
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 136 Session of
2003

INTRODUCED BY MOWERY, BOSCOLA, EARLL, ERICKSON, GREENLEAF,
KASUNIC, KITCHEN, KUKOVICH, LEMMOND, MADIGAN, ORIE,
TARTAGLIONE, THOMPSON, WAGNER AND C. WILLIAMS,
FEBRUARY 3, 2003

REFERRED TO PUBLIC HEALTH AND WELFARE, FEBRUARY 3, 2003

AN ACT

1 Providing for the licensure of assisted living residences and
2 services, for expansion of publicly funded home-based and
3 community-based assisted living services and for greater
4 information to the public about long-term care options;
5 expanding Medicaid-funded services under the Pennsylvania
6 State plan and through the expansion of home-based and
7 community-based services waivers; establishing a new State-
8 funded program of assisted living services to help consumers
9 bridge to eligibility under Medicaid; eliminating barriers
10 and financial disincentives to receiving home-based and
11 community-based assisted living services; conferring powers
12 and duties on the Department of Public Welfare, the
13 Department of Health and the Department of Aging; and making
14 an appropriation.

15 The General Assembly finds and declares as follows:

16 (1) Assisted living residences and community-based
17 assisted living services are a rapidly growing long-term care
18 alternative across the nation.

19 (2) Whereas there have been a number of instances of
20 consumer harm due to inadequate training or staffing,
21 Pennsylvanians want to know that they will receive quality
22 care from adequately and appropriately trained and
23 credentialed staff.

1 (3) Assisted living residences and home-based and
2 community-based assisted living services are widely accepted
3 by the general public because they allow people to age in
4 place, maintain their independence and exercise decision
5 making and personal choice.

6 (4) Consumers continue to say if they should need long-
7 term care services, the four things they want most are:

8 (i) To stay independent and live at home or in their
9 community as long as possible.

10 (ii) To be treated with respect and dignity.

11 (iii) To have a choice of long-term care and
12 supportive services options.

13 (iv) If they can no longer be maintained at home,
14 they want to be in as residential a setting as possible
15 where they can have their own private living unit.

16 (5) Medicare, Medicaid State plan services and most
17 private insurance pay for very little home-based and
18 community-based assisted living services or assisted living
19 residences and many Pennsylvanians cannot afford to pay for
20 themselves.

21 (6) It is often far less expensive to provide publicly
22 funded assisted living services in the home or in an assisted
23 living residence than to provide such services in a nursing
24 facility.

25 (7) Presently, Pennsylvania lags behind other states in
26 the imbalance of its public funding for nursing facility care
27 versus home-based and community-based services.

28 (8) Pennsylvania's publicly funded programs for home-
29 based and community-based services have complicated
30 application forms, delays for assessment and approval and

1 inadequate assisted living services available for
2 Pennsylvanians needing long-term care services who wish to
3 remain in the community.

4 (9) Although Pennsylvanians wish to remain in the
5 community when they are in need of long-term care services,
6 they are generally unaware of what assisted living services
7 are available or of the availability of public funding for
8 those services other than in a nursing facility.

9 (10) Publicly funded home-based and community-based
10 services should meet consumers' needs, assist family
11 caregivers, permit consumers to live independently in the
12 residential environment of their choice, promote integration
13 of consumers into the community, maximize consumer choice to
14 promote and support the consumer's changing needs, be
15 consumer oriented and meet professional standards of quality.

16 (11) It is in the best interest of all Pennsylvanians
17 that the Commonwealth license assisted living residences and
18 services and establish a wider range of publicly funded home-
19 based and community-based assisted living services, make
20 information about these services widely available, streamline
21 and simplify the application and publicly funded services in
22 the community rather than a nursing facility and make these
23 services available in residential settings with the
24 availability of 24-hour services, if the consumer lives alone
25 and needs to move to such a setting.

26 The General Assembly of the Commonwealth of Pennsylvania
27 hereby enacts as follows:

28 Section 1. Short title.

29 This act shall be known and may be cited as the Pennsylvania
30 Assisted Living Act.

1 Section 2. Definitions.

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

5 "Abuse." One or more of the following acts:

6 (1) infliction of injury, unreasonable confinement,
7 intimidation or punishment with resulting physical harm, pain
8 or mental anguish;

9 (2) willful deprivation of goods or services by a
10 caretaker or assisted living provider or direct service staff
11 which are necessary to maintain physical or mental health;

12 (3) sexual harassment, rape or abuse as defined in 23
13 Pa.C.S. Ch. 61 (relating to protection from abuse);

14 (4) exploitation by an act or a course of conduct,
15 including misrepresentation or failure to obtain informed
16 consent which results in monetary, personal or other benefit,
17 gain or profit for the perpetrator or monetary or personal
18 loss to the consumer;

19 (5) neglect of the consumer which results in physical
20 harm, pain or mental anguish; or

21 (6) abandonment or desertion by a caretaker.

22 "Activities of daily living." Activities including eating,
23 bathing, dressing, toileting, transferring in and out of bed or
24 in and out of a chair and personal hygiene.

25 "Adult." A person who is 18 year of age or older.

26 "Aging in place." The process of providing increased or
27 adjusted services to a person to compensate for the physical or
28 mental decline that occurs with the aging process in order to
29 maximize individual dignity and independence and permit the
30 person to remain in a familiar, noninstitutional, residential

1 environment for as long as possible. Such services may be
2 provided through residence staff, a third party, volunteers,
3 friends or family.

4 "Applicant." An individual who has expressed interest in
5 applying for residence in an assisted living residence or
6 obtaining services from an assisted living services provider.

7 "Area agency on aging." The local agency designated by the
8 Department of Aging within each planning and service area to
9 administer the delivery of a comprehensive and coordinated plan
10 of social and other services and activities.

11 "Assisted living." Services as determined and self-directed
12 by a consumer or by a legal representative that permit and
13 assist the consumer to live in a community, including such
14 housing assistance or residency in an assisted living residence
15 that permits the consumer to safely be supported in a residence
16 in which the consumer's independence, dignity and ability to
17 make choices are maintained, to the extent of the consumer's
18 capabilities.

19 "Assisted living residence." A residential setting that:

20 (1) Offers, provides and/or coordinates a combination of
21 personal care services, activities, whether scheduled or
22 unscheduled, and 24-hour supervision and health-related
23 services for four or more consumers who are not related to
24 the operator.

25 (2) Has a service program and physical environment
26 designed to minimize the need for residents to move within or
27 from the setting to accommodate changing needs and
28 preferences.

29 (3) Has an organized mission, service programs and a
30 physical environment designed to maximize residents' dignity,

1 autonomy, privacy and independence and encourages family and
2 community involvement.

3 (4) Charges costs for housing and services which may be
4 independent of one another and that provides consumers with
5 the ability to choose their service provider and the services
6 to be provided.

7 (5) Has a goal of fostering aging in place and promoting
8 consumer self-direction and active participation in decision
9 making while emphasizing an individual's privacy and dignity.

10 The term does not include residential living units in continuing
11 care providers certified by the Insurance Department or
12 residential living units in subsidized housing apartments,
13 unless required to be licensed under the United States
14 Department of Housing and Urban Development Assisted Living
15 Conversion Program.

16 "Assisted living residency agreement." The contract or
17 contracts between a provider and a consumer regarding the
18 consumer's residency at the assisted living residence. The term
19 also includes the agreement between an assisted living residence
20 and an entity contracting for assisted living residence for the
21 consumer using public funding.

22 "Assisted living services." A combination of supportive
23 services, personal care services, personalized assistance
24 services, assistive technology and health-related services
25 designed to respond to the individual needs of those who need
26 assistance with activities of daily living (ADLs) and
27 instrumental activities of daily living (IADLs).

28 "Assisted living services agreement." The contract or
29 contracts between a provider or providers and the consumer
30 needing assisted living services regarding the provision and

1 terms of the assisted living services. The term includes
2 contracts between assisted living service providers and entities
3 contracting for services for consumers using public funding.

4 "Assistive technology." Those devices and services, whether
5 medically necessary or not, that are used to increase, maintain
6 or improve the functional capabilities of individuals with
7 disabilities which may or may not be needed to permit the person
8 to live independently. The term shall include, but not be
9 limited to, hand reachers, adapted telephones, reading aids and
10 other nonmedical devices.

11 "Cognitive support services." Services provided as part of a
12 coordinated care plan to individuals who have memory impairments
13 and other cognitive problems that significantly interfere with
14 their ability to carry out activities of daily living without
15 assistance and who require that supervision, monitoring and
16 programming be available to them 24 hours a day, seven days a
17 week in order for them to reside safely in setting of their
18 choice, including assessment, service planning, ongoing
19 monitoring, personal care services, health support services and
20 a full range of dementia-capable activity programming and crisis
21 management.

22 "Compliance." A residence or assisted living service
23 provider will be found in compliance with the requirements of
24 this act and its regulations where, but for isolated Class III
25 violations for which the assisted living residence administrator
26 has provided written certification of correction of the isolated
27 Class III violations within 30 days of the date of the
28 inspection, and has met all other requirements of this act and
29 its regulations.

30 "Comprehensive assessment." A thorough review and analysis

1 of a consumer's functional status. The term includes a personal
2 history, assessment of physical and emotional health, ability to
3 carry out activities of daily living, informal supports,
4 environmental factors and cognitive functioning, including
5 immobility assessment.

6 "Consumer." A person who receives assisted living services
7 in an assisted living residence, a home or other location
8 approved by the Department of Public Welfare.

9 "Department." The Department of Public Welfare of the
10 Commonwealth.

11 "Direct care staff." A person who directly assists residents
12 with activities of daily living, provides services or is
13 otherwise responsible for the health, safety and welfare of the
14 residents. Direct care staff must meet all training and testing
15 requirements of this act.

16 "Discharge." Termination of the consumer's residency in the
17 assisted living residence or of services from an assisted living
18 services provider.

19 "Federally Funded Home and Community Based Waiver Service
20 Slots and Services." The packages of services which are
21 Federally funded, in part, pursuant to a waiver of Title XIX of
22 the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.)
23 and which are available in designated numbers to individuals
24 eligible for Pennsylvania medical assistance who qualify for the
25 nursing facility level of care but who elect home-based and
26 community-based services in lieu of institutionalization in a
27 nursing facility.

28 "Financial management." A service provided by an assisted
29 living residence or assisted living services provider with
30 budgeting and spending for the consumer's personal needs.

1 "Fair share first-day-medical assistance access formulae."
2 The percentage determined by the Department of Public Welfare of
3 those qualifying for publicly funded assisted living services
4 who were income eligible for medical assistance on the first day
5 they met the functional eligibility for publicly funded assisted
6 living services out of all those assessed as functionally
7 qualifying for assisted living services.

8 "Immobile person." An individual who is unable to move from
9 one location to another or has difficulty in understanding and
10 carrying out instructions without the continued full assistance
11 of another person or is incapable of independently operating a
12 device, such as a wheelchair, prosthesis, walker or cane to exit
13 to a point of safety.

14 "Instrumental activities of daily living." The term
15 includes, but is not limited to, preparing meals, taking
16 medication, using the telephone, handling finances, banking and
17 shopping, light housekeeping, heavy housekeeping and getting to
18 appointments.

19 "Isolated Class III violations." A finding by the Department
20 of Public Welfare at the annual inspection of less than three
21 Class III violations that had not been previously cited at the
22 last inspection and that related to the services provided to an
23 individual or did not present a threat to the health and well-
24 being of consumers.

25 "Isolated violations." A finding by the Department of Public
26 Welfare on any inspection of less than three Class I, II or III
27 violations of separate and distinct provisions of the act or
28 regulations or less than two Class I, II or III violations of
29 the same provision of the act or regulations.

30 "Legal representative." A person duly authorized by law to

1 take certain action on behalf of a consumer, including, but not
2 limited to, legal counsel, a court-appointed guardian, an
3 attorney-in-fact under a durable power of attorney, an agent
4 under a health care proxy or a representative payee. In cases
5 where the consumer has a cognitive impairment, this may include
6 a responsible family member.

7 "Level-of-care screening." An assessment of a person's
8 functional abilities and general health status and family-friend
9 support system completed to determine the level of care and
10 services appropriate for the individual.

11 "Licensing information." Information relating to the
12 licensing agency, licensing process, and licensing status and
13 history of a provider.

14 "Living unit." A room, apartment, cottage or other self-
15 contained unit containing no fewer than 100 square feet per
16 person, which need not be shared except by choice of the
17 resident and which is capable of being locked by the resident,
18 with a readily available bathroom, toilet and sink and shower or
19 bath, space and electrical outlets for residents to have a small
20 microwave and refrigerator and a sleeping and living area unless
21 adjustments have been made to accommodate persons who are
22 significantly cognitively impaired.

23 "Long-term care ombudsperson/ombudsman." An agent of the
24 Department of Aging who investigates and seeks to resolve
25 complaints made by or on behalf of older individuals or adults
26 with disabilities who are consumers of assisted living services
27 pursuant to section 2203-A of the act of April 9, 1929 (P.L.177,
28 No.175), known as The Administrative Code of 1929. Complaints
29 may relate to action, inaction or decisions of providers of
30 assisted living services or residences, of public agencies or of

1 social service agencies, or their representatives, which may
2 adversely affect the health, safety, welfare, interests,
3 preferences or rights of consumers.

4 "Options." The Long-Term Care Pre-admission Assessment
5 Program administered by the Department of Aging and operated by
6 the area agencies on aging.

7 "PACE." The Pharmaceutical Assistance Contract for the
8 Elderly.

9 "Pattern of violations." A finding by the Department of
10 Public Welfare at the annual inspection of any violations that
11 had been cited at one or both of the last two annual or other
12 consecutive inspections or of more than three distinct
13 violations of the same requirement.

14 "Pennsylvania Assisted Living Services Program" or "PALS."
15 The array of publicly funded home-based and community-based
16 assisted living services and other health and social services
17 benefits available to eligible consumers who have applied for
18 and been found to need these services.

19 "Personal care home." Any premises in which food, shelter
20 and personal assistance or supervision are provided for a period
21 exceeding 24 hours for four or more adults who are not relatives
22 of the operator, who do not require the services in or of a
23 licensed long-term care facility but who do require assistance
24 or supervision in such matters as dressing, bathing, diet,
25 financial management, evacuation of a residence in the event of
26 an emergency or medication prescribed for self-administration.

27 "Personal care services." Assistance or supervision in
28 matters such as dressing, bathing, diet, financial management,
29 evacuation of the resident in the event of an emergency or
30 medication prescribed for self-administration. Personal care

1 services shall include prompting, cuing, monitoring and focusing
2 on maintaining functioning.

3 "Provider." An assisted living residence, assisted living
4 services provider, an approved personal care home or an approved
5 domiciliary care home.

6 "Publicly funded assisted living." Includes bridging,
7 medical assistance, HealthChoices, Options, waiver programs and
8 other appropriate publicly funded services that assist
9 individuals to remain in the community.

10 "Qualified assessor." A person approved by the Department of
11 Public Welfare as qualified to conduct assessments of persons
12 needing long-term care services and develop service plans based
13 thereon. A qualified assessor may include an employee of an area
14 agency on aging, an assisted living residence, an assisted
15 living services provider or an independent entity, but may not
16 include hospital discharge planners or other staff or employees
17 of an insured's health or long-term care insurance company.

18 "Qualified couple." A qualified couple for cost-of-living
19 increase is two qualified persons, living together, who are
20 considered a couple under the Supplemental Security Income
21 program, Title XVI of the Social Security Act (49 Stat. 620,
22 U.S.C. 301 et seq.).

23 "Qualified person." A qualified person for cost-of-living
24 increase includes persons meeting the nonfinancial, categorical
25 eligibility requirements under Title XIX of the Social Security
26 Act (49 Stat. 620, U.S.C. 301 et seq.) as aged, blind or
27 disabled and receiving or applying for long-term care services
28 under a special income level.

29 "Resident." An individual who resides in and may receive
30 assisted living services from an assisted living residence or

1 from a personal care home or domiciliary care home approved by
2 the Department of Public Welfare.

3 "Responsible family member." A family member, such as a
4 spouse or adult child, who has been assisting the consumer and
5 to whom the consumer turns to for assistance.

6 "Restraint." A chemical or mechanical device used to
7 restrict the movement or normal function of an individual or a
8 portion of the individual's body, including geriatric chairs;
9 posey; chest; waist, wrist or ankle restraints; locked
10 restraints and locked doors to prevent egress. The term does not
11 include devices used to provide support for the achievement of
12 functional body position or proper balance as long as the device
13 can easily be removed by the resident.

14 "Restricted unit." A unit within a licensed assisted living
15 residence that has received a specialized license designation
16 pursuant to the requirements of this section and regulations of
17 the Department of Public Welfare to provide services to people
18 with cognitive impairments.

19 "Service plan." A detailed plan based on a comprehensive
20 assessment designed to meet the resident's individual physical,
21 mental and psychosocial needs consistent with the resident's
22 preferences and capabilities.

23 "Specialty assisted living residence." A licensed assisted
24 living residence that has received a specialized license
25 designation pursuant to the requirements of this section and the
26 regulations of the Department of Public Welfare to provide
27 services to people with cognitive impairments.

28 "Stakeholders." The Medical Assistance Advisory Committee,
29 the Consumer and Long-Term Care Subcommittees of the Medical
30 Assistance Advisory Committee, the Intra-Governmental Council on

1 Long-Term Care, the Statewide Independent Living Council and the
2 Council on Aging.

3 "Transfer." Movement of a consumer within the assisted
4 living residence or to a hospital or other temporary placement.
5 For consumers receiving assisted living services in their home,
6 the term means movement between assisted living services
7 providers.

8 Section 3. Assisted living residences.

9 (a) Licensure.--The department shall license and regulate
10 living residences and shall establish an annual licensure fee
11 schedule.

12 (b) Physical site standards.--The department shall require
13 assisted living residences to meet all requirements of the act
14 of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania
15 Construction Code Act.

16 (c) Level-of-care screening, assessment and comprehensive
17 service plan.--

18 (1) Prior to admission to an assisted living residence
19 or start of services by an assisted living services provider,
20 a level-of-care screening to determine the level of care and
21 services needed by the applicant shall be obtained. A
22 standardized screening instrument developed by the Department
23 of Aging in consultation with the Department of Public
24 Welfare and the Department of Health shall be used for all
25 screens. The area agency on aging shall be available to
26 conduct level-of-care screenings for applicants. Qualified
27 employees of assisted living residences or assisted living
28 services providers may conduct level-of-care screening but
29 shall inform individuals of the right to receive a screening
30 by an area agency on aging.

1 (2) A medical evaluation, using a form developed by the
2 Department of Public Welfare, the Department of Aging and the
3 Department of Health, shall be obtained by all applicants
4 prior to admission to an assisted living residence or start
5 of services by an assisted living provider.

6 (3) A qualified assessor must assess an individual's
7 care and service needs after the level-of-care screening has
8 determined a need for assisted living services or residency.

9 (i) The department shall develop a training and
10 certification program for qualified assessors.

11 (ii) Only those qualified assessors trained and
12 certified by the Commonwealth shall be permitted to
13 conduct assessments to identify the services an
14 individual requires and that serve as the basis for a
15 comprehensive service plan.

16 (iii) Assessors must certify that the assessment is
17 true and correct to the best of their knowledge and
18 skill. The department shall revoke the certification of
19 any long-term care assessor that falsely certifies a need
20 for services.

21 (iv) The qualified assessor must use a standardized
22 assessment instrument that shall be developed by the
23 Department of Public Welfare, the Department of Aging and
24 the Department of Health, within six months of the
25 effective date of this act.

26 (v) When the area agency on aging is the chosen
27 assessor, the area agency on aging must complete an
28 assessment within five business days or, if there is an
29 expedited need, within one business day of the request
30 for an assessment.

1 (vi) Consumers shall have choice of assisted living
2 providers and be free to present a completed assessment
3 to any provider to compare services and price.

4 (vii) The department shall review provider's
5 compliance with the assessment provisions of this act as
6 part of the annual licensure inspection.

7 (viii) The area agency on aging shall assist any
8 assessed consumer found to need long-term care services
9 to seek public funding, where eligible, and to set up the
10 services if family members or friends are not available
11 to do so.

12 (4) Following completion of a comprehensive assessment
13 and prior to admission or start of services, an appropriately
14 trained person employed by the provider shall work in
15 cooperation with an interdisciplinary team that includes the
16 consumer, the consumer's legal representative or the
17 consumer's responsible family member, with the consumer's
18 consent, to develop a written comprehensive services plan
19 based on the comprehensive assessment and consistent with the
20 consumer's unique physical and psychosocial needs, with
21 recognition of the consumer's capabilities and preferences.

22 (5) Reassessment and revision of service plan, if
23 necessary based on reassessment, will take place annually or
24 when there is a significant change in a consumer's condition.

25 (6) The comprehensive assessment and comprehensive
26 services plan shall be kept on file for each consumer by the
27 provider and shall be available to the consumer or the
28 consumer's legal representative.

29 (d) Assisted living residence administrator qualifications
30 and training.--

1 (1) An assisted living residence administrator shall
2 satisfy either of the following qualifications:

3 (i) Be at least 21 years of age and meet the
4 requirements of Chapters 5 and 7 of the act of November
5 6, 1987 (P.L.381, No.79), known as the Older Adults
6 Protective Services Act, regarding criminal history.

7 (ii) Have a high school diploma or a general
8 educational development diploma (GED).

9 (iii) Complete an education and training course
10 which has been approved by the department of not less
11 than 120 hours. The department shall establish a training
12 curriculum that shall include comprehensive training in
13 areas appropriate to the care and health of residents in
14 an assisted living residence, including, but not limited
15 to:

16 (A) Training in assistive technology.

17 (B) Training in working with persons with
18 cognitive impairments.

19 (C) Training in assisted living principles and
20 laws.

21 (D) Training in medication assistance.

22 (E) Consumer rights.

23 (2) The department shall develop a shorter program of
24 instruction for licensed nursing home administrators,
25 nationally accredited retirement housing professionals or
26 NAB-licensed assisted living administrators that does not
27 duplicate areas where proficiency has been demonstrated but
28 that is particular to assisted living in this Commonwealth.

29 (3) All administrators shall pass a test which has been
30 approved by the department and is administered by an entity

1 approved by the department at the end of training to
2 demonstrate proficiency in the application of skills and
3 knowledge.

4 (4) All administrators shall complete 36 hours of
5 continuing education every two years that has been approved
6 by the department and is applicable to the practice of
7 assisted living administrator. Coordinating education program
8 shall include training and competency testing.

9 (5) One year after the effective date of this act, no
10 one shall be employed as an assisted living administrator
11 unless they have completed the training and testing
12 requirements herein.

13 (e) Direct care and other staff qualifications and
14 training.--

15 (1) Direct care staff in an assisted living residence or
16 of an assisted living services provider must meet the
17 following qualifications:

18 (i) Be either at least 18 years of age with a high
19 school diploma or 17 years of age with a high school
20 diploma and meet the requirements of the Older Adult
21 Protective Services Act regarding criminal history.

22 (ii) Complete an education and training course which
23 has been approved by the department for a minimum of 40
24 hours and obtain a certificate of completion. The
25 department shall establish a training curriculum. Direct
26 care staff of assisted living residences and assisted
27 living services providers must demonstrate proficiency in
28 a manner approved by the department in each component
29 prior to start of independent work in that component.

30 Approved coursework shall include comprehensive training

1 in areas appropriate to the care and health of assisted
2 living residents and recipients, including, but not
3 limited to:

4 (A) Training in assistive technology.

5 (B) Training in working with persons with
6 cognitive impairments.

7 (C) Training in assisted living principles and
8 laws.

9 (D) Consumer rights.

10 (2) The department shall develop a shorter program of
11 instruction for nurse assistants deemed competent that does
12 not duplicate areas where proficiency has been demonstrated
13 but that is particular to assisted living in this
14 Commonwealth.

15 (f) Direct care staff assisting residents with medication.--
16 Within six months of the effective date of this act, the
17 department shall:

18 (1) Develop a special training and certification program
19 or expand its current medications administration course for
20 direct care staff that assist residents with medication. The
21 program shall include testing and demonstrated proficiency.

22 (2) Establish regulations permitting only those who have
23 completed and passed the training on assisting with the
24 administration of medication to do so in assisted living
25 residences or as an assisted living service provider.

26 (g) Other assisted living residence staff.--Within 30 days
27 of employment or start of voluntary service, staff persons and
28 volunteers shall receive orientation to the general operation of
29 the assisted living residence, training in fire prevention,
30 operation of safety equipment, emergency procedures and

1 evacuation of residents.

2 (h) Exemptions.--Existing personal care home staff employed
3 by personal care homes that apply for and become licensed as
4 assisted living residences have one year from the date of
5 application to complete the direct care staff training except
6 that those who have been working as direct care staff for more
7 than 24 months can opt not to take the training provided they
8 demonstrate proficiency in each training component within one
9 year of the personal care home becoming an assisted living
10 residence.

11 (i) Staffing levels.--

12 (1) The department shall establish minimum staffing
13 levels for assisted living residences, restricted units and
14 specialty assisted living residences depending upon the
15 residence population, mobility of residents and cognitive
16 impairments to ensure adequate 24 hours a day awake direct
17 care staff to meet the unplanned and unscheduled needs of
18 residents.

19 (2) The department shall require each assisted living
20 residence to maintain adequate additional direct care staff
21 to meet the residents' planned and scheduled needs as
22 required in their service plans as well as to ensure a safe
23 and efficient evacuation to a place of safety in case of
24 emergency. Each assisted living residence shall have as a
25 minimum the staff necessary to meet the hours of care set
26 forth in the service plans and the staffing requirements of
27 paragraph (1).

28 (3) Additional staff or contracted services shall be
29 provided as necessary to meet laundry, food service,
30 housekeeping, transportation and maintenance needs of the

1 assisted living residence.

2 (j) Supplemental services.--A resident receiving assisted
3 living services in an assisted living residence may arrange for
4 the receipt of supplemental services where:

5 (1) the supplemental services adequately meet the
6 residents changing needs so that the assisted living
7 residence is not required to fundamentally change its program
8 or residence to accommodate the resident; and

9 (2) the supplemental services are provided by:

10 (i) a licensed entity or an area agency on aging; or

11 (ii) an unlicensed provider, permitted by specified
12 criteria and conditions of the department to provide
13 supplemental services agreed to by resident and assisted
14 living services provider.

15 (k) Transfer and discharge.--

16 (1) A resident may not be transferred or discharged
17 without consent, except for nonpayment of contractual fees
18 after a good faith effort to obtain payment unless:

19 (i) the person has one of the conditions determined
20 by the department;

21 (ii) to accommodate the consumer's needs would
22 require the assisted living residence to fundamentally
23 change the basic program or building modification;

24 (iii) the person is a danger to self or others; or

25 (iv) transfer to a hospital or treatment facility is
26 necessary to meet the consumer's needs and the resident's
27 needs cannot be maintained in the assisted living
28 residence.

29 (2) The assisted living residence must insure that the
30 transfer or discharge is safe, orderly and appropriate to the

1 resident's needs.

2 (l) Notices.--The assisted living residence must provide 30
3 days' advance written notice of changes in policies, services or
4 costs and of intent to transfer or discharge a resident. Written
5 notice must include the reason for the transfer or discharge,
6 the effective date of the transfer or discharge, the location to
7 which the consumer is being transferred or discharged, if known,
8 a statement that the resident has the right to appeal to the
9 department and the contact information for the Long-Term Care
10 Ombudsman and the department's 24-hour hotline.

11 (m) Dispute resolution.--Consumers may seek resolution of
12 disputes in the following ways and selection of one option does
13 not preclude simultaneous or subsequent selection of the other:

14 (1) The department's hearing and appeals bureau will
15 hear complaints and appeals through its fair hearing process.

16 (i) Appeal hearings must include notice, opportunity
17 to be heard, impartial review and prompt decision.

18 (ii) Assisted living residents may appeal decisions
19 regarding:

20 (A) Whether discharge or transfer is
21 appropriate.

22 (B) Whether accommodations would fundamentally
23 alter the program or residence.

24 (C) Whether supplemental services provider is
25 unsafe.

26 (D) What level of care is appropriate.

27 (2) Each provider shall maintain an internal process for
28 resolving consumer complaints and grievances.

29 (3) The department shall develop an expedited hearing
30 process for review of department, consumer or provider

1 actions.

2 (n) Written agreements.--The department shall require as a
3 condition of licensure that all providers shall have an assisted
4 living residency agreement in writing with each consumer. Each
5 agreement should be signed prior to admission or start of
6 services or no later than 24 hours after admission and shall
7 include in clear and simple language the following:

8 (1) Standardized clauses provided by the department on:

9 (i) The consumer's rights.

10 (ii) Negotiated risk, if appropriate.

11 (iii) The Commonwealth's processes for resolving
12 disputes under the contract.

13 (iv) Explanation of the screening, assessment and
14 annual reassessment requirements.

15 (v) The available financial management services a
16 provider may or may not provide.

17 (vi) A prohibition on resident assignment of assets
18 for life to the assisted living residence.

19 (vii) If a resident is receiving publicly funded
20 care and services, details about Social Security Income
21 recipient protections, rent rebate programs and the
22 personal needs allowance.

23 (viii) Explanation of the right to continued
24 residency in an assisted living residence as provided in
25 this act.

26 (ix) Applicant's right to cancel without penalty an
27 assisted living residency agreement within 72 hours of
28 signing.

29 (x) Requirement that consumer receive 30 days'
30 advance written notice of changes to contract, to the

1 charges of the provider and to the provider's policies.

2 (xi) The bases under which a consumer or provider
3 may terminate the agreement.

4 (xii) Contractual enforcement rights of the parties.

5 (2) At a minimum, the provider shall include the
6 following in the agreement:

7 (i) The provider's list of services offered.

8 (ii) By addendum or otherwise, individualized
9 itemization of services that will be provided to the
10 resident and costs thereof, separating housing costs from
11 service costs.

12 (iii) Provider policies.

13 (iv) Internal dispute resolution process.

14 (v) Clear and specific occupancy criteria and
15 procedures, based on Commonwealth requirements and
16 assisted living residence's policies regarding bedholds
17 and refunds.

18 The department shall review contracts at site visits for
19 compliance with this section and the provisions of this act and
20 its regulations.

21 (o) Disclosure.--Each consumer or the consumer's legal
22 representative or responsible family member shall receive an
23 information packet at the time of application for admission or
24 start of services which shall include the following items to be
25 presented in a form able to be easily understood and read by the
26 consumer:

27 (1) A standardized form developed by the department with
28 information pertaining to:

29 (i) The use of advance directives during residency.

30 (ii) Information regarding how to contact and obtain

1 what is required by the licensing agency for providers.

2 (iii) Information about availability and access to
3 and contact information for the ombudsman and the
4 department's 24-hour hotline.

5 (iv) Details about the department's external
6 complaint mechanisms available to consumers.

7 (v) General information about the admission and
8 application process.

9 (vi) Details about the applicant's rights to
10 independent assessment and nondiscrimination in the
11 application process.

12 (vii) Consumer rights.

13 (2) Documentation from the provider to provide the
14 applicant with the following information:

15 (i) A copy of the provider's policies affecting
16 consumers, including discharge or termination or
17 bedholds.

18 (ii) Information regarding the department's
19 inspections and inspection reports demonstrating
20 provider's licensing status.

21 (iii) Complete copy of the assisted living residence
22 agreement, including all attachments and all current
23 rates that may be charged.

24 (iv) Details about the internal complaint mechanism
25 used by the provider.

26 (v) Provider's specific admission and application
27 process.

28 (vi) Information on discharge policies.

29 (p) Housing and services.--

30 (1) Assisted living residences shall separately charge

1 for housing and services.

2 (2) Residents who have been assessed as needing personal
3 care services may be required by the assisted living
4 residence to receive those services from the assisted living
5 residence as a condition of admission to the assisted living
6 residence.

7 (3) No resident shall be required to pay for services
8 not needed, as indicated in their initial or annual
9 assessment.

10 (4) Services other than those identified in paragraph
11 (2), including, but not limited to, home health, massage,
12 physician services and physical therapy services, can be
13 purchased by the resident from the assisted living residence
14 or from an outside provider, unless to accommodate the person
15 would require the assisted living residence to fundamentally
16 change the basic program or building and to do so would put
17 in jeopardy the life and safety of persons in the assisted
18 living residence.

19 (5) If the resident arranges for services other than
20 those identified in paragraph (2) from unlicensed persons or
21 those not on the area agency provider list, the assisted
22 living residence may screen providers but shall not
23 unreasonably deny their access to the resident's living unit.

24 (q) Living unit.--Assisted living residences shall provide
25 residents with their own individual living units, which shall
26 include a sleeping and living area, shared only with the consent
27 of the residents in the unit. A bathroom must be readily
28 available for each resident. One bathroom can be shared between
29 adjacent living units. Except for residents with cognitive
30 impairments, each living unit must provide space and electrical

1 outlets for residents to have small microwaves and
2 refrigerators. Each living unit shall contain no fewer than 100
3 square feet per resident. Each living unit shall have
4 individually lockable doors, except where inappropriate for
5 individuals with cognitive impairments.

6 (r) Department of Aging.--The Department of Aging shall take
7 steps to extend the provisions of the Older Adults Protective
8 Services Act to assisted living residences and consumers. The
9 Department of Aging shall insure that the ombudsman program is
10 made available to assisted living residences and recipients.

11 (s) Contact information.--The department shall require
12 assisted living residences to post contact information for the
13 local ombudsman and shall make available a 24-hour toll-free
14 hotline for consumers to use in contacting the department with
15 questions, concerns and complaints about their care and
16 services.

17 Section 4. Assisted living residences providing cognitive
18 support services.

19 (a) Special designation.--Within six months of the effective
20 date of this act, the department shall establish a special
21 license designation for assisted living residences that wish to
22 maintain restricted units or to be specialized for the purpose
23 of serving individuals with cognitive impairments. Only those
24 assisted living residences that receive this special license
25 designation may have or hold themselves out as having
26 specialized units or specialized purpose. This special
27 designation shall require that the assisted living residences
28 meet all the requirements for assisted living residences set
29 forth in this act and resulting regulations and additional
30 requirements that address:

1 (1) Special admission and transfer criteria.

2 (2) Adequate indoor and outdoor wandering space
3 requirements.

4 (3) Requirements relating to provision of therapeutic
5 activities that meet the scheduled and unscheduled individual
6 needs of each resident, with such services focusing on
7 maximizing independence and on the individual's strengths and
8 abilities.

9 (4) Physical design and safety requirements.

10 (5) Additional and specialized training requirements.

11 (6) Prearranged procedures for notification of
12 authorities should a resident wander away from the residence.

13 (b) Admission or transfer to specially designated unit or
14 specialty assisted living residence.--Assisted living residences
15 should be able to support residents with cognitive impairments
16 if or until the person's needs are such that they are a danger
17 to themselves or others and accommodation would require the
18 assisted living residence to fundamentally change the basic
19 program or building.

20 (1) When either of these conditions are met and if this
21 is reflected in an annual or other assessment, the resident
22 may be transferred to a specialized, restricted unit or
23 specialty assisted living residence or may be requested to
24 leave.

25 (2) Before a person may be transferred or admitted to a
26 specially designated restricted unit or a specially
27 designated specialty assisted living residence:

28 (i) The person, responsible family member or person
29 with legal authority, if any, must be advised of the
30 assisted living residence's intent to discharge or

1 transfer with 30 days' advance written notice and of
2 resident's right to seek an assessment from the area
3 agency on aging or other individual who is independent
4 from the assisted living residence and of the resident's
5 right to appeal to the department or use the internal
6 grievance process to address the appropriateness of
7 restricted movement, or both. The 30-day notice
8 requirement shall not apply, but the provider shall give
9 as much advance notice as possible where transfer or
10 discharge is necessary to meet a consumer's urgent or
11 emergency medical needs or in emergency situations where
12 there is a danger to consumers or others.

13 (ii) A physician must approve the transfer to a
14 restricted unit or admission to a specialized assisted
15 living residence, and the resident or individual with
16 legal authority to act for the resident must sign off on
17 the transfer or admission.

18 (iii) Where neither the resident, the resident's
19 responsible family member nor anyone with legal authority
20 signs to authorize the transfer or discharge, the
21 assisted living residence must refer the matter to the
22 local agency charged to administer the act of November 6,
23 1987 (P.L.381, No.79), known as the Older Adults
24 Protective Services Act, for review.

25 (3) The department shall, through its inspection
26 process, review transfer and discharge cases that are based
27 on cognitive impairments for compliance with this provision.

28 (c) Administer training.--Administrators working in special
29 license designation restricted units or specialized assisted
30 living residences must be trained and tested in a program

1 approved by the department in training areas developed by the
2 department in consultation with stakeholders on issues relating
3 to providing care and services to cognitively impaired
4 individuals. This training shall be in addition to that required
5 under section 3.

6 (d) Staff training.--All direct care staff wishing to work
7 in specially designated restricted units or specialty assisted
8 living residences shall, in addition to the training required of
9 direct care staff in section 3, receive additional specialized
10 training approved by the department in training areas
11 established by the department in consultation with stakeholders
12 relating to providing care and services to cognitively impaired
13 individuals.

14 (e) Disclosures.--Assisted living residences with specially
15 designated restricted units or that are specialty assisted
16 living residences must, in addition to the disclosures required
17 under section 3:

18 (1) Provide each applicant with a standardized
19 disclosure form designed by the department in consultation
20 with stakeholders describing the requirements that must be
21 met by a restricted unit or specialty assisted living
22 residence which shall include, but not be limited to, the
23 philosophy and mission of serving individuals with cognitive
24 impairments, the requirements for physical space, wandering
25 space, therapeutic activities, additional training and
26 security, that must be met for special designation.

27 (2) A representation that the residence meets the
28 special licensure designation, including a description of the
29 frequency and types of individual and group activities,
30 security measures and family support programs.

1 (f) Accreditation.--If national accreditation of specialty
2 assisted living units becomes available with standards that
3 equal or exceed those in this act and supporting regulations,
4 the department may deem that an accredited assisted living
5 residence meets the special licensing designations under this
6 section.

7 (g) Staffing levels.--Staffing levels will be set in
8 accordance with the staffing levels required under section 3.
9 However, if an assisted living residence has national
10 accreditation which has higher staffing requirements, the
11 residence shall meet the higher requirements.

12 Section 5. Assisted living services providers.

13 (a) Licensure.--The Department of Health shall license
14 entities that are not already licensed by the department that
15 either coordinate and provide, or coordinate and subcontract for
16 provisions of assisted living services.

17 (b) Application.--

18 (1) Within six months of the effective date of this act,
19 the department shall license assisted living services
20 providers. Assisted living services providers shall be
21 licensed and bonded, and a licensure fee shall be applied.

22 (2) Direct care staff employed by assisted living
23 services providers or providing direct care services to
24 consumers in their homes shall meet all training and testing
25 requirements of this act and present documentation from the
26 State of completed training and testing to employers and
27 consumers. Passing a criminal history check shall be a
28 prerequisite to training and testing.

29 (3) Family or friend caregivers shall be exempt from the
30 requirements of this act.

1 (4) Entities that do not provide personal care services,
2 but that solely provide assistance with instrumental
3 activities of daily living shall be exempt from the
4 requirements of this act.

5 (c) Requirements.--

6 (1) Assisted living services providers shall be subject
7 to the disclosure and contract requirements set forth in
8 section 3 to the extent applicable to assisted living
9 services providers.

10 (2) Direct care staff shall provide assisted living
11 services consumers with 30 days' advance written notice,
12 where possible, of interruption or termination of service
13 delivery, except where the safety of the direct care staff is
14 at risk. Direct care staff shall be included under the
15 reporting requirements of older adult protective services
16 review. Direct care staff found to be in violation of the
17 advance notice provision of this section may be sanctioned by
18 the department and have their documentation of training
19 necessary for employment withdrawn.

20 (3) All consumer rights specified in section 6 shall
21 apply to consumers of assisted living services providers
22 unless the right is specific to residency. The department
23 shall craft a standardized assisted living service disclosure
24 from such as the one required in section 3 for assisted
25 living residences. As a condition of licensure, all assisted
26 living services providers must provide consumers and
27 applicants with the department's standardized disclosure form
28 of consumers rights.

29 (d) Inspection.--The department shall conduct annual
30 unannounced inspections of assisted living services providers

1 and shall include visits to and interviews of a random sample of
2 consumers as part of the inspection process.

3 Section 6. Consumer rights.

4 (a) Regulations.--Consumers shall have the following rights
5 which shall attach upon admission to an assisted living
6 residence or start of service receipt from an assisted living
7 services provider and the department shall promptly implement
8 regulations to insure these rights:

9 (1) With respect to management of funds:

10 (i) There shall be no commingling of the residence's
11 and residents' funds.

12 (ii) Assisted living residences shall maintain
13 residents' funds in accounts separate from those of the
14 residence.

15 (iii) When a residents' funds exceed \$200, the
16 assisted living residence must offer the resident an
17 opportunity to have the funds placed in an interest-
18 bearing account.

19 (iv) The assisted living residence must keep
20 individual records of individual moneys.

21 (v) Residents are only required to deposit funds
22 with an assisted living residence if they are accepting
23 financial management services.

24 (vi) The department shall develop a means of
25 safeguarding residents' funds and requiring prompt
26 repayment by the assisted living residence of funds that
27 are stolen by residence employees, subcontractors or
28 otherwise mismanaged.

29 (vii) Residents shall have prompt access to funds.

30 (viii) Residents shall receive quarterly statements

1 from assisted living residences holding their funds.

2 (ix) Upon death or discharge, the assisted living
3 residence is required to repay funds to estate or
4 resident within five business days.

5 (x) Assisted living residence staff must obtain
6 written permission for expenditures from the consumer or
7 legally responsible person and keep receipts of
8 expenditures.

9 (xi) No provider or staff of provider or individual
10 affiliated with the provider may assume power of attorney
11 or guardianship over any resident. However, the
12 department shall come up with a process for allowing
13 guardianship in emergency situations where the consumer
14 is unable to authorize and where there is no existing
15 legal representative or the legal representative cannot
16 be reached.

17 (xii) No resident may be required to endorse checks
18 over to the assisted living residence.

19 (2) Each consumer has the right to:

20 (i) Be involved in service planning process and to
21 receive services with reasonable accommodation of
22 individual needs and preferences except where the health
23 or safety of the individual or other residents would be
24 endangered.

25 (ii) Have privacy, confidentiality and freedom from
26 abuse, neglect and financial exploitation.

27 (iii) Refuse treatment or services under the plan.

28 (iv) Receive from the assisted living residence 30
29 days' advance written notice of the assisted living
30 residence's proposed changes to charges and policies and

1 of the intent of the residence to transfer or discharge
2 the resident, except where transfer is necessary to meet
3 consumer's urgent or emergency medical needs or where
4 immediate risk of harm to consumer or others warrants
5 shorter notice.

6 (v) Be free from physical or chemical restraints.

7 (vi) Be free from unreasonable interference with
8 right to leave and return, have visitors, send and
9 receive mail, and participate or not participate in
10 religious activities.

11 (vii) Receive a qualified assessment by someone not
12 associated with the residence.

13 (viii) Be entitled to residency and services 365
14 days a year, with no planned or intermittent
15 interruptions.

16 (ix) Access the ombudsman and the department's 24-
17 hour hotline.

18 (x) Be free from discrimination on the basis of
19 race, color, religious creed, disability, handicap,
20 ancestry, sexual orientation, national origin, age or
21 sex.

22 (xi) Be free from any duration of stay requirements
23 prior to public funding.

24 (xii) Select a doctor or other health care provider
25 of the consumer's choice.

26 (xiii) Reside and receive services with reasonable
27 accommodation of individual needs and preferences except
28 where health, safety, or rights of individual or other is
29 endangered and does not change the nature, etc., of the
30 assisted living residence.

1 (xiv) Review inspection and complaint survey and
2 inspection results conducted by the department.

3 (xv) Exercise all rights as a citizen, including,
4 but not limited to, the right to vote, the right to voice
5 grievances with respect to services without retaliation
6 and to organize and participate in resident and family
7 groups.

8 Section 7. Survey, inspection and enforcement process.

9 (a) Licensure and inspection.--The appropriate department
10 shall license and inspect all assisted living residences and
11 assisted living services providers at least annually. Licensure
12 fees shall be established and funds from such fees shall be
13 employed to defray the costs of enforcing the provisions of this
14 act.

15 (1) The appropriate department shall establish and make
16 public specific, objective guidelines for inspectors to
17 employ in the inspection of assisted living residences and
18 assisted living services providers. Inspectors shall be
19 adequately trained in the intention and interpretation of
20 inspection guidelines to ensure consistent application of
21 legal requirements. Each department shall ensure adequate,
22 trained staff and provide annual continuing education courses
23 to inspection staff.

24 (2) There shall be four classes of licensure as follows:

25 (i) Exceptional quality licensure will be awarded to
26 providers based on a finding by a panel established by
27 each department that the provider is in compliance with
28 licensure requirements and should be recognized for its
29 use of best practices and high consumer satisfaction and
30 positive outcomes. Providers with this licensure

1 classification may advertise and each department shall
2 post names of those providers with this licensure
3 classification on its web site.

4 (ii) Compliance licensure will be provided to
5 providers with either no violations or isolated Class III
6 (minor) violations which the administrator or provider
7 has certified in writing to the appropriate department
8 have been corrected within 30 days of the date of the
9 annual licensure inspection.

10 (iii) Provisional licensure will be given to
11 providers with a pattern of Class III (minor) violations
12 or isolated Class II violations for a period of six
13 months. Substantial improvement must be demonstrated for
14 a provider to receive a second six-month provisional
15 license. Those providers which do not meet the standards
16 for a compliance license at the next scheduled inspection
17 shall have their license revoked by the appropriate
18 department.

19 (iv) Provisional licensure with ban on admissions
20 will be given for a six-month period to providers with a
21 pattern of Class II, isolated Class I or a pattern of
22 Class I violations such that new consumers may not be
23 admitted or provided services by the provider with this
24 licensure status.

25 (3) Before an assisted living residence is licensed and
26 permitted to open, operate or admit residents and before an
27 assisted living services provider is permitted to provide
28 services to consumers, it shall be inspected by the
29 appropriate department and must be found in compliance with
30 the requirements set forth in this act and the resulting

1 regulations.

2 (4) After initial licensure inspection, survey staff
3 shall, at a minimum, conduct one onsite unannounced
4 inspection per year. Each department shall develop a uniform
5 survey tool to be used by inspectors.

6 (5) Within 24 hours, upon receipt of a complaint from
7 any person alleging an immediate serious risk to the health
8 or safety of a consumer, the appropriate department shall
9 conduct an onsite unannounced inspection of the provider.
10 Complaints prompting an inspection pursuant to this
11 subsection may include severe injury or death of a consumer,
12 reports of abuse or conditions or practices that cause an
13 immediate and serious risk to a consumer. Complaints shall be
14 investigated immediately but no later than 48 hours after
15 receipt of the complaint.

16 (6) Each department shall develop requirements for the
17 preinspection provision of information and documents by the
18 provider on the annual anniversary of initial licensure, to
19 be reviewed by the appropriate department's inspectors prior
20 to the onsite inspection.

21 (7) Within six months of the passage of this act, each
22 department shall develop a time line and work plan to be used
23 to develop quality indicators of care and consumer
24 satisfaction surveys that will be used as part of the annual
25 inspection process. The quality indicators of care and
26 consumer satisfaction surveys shall be developed in
27 consultation with stakeholders and shall be placed within 24
28 months of the passage of this act.

29 (8) Each department shall develop a provider survey
30 instrument to obtain provider feedback on the inspection

1 process. The survey instrument shall be sent in the
2 preinspection submission information to be returned to the
3 deputy secretary of the appropriate department by the
4 provider after the onsite inspection.

5 (9) After three annual unannounced inspections resulting
6 in compliance or exceptional quality licensure status, a
7 provider shall receive abbreviated inspections for as long as
8 it maintains compliance or exceptional quality licensure
9 status. The appropriate department shall develop an
10 abbreviated inspection process.

11 (10) As provided in section 7(b), assisted living
12 residences not in compliance with the requirements of this
13 act and its regulations shall be subject to intensified
14 inspections which shall include intensified frequency,
15 duration and scope.

16 (11) There shall be no transfer of license unless the
17 appropriate department approves the transfer of license. The
18 appropriate department may deny transfers to friends,
19 relatives, business associates, etc., if it appears that
20 purpose of transfer is to avoid licensure action or it
21 appears that the previous owner will continue to have
22 involvement in the residence or business.

23 (b) Violations.--

24 (1) Within six months of the effective date of this
25 section, the Department of Public Welfare and the Department
26 of Health shall classify each violation of its regulations
27 into one of the following categories:

28 (i) Class I. A violation, including failure to or
29 negligent provision of services in the service plan,
30 which indicates a substantial probability that death or

1 serious mental or physical harm to a consumer may result
2 or death actually results.

3 (ii) Class II. A violation, including failure to or
4 negligent provision of services in the service plan,
5 which has a potential or actual substantial adverse
6 effect upon the health, safety or well-being of a
7 consumer.

8 (iii) Class III. A minor violation which has an
9 adverse effect upon the health, safety or well-being of a
10 consumer.

11 (2) The remedy and penalty for violations will depend on
12 the violations.

13 (i) Isolated Class III violation. Within 30 days of
14 the date of the citation, the assisted living residence
15 administrator or assisted living services provider must
16 correct the violation and certify in writing to the
17 appropriate department that the violation has been
18 corrected.

19 (ii) Pattern of Class III violations. Within ten
20 days of the date of the citation, the assisted living
21 residence administrator or assisted living services
22 provider must submit a plan of correction for appropriate
23 department approval. Within 30 days of the date of the
24 citation, the assisted living residence administrator or
25 assisted living services provider must correct the
26 violations and certify in writing to the appropriate
27 department that corrections have been made. The
28 appropriate department shall issue fines and grant a
29 provisional license, which shall be in effect only until
30 written certification of corrections has been received by

1 the appropriate department. Immediate correction of the
2 violation to the inspector's satisfaction during the
3 survey process will preclude the application of a penalty
4 under this subsection.

5 (iii) Isolated Class II violations. Within ten days
6 of the date of the citation, the assisted living
7 residence administrator or assisted living services
8 provider must submit a plan of correction for appropriate
9 departmental approval. Within 30 days of the date of the
10 citation, the assisted living residence administrator or
11 assisted living services provider shall correct the
12 violations and certify in writing to the appropriate
13 department that corrections have been made. The
14 appropriate department shall fine the assisted living
15 residence or assisted living service provider and issue a
16 provisional license until certification of corrections
17 has been received by the appropriate department.

18 Immediate correction of the violation to the inspector's
19 satisfaction during the survey process will preclude the
20 application of a penalty under this subsection.

21 (iv) Pattern of Class II violations. Within ten days
22 of the date of the citation, the assisted living
23 residence administrator or assisted living services
24 provider shall submit a plan of correction for
25 appropriate departmental approval. Within 30 days of the
26 date of the citation, the assisted living residence
27 administrator or assisted living services provider shall
28 correct the violations and shall certify in writing to
29 the appropriate department that all corrections have been
30 made. The appropriate department shall fine the provider

1 and issue a provisional license with a ban on admissions
2 or service until written certification of corrections has
3 been received and corrections have been verified by the
4 appropriate department. The appropriate department shall
5 conduct an onsite inspection to verify corrections within
6 two business days of receipt of the certification of
7 correction. The appropriate department shall conduct
8 intensified inspections of the provider with more
9 numerous unannounced inspections.

10 (v) Isolated Class I violations. Upon a finding by
11 the appropriate department of a Class I violation, the
12 appropriate department shall immediately decide whether:

13 (A) to give a provisional license with a ban on
14 admissions or services and allow the assisted living
15 residence or assisted living services provider to
16 correct the violation;

17 (B) require the appointment of a master at the
18 assisted living residence's expense to oversee the
19 immediate correction of the violations; or

20 (C) to revoke the license and arrange for the
21 immediate relocation or transfer of consumers. The
22 appropriate department shall fine the provider and
23 should the provider remain in operation, subject it
24 to intensified and more numerous unannounced
25 inspections.

26 (vi) Pattern of Class I violations. Upon a finding
27 by the appropriate department that a provider has a
28 pattern of Class I violations, the appropriate department
29 shall immediately revoke the provider's license and
30 arrange for relocation or transfer of the consumers or

1 appoint a master at the assisted living residence's
2 expense to bring the assisted living residence into
3 compliance within 30 days. The appropriate department
4 shall issue a provisional license with a ban on
5 admissions or service if the provider is permitted to
6 continue in operation and shall fine the provider. Should
7 the provider remain in operation, the appropriate
8 department shall conduct intensified and more numerous
9 inspections.

10 (vii) False certifications. Any administrator that
11 falsely certifies to the appropriate department that
12 violations have been corrected shall be fined by the
13 appropriate department and shall lose his administrator
14 license.

15 (3) Within six months of the effective date of this act,
16 the appropriate department shall issue regulations pursuant
17 to this section. The regulations shall ensure that
18 inspections are not invasive of consumer's privacy or
19 dignity, support the principles of assisted living and can be
20 uniformly and consistently applied by the appropriate
21 department.

22 (4) The appropriate department shall establish monetary
23 penalties that relate to the severity of the violation. Money
24 collected by the appropriate department under this section
25 shall be first used to defray the expenses incurred by
26 consumers relocated under this act. Any moneys remaining
27 shall be used by the appropriate department for enforcing the
28 provisions of this act. Fines collected pursuant to this act
29 shall not be subject to the provisions of 42 Pa.C.S. § 3733
30 (relating to deposits into account).

1 (c) Relocation, relocation assistance and transfer.--

2 (1) In addition to making all licensing surveys
3 available, assisted living residences shall post all Class I
4 and II licensing actions. The department shall inform all
5 residents of their right to leave the assisted living
6 residence and to receive relocation assistance.

7 (i) The department shall promptly relocate consumers
8 from an assisted living residence if any of the following
9 conditions exist:

10 (A) The assisted living residence is operating
11 without a license.

12 (B) The licensee is voluntarily closing an
13 assisted living residence and relocation is necessary
14 for the health and welfare of the consumers.

15 (C) The assisted living residence has engaged in
16 conduct that endangers the health and safety of its
17 residents, leading a reasonable consumer to be
18 concerned for his or her safety.

19 (D) When the assisted living resident wishes to
20 leave.

21 (ii) The department shall offer relocation
22 assistance to consumers of assisted living residences.

23 This shall include:

24 (A) Providing residents with pertinent
25 information, such as referrals to nearby social
26 service agencies or assisted living residences in
27 complete compliance with governing regulations.

28 (B) Determining other options for relocation;
29 and assisting residents to make arrangements for
30 relocation if family members are not available for

1 this purpose.

2 (iii) Except in an emergency, the consumer shall be
3 involved in planning his transfer to another placement
4 and shall have the right to choose among the available
5 alternative placements. The department may make temporary
6 placement until final placement can be arranged.

7 Consumers shall be provided with an opportunity to visit
8 alternative placement before relocation or following
9 temporary emergency relocation. Consumers shall choose
10 their final placement and shall be given assistance in
11 transferring to such place.

12 (iv) Consumers shall not be relocated pursuant to
13 this section if the department determines in writing and
14 consistent with consumer preference that such relocation
15 is not in the best interest of the consumer.

16 (2) All consumers of assisted living services providers
17 shall be notified by the Department of Health of its Class I
18 and II licensing actions against their provider, informed of
19 their right to switch providers and informed of their right
20 to receive assistance in locating a new assisted living
21 services provider. The Department of Health shall provide
22 assistance to consumers of assisted living services providers
23 who require assistance in transferring to other assisted
24 living services providers. The assistance shall be consistent
25 with the conditions for and forms of assistance stated in
26 paragraph (1).

27 (d) Appeal of violations.--A provider appealing appropriate
28 departmental ban on admissions and/or license revocation or
29 nonrenewal shall be denied a supersedeas unless the provider
30 demonstrates substantial likelihood of prevailing on the merits.

1 Where a supersedeas is granted it shall be revoked if the
2 department presents evidence of any intervening Class I or II
3 violations. Where supersedeas is granted:

4 (1) The appropriate department shall inspect a residence
5 or assisted living services provider at least monthly or more
6 frequently to ensure residents' or recipients' safety and
7 well-being. These inspection reports will be maintained as
8 part of the public record for the assisted living residence
9 or assisted living services provider.

10 (2) Where a supersedeas has been granted, a Class I or
11 II violation cited after the granting of the supersedeas
12 shall lead to a revocation of the supersedeas.

13 (e) Hearings.--The Department of Public Welfare and the
14 Department of Health, respectively, shall make the assisted
15 living residence or services consumer and provider appeals a
16 priority, with no appeal outstanding more than 60 days beyond
17 the date on which the appeal was filed.

18 (f) Expedited reconsideration.--The Secretary of Public
19 Welfare shall rule on reconsiderations within 60 days.

20 (g) Definitions.--As used in this section, the following
21 words and phrases shall have the meanings given to them in this
22 subsection:

23 "Appropriate department." The appropriate department with
24 respect to assisted living residences shall be the Department of
25 Public Welfare and the appropriate department with respect to
26 assisted living services providers shall be the Department of
27 Health.

28 "Each department." The term shall mean both the Department
29 of Public Welfare and the Department of Health acting
30 independently but following the same instruction from the

1 legislature.

2 Section 8. Expansion of availability of publicly funded home-
3 based and community-based assisted living
4 services.

5 (a) Categories and services.--Within the next fiscal year
6 following the effective date of this act, the department shall:

7 (1) Immediately work with stakeholders to identify
8 categories of persons qualifying for nursing facility care
9 who do not presently fit in any of Pennsylvania's present
10 Medicaid home-based and community-based waiver programs, such
11 as persons with autism, persons who have suffered a stroke
12 and others.

13 (2) Seek amendment of all present Medicaid home-based
14 and community-based services waivers consistent with Federal
15 requirements for the purposes of adding/increasing needed
16 services not presently provided and covering populations
17 identified in paragraph (1), to fill in the gaps in
18 Pennsylvania's current Medicaid waivers and to maximize caps
19 on payment, such as adding cognitive support services and
20 assistive technology to the PDA waiver, amending the AIDS
21 waiver and increasing the 80% cap on PDA waiver services.

22 (3) Amend, if permitted by Federal law, the State plan
23 to include in medical assistance financial eligibility
24 determination the following:

25 (i) In determining the countable resources of
26 qualified persons for purposes of medical assistance
27 eligibility, the department shall use a computation
28 method which exempts an amount of otherwise countable
29 resources which is equal to the difference between \$2,000
30 and an amount calculated as follows: \$2,000 increased by

1 each of the Social Security cost-of-living adjustments
2 sequentially from January 1, 1990, to the present.

3 (ii) For qualified couples, the department shall use
4 a computation method which exempts an amount of otherwise
5 countable resources which is equal to the difference
6 between \$3,000 and the amount calculated as follows:
7 \$3,000 increased by each of the Social Security cost-of-
8 living adjustments sequentially from January 1, 1990, to
9 the present.

10 (iii) The department shall promptly adjust upward
11 the exempted amounts each year as new Social Security
12 cost-of-living adjustments go into effect.

13 (4) Change and, where necessary, seek Federal approval
14 to liberalize eligibility requirements for nursing facility-
15 eligible persons receiving Medicaid-funded services in the
16 community to parallel the requirements for those receiving
17 care in a nursing facility. Where permitted by Federal law,
18 the department shall increase the resource level, adjust the
19 spousal impoverishment level and revise spenddown allowances
20 for those receiving services in their home and community to
21 parallel the requirements for those persons receiving such
22 services in a Medicaid-funded nursing facility.

23 (b) Housing.--Within nine months the Department of Aging and
24 the Department of Public Welfare shall:

25 (1) Establish a presumptive eligibility program for
26 immediately putting assisted living services in place for
27 persons needing long-term care services who appear to be
28 eligible for State-funded or Medicaid-funded programs, where
29 the individual is at risk of imminent placement in a nursing
30 facility. In so doing, the department shall attempt to

1 maximize Federal matching funding but, if necessary, may use
2 State funding exclusively.

3 (2) Establish rules and procedures for a program to
4 provide payment for a housing supplement funded with State
5 dollars to be used with Medicaid-funded home-based and
6 community-based services to help keep the consumer at home,
7 in an approved domiciliary care home, in an assisted living
8 residence or in an approved personal care home where:

9 (i) the total State cost of the housing supplement
10 and home-based and community-based services is less than
11 the State cost for that consumer in a nursing facility;

12 or

13 (ii) a housing supplement is necessary to avoid
14 nursing facility placement unwanted by the consumer:

15 (A) the person is certified for an available
16 waiver slot in the Medicaid-funded home-based and
17 community-based services waiver program; and

18 (B) adequate State funds have been appropriated
19 for the year for the payment of the supplement.

20 (3) Begin annual assessment of the availability of home-
21 based and community-based assisted living services in all
22 counties and assist counties to develop needed services, such
23 as adult day care, where they are presently unavailable.

24 (4) Establish a program which allows persons with
25 medical assistance countable assets of up to \$40,000, but who
26 are presently income eligible for Medicaid-funded home-based
27 and community-based assisted living services to equally share
28 the cost of those services with a State-funded program and
29 provides State support to bridge the transition to Medicaid-
30 funded services.

1 (5) Implement a quality assessment and improvement
2 program, which includes consumer satisfaction surveys and
3 quality-of-life outcome measures to ensure that publicly
4 funded home-based and community-based services meet
5 consumers' needs and permit consumers to live independently
6 in the residential environment of their choice, promote
7 integration of consumers into the community, maximize
8 consumer choice to promote and support the consumer's
9 changing needs, are consumer-oriented and meet professional
10 standards of quality.

11 (6) Work with stakeholders to develop recommendations
12 for the General Assembly for public funding and cost sharing
13 for consumers needing assistance with activities of daily
14 living whose income is higher than the Medicaid or
15 Supplemental Security Income State supplement but less than
16 the medical assistance home-based and community-based waiver
17 income level, and who do not meet the functional eligibility
18 for Medicaid home-based and community-based waiver services.

19 (c) Transition.--On a timely and ongoing basis, the
20 department shall identify persons aging out of the Early and
21 Periodic Screening, Diagnosis and Treatment (EPSDT) Program and
22 other publicly funded programs who would be eligible for
23 publicly funded home-based and community-based assisted living
24 services and assist them to make a safe and uninterrupted
25 transfer to those programs so that they may continue to remain
26 in their communities.

27 (d) Report.--The Department of Public Welfare and the
28 Department of Aging shall provide annually a public report
29 including the following information:

30 (1) The types of home-based and community-based services

1 funded through public sources by county, including
2 descriptions of services, units of services, an unduplicated
3 count of people served by service and consumer satisfaction
4 information.

5 (2) The number of people who applied for home-based and
6 community-based services, the number of people on waiting
7 lists, the number of people denied home-based and community-
8 based services because of financial ineligibility, the
9 adequacy of access to providers funded under this act and
10 choice of quality providers for first-day medical assistance
11 beneficiaries qualifying for services under this act, an
12 analysis of the adequacy of reimbursement to providers for
13 publicly funded services under this act and the number of
14 people denied home-based and community-based services because
15 of functional ineligibility.

16 (3) The number, types and results of complaints,
17 consumer satisfaction information, length of stay or service
18 delivery, reasons for termination of service and development
19 of evaluation tools for determining quality of life and care.

20 (e) Annual determination.--The department shall annually
21 determine, on a county-by-county basis, the adequacy of access
22 of first-day medical assistance beneficiaries who qualify for
23 services under this act to a reasonable choice of quality
24 providers funded for services under this act. In those counties
25 where first-day Medicaid beneficiaries do not have adequate
26 access and choice of quality providers, the department shall,
27 after consultation with stakeholders, determine a fair share
28 first-day medical assistance access formula to be applied to
29 providers in that county who provide services under this act,
30 for the purpose of providing access for first-day medical

1 assistance beneficiaries. In such cases, the department shall
2 only contract with those providers who agree to serve a fair
3 share of first-day medical assistance consumers. However, no
4 provider shall be penalized for not meeting the fair share
5 requirements if it can demonstrate that access or services have
6 not been denied to any first-day medical assistance recipient
7 meeting the providers' admission/acceptance standards.

8 Section 9. Application, assessment and appeal process for
9 publicly funded home-based and community-based
10 assisted living services.

11 (a) Application form and application process.--Within six
12 months of the effective date of this act, the Department of
13 Public Welfare and the Department of Aging, working with the
14 stakeholders, shall design and utilize a single, simple,
15 consumer-friendly, attractive and readily available PALS
16 application form for publicly funded services and benefits
17 available in Pennsylvania for persons needing long-term care
18 services, which will serve as a one-stop application for these
19 services. The application shall be for all publicly funded
20 assisted living services available in Pennsylvania and shall be
21 known as the PALS Program Application.

22 (b) Duties of departments.--The departments shall:

23 (1) To the extent possible, rely primarily on income and
24 asset verification that is independently available to the
25 Commonwealth, with little burden placed on the applicant.

26 (2) Ensure swift and seamless application process for
27 all PALS programs so that there are consistent income-
28 eligibility periods and use of self-declaration of income for
29 PACE and Medicaid so that Medicaid-eligible PACE applicants
30 will receive the greater package of services through

1 Medicaid, while helping the Commonwealth maximize Federal
2 funding and free up State lottery funds.

3 (3) Permit PALS application submission to either the
4 Department of Aging or the Department of Public Welfare and
5 take other steps to ensure the prompt and seamless processing
6 of applications and provision of services.

7 (4) Promptly assist and advise applicants and their
8 family members in gathering necessary nonindependently
9 available verification of income and assets and directly
10 contact sources of information if the consumer requests.

11 (5) Ensure that the application is capable of swift
12 determination on completeness and eligibility so that, upon
13 submission, additional items necessary for processing the
14 completed application will be identified to the applicant or
15 their family members.

16 (6) Ensure that eligibility determinations made in one
17 county shall be good for use in any county of this
18 Commonwealth during the period of eligibility.

19 (c) Legislative Budget and Finance Committee.--Within six
20 months of the effective date of this act, the Legislative Budget
21 and Finance Committee shall evaluate the efficiency,
22 responsiveness to consumers, consumer satisfaction with and
23 effectiveness of the present staffing and application and
24 verification process for publicly funded home-based and
25 community-based assisted living services and make
26 recommendations for improvements.

27 (d) Screening, assessment and eligibility determination.--

28 (1) The department shall immediately establish
29 procedures requiring all persons seeking long-term care
30 services in an assisted living residence or personal care

1 home to obtain a level-of-care screening and comprehensive
2 assessment from the area agency on aging program prior to
3 admission to such residence.

4 (2) The procedures may permit an area agency on aging
5 level-of-care screening and comprehensive assessment to be
6 conducted by telephone based on representations made by the
7 provider and applicant subject to retrospective face-to-face
8 evaluation of the applicant thereafter.

9 (3) All persons may obtain level-of-care screenings and
10 comprehensive assessments from the area agency on aging.

11 (4) All area agency on aging level-of-care screenings or
12 comprehensive assessments must be completed within five
13 business days of the request, except where an urgent
14 situation requires that they be completed within one business
15 day, and shall be valid for six months unless the resident's
16 or recipient's condition changes.

17 (5) All area agency on aging determinations of need for
18 publicly funded long-term care services shall be evaluated by
19 the county assistance offices for financial eligibility
20 within five business days generally or one day for emergency
21 cases from date of receipt of completed Medicaid application.

22 (6) The departments, in consultation with stakeholders,
23 shall establish the negotiated risk standards to be used in
24 determining the consumer's eligibility for publicly funded
25 assisted living services.

26 (e) Appeals.--The department shall promptly develop an
27 expedited fair hearing process for addressing challenges to
28 financial eligibility, level of care, service plan and
29 Supplemental Security Income supplemental decisions where the
30 denial has resulted in failure to provide long-term care

1 services. Hearing and decision must take place within 30 days of
2 filing of fair hearing.

3 Section 10. Information on publicly funded assisted living
4 services.

5 Within nine months of the effective date of this act, the
6 Department of Public Welfare and the Department of Aging shall:

7 (1) Develop an extensive multimedia public information
8 campaign to inform Pennsylvanians needing home-based and
9 community-based long-term assisted living services of the
10 range of options available, which list shall be updated and
11 disseminated annually, and of the availability of the
12 Pennsylvania Assisted Living Services (PALS) Program. The
13 public information campaign shall be reviewed and updated
14 every two years with reports to and an opportunity for input
15 by the stakeholders.

16 (2) Establish a toll-free PALS Help Line for consumers
17 needing home-based and community-based assisted living
18 services to advise consumers of programs in their area and of
19 public funding availability and to assist with the
20 application process.

21 (3) Initiate a training program for hospital discharge
22 planners, area aging personnel, nursing home staff,
23 Department of Public Welfare caseworkers, HealthChoices
24 special needs personnel and social service programs on the
25 range of publicly funded home-based and community-based
26 assisted living services and the new application process
27 therefore.

28 Section 11. Information sharing.

29 The department shall maintain a data base of licensed
30 assisted living residences and assisted living services

1 providers and shall make available from the department and on
2 its World Wide Web site, at a minimum, the following information
3 for each licensed provider: name, address, licensing status,
4 resident profiles, number of beds, payer sources, consumer
5 satisfaction and quality indicators, and important links to
6 related long-term care World Wide Web sites. This information
7 must be regularly updated and it must be timely.

8 Section 12. Appropriation.

9 The sum of \$1,000,000 is hereby appropriated to the
10 Department of Public Welfare for the housing supplement purposes
11 set out in section 8(b)(2) for the fiscal year July 1, 2003, to
12 June 30, 2004, to carry out the provisions of this act.

13 Section 13. Repeal.

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

16 Section 14. Effective date.

17 This act shall take effect in 60 days.