

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2480

Session of
1990

INTRODUCED BY STUBAN, JAROLIN, STISH, KASUNIC, HALUSKA, DALEY,
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D. F. CLARK AND ANGSTADT, APRIL 23, 1990

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 19, 1990

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.

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

19 Section 1. Short title.

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

22 Section 2. Definitions.

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

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

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

1 "Older adult daily living services." Services provided or
2 arranged for part of a 24-hour day to assist in meeting the
3 needs, including, but not limited to, personal care, social,
4 nutritional, health and educational needs, of A POPULATION OF <—
5 persons who are predominantly 60 years of age or older or who
6 are under 60 years of age but who have a dementia-related
7 disease, such as Alzheimer's disease, as a primary diagnosis.
8 The term does not include services provided for persons whose
9 needs are such that they can only be met in a long-term care
10 facility on an inpatient basis receiving professionally
11 supervised nursing care and related medical and other health
12 services.

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

16 Section 3. Operation and maintenance without license
17 prohibited.

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

21 Section 4. License.

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

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

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

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

3 (3) The facility is appropriately equipped.

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

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

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

21 Section 5. Interim license.

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

30 Section 6. Provisional license.

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

8 Section 7. Term and content of license.

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

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

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

13 (3) Not be transferable.

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

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

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

20 Section 8. Right to enter and inspect.

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

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

6 Section 9. Records.

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

10 Section 10. Regulations.

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

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

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

25 (b) Notice of violation.--Whenever the department, upon
26 inspection or investigation, learns of a violation of this act
27 or of regulations adopted by the department pursuant to this
28 act, it shall give written notice thereof to the offending
29 person. The notice shall require the offending person to take
30 action to bring the facility into compliance with this act or

1 with the relevant regulations within a specified time.

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

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

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

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

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

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

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

20 Section 12. Violation; penalty.

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

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

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

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

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

20 Section 15. Jurisdiction.

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

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

27 Whenever the department has refused to renew a license or
28 revoked a license required by this act or has ordered the person
29 to refrain from conduct violating the rules and regulations of
30 the department and the person has appealed the action of the

1 department, the court shall, during pendency of the appeal,
2 issue a restraining order or injunction upon proof by the
3 department that the operation of the older adult daily living
4 center or its failure to comply with the order of the department
5 is a threat to the well-being and safety of the adults attending
6 the older adult daily living center.

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

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

19 Section 18. Search warrants.

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

28 Section 19. Bonds and costs.

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

1 Section 20. Law supplementary.

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

7 Section 21. Repeals.

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

11 Section 22. Effect on issued certificates.

12 Any certificate of compliance issued by the Department of
13 Public Welfare with an effective date prior to January 1, 1991, <—
14 ~~shall remain in effect until the expiration of that certificate~~
15 ~~of compliance unless a license is issued by the Department of~~
16 ~~Aging prior to the expiration of the certificate of compliance.~~

17 ~~Section 23. Effective date.~~

18 ~~This act shall take effect January 1, 1991. EXPIRATION DATE~~ <—
19 AFTER DECEMBER 31, 1990, AND BEFORE JULY 1, 1991, SHALL REMAIN
20 IN EFFECT UNTIL A LICENSING DECISION IS MADE BY THE DEPARTMENT
21 OF AGING.

22 SECTION 23. EFFECTIVE DATE.

23 THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

24 (1) SECTION 10 AND THIS SECTION SHALL TAKE EFFECT
25 IMMEDIATELY.

26 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT JANUARY
27 1, 1991.