

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 704 Session of 2007

INTRODUCED BY VANCE, WASHINGTON, BAKER, BOSCOLA, BROWNE, EARLL, ERICKSON, FOLMER, FUMO, KITCHEN, LOGAN, MELLOW, MUSTO, O'PAKE, ORIE, PICCOLA, PIPPY, PUNT, RAFFERTY, STACK, STOUT, TOMLINSON, WAUGH, D. WHITE, M. WHITE, C. WILLIAMS, WONDERLING, WOZNIAK, SCARNATI, REGOLA, RHOADES, MADIGAN AND McILHINNEY, MARCH 29, 2007

REFERRED TO PUBLIC HEALTH AND WELFARE, MARCH 29, 2007

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," further providing for
4 rules and regulations for personal care homes and assisted
5 living residences.

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

8 Section 1. Section 213 heading and (c) of the act of June
9 13, 1967 (P.L.31, No.21), known as the Public Welfare Code,
10 added December 21, 1988 (P.L.1883, No.185), are amended and the
11 section is amended by adding a subsection to read:

12 Section 213. Personal Care Home [Administrator] and Assisted
13 Living Residence Administrators.--* * *

14 (a.1) All assisted living residences shall identify and
15 appoint an administrator or administrators who meet the
16 qualifications provided in this section for personal care home
17 administrators and any additional standards pertaining to the

1 operations of assisted living residences as the department may
2 establish by regulation.

3 * * *

4 (c) The department may promulgate regulations requiring
5 orientation and training for all direct care staff in a personal
6 care home or assisted living residence.

7 * * *

8 Section 2. The definition of "facility" in section 1001 of
9 the act, amended December 21, 1988 (P.L.1883, No.185), is
10 amended and the section is amended by adding definitions to
11 read:

12 Section 1001. Definitions.--As used in this article--

13 * * *

14 "Assisted living residence" means any premises in which food,
15 shelter, personal care, assistance or supervision and
16 supplemental health care services are provided for a period
17 exceeding twenty-four hours or four or more adults who are not
18 relatives of the operator, who require assistance or supervision
19 in such matters as dressing, bathing, diet, financial
20 management, evacuation from the residence in the event of an
21 emergency or medication prescribed for self-administration.

22 "Assisted living residence administrator" means an individual
23 who is charged with the general administration of an assisted
24 living residence, whether or not such individual has an
25 ownership interest in the residence or his function and duties
26 are shared with other individuals.

27 * * *

28 "Facility" means an adult day care center, child day care
29 center, family day care home, boarding home for children, mental
30 health establishment, personal care home, assisted living

1 residence, nursing home, hospital or maternity home, as defined
2 herein, [and shall not include those] except to the extent that
3 such a facility is operated by the State or Federal governments
4 or those supervised by the department[.], or licensed pursuant
5 to the act of July 19, 1979 (P.L.130, No.48), known as the
6 "Health Care Facilities Act."

7 * * *

8 "Supplemental health care service" means the provision by an
9 assisted living residence of any type of health care service,
10 either directly or through contractors, subcontractors, agents
11 or designated providers, except for any service that is required
12 by law to be provided by a health care facility pursuant to the
13 act of July 19, 1979 (P.L.130, No.48), known as the "Health Care
14 Facilities Act."

15 Section 3. Section 1006 of the act, amended December 21,
16 1988 (P.L.1883, No.185), is amended to read:

17 Section 1006. Fees.--Annual licenses shall be issued when
18 the proper fee, if required, is received by the department and
19 all the other conditions prescribed in this act are met. For
20 personal care homes and assisted living residences, the fee
21 shall be an application fee. The fees shall be:

22 Facility	Annual Fee
23 Adult day care center	\$ 15
24 Mental health establishment	50
25 Personal care home	
26 <u>or assisted</u>	
27 <u>living residence</u> -- [0] 4 - 20 beds	15
28 -- 21 - 50 beds	20
29 -- 51 - 100 beds	30
30 --101 beds and above	50

1 No fee shall be required for the annual license in the case
2 of day care centers, family day care homes, boarding homes for
3 children or for public or nonprofit mental institutions.

4 Section 4. The definition of "private institution" in
5 section 1051 of the act, amended December 21, 1988 (P.L.1883,
6 No.185), is amended to read:

7 Section 1051. Definition.--As used in this subarticle--

8 "Private institution" means any of the following facilities
9 by whatever term known and irrespective of the age group served:
10 Mental hospital, institution for the mentally defective, day
11 care center, nursing home, hospital, personal care home,
12 assisted living residence and other similar institution which is
13 operated for profit and which requires a license issued by the
14 department.

15 Section 5. Sections 1057.1, 1057.2(a), 1057.3, 1085
16 introductory paragraph, 1086(e) and 1087 of the act, added
17 December 21, 1988 (P.L.1883, No.185), are amended to read:

18 Section 1057.1. Appeals.--(a) An appeal from the decision
19 of the department relating to the licensure or revocation of a
20 personal care home or assisted living residence shall not act as
21 a supersedeas but, upon cause shown and where circumstances
22 require it, the reviewing authority shall have the power to
23 grant a supersedeas.

24 (b) If, without good cause, one or more Class I or Class II
25 violations remain uncorrected or when the home or residence has
26 demonstrated a pattern of episodes of noncompliance alternating
27 with compliance over a period of at least two years such as
28 would convince a reasonable person that any correction of
29 violations would be unlikely to be maintained, the department
30 may petition the court to appoint a master designated as

1 qualified by the department to assume operation of the home or
2 residence at the [home's] operator's expense for a specified
3 period of time or until all violations are corrected and all
4 applicable laws and regulations are complied with.

5 Section 1057.2. Relocation.--(a) The department, in
6 conjunction with appropriate local authorities, shall relocate
7 residents from a personal care home or assisted living residence
8 if any of the following conditions exist:

9 (1) The home or residence is operating without a license.

10 (2) The licensee is voluntarily closing a home or residence
11 and relocation is necessary for the health and welfare of the
12 resident or residents.

13 * * *

14 Section 1057.3. Rules and Regulations for Personal Care Home
15 and Assisted Living Residences.--(a) The rules and regulations
16 for the licensing of personal care homes and assisted living
17 residences promulgated by the department shall require that:

18 (1) Prior to a resident's admission to a personal care home
19 or assisted living residence, an initial standardized screening
20 instrument be completed for that resident by the [personal care
21 home] provider or a human service agency. Such standardized
22 screening instrument shall be developed by the department.

23 [This]

24 (i) For a personal care home, the screening will be done to
25 determine that the potential resident does not require the
26 services in or of a long-term care facility [or] and whether the
27 potential resident requires the services of a personal care
28 [services] home and, if so, the nature of the services and
29 supervision necessary.

30 (ii) For an assisted living residence, the screening will be

1 done to determine whether the potential resident requires the
2 services provided by an assisted living residence. A resident
3 who currently does not require assistance in obtaining
4 supplemental health care service, but who may require such
5 services in the future or who wishes to obtain assistance in
6 obtaining such services or reside in a facility in which such
7 services are available, may be admitted to the assisted living
8 residence, provided the resident is only provided service
9 required or requested by the resident.

10 (iii) An initial screening shall not be required to commence
11 supplemental health care services to a resident of an assisted
12 living facility who was not receiving such services at the time
13 of the resident's admission; to transfer a resident from a
14 portion of an assisted living residence that does not provide
15 supplemental health care service to a portion of the residence
16 that provides such service; or to transfer a resident from a
17 personal care home to an assisted living residence licensed by
18 the same operator.

19 (2) In addition to the screening, each resident receive a
20 complete medical examination by a physician prior to, or within
21 thirty days of, admission and that, once admitted, each resident
22 receive a screening and medical evaluation at least annually.

23 (3) A personal care home or assisted living residence
24 administrator refer an applicant whose needs cannot be met by [a
25 personal care home] the home or residence to an appropriate
26 assessment agency.

27 (4) Each resident be provided by the administrator with
28 notice of any Class I or Class II violations uncorrected after
29 five days.

30 (5) All residents sign a standard written admission

1 agreement which shall include the disclosure to each resident of
2 the actual rent and other charges for services provided by the
3 personal care home or assisted living residence.

4 (6) For residents eligible for Supplemental Security Income
5 (SSI) benefits, actual rent and other charges not exceed the
6 resident's actual current monthly income reduced by a personal
7 needs allowance for the resident in an amount to be determined
8 by the department, but not less than twenty-five dollars (\$25).

9 (7) A personal care home or assisted living residence not
10 seek or accept any payments from a resident who is a
11 Supplemental Security Income (SSI) recipient in excess of one-
12 half of any funds received by the resident under the act of
13 March 11, 1971 (P.L.104, No.3), known as the "Senior Citizens
14 Rebate and Assistance Act."

15 (8) A personal care home or assisted living residence not
16 seek or accept from a resident who is eligible for Supplemental
17 Security Income (SSI) benefits any payment from any funds
18 received as lump sum awards, gifts or inheritances, gains from
19 the sale of property, or retroactive government benefits:
20 Provided, however, That an owner or operator may seek and accept
21 payments from funds received as retroactive awards of Social
22 Security or Supplemental Security Income (SSI) benefits, but
23 only to the extent that the retroactive awards cover periods of
24 time during which the resident actually resided in the personal
25 care home or assisted living residence.

26 (9) Each resident who is a recipient of, or an eligible
27 applicant for, Supplemental Security Income (SSI) benefits be
28 provided, at no additional charge to the resident, necessary
29 personal hygiene items and personal laundry services. This
30 requirement does not include cosmetic items.

1 (10) All residents may leave and return to [the] a personal
2 care home or assisted living residence, receive visitors, have
3 access to a telephone and mail and participate in religious
4 activities.

5 (11) Personal care home and assisted living residence
6 owners, administrators or employes be prohibited from being
7 assigned power of attorney or guardianship for any resident.

8 (12) Each assisted living residence demonstrate the ability
9 to provide supplemental health care services in a manner duly
10 protective of the health, safety and well-being of its residents
11 utilizing employes, independent contractors or contractual
12 arrangements with other health care facilities or practitioners
13 licensed, registered or certified to the extent required by law
14 to provide such service. To the extent prominently disclosed in
15 a written admission agreement, an assisted living residence may
16 require residents to use providers of supplemental health care
17 services designated by the facility.

18 (13) A personal care home not provide supplemental health
19 care services to residents, provided, however, that a personal
20 care home may assist residents in obtaining health care services
21 in the manner provided by 55 Pa. Code §§ 2600.29 (relating to
22 hospice care and services), 2600.142 (relating to assistance
23 with health care) and 2600.181 (relating to self-administration)
24 through 2600.191 (relating to medications) or as otherwise
25 provided by regulations adopted by the department not
26 inconsistent with the requirements of this section.

27 (b) [The] Subject to subsection (a)(13), the department
28 shall not prohibit immobile persons who do not require the
29 services of a licensed long-term care facility[, but who require
30 personal care services,] from residing in a personal care home,

1 provided that appropriate personal care services and health care
2 services are available to the resident and the design,
3 construction, staffing or operation of the personal care home
4 allows for safe emergency evacuation. Persons requiring the
5 services of a licensed long-term care facility, including
6 immobile persons, may reside in an assisted living residence,
7 provided that appropriate supplemental health care services are
8 provided such residents and the design, construction, staffing
9 and operation of the assisted living residence allows for their
10 safe emergency evacuation.

11 (c) An assisted living residence may not admit, retain or
12 serve a consumer with any of the following conditions or health
13 care needs:

14 (1) Ventilator dependency.

15 (2) Stage III and IV, or multiple stage II decubiti and
16 vascular ulcers that are not in a healing stage.

17 (3) Continuous intravenous fluids.

18 (4) Reportable infectious diseases, such as tuberculosis, in
19 a communicable state that require isolation of the consumer or
20 require special precautions by a caretaker to prevent
21 transmission of the disease unless the Department of Health
22 directs that isolation be established within the assisted living
23 residence.

24 (5) Nasogastric tubes.

25 (6) Gastric tubes, except when the consumer is capable of
26 self-care of the tube.

27 (7) Physical restraints.

28 (8) Tracheostomy except when the consumer is independently
29 capable of self-care of the tracheostomy.

30 (9) Other conditions for which care cannot be provided in a

1 safe and effective manner in an assisted living residence as
2 determined by regulations adopted by the department.

3 (10) A consumer for whom an assisted living residence
4 administrator, acting in consultation with supplemental health
5 care providers, or whose physician or the medical director of
6 the facility, certifies is not appropriate for admission or
7 retention in an assisted living residence.

8 (11) A consumer for whom a determination is made that the
9 consumer's health care needs cannot be met by a provider of
10 personal care or assisted living services or within an assisted
11 living residence, including a consumer requiring:

12 (i) skilled nursing care twenty-four hours per day;

13 (ii) a sliding scale insulin administration unless the
14 consumer is capable of self-administration or a licensed health
15 care professional or other individual qualified to do so
16 administers the insulin;

17 (iii) intermittent intravenous therapy unless a licensed
18 health care professional manages the therapy;

19 (iv) insertions, sterile irrigation and replacement of a
20 catheter, except for routine maintenance of a urinary catheter,
21 unless the consumer is capable of self-administration or a
22 licensed health care professional administers the catheter;

23 (v) oxygen, unless the consumer is capable of self-
24 administration or a licensed health care professional
25 administers the oxygen;

26 (vi) inhalation therapy, unless the consumer is capable of
27 self-administration or a licensed health care professional
28 administers the therapy; or

29 (vii) other types of supplemental health care services that
30 an assisted living residence administrator, acting in

1 consultation with supplemental health care providers, determines
2 cannot be provided in a safe and effective manner by the
3 assisted living residence.

4 (d) (i) Subject to subsection (a)(12), an assisted living
5 residence may admit or retain a resident who does not require
6 supplemental health care services or who, subject to any
7 restrictions provided in the written resident agreement, makes
8 alternative arrangements for such services.

9 (ii) Portions or sections of an assisted living residence
10 may be designated for use by residents not requiring
11 supplemental health care services, or for a facility may provide
12 services both to residents receiving supplemental health care
13 service and to residents not receiving such service within the
14 same portions or sections of its residence.

15 Section 1085. Classification of Violations.--The department
16 shall classify each violation of its regulations [on] by
17 personal care homes or assisted living residences into one of
18 the following categories:

19 * * *

20 Section 1086. Penalties.--* * *

21 (e) A personal care home or assisted living residence found
22 to be operating without a license shall be assessed a penalty of
23 five hundred dollars (\$500). If, after fourteen days, a provider
24 [of a personal care home] cited for operating without a license
25 fails to file an application for a license, the department shall
26 assess an additional twenty dollars (\$20) for each resident for
27 each day in which the home or residence fails to make such
28 application.

29 * * *

30 Section 1087. Revocation or Nonrenewal of License.--(a) (1)

1 The department shall temporarily revoke the license of a
2 personal care home or assisted living residence if, without good
3 cause, one or more Class I violations remain uncorrected twenty-
4 four hours after the [personal care home] operator has been
5 cited for such violation or if, without good cause, one or more
6 Class II violations remain uncorrected fifteen days after being
7 cited for such violation.

8 (2) Upon the revocation of a license pursuant to this
9 subsection, all residents shall be relocated.

10 (3) The revocation may terminate upon the department's
11 determination that its violation is corrected.

12 (4) If, after three months, the department does not issue a
13 new license for a personal care home or assisted living
14 residence license revoked pursuant to this section:

15 (i) Such revocation or nonrenewal pursuant to this section
16 shall be for a minimum period of five years.

17 (ii) No provider of a personal care home or assisted living
18 residence who has had a license revoked or not renewed pursuant
19 to this section shall be allowed to operate or staff or hold an
20 interest in a home or residence that applies for a license for a
21 period of five years after such revocation or nonrenewal.

22 (b) The department shall revoke or refuse to renew the
23 license of a personal care home or assisted living residence if,
24 during any two-year period, the home or residence, without good
25 cause, on two or more separate occasions, has been found to have
26 violated a regulation of the department which has been
27 categorized as Class I.

28 (c) The power of the department to revoke or refuse to renew
29 or issue a license pursuant to this section is in addition to
30 the powers and duties of the department pursuant to section

1 1026.

2 Section 6. The following transitional provisions shall
3 apply:

4 (1) A facility licensed as a personal care home upon the
5 effective date of this section shall not provide supplemental
6 health care services to its residents until the facility
7 submits an application to the department to operate an
8 assisted living residence and the department issues a license
9 to the facility to operate as an assisted living residence.

10 (2) Prior to the issuance of application forms and the
11 adoption of regulations pertaining to assisted living
12 residences, the department shall issue licenses to operators
13 of personal care homes to operate assisted living residences
14 based upon the review of plans submitted by the operator
15 demonstrating the ability of a facility to safely and
16 effectively operate as an assisted living residence pursuant
17 to the requirements of this act.

18 (3) Unless the department, pursuant to section 213(a.1)
19 of the act, promulgates final regulations establishing
20 additional qualifications for assisted living residence
21 administrators, a personal care home administrator may serve
22 as an assisted living residence administrator, and unless the
23 department, pursuant to section 213(a.1) of the act,
24 promulgates final regulations establishing additional
25 orientation or training requirements for direct care staff in
26 an assisted living residence, direct care staff who have
27 received orientation and training required for a personal
28 care home may serve as direct care staff in an assisted
29 living residence.

30 (4) Except to the extent inconsistent with this act, a

1 reference in another statute to a personal care home, a
2 personal care boarding home, personal care housing or a
3 personal care home administrator shall be construed to also
4 include an assisted living residence or an assistant living
5 residence administrator, including, but not limited to, the
6 use of such terms in:

7 (i) the definition of "caretaker" in 18 Pa.C.S. §
8 2713;

9 (ii) the definition of "health care provider" in 42
10 Pa.C.S. § 5101.1;

11 (iii) the definition of "health center" in 53
12 Pa.C.S. § 5602;

13 (iv) the authorization to conduct studies and
14 evaluations and to develop community housing options by
15 the Department of Aging as provided by section 2203-A of
16 the act of April 9, 1929 (P.L.177, No.175), known as The
17 Administrative Code of 1929;

18 (v) the authorization to develop community-based
19 service and housing options for impaired and chronically
20 ill older persons provided to area agencies on aging by
21 section 2207-A of The Administrative Code of 1929;

22 (vi) the term "residence" in section 2201-A of the
23 act of July 28, 1953 (P.L.723, No.230), known as the
24 Second Class County Code,

25 (vii) the authorization to provide tax exempt bond
26 allocations pursuant to Chapter 27 of the act of June 29,
27 1996 (P.L.434, No.67), known as the Job Enhancement Act;

28 (viii) the definition of "exempt facility" in
29 section 2702 of the Job Enhancement Act;

30 (ix) the definition of "facility" in section 103 of

1 the act of November 6, 1987 (P.L.381, No.79), known as
2 the Older Adults Protective Services Act;

3 (x) establishing the qualifications for a pediatric
4 extended care center administrator pursuant to section
5 15(b)(2) of the act of November 24, 1999 (P.L.884,
6 No.54), known as the Prescribed Pediatric Extended Care
7 Centers Act;

8 (xi) the definition of "health care provider" in
9 section 503 of the act of March 20, 2002 (P.L.154,
10 No.13), known as the Medical Care Availability and
11 Reduction of Error (Mcare) Act;

12 (xii) the definition of "facility" in section 2 of
13 the act of December 9, 2002 (P.L.1388, No.171), known as
14 the Elder Care Payment Restitution Act;

15 (xiii) the list of facilities required to make
16 refunds pursuant to section 3 of the Elder Care Payment
17 Restitution Act; or

18 (xiv) the definition of "family" as excluding
19 persons residing in a personal care boarding home in
20 section 3 of the act of November 30, 2004 (P.L.1561,
21 No.198), known as the Family Support for Persons with
22 Disabilities Act.

23 Section 7. This act shall take effect in 60 days.