

No. 1999-54

AN ACT

SB 670

Relating to the licensure and regulation of pediatric extended care centers in this Commonwealth.

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

Section 1. Short title.

This act shall be known and may be cited as the Prescribed Pediatric Extended Care Centers Act.

Section 2. Legislative intent.

It is the intent of the General Assembly to develop, establish and enforce licensure and health and safety standards for pediatric extended care centers in order to assure that the centers provide appropriate care.

Section 3. Definitions.

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

“Basic services.” The term includes, but is not limited to, development, implementation and monitoring of a comprehensive plan of care, developed

with the involvement of the parent or legal guardian, which specifies the medical, nursing, psychological and developmental therapies required by the medically dependent or technologically dependent child served as well as the caregiver training needs of the child's legal guardian.

"Department." The Department of Health of the Commonwealth.

"Medical records." Data from all episodes of care and treatment of the child which contains:

(1) sufficient information to identify the patient clearly, to justify the diagnosis and treatment and to document the results accurately; and

(2) notes by authorized pediatric extended care center staff or contract staff regarding the care and services delivered to the patient while under the care of the pediatric extended care center.

"Medically dependent or technologically dependent child." A child eight years of age or younger who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision which must be prescribed by a licensed physician and administered by or under the direct supervision of a licensed registered nurse.

"Operator." Any of the following that is responsible for the overall operation of a pediatric extended care center:

(1) An individual.

(2) A trust or an estate.

(3) A partnership.

(4) An association.

(5) A corporation.

(6) A political subdivision or an instrumentality of a political subdivision.

(7) An instrumentality of the Commonwealth.

"Owner." An operator.

"Pediatric extended care center." Any building or buildings, or other place, whether operated for-profit or not-for-profit, which undertakes through its ownership or management to provide basic nonresidential services to more than six medically dependent or technologically dependent children who are not related to the owner or operator by blood, marriage or adoption and who require such services. Prerequisites for admission are a prescription from the child's attending physician and consent of a parent or legal guardian.

"PECC." A pediatric extended care center.

"Supportive services" or "contracted services." The term includes, but is not limited to, speech therapy, occupational therapy, physical therapy, pharmaceutical services, social work, developmental, child life and psychological services.

Section 4. PECC licensure.

(a) Licensing.—The facilities to be licensed by the department shall include all pediatric extended care centers which are not otherwise exempt as provided by subsection (b).

(b) Exemption.—

- (1) The following are not required to obtain a license under this act:
 - (i) A facility licensed under:
 - (A) Article IX or X of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code; or
 - (B) Chapter 8 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.
 - (ii) A school district.

(2) An entity which is exempt under paragraph (1)(i) is not prohibited from obtaining a license under this act.

Section 5. License required.

The department is responsible for licensing pediatric extended care centers in accordance with the provisions of this act.

Section 6. Application for license; fees.

(a) Submission to department.—Any person desiring to secure a license to maintain and operate a PECC must submit an application to the department upon forms prepared and furnished by it, containing information the department considers necessary to determine that the operator and the PECC meet the requirements of licensure under this act and the regulations relating to licensure. Application for renewal of a license must be made upon forms prepared and furnished by the department in accordance with the regulations of the department. The application must include the license fee. The application must include evidence that a bond has been posted by the applicant.

(b) Proof of insurance.—The applicant for licensure must furnish proof of adequate liability insurance coverage or protection.

(c) Fees.—

(1) The annual regular license fee required of a PECC shall be in an amount determined by the department to be sufficient to cover the department's costs in carrying out its responsibilities under this act. Until the department changes the fee by regulation, the annual license fee shall be \$500.

(2) The provisional license fee shall be as follows:

First provisional, \$500.

Second provisional, \$700.

Third provisional, \$900.

Fourth provisional, \$1,100.

Section 7. Issuance of license.

(a) Standards.—The department shall issue a license to an operator when it is satisfied that the following standards have been met:

(1) The operator is a responsible person.

(2) The place to be used by a PECC is adequately constructed, equipped, maintained and operated to safely and efficiently render the services offered.

(3) The PECC provides safe and efficient services which are adequate for the care, treatment and comfort of the patients or residents of the facility.

(4) There is substantial compliance with the requirements of this act and regulations promulgated by the department under this act.

(b) Premises to be licensed.—Separate licenses are required for pediatric extended care centers maintained on separate premises, even though they are operated under the same management. Separate licenses are required for separate buildings on the same premises.

(c) Display of license.—The license shall be displayed in a conspicuous place inside the pediatric extended care center.

(d) License transfer.—A license shall be valid only in the possession of the operator to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a license be valid for any premises other than that for which originally issued.

(e) Facility capacity.—Any license granted by the department shall state the maximum capacity of the facility, the date the license was issued, the expiration date of the license and any other information deemed necessary by the department. The department may determine, by regulation, a maximum patient capacity which may not be exceeded by a PECC.

Section 8. Provisional license.

If there are numerous deficiencies or a serious specific deficiency in compliance with applicable statutes, regulations or ordinances, the department may issue a provisional license for a specified period of not more than six months, subject to renewal three times at the discretion of the department, if the department finds all of the following:

(1) The applicant is taking appropriate steps to correct the deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the department.

(2) There is no cyclical pattern of deficiencies over a period of two or more years.

Section 9. Expiration of license; renewal.

A license issued for the operation of a PECC, unless sooner suspended or revoked, shall expire one year after the date of issuance. At least 60 days before the expiration date, an application for renewal must be submitted to the department. The department shall renew the license, upon the filing of an application on forms furnished by the department, if the applicant has first met the requirements established under this act and regulations promulgated pursuant to this act. The PECC must file with the application satisfactory proof of financial ability to operate and conduct the facility in accordance with this act.

Section 10. Reasons for revocation or nonrenewal of license.

The department may refuse to renew a license or may suspend or revoke or limit a license for all or any portion of a PECC or for any particular

service offered by a facility or may suspend admissions for any of the following reasons:

- (1) A serious violation of this act, of regulations for licensure issued to this act or of Federal laws and regulations. For the purpose of this paragraph, a serious violation is one which poses a significant threat to the health or safety of the children receiving services from the PECC.
- (2) Failure of a licensee to submit an acceptable plan with a reasonable timetable to correct deficiencies.
- (3) The existence of a cyclical pattern of deficiencies over a period of two or more years.
- (4) Failure by the holder of a provisional license to correct deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the department.
- (5) Fraud or deceit in obtaining or attempting to obtain a license.
- (6) Lending, borrowing or using the license of another or in any way knowingly aiding or abetting the improper granting of a license.
- (7) Incompetence, negligence or misconduct in operating the PECC or in providing services to children.
- (8) Mistreating or abusing children cared for by the PECC.
- (9) Serious violation of the laws relating to medical assistance or Medicare reimbursement.
- (10) Serious violation of other applicable Federal or State laws.

Section 11. Operator violation.

If the department, upon inspection, investigation or complaint, finds a violation of this act or regulations promulgated by the department under this act or under Federal law, it shall give written notice specifying the violation to the PECC operator. The notice shall require the PECC operator to take action or to submit a plan of correction that shall bring the PECC into compliance with applicable law or regulation within a specified time. The plan of correction must be submitted within ten days of receipt of the written notice or sooner if directed to do so by the department. The department may ban admissions or revoke a license before a plan of correction is submitted if deficiencies pose a significant threat to the health or safety of the children.

Section 12. Enforcement.

(a) Actions brought by the department.—If a person, regardless of whether the person is a licensee, violates this act or the regulations issued under this act, the department may maintain an action in the name of the Commonwealth for an injunction or other process restraining or prohibiting the person from engaging in such activity.

(b) Civil penalty.—A person, regardless of whether the person is a licensee, who has committed a violation of this act or of a regulation issued under this act, including failure to correct a serious licensure violation, as defined by regulation, within the time specified in a deficiency citation, may be assessed a civil penalty by an order of the department of up to \$500 for each deficiency for each day that the deficiency continues. Civil penalties

shall be collected from the date the PECC receives notice of the violation until the department confirms correction of such violation.

(c) Interest.—If a pediatric extended care center desires to appeal any department action under this section, the PECC shall pay the fine in order to receive the renewal license. If the PECC wins the appeal and the fine is not upheld, the department shall refund the fine plus interest at the legal rate.

(d) Amounts of fine.—In determining the amount of any fine, the department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical or emotional harm to a child will result or has resulted, the severity of the actual or potential harm and the extent to which the provisions of the applicable statutes or rules were violated.

(2) Actions taken by the owner or operator to correct violations.

(3) Any previous violations.

(4) The financial benefit to the pediatric extended care center of committing or continuing the violation.

(5) Any other factor the department deems relevant.

Section 13. Closing of PECC.

(a) Notice.—Whenever a pediatric extended care center voluntarily discontinues operation, it shall inform the department in writing at least 60 days before the discontinuance of operation. The pediatric extended care center shall also at such time inform each child's parent or legal guardian of the fact and the proposed time of such discontinuance.

(b) Surrender license.—Immediately upon discontinuance of the operation of a pediatric extended care center, the owner or operator shall surrender the license therefor to the department, and the license shall be canceled.

Section 14. Right of entry and inspection.

For the purpose of determining the suitability of the applicants and of the premises or for determining the adequacy of the care and treatment provided or the continuing conformity of the licensees to this act and to applicable Federal, State and local regulations, an authorized agent of the department has the right to enter, inspect and investigate the building, grounds, equipment and supplies of a PECC licensed under this act; to have access to the records of the PECC and to the children and employees.

Section 15. Regulations.

(a) Standards.—Pursuant to the intention of the General Assembly to provide safe and sanitary facilities and healthful programs, the department may adopt and publish rules and regulations to implement the provisions of this act, which shall include reasonable and fair standards. Any conflict between these standards and those that may be set forth in local, county or city ordinances shall be resolved in favor of those having Statewide effect. Such standards shall, at a minimum, include:

(1) Adoption and implementation of policies and procedures which assure the health and safety of children.

(2) The maintenance of pediatric extended care centers based upon the size of the structure and number of children, relating to plumbing, heating, lighting, ventilation and other building conditions, including adequate space, which will ensure the health, safety, comfort and protection from fire of the children served.

(3) The appropriate provisions of the "Life Safety Code" (NFPA-101), the National Fire Protection Association requirements and State building code requirements. This paragraph applies to renovation and remodeling of a PECC.

(4) The number and qualifications of all personnel who have responsibility for the care of the children served.

(5) All sanitary conditions within the pediatric extended care center and its surroundings, including water supply, sewage disposal, food handling and general hygiene, and maintenance thereof, which will ensure the health and comfort of children served.

(6) Supportive, contracted, other operational and transportation services. Staff providing transportation services shall not be counted in direct caregiving staff ratio under this paragraph.

(7) Maintenance of appropriate medical records, data and information relative to the children and programs. Such records shall be maintained in the facility for inspection by the department.

(b) Requirements.—

(1) For emergency transportation, arrangements shall be made with the county emergency transportation services. The PECC shall assure that any child being placed in an ambulance for transport for emergency services is accompanied by a direct caregiver of the PECC who is familiar with the child's treatment plan. The direct caregiver shall stay with the child until the parent or legal guardian arrives to relieve the direct caregiver of the PECC.

(2) The department shall require that the PECC has employed an administrator whose qualifications are that of a physician who has a current, active, unrestricted license in this Commonwealth, a certified registered nurse practitioner licensed to practice in this Commonwealth, a licensed nursing home administrator, personal care home administrator, a child day-care administrator or a registered nurse with five years of documented experience in pediatric medicine. The administrator shall be responsible for the operation of the PECC.

(3) The PECC shall employ or contract with a medical director. The medical director's qualifications are that of a physician who has a current, active, unrestricted license in this Commonwealth with pediatric specialty board certification or other postgraduate preparation acceptable to the department or a certified registered nurse practitioner licensed to practice in this Commonwealth with five years of documented experience in pediatric medicine. The medical director shall be responsible for the basic

and supportive services, including medical, pharmaceutical and nursing services provided by the PECC.

(4) A minimum of one supervisor shall be employed for every six children. The supervisor may have direct caregiving responsibilities and may be counted in the one direct caregiving staff to every three children ratio. The supervisor shall comply with all health care professional licensing statutes and regulations promulgated by the appropriate licensing boards. A supervisor shall hold a valid professional license issued by the State Board of Medicine, State Board of Nursing, State Board of Occupational Therapy Education and Licensure, State Board of Osteopathic Medicine, State Board of Pharmacy, State Board of Physical Therapy, State Board of Podiatry or State Board of Examiners in Speech-Language and Hearing.

(5) A minimum of one direct caregiving staff shall be available for every three children at all times, including the transportation of the child for services not provided in the PECC but provided to the child while under the care of the PECC. Direct caregiving staff must be a licensed practical nurse, a registered nurse, a physical therapist, an occupational therapist, a speech-language pathologist or an individual who has a high school diploma or its equivalent and at least one year of documented and supervised experience in a health care or child-care setting. Additional staff may provide other support services. Basic and supportive services provided at a PECC shall comply with all health care professional licensing statutes and any regulations promulgated by the appropriate licensing boards.

(6) Each child shall have an individualized care plan which is designed by the attending physician, the PECC treatment team, a parent or legal guardian and, when appropriate, the child. The care plan shall be reviewed at least monthly and revised as the child's care needs change. Staffing shall be adequate to provide for the needs of each child as identified on the child's care plan. For any child enrolled in the early intervention program or the local school district's program under the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400 et seq.), the PECC shall do all of the following:

(i) In the development of the care plan, consider the components of the individualized family services plan for children under four years of age or the individualized education plan for children under nine years of age. The PECC shall not duplicate services already provided through the early intervention program or the local school district.

(ii) Make available upon request by the early intervention program or the local school district any records necessary to develop, review or revise an individualized family services plan or individualized education plan under Federal law.

(7) The PECC shall have a documented orientation program which assures that employees and contract staff are adequately trained to provide services to children.

(8) The PECC shall have a documented staff development program that assures that employees and contract staff are adequately trained to provide services to children.

(9) The PECC shall have a documented preventative maintenance program with specific emphasis on assuring that all durable medical equipment is functioning correctly and safely so as to assure the health and safety of the children.

(10) The PECC shall have appropriate emergency services readily available. These services may include an emergency drug kit, a crash cart with a defibrillator appropriate for children and any other emergency services as appropriate based on the needs of the children served in the PECC.

(11) The PECC shall have arrangements with a licensed pharmacist to provide consultation services for children enrolled in the PECC.

(12) The director of the PECC shall assure that the governing body has developed, approved and implemented policies and procedures regarding the operation of the PECC. At a minimum, the PECC shall have policies and procedures on the prevention, reporting and investigation of abuse, delivery of medical and therapeutic services, control and delivery of pharmaceutical service and prevention of incidents and accidents.

(13) The PECC shall have a written disaster plan which, at a minimum, addresses natural disasters, financial disasters, weather emergencies and bomb threats. A fire drill shall be conducted at least once every two months. A disaster drill shall be practiced every month, and a full evacuation shall occur at least once every six months.

(14) The PECC shall report any unusual incidents immediately to the department. Unusual incidents include a death, abuse or suspected abuse, rape, transfer to a hospital as a result of injury or accident, child abduction or child released to wrong family, fire on the premises, a need to implement a disaster plan or receipt of a strike notice, medical errors resulting in injury or harm to the child or any knowledge of an unlicensed practice of a regulated profession.

(15) The PECC shall maintain a log of all incidents and accidents. At a minimum, the log shall include the date the incident occurred, a description of the incident, the name of the child involved in the incident and the name of the employee involved in the incident. A system shall be developed, documented and implemented to demonstrate evidence that the incident or accident has been thoroughly investigated and that any corrective action to avoid the incident or accident in the future has been implemented.

(16) A PECC may not serve a child for more than 12 hours within a 24-hour period.

(17) A PECC may only provide services to medically or technologically dependent children.

(18) If, upon application to a PECC, the PECC has no evidence of an application to the early intervention program or the local school district, the PECC shall make a referral for the family to the early intervention program or the local school district appropriate for the child's residence.

(19) The operator and all employees and contract staff of the PECC shall comply with 23 Pa.C.S. § 6344 (relating to information relating to prospective child-care personnel).

(20) The PECC shall annually disclose to the department and to the public the names of persons owning 5% or more of the PECC as well as the PECC's officers and board members.

(21) All of the standards set forth in this section shall apply at all times that the PECC is open and operating.

Section 16. Interim license.

Until such time as final rules and regulations are adopted and published, the department shall operate the licensing program pursuant to the standards established in this act.

Section 17. Penalty.

(a) Prohibited acts.—It is unlawful for any person or public body to offer or advertise to the public, in any way or by any medium, basic services as defined in this act without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to this act to advertise or hold out to the public that it holds a license for a pediatric extended care center other than that for which it actually holds a license. Except as set forth in section 4(b)(1), it is unlawful to operate or maintain a pediatric extended care center without first obtaining from the department a license authorizing such operation.

(b) Grading.—Any person who violates the provisions of subsection (a) commits a misdemeanor of the second degree. Each day of continuing violation shall be considered a separate offense.

Section 18. Effective date.

This act shall take effect immediately.

APPROVED—The 24th day of November, A.D. 1999.

THOMAS J. RIDGE