the required information within 90 days following the
11 due date shall be a violation of this act.

12 (c) Separate application.--When an applicant has more than
13 one facility offering life care, separate applications for
14 registration and renewal certificates shall be made for each
15 facility.

16 (d) Approval or denial of application.--Within 60 days after
17 receipt of the application, unless the applicant has consented
18 in writing to a delay, the commissioner shall approve the
19 application and register the facility or shall deny the
20 application and notify the applicant in writing of the specific
21 reasons for denial.

22 (e) Director of life care facilities.--The department shall
23 compile and publish, on an annual basis, a directory of all life
24 care facilities which have been approved by the department. The
25 directory shall contain, but not be limited to:

26 (1) Name, address and physical description of the
27 facility.

28 (2) The facility's fee schedule, including entrance
29 fees, periodic charges, service charges and method of payment
30 of such fees and charges.

- 1 (3) Terms of cancellation of the contract.
- 2 (4) Rebate provisions.
- 3 (5) Type of residences available and services provided.
- 4 (6) Medical services provided.

5 The report shall be available to all residents and to the
6 general public at no cost. The directory shall include a
7 statement that all the information which the provider has filed
8 with the department is available upon request from the provider.

9 Section 7. Life care agreement.

10 A copy of each life care agreement to be used at each
11 facility shall be filed with the commissioner for approval.

12 Section 8. Disclosure statement and access to records.

13 The provider shall prepare and make available annually to all
14 residents and prospective residents, upon request, a disclosure
15 statement. The provider shall file a copy of the disclosure
16 statement with the commissioner prior to use. Specific
17 information to be included in the disclosure statement shall be
18 prescribed by the commissioner in regulations to be issued no
19 later than 120 days after the effective date of this act. Such
20 specific information shall include, but shall not be limited to,
21 all the information which the provider has filed with the
22 department in accordance with section 5.

23 Section 9. Reserve fund.

24 (a) Establishment of reserve fund.--As a condition of
25 initial or continuing certification under this act, each
26 provider shall establish and maintain for each facility at the
27 time the facility is first occupied by any resident, reserves as
28 provided in this section.

29 (b) Use of reserve fund.--The reserve fund shall be
30 maintained in liquid investments in an amount equal to the total

1 of all principal and interest payments due during the next 12
2 months on account of any first mortgage loan or other long-term
3 financing of the facility.

4 (c) Exemption.--The provider shall notify the department at
5 least 10 days prior to the expenditure of any portion of the
6 reserve fund and shall use not more than one-twelfth of the
7 original balance in the fund in any one month.

8 Section 10. Waivers disallowed.

9 No act, agreement or statement of any resident or by an
10 individual purchasing care for a resident under any agreement to
11 furnish care to the resident shall constitute a valid waiver of
12 any provision of this act intended for the benefit or protection
13 of the resident or the individual purchasing care for the
14 resident.

15 Section 11. Department audits.

16 The department shall visit each life care facility in this
17 Commonwealth to examine its books and records at least once
18 every three years.

19 Section 12. Penalties.

20 Any person, association or corporation that violates any
21 provision of this act commits a misdemeanor of the third degree
22 and shall, upon conviction, be sentenced to imprisonment not
23 exceeding six months or to pay a fine of not more than \$1,000,
24 or both. Each violation of this act shall constitute a separate
25 offense.

26 Section 13. Civil remedies available to residents.

27 Any resident of a life care facility injured by a violation
28 of this act may bring an action against the violator for the
29 recovery of damages in any court of general jurisdiction. In
30 such cases the court may award reasonable attorney's fees to a

1 resident in whose favor a judgment is rendered.

2 Section 14. Injunctions.

3 Any resident injured by a violation of this act, or the
4 department on behalf of any resident, may institute an action
5 for an appropriate temporary restraining order or injunction.

6 Any injured resident, or the department on behalf of any injured
7 resident, may petition for the appointment of a receiver:

8 (1) in the event of a threat of immediate closure of a
9 facility;

10 (2) if the provider is not honoring its contracts with
11 its residents; or

12 (3) to prohibit the removal by the provider of its
13 assets and records from the facility or the Commonwealth.

14 Section 15. Rehabilitation or liquidation.

15 (a) Appointment of trustee.--If at any time, the
16 commissioner shall determine, after notice and an opportunity
17 for the provider to be heard, that a facility is not in
18 compliance with the reserve requirements set forth in this act,
19 or that a provider is bankrupt or insolvent or in imminent
20 danger of becoming bankrupt or insolvent, then the commissioner
21 may apply to the appropriate court of this Commonwealth or to
22 the Federal bankruptcy court, which may have previously taken
23 jurisdiction over the provider or facility, for a trustee to be
24 appointed to rehabilitate or liquidate a facility.

25 (b) Court order.--An order to rehabilitate a facility shall
26 direct the trustee to take possession of the property of the
27 provider and to conduct the business thereof, including the
28 employment of such managers or agents as the trustee may deem
29 necessary, and to take such steps as the court may direct toward
30 removal of the causes and conditions which have made

1 rehabilitation necessary.

2 (c) Termination of trustee.--If, at any time, the court
3 finds, upon petition of the commissioner or trustee or on its
4 own motion, that the objectives of the order to rehabilitate a
5 provider have been accomplished and that the facility can be
6 returned to the provider's management without further jeopardy
7 to the security of the residents of the facility, the provider's
8 creditors or the public welfare, the court may, upon a full
9 report and accounting of the conduct of the facility's affairs
10 during the rehabilitation and of the facility's current
11 financial condition, terminate the rehabilitation and by order
12 return the facility and its assets and affairs to the provider's
13 management.

14 (d) Liquidation.--If, at any time, the commissioner
15 determines that further efforts to rehabilitate the provider
16 would be useless, it may apply to the court for an order of
17 liquidation.

18 (e) Bond.--An order for rehabilitation under this section
19 shall be refused or vacated if the provider posts a bond by a
20 recognized surety authorized to do business in this State, and
21 executed in favor of the commissioner on behalf of persons who
22 may be found entitled to a refund of entrance fees from the
23 provider or other damages in the event the provider is unable to
24 fulfill its contracts, to provide life care at the facility, in
25 an amount determined by the court to be equal to the reserve
26 funding which would otherwise need to be available to fulfill
27 such obligations.

28 (f) Order of liquidation.--An order to liquidate a facility
29 may be issued upon application of the commissioner, whether or
30 not there has been issued a prior order to rehabilitate the

1 facility. Such order shall act as a revocation of the
2 registration of the facility and shall order the trustee to
3 marshal and liquidate all of the provider's assets located
4 within this Commonwealth.

5 (g) Consideration of commissioner.--In applying for an order
6 to rehabilitate or liquidate a facility, the commissioner shall
7 give due consideration in the application to the manner in which
8 the welfare of persons who have previously contracted with the
9 provider for life care may be best served.

10 Section 16. Suspension or revocation of registration.

11 (a) Grounds for suspension or revocation.--A certificate of
12 registration or renewal certificate may be suspended or revoked
13 for cause by the commissioner. Grounds for suspension or
14 revocation include knowing violation of the provisions of this
15 act, knowing violation of regulations issued by the commissioner
16 pursuant to this act, knowing misrepresentations or knowing
17 submissions of any false financial statement to the
18 commissioner.

19 (b) Proceedings.--The proceeding governing the appeal of a
20 revocation or suspension shall be conducted in accordance with
21 Title 2 of the Pennsylvania Consolidated Statutes (relating to
22 administrative law and procedure).

23 Section 17. Maintenance of records within Commonwealth.

24 A copy of all records of the provider related to the
25 operation of the facility and the provision of services under
26 the life care agreement shall be maintained in this Commonwealth
27 by a provider. These records shall be available to the
28 department for examination during regular business hours.

29 Section 18. Sale or transfer of ownership.

30 Any provider or owner of a life care facility who desires to

1 sell or transfer ownership of that facility to another party
2 shall first obtain approval from the department, which approval
3 shall be deemed automatically granted within 90 days of receipt
4 of the notice of intent except on findings of fact by the
5 department that the sale or transfer is harmful to the interests
6 of the residents involved.

7 Section 19. Cross-collateralization.

8 The assets of an existing life care facility shall not be
9 pledged by the facility as collateral for the purpose of
10 securing loans for the construction of other life care
11 facilities.

12 Section 20. Repeals.

13 All acts and parts of acts are repealed insofar as they are
14 inconsistent with this act.

15 Section 21. Effective date.

16 This act shall take effect in six months.