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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2480

Session of  
1990

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D. F. CLARK AND ANGSTADT, APRIL 23, 1990

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REFERRED TO COMMITTEE ON YOUTH AND AGING, APRIL 23, 1990

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AN ACT

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

4 TABLE OF CONTENTS

5 Section 1. Short title.

6 Section 2. Definitions.

7 Section 3. Operation and maintenance without license  
8 prohibited.

9 Section 4. License.

10 Section 5. Interim license.

11 Section 6. Provisional license.

12 Section 7. Term and content of license.

13 Section 8. Right to enter and inspect.

14 Section 9. Records.

15 Section 10. Regulations.

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

17 Section 12. Violation; penalty.

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

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

5 Section 15. Jurisdiction.

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

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

10 Section 18. Search warrants.

11 Section 19. Bonds and costs.

12 Section 20. Law supplementary.

13 Section 21. Repeals.

14 Section 22. Effect on issued certificates.

15 Section 23. Effective date.

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

18 Section 1. Short title.

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

21 Section 2. Definitions.

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

25 "Department." The Department of Aging of the Commonwealth of  
26 Pennsylvania.

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

1 "Older adult daily living services." Services provided for  
2 part of a 24-hour day to meet the personal care needs, excluding  
3 skilled care, of persons who are predominantly 60 years of age  
4 or older or who are under 60 years of age but who have a  
5 dementia-related disease, such as Alzheimer's disease, as a  
6 primary diagnosis.

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

10 "Skilled care." Professionally supervised nursing care and  
11 related medical and other health services provided for a period  
12 exceeding 24 hours to an individual not in need of  
13 hospitalization, but whose needs are such that they can only be  
14 met in a long term care facility on an inpatient basis, and who  
15 needs the care because of age, illness, disease, injury,  
16 convalescence or physical or mental infirmity. The term includes  
17 the provision of daily inpatient services that are needed on a  
18 daily basis by the patient, ordered by a physician, which  
19 require the skills of and are furnished directly by or under the  
20 supervision of technical or professional personnel, such as, but  
21 not limited to, registered nurses, licensed practical nurses,  
22 physical therapists, occupational therapists, speech  
23 pathologists or audiologists. The care would include skilled  
24 nursing, skilled rehabilitation or a personal care service that  
25 because of a special medical complication of the patient require  
26 that the personal care services be performed by or under the  
27 direct supervision of skilled nursing or rehabilitative  
28 personnel.

29 Section 3. Operation and maintenance without license  
30 prohibited.

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

4 Section 4. License.

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

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

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

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

16 (3) The facility is appropriately equipped.

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

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

22 Section 5. Interim license.

23 The department shall have the power to issue an interim  
24 license, not exceeding six months, to an applicant seeking to  
25 operate an older adult daily living center for the first time at  
26 a specified location. The department may issue such license when  
27 it is satisfied that the applicant is suitable, the premises are  
28 safe and the applicant is likely to substantially comply with  
29 applicable regulations prior to expiration of the interim  
30 license. Interim licenses shall not be renewable.

1 Section 6. Provisional license.

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

9 Section 7. Term and content of license.

10 A license issued by the department under this act shall:

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

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

14 (3) Not be transferable.

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

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

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

21 Section 8. Right to enter and inspect.

22 (a) Inspection.--For the purpose of determining the  
23 suitability of the applicants and of the premises or whether or  
24 not any premises in fact qualifies as an older adult daily  
25 living center or the continuing conformity of the licensees to  
26 this act and to the applicable regulations of the department,  
27 any authorized agent of the department shall have the right to  
28 enter, visit and inspect any facility licensed or requiring a  
29 license under this act. An inspector shall have full and free  
30 access to the records of the facility and to the individuals and

1 full opportunity to interview, inspect or examine such  
2 individuals.

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

#### 8 Section 9. Records.

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

#### 12 Section 10. Regulations.

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

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

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

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

1 person. The notice shall require the offending person to take  
2 action to bring the facility into compliance with this act or  
3 with the relevant regulations within a specified time.

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

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

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

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

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

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

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

22 Section 12. Violation; penalty.

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

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

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

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

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

22 Section 15. Jurisdiction.

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

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

29 Whenever the department has refused to renew a license or  
30 revoked a license required by this act or has ordered the person



1 to refrain from conduct violating the rules and regulations of  
2 the department and the person has appealed the action of the  
3 department, the court shall, during pendency of the appeal,  
4 issue a restraining order or injunction upon proof by the  
5 department that the operation of the older adult daily living  
6 center or its failure to comply with the order of the department  
7 is a threat to the well-being and safety of the adults attending  
8 the older adult daily living center.

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

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

21 Section 18. Search warrants.

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

30 Section 19. Bonds and costs.

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

3       Section 20.   Law supplementary.

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

9       Section 21.   Repeals.

10       All acts and parts of acts are repealed insofar as they are  
11       inconsistent with this act.

12       Section 22.   Effect on issued certificates.

13       Any certificate of compliance issued by the Department of  
14       Public Welfare with an effective date prior to January 1, 1991,  
15       shall remain in effect until the expiration of the current  
16       certificate of compliance unless a new certificate of compliance  
17       is issued by the Department of Aging prior to the expiration of  
18       the current certificate of compliance.

19       Section 23.   Effective date.

20       This act shall take effect January 1, 1991.