

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 704 Session of 2007

INTRODUCED BY VANCE, WASHINGTON, BAKER, BROWNE, EARLL, ERICKSON, FOLMER, FUMO, KITCHEN, 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

SENATOR ARMSTRONG, APPROPRIATIONS, RE-REPORTED AS AMENDED, JUNE 28, 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 Intra-Governmental Council on Long-Term Care and for rules  
5 and regulations for personal care homes and assisted living  
6 residences.

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

9 Section 1. Section 212(b) of the act of June 13, 1967  
10 (P.L.31, No.21), known as the Public Welfare Code, is amended by  
11 adding a paragraph to read:

12 Section 212. Intra-Governmental Council on Long-Term Care.--

13 \* \* \*

14 (b) The Intra-Governmental Council on Long-Term Care shall  
15 be composed of and appointed in accordance with the following:

16 \* \* \*

17 (9.1) Two representatives of the assisted living residence

1 community, one of whom shall be an owner or administrator of a  
2 licensed assisted living residence and one of whom shall be a  
3 consumer of a licensed assisted living residence.

4 \* \* \*

5 Section 1.1. Section 213 heading and (c) of the act, added  
6 December 21, 1988 (P.L.1883, No.185), are amended and the  
7 section is amended by adding a subsection to read:

8 Section 213. Personal Care Home [Administrator] and Assisted  
9 Living Residence Administrators.--\* \* \*

10 (a.1) All assisted living residences shall identify and  
11 appoint an administrator or administrators who meet the  
12 qualifications provided in this section for personal care home  
13 administrators and any additional standards pertaining to the  
14 operations of assisted living residences as the department may  
15 establish by regulation.

16 \* \* \*

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

20 \* \* \*

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

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

26 \* \* \*

27 "Assisted living residence" means any premises in which food,  
28 shelter, personal care, assistance or supervision and  
29 supplemental health care services are provided for a period  
30 exceeding twenty-four hours for four or more adults who are not

1 relatives of the operator, who require assistance or supervision  
2 in such matters as dressing, bathing, diet, financial  
3 management, evacuation from the residence in the event of an  
4 emergency or medication prescribed for self-administration.

5 "Assisted living residence administrator" means an individual  
6 who is charged with the general administration of an assisted  
7 living residence, whether or not such individual has an  
8 ownership interest in the residence or his function and duties  
9 are shared with other individuals.

10 \* \* \*

11 "Facility" means an adult day care center, child day care  
12 center, family day care home, boarding home for children, mental  
13 health establishment, personal care home, assisted living  
14 residence, nursing home, hospital or maternity home, as defined  
15 herein, [and shall not include those] except to the extent that  
16 such a facility is operated by the State or Federal governments  
17 or those supervised by the department[.], or licensed pursuant  
18 to the act of July 19, 1979 (P.L.130, No.48), known as the  
19 "Health Care Facilities Act."

20 \* \* \*

21 "Supplemental health care services" means the provision by an  
22 assisted living residence of any type of health care service,  
23 either directly or through contractors, subcontractors, agents  
24 or designated providers, except for any service that is required  
25 by law to be provided by a health care facility pursuant to the  
26 act of July 19, 1979 (P.L.130, No.48), known as the "Health Care  
27 Facilities Act."

28 Section 3. Section 1021 of the act is amended to read:

29 Section 1021. Regulations.--(a) The department is hereby  
30 authorized and empowered to adopt regulations establishing

1 minimum standards for building, equipment, operation, care,  
2 program and services and for the issuance of licenses.

3 (b) The department shall, by regulation, set fees for  
4 application for assisted living residence licensure and  
5 licensure renewal. ~~to ensure that the Commonwealth's~~ ←  
6 administration and oversight of assisted living residence  
7 licensure is self-funded. Fees received by the department shall  
8 augment the department's funding for quality assurance and shall  
9 be used for the purposes of this article.

10 (c) The department shall develop regulations under this  
11 article in collaboration with industry stakeholders, consumers  
12 and other interested parties.

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

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

17 "Private institution" means any of the following facilities  
18 by whatever term known and irrespective of the age group served:  
19 Mental hospital, institution for the mentally defective, day  
20 care center, nursing home, hospital, personal care home,  
21 assisted living residence and other similar institution which is  
22 operated for profit and which requires a license issued by the  
23 department.

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

27 Section 1057.1. Appeals.--(a) An appeal from the decision  
28 of the department relating to the licensure or revocation of a  
29 personal care home or assisted living residence shall not act as  
30 a supersedeas but, upon cause shown and where circumstances

1 require it, the reviewing authority shall have the power to  
2 grant a supersedeas.

3 (b) If, without good cause, one or more Class I or Class II  
4 violations remain uncorrected or when the home or residence has  
5 demonstrated a pattern of episodes of noncompliance alternating  
6 with compliance over a period of at least two years such as  
7 would convince a reasonable person that any correction of  
8 violations would be unlikely to be maintained, the department  
9 may petition the court to appoint a master designated as  
10 qualified by the department to assume operation of the home or  
11 residence at the [home's] operator's expense for a specified  
12 period of time or until all violations are corrected and all  
13 applicable laws and regulations are complied with.

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

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

19 (2) The licensee is voluntarily closing a home or residence  
20 and relocation is necessary for the health and welfare of the  
21 resident or residents.

22 \* \* \*

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

27 (1) Prior to a resident's admission to a personal care home  
28 or assisted living residence, an initial standardized screening  
29 instrument be completed for that resident by the [personal care  
30 home] provider or a human service agency. Such standardized

1 screening instrument shall be developed by the department.

2 [This]

3 (i) For a personal care home, the screening will be done to  
4 determine that the potential resident does not require the  
5 services in or of a long-term care facility [or] and whether the  
6 potential resident requires the services of a personal care  
7 [services] home and, if so, the nature of the services and  
8 supervision necessary.

9 (ii) For an assisted living residence, the screening will be  
10 done to determine whether the potential resident requires the  
11 services provided by an assisted living residence. A resident  
12 who currently does not require assistance in obtaining  
13 supplemental health care services, but who may require such  
14 services in the future or who wishes to obtain assistance in  
15 obtaining such services or reside in a facility in which such  
16 services are available, may be admitted to the assisted living  
17 residence, provided the resident is only provided service  
18 required or requested by the resident.

19 (iii) An initial screening shall not be required to commence  
20 supplemental health care services to a resident of an assisted  
21 living facility who was not receiving such services at the time  
22 of the resident's admission; to transfer a resident from a  
23 portion of an assisted living residence that does not provide  
24 supplemental health care services to a portion of the residence  
25 that provides such service; or to transfer a resident from a  
26 personal care home to an assisted living residence licensed by  
27 the same operator.

28 (2) In addition to the screening, each resident receive a  
29 complete medical examination by a physician prior to, or within  
30 thirty days of, admission and that, once admitted, each resident

1 receive a screening and medical evaluation at least annually.

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

6 (3.1) Priority for Medicaid-funded home and community-based  
7 waiver services shall be given to prospective or current  
8 residents of assisted living residences for whom placement in a  
9 skilled nursing facility is imminent absent access to said  
10 waiver.

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

14 (5) All residents sign a standard written admission  
15 agreement which shall include the disclosure to each resident of  
16 the actual rent and other charges for services provided by the  
17 personal care home or assisted living residence.

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

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

29 (8) A personal care home or assisted living residence not  
30 seek or accept from a resident who is eligible for Supplemental

1 Security Income (SSI) benefits any payment from any funds  
2 received as lump sum awards, gifts or inheritances, gains from  
3 the sale of property, or retroactive government benefits:  
4 Provided, however, That an owner or operator may seek and accept  
5 payments from funds received as retroactive awards of Social  
6 Security or Supplemental Security Income (SSI) benefits, but  
7 only to the extent that the retroactive awards cover periods of  
8 time during which the resident actually resided in the personal  
9 care home or assisted living residence.

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

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

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

22 (12) Each assisted living residence demonstrate the ability  
23 to provide supplemental health care services in a manner duly  
24 protective of the health, safety and well-being of its residents  
25 utilizing employes, independent contractors or contractual  
26 arrangements with other health care facilities or practitioners  
27 licensed, registered or certified to the extent required by law  
28 to provide such service. To the extent prominently disclosed in  
29 a written admission agreement, an assisted living residence may  
30 require residents to use providers of supplemental health care

1 services designated by the facility.

2 (13) A personal care home not provide supplemental health  
3 care services to residents, provided, however, that a personal  
4 care home may assist residents in obtaining health care services  
5 in the manner provided by 55 Pa. Code §§ 2600.29 (relating to  
6 hospice care and services), 2600.142 (relating to assistance  
7 with health care) and 2600.181 (relating to self-administration)  
8 through 2600.191 (relating to medications) or as otherwise  
9 provided by regulations adopted by the department not  
10 inconsistent with the requirements of this section.

11 (b) [The] Subject to subsection (a)(13), the department  
12 shall not prohibit immobile persons who do not require the  
13 services of a licensed long-term care facility[, but who require  
14 personal care services,] from residing in a personal care home,  
15 provided that appropriate personal care services and health care  
16 services are available to the resident and the design,  
17 construction, staffing or operation of the personal care home  
18 allows for safe emergency evacuation. Persons requiring the  
19 services of a licensed long-term care facility, including  
20 immobile persons, may reside in an assisted living residence,  
21 provided that appropriate supplemental health care services are  
22 provided such residents and the design, construction, staffing  
23 and operation of the assisted living residence allows for their  
24 safe emergency evacuation.

25 (c) An assisted living residence may not admit, retain or  
26 serve a consumer with any of the following conditions or health  
27 care needs unless an exception is granted by the department:

28 (1) Ventilator dependency.

29 (2) Stage III and IV decubiti and vascular ulcers that are  
30 not in a healing stage.

1       (3) Continuous intravenous fluids.

2       (4) Reportable infectious diseases, such as tuberculosis, in  
3 a communicable state that require isolation of the consumer or  
4 require special precautions by a caretaker to prevent  
5 transmission of the disease unless the Department of Health  
6 directs that isolation be established within the assisted living  
7 residence.

8       (5) Nasogastric tubes.

9       (d) Any of the following individuals may certify that a  
10 consumer may not be admitted or retained in an assisted living  
11 residence and the department shall establish the standards  
12 required for the certification:

13       (1) The assisted living residence administrator acting in  
14 consultation with supplemental health care providers.

15       (2) A consumer's physician or certified registered nurse  
16 practitioner.

17       (3) The medical director of the facility.

18       (e) An assisted living residence may admit, retain or serve  
19 a consumer for whom a determination is made by the department  
20 that the consumer's specific health care needs can be met by a  
21 provider of assisted living services or within an assisted  
22 living residence, including a consumer requiring:

23       (1) gastric tubes, except that a determination shall not be  
24 required if the consumer is capable of self-care of the gastric  
25 tube or a licensed health care professional or other qualified  
26 individual cares for the gastric tube;

27       (2) tracheostomy, except that a determination shall not be  
28 required if the consumer is independently capable of self-care  
29 of the tracheostomy;

30       (3) skilled nursing care twenty-four hours a day, except

1 that a determination shall not be required if the skilled  
2 nursing care is provided on a temporary or intermittent basis;

3 (4) a sliding scale insulin administration, except that a  
4 determination shall not be required if the consumer is capable  
5 of self-administration or a licensed health care professional or  
6 other qualified individual administers the insulin;

7 (5) intermittent intravenous therapy, except that a  
8 determination shall not be required if a licensed health care  
9 professional manages the therapy;

10 (6) insertions, sterile irrigation and replacement of a  
11 catheter, except that a determination shall not be required for  
12 routine maintenance of a urinary catheter, if the consumer is  
13 capable of self-administration or a licensed health care  
14 professional administers the catheter;

15 (7) oxygen, except a determination shall not be required if  
16 the consumer is capable of self-administration or a licensed  
17 health care professional or other qualified individual  
18 administers the oxygen;

19 (8) inhalation therapy, except that a determination shall  
20 not be required if the consumer is capable of self-  
21 administration or a licensed health care professional or other  
22 qualified individual administers the therapy;

23 (9) other types of supplemental health care services that an  
24 assisted living residence administrator, acting in consultation  
25 with supplemental health care providers, determines can be  
26 provided in a safe and effective manner by the assisted living  
27 residence; or

28 (10) other types of care that can be provided in a safe and  
29 effective manner in an assisted living residence as determined  
30 by regulations adopted by the department.

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

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

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

16       \* \* \*

17       Section 1086. Penalties.--\* \* \*

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

26       \* \* \*

27       Section 1087. Revocation or Nonrenewal of License.--(a) (1)  
28 The department shall temporarily revoke the license of a  
29 personal care home or assisted living residence if, without good  
30 cause, one or more Class I violations remain uncorrected twenty-

1 four hours after the [personal care home] operator has been  
2 cited for such violation or if, without good cause, one or more  
3 Class II violations remain uncorrected fifteen days after being  
4 cited for such violation.

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

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

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

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

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

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

25 (c) The power of the department to revoke or refuse to renew  
26 or issue a license pursuant to this section is in addition to  
27 the powers and duties of the department pursuant to section  
28 1026.

29 Section 6. The following transitional provisions shall  
30 apply:

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

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

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

27           (4) Except to the extent inconsistent with this act, a  
28 reference in another statute to a personal care home, a  
29 personal care boarding home, personal care housing or a  
30 personal care home administrator shall be construed to also

1 include an assisted living residence or an assistant living  
2 residence administrator, including, but not limited to, the  
3 use of such terms in:

4 (i) the definition of "caretaker" in 18 Pa.C.S. §  
5 2713;

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

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

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

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

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

22 (vii) the authorization to provide tax exempt bond  
23 allocations pursuant to Chapter 27 of the act of June 29,  
24 1996 (P.L.434, No.67), known as the Job Enhancement Act;

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

27 (ix) the definition of "facility" in section 103 of  
28 the act of November 6, 1987 (P.L.381, No.79), known as  
29 the Older Adults Protective Services Act;

30 (x) establishing the qualifications for a pediatric

1 extended care center administrator pursuant to section  
2 15(b)(2) of the act of November 24, 1999 (P.L.884,  
3 No.54), known as the Prescribed Pediatric Extended Care  
4 Centers Act;

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

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

12 (xiii) the list of facilities required to make  
13 refunds pursuant to section 3 of the Elder Care Payment  
14 Restitution Act; or

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

20 Section 7. This act shall take effect January 1, 2009.