

No. 1988-185

AN ACT

HB 1278

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 the licensing and regulation of personal care homes and adding penalties; establishing the Intra-Governmental Council on Long-Term Care and providing for its powers and duties; and further providing for regulations by the department.

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

Section 1. Section 211 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, added July 10, 1980 (P.L.493, No.105), is amended to read:

Section 211. State Plan for Regulating and Licensing Personal Care **[Boarding]** Homes.—(a) In accordance with the statutory authority and responsibility vested in the department to regulate nonprofit **[boarding]** homes for adults which provide personal care and services and to license for profit personal care **[boarding]** homes for adults, pursuant to Articles IX and X, the department shall develop and implement a State plan for regulating and licensing said facilities as defined by section 1001 of this act.

(b) In developing rules and regulations for the State plan, the department shall:

(1) Distinguish between personal care homes serving less than eight persons and personal care homes serving more than eight persons.

(2) By July 1, 1981 adopt rules relating to the conduct of owners and employes of personal care **[boarding]** homes relative to the endorsement or delivery of public or private welfare, pension or insurance checks by a resident of a personal care **[boarding]** home.

(3) Not regulate or require the registration of boarding homes which merely provide room, board and laundry services to persons who do not need personal care **[boarding]** home services.

(c) Within three months following the effective date of this act, the department shall submit to the General Assembly for comment and review, and publish in the Pennsylvania Bulletin in accordance with the provisions of the Commonwealth Documents Law relating to the publication of regulations, a preliminary State plan for regulating and licensing personal care **[boarding]** homes.

(d) The preliminary plan shall include, but is not limited to, the following:

(1) Coordination of the department's statutory responsibilities with those of other State and local agencies having statutory responsibilities relating to personal care **[boarding]** homes, with particular attention given to the Department of Labor and Industry, the Department of Environmental

Resources, the Department of Aging and the Pennsylvania Human Relations Commission. The Department of Labor and Industry shall promulgate rules and regulations applicable to personal care **[boarding]** homes on a Statewide basis consistent with size distinctions set forth in subsection (b) pertaining to construction and means of egress.

(2) Recommendations for changes in existing State law and proposed legislation to:

(i) Resolve inconsistencies that hinder the department's implementation of the State plan.

(ii) Promote the cost efficiency and effectiveness of visitations and inspections.

(iii) Delegate to other State and local agencies responsibility for visitations, inspections, referral, placement and protection of adults residing in personal care **[boarding]** homes.

(iv) Evaluate the State's fire and panic laws as applied to personal care **[boarding]** homes.

(3) Recommendations for implementation of fire safety and resident care standards relating to personal care **[boarding]** homes by cities of the first class, second class and second class A.

(4) A programmatic and fiscal impact statement regarding the effect of the plan on existing residential programs for the disabled, including but not limited to skilled nursing homes, intermediate care facilities, domiciliary care homes, adult foster care homes, community living arrangements for the mentally retarded and group homes for the mentally ill and the effect of the plan on recipients of Supplemental Security Income.

(5) Cost analysis of the entire plan and of all regulations that will be proposed pursuant to the plan.

(6) Number of personnel at the State, regional and county level required to inspect personal care **[boarding]** homes and monitor and enforce final rules and regulations adopted by the department.

(7) Process for relocating residents of personal care **[boarding]** homes whose health and safety are in imminent danger.

(e) If the department deems that it is in the best interest of the Commonwealth to develop a plan for implementation on a phased basis, the department shall submit a detailed schedule of the plan to the General Assembly which shall be part of the preliminary State plan.

(f) Within six months of the effective date of this act, the department shall adopt a final State plan which shall be submitted and published in the same manner as the preliminary plan.

(g) The final plan shall include the information required in the preliminary plan and, in addition, the cost to operators of personal care **[boarding]** homes for compliance with the regulations.

(h) At no time may the department change, alter, amend or modify the final State plan, except in emergency situations, without first publishing such change in the Pennsylvania Bulletin in accordance with the Commonwealth Documents Law relating to publication of regulations and without first submitting the proposed change to the General Assembly for comment and

review. In an emergency, the department may change, alter, amend or modify the State plan without publishing the change or submitting the change to the General Assembly; but, within thirty days, the department shall submit and publish the change as otherwise required.

(i) The State plan shall not apply to any facility operated by a religious organization for the care of clergymen or other persons in a religious profession.

(j) Prior to January 1, 1985, department regulations shall not apply to personal care **[boarding]** homes in which services are integrated with, are under the same management as, and on the same grounds as a skilled nursing or intermediate care facility licensed for more than twenty-five beds and having an average daily occupancy of more than fifteen beds. Prior to January 1, 1985 the department may require registration of such facilities and may visit such facilities for the purpose of assisting residents and securing information regarding facilities of this nature.

(k) Any regulations by the department relating to the funding of residential care for the mentally ill or mentally retarded adults and any regulations of the Department of Aging relating to domiciliary care shall use as their base, regulations established in accordance with this section. Supplementary requirements otherwise authorized by law may be added.

(l) After initial approval, personal care **[boarding]** 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 **[boarding]** homes every two years and all homes shall be inspected at least once every three years.

(m) Regulations specifically related to personal care homes or personal care **[boarding]** home services adopted prior to the effective date of this act shall remain in effect until superseded by a final plan adopted in accordance with this section.

Section 2. The act is amended by adding sections to read:

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

(a) The General Assembly hereby establishes the 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:

(1) The Secretary of Aging.

(2) The Secretary of Community Affairs.

(3) The Secretary of Health.

(4) The Secretary of Public Welfare.

(5) The Insurance Commissioner.

(6) Two members of the Senate, one appointed by the President pro tempore and one by the Minority Leader.

(7) Two members of the House of Representatives, one appointed by the Speaker of the House of Representatives and one by the Minority Leader.

(8) One representative from the Pennsylvania Council on Aging.

(9) *One representative of the personal care home industry, who shall be an owner or administrator of a licensed personal care home, appointed by the Governor.*

(10) *Such other members of the public who represent special needs populations, provider communities, business, labor and consumers as the Governor shall appoint.*

(c) *The Secretary of Aging shall serve as chairperson.*

(d) (1) *The terms of the Secretary of Aging, the Secretary of Community Affairs, the Secretary of Health, the Secretary of Public Welfare and the Insurance Commissioner shall be concurrent with their holding of public office.*

(2) *The terms of the members of the Senate and the House of Representatives shall be concurrent with the terms of the appointing officer.*

(3) *Nongovernmental members shall be recommended by the Secretary of Aging for appointment by the Governor and shall serve until their successors are appointed.*

(e) *The Intra-Governmental Council on Long-Term Care shall have the following powers and duties:*

(1) *To consult with the department and make recommendations on regulations, licensure and any other responsibilities of the department relating to personal care homes.*

(2) *To perform such other duties as the Governor may assign in planning for long-term care services.*

(f) *The department, in developing rules and regulations for licensure of personal care homes, shall take into consideration the recommendations of the Intra-Governmental Council on Long-Term Care.*

Section 213. Personal Care Home Administrator.—(a) After December 31, 1990, all personal care homes shall identify and appoint a personal care home administrator or administrators who meet the qualifications provided in this section.

(b) *A personal care home administrator shall:*

(1) *be at least twenty-one years of age and be of good moral character; and*

(2) *have knowledge, education and training in all of the following:*

(i) *fire prevention and emergency planning;*

(ii) *first aid, medications, medical terminology and personal hygiene;*

(iii) *local, State and Federal laws and regulations;*

(iv) *nutrition, food handling and sanitation;*

(v) *recreation;*

(vi) *mental illness and gerontology;*

(vii) *community resources and social services; and*

(viii) *staff supervision, budgeting, financial record keeping and training;*

or

(3) *be a licensed nursing home administrator. The department may establish separate standards of knowledge and training for licensed nursing home administrators who wish to operate a personal care home.*

(c) The department may promulgate regulations requiring orientation and training for all direct care staff in a personal care home.

(d) By June 1, 1989, the department shall by regulation develop such standards for knowledge, education or training to meet the standards of this section.

(e) If not otherwise available, the department shall schedule, and offer at cost, training and educational programs for a person to meet the knowledge, educational and training requirements established by this act.

Section 3. Section 1001 of the act, amended July 10, 1980 (P.L.493, No.105) and December 5, 1980 (P.L.1112, No.193), is amended to read:

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

“Adult day care” means care given for part of the twenty-four hour day to adults requiring assistance to meet personal needs and who, because of physical or mental infirmity, cannot themselves meet these needs, but who do not require nursing care.

“Adult day care center” means any premises operated for profit, in which adult day care is simultaneously provided for four or more adults who are not relatives of the operator.

“Boarding home for children” means any premises operated for profit in which care is provided for a period exceeding twenty-four hours for any child or children under sixteen years of age, who are not relatives of the operator and who are not accompanied by parent, individual standing in loco parentis or legal guardian. The term shall not be construed to include any such premises selected for care of such child or children by a parent, individual standing in loco parentis or legal guardian for a period of thirty days or less, nor any such premises conducted under social service auspices.

“Child day care” means care in lieu of parental care given for part of the twenty-four hour day to children under sixteen years of age, away from their own homes, but does not include child day care furnished in places of worship during religious services.

“Child day care center” means any premises operated for profit in which child day care is provided simultaneously for seven or more children who are not relatives of the operator, except such centers operated under social service auspices.

“Direct care staff” means a person who directly assists residents with activities of daily living; provides services; or is otherwise responsible for the health, safety and welfare of the residents.

“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 [for adults], nursing home, hospital or maternity home, as defined herein, and shall not include those operated by the State or Federal governments or those supervised by the department.

“Hospital” means any premises, other than a mental health establishment as defined herein, operated for profit, having an organized medical staff and providing equipment and services primarily for inpatient care for two or more individuals who require definitive diagnosis and/or treatment for illness, injury or other disability or during or after pregnancy, and which also

regularly makes available at least clinical laboratory services, diagnostic X-ray services and definitive clinical treatment services. The term shall include such premises providing either diagnosis or treatment, or both, for specific illnesses or conditions.

“Immobile person” means an individual who is unable to move from one location to another or has difficulty in understanding and carrying out instructions without the continued full assistance of other persons, or is incapable of independently operating a device such as a wheelchair, prosthesis, walker or cane to exit a building.

“Maternity home” means any premises operated for profit in which, within a period of six months, any person receives more than one woman or girl, not a relative of the operator, for care during pregnancy or immediately after delivery.

“Mental health establishment” means any premises or part thereof, private or public, for the care of individuals who require care because of mental illness, mental retardation or inebriety but shall not be deemed to include the private home of a person who is rendering such care to a relative.

“Nursing home” means any premises operated for profit in which nursing care and related medical or other health services are provided, for a period exceeding twenty-four hours, for two or more individuals, who are not relatives of the operator, who are not acutely ill and not in need of hospitalization, but who, because of age, illness, disease, injury, convalescence or physical or mental infirmity need such care.

“Person” means any individual, partnership, association or corporation operating a facility.

“Personal care home [for adults]” means any premises in which food, shelter and personal assistance or supervision are provided for a period exceeding twenty-four hours for *four or more [than three]* adults who are not relatives of the operator, [and] who *do not require the services in or of a licensed long-term care facility but who do* require assistance or supervision in such matters as dressing, bathing, diet, *financial management, evacuation of a residence in the event of an emergency* or medication prescribed for self administration.

“Personal care home administrator” means an individual who is charged with the general administration of a personal care home, whether or not such individual has an ownership interest in the home or his functions and duties are shared with other individuals.

“Relative” means parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half brother, half sister, aunt, uncle, niece, nephew.

“Social service auspices” means any nonprofit agency regularly engaged in the affording of child or adult care.

Section 4. Section 1006 of the act is amended to read:

Section 1006. Fees.—Annual licenses shall be issued when the proper fee, if required, is received by the department and all the other conditions prescribed [by] in this act are met. ***For personal care homes, the fee shall be an application fee.*** The fees shall be:

Facility	Annual [License] Fee
Adult day care center	\$ 15
Mental health establishment	50
[Personal care home	10
Hospital	100
Nursing home—under 30 beds	15
—over 30 but under 50 beds	25
—50 but under 100 beds	50
—100 or more beds	75
Maternity home	15]
Personal care home— 0 - 20 beds	15
— 21 - 50 beds	20
— 51 - 100 beds	30
—101 beds and above	50

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

Section 5. Section 1051 of the act, amended December 5, 1980 (P.L.1112, No.193), 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, [boarding home,] personal care home, and other similar institution which is operated for profit and which requires a license issued by the department.

Section 6. The act is amended by adding sections to read:

Section 1057.1. Appeals.—(a) 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.

(b) If, without good cause, one or more Class I or Class II violations remain uncorrected or when the home 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 at the home'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 if any of the following conditions exist:

(1) The home is operating without a license.

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

(b) The department shall offer relocation assistance to residents relocated under this section. Except in an emergency, the resident shall be involved in planning his transfer to another placement and shall have the right to choose among the available alternative placements. The department may make temporary placement until final placement can be arranged. Residents shall be provided with an opportunity to visit alternative placement before relocation or following temporary emergency relocation. Residents shall choose their final placement and shall be given assistance in transferring to such place.

(c) Residents shall not be relocated pursuant to this section if the secretary determines, in writing, that such relocation is not in the best interest of the resident.

Section 1057.3. Rules and Regulations for Personal Care Home.—

(a) The rules and regulations for the licensing of personal care homes promulgated by the department shall require that:

(1) Prior to a resident's admission to a personal care home, 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 screening will be done to determine that the potential resident does not require the services in or of a long-term care facility or whether the potential resident requires personal care services and, if so, the nature of the services and supervision necessary.

(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 administrator refer an applicant whose needs cannot be met by a personal care home to an appropriate assessment agency.

(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.

(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 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 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.

(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 personal care home, receive visitors, have access to a telephone and mail and participate in religious activities.

(11) Personal care home owners, administrators or employes be prohibited from being assigned power of attorney or guardianship for any resident.

(b) 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 the design, construction, staffing or operation of the personal care home allows for safe emergency evacuation.

Section 7. Article X of the act is amended by adding a subarticle to read:

ARTICLE X
DEPARTMENTAL POWERS AND DUTIES AS TO LICENSING

* * *

(d) Personal Care Home

Section 1085. Classification of Violations.—The department shall classify each violation of its regulations on personal care homes into one of the following categories:

(1) Class I. A violation which indicates a substantial probability that death or serious mental or physical harm to any resident may result.

(2) Class II. A violation which has a substantial adverse effect upon the health, safety or well-being of any resident.

(3) Class III. A minor violation which has an adverse effect upon the health, safety or well-being of any resident.

Section 1086. Penalties.—(a) The department shall assess a penalty for each violation of this subarticle or regulations of the department. Penalties shall be assessed on a daily basis from the date on which the citation was issued until the date such violation is corrected except in the case of Class II violations. In the case of Class II violations, assessment of a penalty shall be suspended for a period of five days from the date of citation provided that, except for good cause, the provider has corrected the violation. If the violation has not been corrected within the five-day period, the fine shall be retroactive to the date of citation.

(b) The department shall assess a penalty of twenty dollars (\$20) per resident per day for each Class I violation.

(c) *The department shall assess a minimum penalty of five dollars (\$5) per resident per day, up to a maximum of fifteen dollars (\$15) per resident per day, for each Class II violation.*

(d) *There shall be no monetary penalty for Class III violations unless the provider fails to correct the Class III violation within fifteen days. Failure to correct the violation within fifteen days may result in an assessment of up to three dollars (\$3) per resident per day for each Class III violation, retroactive to the date of the citation.*

(e) *A personal care home 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 fails to make such application.*

(f) *Any provider charged with violation of this act shall have thirty days to pay the assessed penalty in full, or, if the provider wishes to contest either the amount of the penalty or the fact of the violation, the party shall forward the assessed penalty, not to exceed five hundred dollars (\$500), to the Secretary of Public Welfare for placement in an escrow account with the State Treasurer. If, through administrative hearing or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the secretary shall within thirty days remit the appropriate amount to the provider with any interest accumulated by the escrow deposit. Failure to forward the payment to the secretary within thirty days shall result in a waiver of rights to contest the fact of the violation or the amount of the penalty. The amount assessed after administrative hearing or a waiver of the administrative hearing shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided by law for the collection of debts. If any provider liable to pay such penalty neglects or refuses to pay the same after demand, such failure to pay shall constitute a judgment in favor of the Commonwealth in the amount of the penalty, together with the interest and any costs that may accrue.*

(g) *Money collected by the department under this section shall be placed in a special restricted receipt account and shall be first used to defray the expenses incurred by residents relocated under this act. Any moneys remaining in this account shall annually be remitted to the department for enforcing the provisions of this subarticle. Fines collected pursuant to this act shall not be subject to the provisions of 42 Pa.C.S. § 3733 (relating to deposits into account).*

(h) *The department shall promulgate regulations necessary for the implementation of this section in order to ensure uniformity and consistency in the application of penalties.*

Section 1087. Revocation or Nonrenewal of License.—(a) (1) *The department shall temporarily revoke the license of a personal care home if, without good cause, one or more Class I violations remain uncorrected twenty-four hours after the personal care home 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 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 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 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 if, during any two-year period, the home, 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. The Department of Labor and Industry, in cooperation with the Department of Public Welfare, shall evaluate the Commonwealth's fire and safety laws pertaining to personal care homes and report back to the General Assembly and the Intra-Governmental Council on Long-Term Care established by this act regarding acceptable Statewide standards for fire safety and building codes for personal care homes. This report and recommendation shall be transmitted to the General Assembly within 21 months from the date of final enactment of this act.

Section 9. The Department of Public Welfare shall evaluate the costs of providing personal care and the adequacy of the personal needs allowance for personal care home residents and report its findings to the Appropriations Committees of the House of Representatives and of the Senate and to the Intra-Governmental Council on Long-Term Care. This report and recommendations shall be transmitted to the Appropriations Committees of the House of Representatives and of the Senate and to the Intra-Governmental Council on Long-Term Care within 21 months from the date of final enactment of this act.

Section 10. The department shall prepare an analysis of the feasibility of using funds under the Social Security Act (Public Law 74-271, 42 U.S.C. § 301 et seq.), including funds under the Medicaid Section 2176 Waiver Program, to provide case management services. This analysis shall be transmitted to the Appropriations Committees of the House of Representatives and of the Senate and to the Intra-Governmental Council on Long-Term Care within 21 months from the date of final enactment of this act. As used in this section, case management means, in consultation with and upon the approval of the resident, to assist such resident in the development and implementation of an individualized plan for activities and services both within and outside the personal care home.

Section 11. This act shall take effect immediately.

APPROVED—The 21st day of December, A. D. 1988.

ROBERT P. CASEY