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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2055

Session of  
2001

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INTRODUCED BY B. SMITH, SCHULER, PISTELLA, THOMAS, NAILOR,  
MARKOSEK, ZIMMERMAN, BROWNE, JAMES, ALLEN, BLAUM, CAPPELLI,  
CLARK, CLYMER, CORRIGAN, CREIGHTON, CURRY, DeLUCA, DeWEESE,  
FREEMAN, GEORGE, GODSHALL, GRUCELA, HARHAI, HARHART,  
KIRKLAND, MAITLAND, McCALL, R. MILLER, PALLONE, PRESTON,  
ROBERTS, ROEBUCK, RUBLEY, SAYLOR, SHANER, SOLOBAY, STABACK,  
TANGRETTI, E. Z. TAYLOR, TIGUE, TRICH, WANSACZ, WASHINGTON,  
WATERS, WATSON, C. WILLIAMS, WILT, WOJNAROSKI, YOUNGBLOOD,  
STEELMAN, HABAY, SAMUELSON AND PICKETT, OCTOBER 22, 2001

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SENATOR MURPHY, AGING AND YOUTH, IN SENATE, AS AMENDED,  
OCTOBER 7, 2002

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AN ACT

1 Requiring certain elder care facilities to provide refunds and  
2 payments in certain circumstances; providing for inventory of  
3 personal property; authorizing the storage of personal  
4 property by elder care facilities; and imposing a penalty.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Elder Care  
9 Payment Restitution Act.

10 Section 2. Definitions.

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

14 "Consumer." A person who is at least 60 years old and

1 receives elder care in or from a facility.

2 "Elder care." Services or treatment provided to meet a  
3 consumer's need for personal care or health care, including, but  
4 not limited to, homemaker services, assistance with activities  
5 of daily living, physical therapy, occupational therapy, speech  
6 therapy, medical social services, home care aide services,  
7 companion care services, private duty nursing services,  
8 respiratory therapy, intravenous therapy and in-home dialysis  
9 and durable medical equipment services, which are routinely  
10 provided unsupervised and require interaction with the consumer.  
11 The term does not include durable medical equipment delivery, <—  
12 SECURITY DEPOSIT OR APPLICATION FEES UNRELATED TO THE RESIDENT  
13 MONTHLY CHARGES FOR ELDER CARE SERVICES.

14 "Facility." Any of the following:

15 (1) A home which provides domiciliary care as defined in  
16 section 2202-A of the act of April 9, 1929 (P.L.177, No.175),  
17 known as The Administrative Code of 1929.

18 ~~(2) A home health care agency.~~ <—

19 ~~(3)~~ (2) A personal care home as defined in section 1001  
20 of the act of June 13, 1967 (P.L.31, No.21), known as the  
21 Public Welfare Code.

22 ~~(4)~~ (3) A long-term care nursing facility as defined in <—  
23 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),  
24 known as the Health Care Facilities Act.

25 ~~(5)~~ (4) An older adult daily living center as defined in <—  
26 section 2 of the act of July 11, 1990 (P.L.499, No.118),  
27 known as the Older Adult Daily Living Centers Licensing Act.

28 "Home health care agency." Any of the following:

29 (1) A home health care organization or agency licensed  
30 by the Department of Health.

1           (2) A public or private agency or organization, or part  
2       of an agency or organization, which provides elder care to a  
3       person in the person's place of residence.

4       "Payment." A transfer of any or all moneys or other property  
5       transferred or promised to be transferred as full or partial  
6       consideration for elder care of a specified consumer by a  
7       facility. The term shall not include any copayment or partial  
8       payment made by a consumer for publicly funded elder care nor a  
9       payment made by a Federal or State program on behalf of a  
10      consumer.

11   Section 3. Payment refunds.

12       (a) Refunds required.--

13           (1) A "personal care home," as defined in section 1001  
14      of the act of June 13, 1967 (P.L.31, No.21), known as the  
15      Public Welfare Code, that collects payment from a consumer  
16      shall, within 30 days from the date that the living unit is  
17      cleared of the consumer's personal property as a result of  
18      the consumer's death, pay the personal representative or  
19      guardian of the consumer the amount of the difference between  
20      any payment made, including any unpaid interest thereon, and  
21      the cost of elder care actually provided to the consumer.

22           (2) A "long-term care nursing facility," as defined in  
23      section 802.1 of the act of July 19, 1979 (P.L.130, No.48),  
24      known as the Health Care Facilities Act, that collects  
25      payment from a consumer shall, within 60 days from the date  
26      of the death of the consumer, pay the personal representative  
27      or guardian of the consumer the amount of the difference  
28      between any payment made, including any unpaid interest  
29      thereon, and the cost of elder care actually provided to the  
30      consumer.

1           (3) A facility, except for a facility subject to  
2 paragraph (1) or (2), OR A HOME HEALTH CARE AGENCY that  
3 collects payment from a consumer shall, within 30 days from  
4 the date of the death of the consumer, pay the personal  
5 representative or guardian of the consumer the amount of the  
6 difference between any payment made, including any unpaid  
7 interest thereon, and the cost of elder care actually  
8 provided to the consumer.

9           (4) Any clause within a contractual agreement which  
10 imposes such elder care costs and which is entered into  
11 between the consumer and the facility on or after the  
12 effective date of this act that does not meet the standards  
13 established by this act shall be null and void.

14       (b) Liability for noncompliance.--If the facility OR HOME  
15 HEALTH CARE AGENCY fails to pay the personal representative or  
16 guardian as required by this section, the facility shall be  
17 liable to the personal representative or guardian for twice that  
18 portion of the payment, including any unpaid interest thereon,  
19 that exceeds the cost of the elder care actually provided, as  
20 determined by a court having jurisdiction in civil actions at  
21 law. THIS SUBSECTION SHALL NOT APPLY IF THE FACILITY CAN  
22 DEMONSTRATE THAT, AFTER GOOD FAITH EFFORTS, IT WAS UNABLE TO  
23 CONTACT THE PERSONAL REPRESENTATIVE OR GUARDIAN AS REQUIRED BY  
24 THIS ACT.

25 Section 4. Inventory.

26 A facility shall contact the consumer's personal  
27 representative or guardian within 24 hours after the consumer's  
28 death to arrange for an inventory of the consumer's personal  
29 property.

30 Section 5. Storage.

1       A facility, after the death of the consumer and after  
2     completing an inventory, may place a consumer's personal  
3     property into storage. Any facility that places items into  
4     storage shall do so without charging a fee to the consumer's  
5     estate or the consumer's family. The facility shall hold items  
6     under this section for a period up to 30 days. If the items held  
7     in storage are not claimed by the consumer's estate or the  
8     consumer's family at the end of the 30-day period, the facility  
9     shall send notice by certified mail to the personal  
10    representative stating that if items in storage are not removed  
11    within 14 days, the facility may dispose of the property.

12   Section 6.   Penalty for noncompliance.

13       The owner of a facility OR HOME HEALTH CARE AGENCY that       <—  
14    intentionally or willfully fails to comply with this act commits  
15    a misdemeanor of the third degree and shall, upon conviction, be  
16    sentenced to pay a fine of \$2,500 or imprisonment for not more  
17    than one year, or both.

18   Section 7.   Effective date.

19       This act shall take effect in 60 days.