

No. 2007-56

AN ACT

SB 704

Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth," further providing for State plan for regulating and licensing personal care homes, for Intra-Governmental Council on Long-Term Care and for rules and regulations for personal care homes and assisted living residences.

The General Assembly finds and declares as follows:

(1) Assisted living residences are a significant long-term care alternative nationwide.

(2) Assisted living residences are a combination of housing and supportive services, as needed. They are widely accepted by the general public because they allow people to age in place, maintain their independence and exercise decision making and personal choice.

(3) It is in the best interest of all Pennsylvanians that a system of licensure and regulation be established for assisted living residences in order to ensure accountability and a balance of availability between institutional and home-based and community-based long-term care for adults who need such care.

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

Section 1. Section 211 heading and (l) of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, amended December 21, 1988 (P.L.1883, No.185), are amended to read:

Section 211. State Plan for Regulating and Licensing Personal Care Homes *and Assisted Living Residences*.—* * *

(l) [After initial approval, personal care homes need not be visited or inspected annually; provided that the department shall schedule inspections in accordance with a plan that provides for the coverage of at least seventy-five percent of the licensed personal care homes every two years and all homes shall be inspected at least once every three years.] *The department shall annually conduct at least one onsite unannounced inspection of each personal care home and each assisted living residence. Additional announced or unannounced inspections may be conducted by the department as the department deems necessary. When developing regulations under this act, the department may provide for an abbreviated annual licensure visit when a residence has established a history of exemplary compliance.*

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Section 2. Section 212(b) of the act is amended by adding a paragraph to read:

Section 212. Intra-Governmental Council on Long-Term Care.—***

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

(9.1) Two representatives of the assisted living residence community, one of whom shall be an owner or administrator of a licensed assisted living residence and one of whom shall be a consumer of a licensed assisted living residence.

Section 3. Section 213 heading and (c) of the act, added December 21, 1988 (P.L.1883, No.185), are amended and the section is amended by adding a subsection to read:

Section 213. Personal Care Home [Administrator] and Assisted Living Residence Administrators.—***

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

(c) [The department may promulgate regulations requiring orientation and training for all direct care staff in a personal care home.] The department shall promulgate regulations requiring orientation and training for all direct care staff and regulations requiring qualifications for administrators in a personal care home or assisted living residence. Such regulations for assisted living direct care staff and administrators shall meet or exceed the requirements for direct service staff and administrators in a personal care home.

Section 4. The definition of “facility” in section 1001 of the act, amended December 21, 1988 (P.L.1883, No.185), is amended and the section is amended by adding definitions to read:

Section 1001. Definitions.—As used in this article—

“Age in place” and “aging in place” means receiving care and services at a licensed assisted living residence to accommodate changing needs and preferences in order to remain in the assisted living residence.

“Assisted living residence” means any premises in which food, shelter, personal care, assistance or supervision and supplemental health care services are provided for a period exceeding twenty-four hours for four or more adults who are not relatives of the operator and who require assistance or supervision in such matters as dressing, bathing, diet,

financial management, evacuation from the residence in the event of an emergency or medication prescribed for self-administration.

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

“Cognitive support services” means services provided to an individual who has memory impairments and other cognitive problems which significantly interfere with their ability to carry out activities of daily living without assistance and who require that supervision, monitoring and programming be available to them 24 hours per day, seven days per week, in order for them to reside safely in the setting of their choice. The term includes assessment, health support services and a full range of dementia-capable activity programming and crisis management.

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

“Informed consent agreement” means a formal, mutually agreed upon, written understanding which:

(1) results after thorough discussion among the assisted living residence staff, the resident and any individuals the resident wants to be involved; and

(2) identifies how to balance the assisted living residence’s responsibilities to the individuals they serve with a resident’s choices and capabilities with the possibility that those choices will place the resident or other residents at risk of harm.

“Special care designation” means a licensed assisted living residence or a distinct part of the residence which is specifically designated by the department as capable of providing cognitive support services to residents with severe cognitive impairments, including, but not limited to, dementia or Alzheimer’s disease, in the least restrictive manner to ensure the safety of the resident and others in the residence while maintaining the resident’s ability to age in place.

“Supplemental health care services” means the provision by an assisted living residence of any type of health care service, either directly or through contractors, subcontractors, agents or designated providers, except

for any service that is required by law to be provided by a health care facility pursuant to the act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act."

Section 5. Section 1021 of the act is amended to read:

Section 1021. Regulations.—(a) (1) The department [is hereby authorized and empowered to] shall adopt regulations establishing minimum standards for building, equipment, operation, care, program and services, *training and staffing* and for the issuance of licenses.

(2) *Regulations for assisted living residences shall:*

(i) *Meet or exceed standards established in 55 Pa. Code § 2600 (relating to personal care homes). Residents' rights in those or subsequent regulations shall not be subject to waiver.*

(ii) *Require an assisted living residence to provide a resident with the resident's own living unit. Two residents may voluntarily agree to share one unit, provided that the agreement is in writing and contained in each of the residency agreements of those residents. A licensee shall not require residents to share a unit.*

(iii) *Provide that supplemental health care services shall be packaged, contracted and priced separately from the resident agreement.*

(iv) *Require that each living unit contain a private bathroom, living and bedroom space, kitchen capacity, which may mean electrical outlets to have small appliances such as a microwave and refrigerator, closets and adequate space for storage and a door with a lock, except where a lock or appliances in a unit under special care designation would pose a risk or be unsafe.*

(v) *Establish minimum square footage requirements for individual living units which excludes bathrooms and closet space. Exceptions to the size of the living unit may be made at the discretion of the department.*

(vi) *Establish a special care designation for assisted living residences and units that require specialized staff training, service planning, activity programming and security measures for residents receiving cognitive support services.*

(vii) *Create standards for informed consent agreements that promote aging in place which include written acknowledgment of the risks that residents assume while directing their own care and which release the facility from liability for adverse outcomes resulting from actions consistent with the terms of the informed consent agreement. Such informed consent agreements shall only be entered into upon the mutual agreement of the resident and the assisted living residence.*

(viii) *Create standards for transfer and discharge that require the assisted living residence to make a reasonable accommodation for aging in place and that may include services from outside providers.*

(b) *The department shall, by regulation, set fees for application for assisted living residence licensure and licensure renewal. Fees received by*

the department shall augment the department's funding for quality assurance and shall be used for the purposes of this article.

(c) The department shall have enforcement and licensure staff dedicated solely to assisted living residences. All inspections of residences dually licensed as assisted living residences and personal care homes shall be conducted by a team of surveyors comprised of both personal care home and assisted living residence surveyors.

(d) The department shall develop regulations under this article in consultation with industry stakeholders, consumers and other interested parties.

Section 6. Section 1051 of the act, amended December 21, 1988 (P.L.1883, No.185), is amended to read:

Section 1051. Definition.—As used in this subarticle—

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

Section 7. Sections 1057.1, 1057.2(a), 1057.3, 1085 introductory paragraph, 1086(e) and 1087 of the act, added December 21, 1988 (P.L.1883, No.185), are amended to read:

Section 1057.1. Appeals.—(a) (1) An appeal from the decision of the department relating to the licensure or revocation of a personal care home shall not act as a supersedeas but, upon cause shown and where circumstances require it, the reviewing authority shall have the power to grant a supersedeas.

(2) An appeal from the decision of the department relating to revocation of an assisted living residence license shall not act as a supersedeas but, upon cause shown and where circumstances require it, the reviewing authority shall have the power to grant a supersedeas.

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

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

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

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

* * *

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

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

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

(iii) *For an assisted living residence, the screening will be done to determine whether the potential resident requires the services provided by an assisted living residence. A resident who currently does not require assistance in obtaining supplemental health care services, but who may require such services in the future or who wishes to obtain assistance in obtaining such services or reside in a facility in which such services are available, may be admitted to the assisted living residence, provided the resident is only provided service required or requested by the resident. Where services are required, the assisted living residence shall develop a support plan as defined in 55 Pa. Code § 2600 (relating to personal care homes) and any other regulations applicable to assisted living residences.*

(iv) *An initial screening shall not be required to commence supplemental health care services to a resident of an assisted living residence who was not receiving such services at the time of the resident's admission, to transfer a resident from a portion of an assisted living residence that does not provide supplemental health care services to a portion of the residence that provides such service or to transfer a resident from a personal care home to an assisted living residence licensed by the same operator.*

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

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

(3.1) Prospective or current residents for whom placement in a skilled nursing facility is imminent shall be given priority for assisted living residence services funded through a home- and community-based waiver.

(3.2) All individuals receiving services under the home- and community-based waivers shall have a comprehensive assessment of their needs using an instrument that provides comparable data elements and at comparable time intervals as specified by the State for Medicaid for nursing facilities.

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

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

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

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

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

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

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

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

(12) Each assisted living residence demonstrate the ability to provide supplemental health care services in a manner duly protective of the health, safety and well-being of its residents utilizing employes,

independent contractors or contractual arrangements with other health care facilities or practitioners licensed, registered or certified to the extent required by law to provide such service. To the extent prominently disclosed in a written admission agreement, an assisted living residence may require residents to use providers of supplemental health care services designated by the assisted living residence.

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

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

(c) For consumers with Alzheimer's disease or dementia, or where the assisted living residence holds itself out to the public as providing services or housing for consumers with cognitive impairments, assisted living residences shall disclose to consumers and provide:

(1) The residence's written statement of its philosophy and mission which reflects the needs of consumers with cognitive impairments.

(2) A description of the residence's physical environment and design features to support the functioning of consumers with cognitive impairments.

(3) A description of the frequency and types of individual and group activities designed specifically to meet the needs of consumers with cognitive impairments.

(4) A description of security measures provided by the residence.

(5) A description of training provided to staff regarding provision of care to consumers with cognitive impairments.

(6) A description of availability of family support programs and family involvement.

(7) The process used for assessment and establishment of a plan of services for the consumer, including methods by which the plan of services will remain responsive to changes in the consumer's condition.

(d) Cognitive support services.—

(1) An assisted living residence shall provide to consumers with cognitive impairments cognitive support services, including dementia-specific activity programming.

(2) Assisted living residences shall identify measures to address consumers with cognitive impairments who have tendencies to wander.

(3) If national accreditation of secured assisted living residences for persons in need of cognitive support services becomes available, the department may deem all assisted living residences accredited by accrediting bodies that have standards that equal or exceed those in this act and regulations as meeting the special care designation under this act.

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

(1) Ventilator dependency.

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

(3) Continuous intravenous fluids.

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

(5) Nasogastric tubes.

(6) Physical restraints.

(7) Continuous skilled nursing care twenty-four hours a day.

(f) Any of the following individuals may certify that a consumer may not be admitted or retained in an assisted living residence and the department shall by regulation establish the standards required for the certification:

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

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

(3) The medical director of the assisted living residence.

(g) An assisted living residence may admit, retain or serve a consumer for whom a determination is made by the department, upon the written request of the assisted living residence, that the consumer's specific health care needs can be met by a provider of assisted living services or within an assisted living residence, in conformity with standards set by the department through regulation, including a consumer requiring:

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

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

(3) skilled nursing care twenty-four hours a day, except that a determination shall not be required if the skilled nursing care is provided on a temporary or intermittent basis;

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

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

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

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

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

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

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

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

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

(i) No person, organization or program shall use the term "assisted living" in any name or written material, except as a licensee in accordance with this article.

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

Section 1086. Penalties.—***

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

Section 1087. Revocation or Nonrenewal of License.—(a) (1) The department shall temporarily revoke the license of a personal care home *or assisted living residence* if, without good cause, one or more Class I violations remain uncorrected twenty-four hours after the [personal care home] *operator* has been cited for such violation or if, without good cause, one or more Class II violations remain uncorrected fifteen days after being cited for such violation.

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

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

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

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

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

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

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

Section 8. Except to the extent inconsistent with this act, a reference in another statute to a personal care home, a personal care boarding home, personal care housing or a personal care home administrator shall be construed to also include an assisted living residence or an assisted living

residence administrator, including, but not limited to, the use of such terms in:

- (1) the definition of "caretaker" in 18 Pa.C.S. § 2713;
- (2) the definition of "health care provider" in 42 Pa.C.S. § 5101.1;
- (3) the definition of "health center" in 53 Pa.C.S. § 5602;
- (4) the authorization to conduct studies and evaluations and to develop community housing options by the Department of Aging as provided by section 2203-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929;
- (5) the authorization to develop community-based service and housing options for impaired and chronically ill older persons provided to area agencies on aging by section 2207-A of The Administrative Code of 1929;
- (6) the term "residence" in section 2201-A of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code,
- (7) the authorization to provide tax-exempt bond allocations pursuant to Chapter 27 of the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act;
- (8) the definition of "exempt facility" in section 2702 of the Job Enhancement Act;
- (9) the definition of "facility" in section 103 of the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act;
- (10) establishing the qualifications for a pediatric extended care center administrator pursuant to section 15(b)(2) of the act of November 24, 1999 (P.L.884, No.54), known as the Prescribed Pediatric Extended Care Centers Act;
- (11) the definition of "health care provider" in section 503 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act;
- (12) the definition of "facility" in section 2 of the act of December 9, 2002 (P.L.1388, No.171), known as the Elder Care Payment Restitution Act;
- (13) the list of facilities required to make refunds pursuant to section 3 of the Elder Care Payment Restitution Act; or
- (14) the definition of "family" as excluding persons residing in a personal care boarding home in section 3 of the act of November 30, 2004 (P.L.1561, No.198), known as the Family Support for Persons with Disabilities Act.

Section 9. Within nine months after the effective date of this section, the Legislative Budget and Finance Committee shall report to the General Assembly on existing Federal and other states' initiatives and programs that provide financial assistance for assisted living. This study shall include information on other Federal or state assisted living programs that are effectively administered and may be considered a model. Within six months

after receipt of the report, a joint legislative task force consisting of selected members of the Aging and Youth Committee of the Senate and the Aging and Older Adult Services Committee of the House of Representatives shall review the report and any recommendations contained therein and shall report back to the full committees with a proposal for a funding mechanism for assisted living in this Commonwealth. The chairman of the Aging and Youth Committee of the Senate and the chairman of the Aging and Older Adult Services Committee of the House of Representatives shall select three members from the majority party and three members from the minority party, and the Secretary of Aging shall serve as chairperson of the task force.

Section 10. Nothing in this act shall be construed to alter existing statutory or regulatory requirements pertaining to personal care homes until the regulations required by this act are published by the Department of Public Welfare in the Pennsylvania Bulletin.

Section 11. The Department of Public Welfare shall not issue any assisted living residence licenses until final regulations are published by the Department of Public Welfare in the Pennsylvania Bulletin.

Section 12. This act shall take effect in 90 days.

APPROVED—The 25th day of July, A.D. 2007.

EDWARD G. RENDELL