

**TITLE 62. POOR PERSONS AND PUBLIC WELFARE
CHAPTER 1. PUBLIC WELFARE CODE
ARTICLE X. DEPARTMENTAL POWERS AND DUTIES AS TO LICENSING**

(A) LICENSING PROVISIONS

§ 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.

"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.

"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.

"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.

"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, assisted living residence, nursing home, hospital or maternity home, as defined herein, 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."

"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.

"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.

"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" 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 adults who are not relatives of the operator, 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.

"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."

§ 1002. Operation and maintenance without license prohibited

No person shall maintain, operate or conduct any facility, as defined herein, without having a license therefore issued by the department.

§ 1003. Application for license

Any person desiring to secure a license for maintaining, operating and conducting a facility shall submit an application therefor to the department upon forms prepared and furnished by the department, together with such other information as the department

shall require. Application for annual renewal of license shall be made in the same manner as application for original licensure.

§ 1006. Fees

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

	Facility	Annual Fee
Adult day care center		\$15
Mental health establishment		50
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.

§ 1007. Issuance of license

When, after investigation, the department is satisfied that the applicant or applicants for a license are responsible persons, that the place to be used as a facility is suitable for the purpose, is appropriately equipped and that the applicant or applicants and the place to be used as a facility meet all the requirements of this act and of the applicable statutes, ordinances and regulations, it shall issue a license and shall keep a record thereof and of the application.

§ 1008. Provisional license

When there has been substantial but not complete compliance with all the applicable statutes, ordinances and regulations and when the applicant has taken appropriate steps to correct deficiencies, the department shall issue a provisional license for a specified period of not more than six months which may be renewed three times. Upon full compliance, a regular license shall be issued immediately.

§ 1009. Term and content of license

All licenses issued by the department under this act shall expire one year next following the day on which issued, shall be on a form prescribed by the department, shall not be transferable, shall be issued only to the person for the premises and for the facility named in the application and shall specify the maximum number of individuals who may be cared for in the facility at any one time. The license shall at all times be posted in a conspicuous place on the applicant's premises.

§ 1016. Right to enter and inspect

For the purpose of determining the suitability of the applicants and of the premises or whether or not any premises in fact qualifies as a facility as defined in section 1001 of this act or the continuing conformity of the licensees to this act and to the applicable regulations of the department, any authorized agent of the department shall have the right to enter, visit and inspect any facility licensed or requiring a license under this act and shall have full and free access to the records of the facility and to the individuals therein and full opportunity to interview, inspect or examine such individuals.

An authorized agent of the department shall also confer with the operators of facilities regarding the minimum standards of the department, encourage the adoption of higher standards and recommend methods of improving care and services.

§ 1018. Records

Every person licensed under this act to maintain, operate and conduct a facility shall keep such records and make such reports as are required by the department.

§ 1021. Regulations

(a)(1) The department 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.

§ 1026. Refusal to issue license; revocation; notice

(a) Whenever the department, upon inspection or investigation, shall learn of violation of this act or of regulations adopted by the department pursuant to this act, it shall give written notice thereof to the offending person. Such notice shall require the offending person to take action to bring the facility into compliance with this act or with the relevant regulations within a specified time.

(b) The department shall refuse to issue a license or shall revoke a license for any of the following reasons:

(1) Violation of or non-compliance with the provisions of this act or of regulations pursuant thereto;

(2) Fraud or deceit in obtaining or attempting to obtain a license;

(3) Lending, borrowing or using the license of another, or in any way knowingly aiding or abetting the improper granting of a license;

(4) Gross incompetence, negligence or misconduct in operating the facility;

(5) Mistreating or abusing individuals cared for in the facility.

(c) Whenever the department revokes or refuses to issue a license, it shall give written

notice thereof by certified mail. Such notice shall specify the reason for the refusal or revocation.

§ 1031. Violation; penalty

Any person operating a facility within this Commonwealth without a license required by this act, shall upon conviction thereof in a summary proceeding be sentenced to pay a fine of not less than twenty-five dollars (\$ 25) nor more than three hundred dollars (\$ 300), and costs of prosecution, and in default of the payment thereof to undergo imprisonment for not less than ten days nor more than thirty days. Each day of operating a facility without a license required by this act shall constitute a separate offense.

(B) INJUNCTIONS AGAINST UNLICENSED ACTIVITIES; PROCEDURES

§ 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.

§ 1052. Actions against unlicensed institutions

Whenever a license is required by law for the establishment, operation or conduct of a private institution, the department responsible for issuing such license, upon advice of the Attorney General, may maintain an action in the name of the Commonwealth for an injunction or other process restraining or prohibiting any person from establishing, conducting or operating any private institution during any period after a license to engage in such activity has been refused, has not been renewed or has been revoked by the department.

§ 1053. Actions against violations of law and rules and regulations

Whenever any person, regardless of whether such person is a licensee, has violated the laws of this Commonwealth pertaining to the licensing of a private institution or the rules and regulations adopted pursuant to such laws by the department, the department, upon the advice of the Attorney General, may maintain an action in the name of the Commonwealth for an injunction or other process restraining or prohibiting such person from engaging in such activity.

§ 1054. Venue

An action authorized under the provisions of this subarticle shall be instituted in the court of common pleas in the county where the alleged unauthorized activity is committed.

§ 1055. Injunction or restraining order when appeal is pending

Whenever the department shall have refused to grant or renew a license, or shall have revoked a license required by law to operate or conduct a private institution, or shall have ordered the person to refrain from conduct violating the rules and regulations of the department and the person deeming himself aggrieved by such refusal or revocation or order shall have appealed the action of the department, the court may, during pendency of such appeal, issue a restraining order or injunction upon proof that the operation of the private institution or its failure to comply with the order of the department adversely affects the well-being and safety of the patients or inmates in the private institution.

§ 1056. Injunction or restraining order when no appeal is pending

Should a person, who is refused a license or the renewal of a license to operate or conduct a private institution, or whose license to operate or conduct a private institution is revoked, or who has been ordered to refrain from conduct or activity which violates the rules and regulations of the department, fail to appeal or should such appeal be decided finally favorably to the department, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a private institution without a license as required by law, or has continued to violate the rules and regulations of the department.

§ 1057. Repealed. 1971, June 3, P.L. 146, No. 6, § 1 (§ 509(a)(176))

§ 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 operator's expense for a specified period of time or until all violations are corrected and all applicable laws and regulations are complied with.

§ 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.

(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.

§ 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 provider or a human service agency. Such standardized screening instrument shall be developed by the department.

(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 and whether the potential resident requires the services of a personal care 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 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 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 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) 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 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.

§ 1058. Bonds and costs

No bond shall be required of and no costs shall be taxed against the department on account of any such action.

§ 1059. Law supplementary

The provisions of this subarticle shall be construed as supplementary to all other provisions dealing with the same subject matter. No action brought under the provisions of this subarticle shall prevent the prosecution or institution of any civil or criminal action otherwise provided by law for violation of any law providing for licensing or departmental rules or regulations promulgated thereunder.

(C) REGISTRATION PROVISIONS

§ 1070. Definitions

As used in this article--

"CHILD DAY CARE" means care in lieu of parental care given for part of the twenty-four hour day to children away from their own homes.

"FAMILY DAY CARE HOME" means any home in which child day care is provided at any one time to four through six children who are not relatives of the caregiver.

§ 1071. Operation without registration certificate prohibited

No individual shall operate a family day care home without a registration certificate issued therefor by the department.

§ 1072. Application for registration certificate

(a) Any individual desiring to secure a registration certificate shall submit an application therefor to the department upon forms prepared and furnished by the department, and, at the same time, shall certify in writing that he/she and the facility named in the application are in compliance with applicable department regulations.

(b) Application for renewal of the registration certificate shall be made every two years in the same manner as application for the original registration certificate.

(c) No application fee shall be required to register a family day care home.

§ 1073. Issuance of registration certificate

Upon receipt of an application and the applicant's written certification of compliance with applicable department regulations, the department shall issue a registration certificate to the applicant for the premises named in the application. A registration certificate shall be issued for a period of two years.

§ 1074. Visitation and inspection

The department or authorized agent of the department shall have the right to enter, visit and inspect on a random sample basis, upon complaint, or upon request of the caregiver, any family day care home registered or requiring registration under this article and shall have free and full access to the premises, where children are cared for, all records of the premises which relate to the children's care, and to the children cared for therein and full opportunity to speak with or observe such children.

§ 1075. Records

Every individual who operates a family day care home registered under this article shall keep and maintain such records as required by the department.

§ 1076. Regulations

The department is hereby authorized and empowered to adopt regulations establishing minimum and reasonable standards for the operation of family day care homes and the issuance of registration certificates. These regulations will establish the minimum standards of safety and care which will be required in family day care homes and will recognize the vital role which parents and guardians play in monitoring the care provided in family day care homes.

§ 1077. Technical assistance

The department may offer and provide upon request technical assistance to caregivers to assist them in complying with department regulations.

§ 1078. Operation without registration certificate

No individual shall operate a family day care home without having a registration certificate. Any individual operating a family day care home without a registration certificate, after being notified that such a registration is required, shall upon conviction pay a fine of not less than twenty dollars (\$ 20) nor more than one hundred dollars (\$ 100) and costs of prosecution. Each day of operating without a registration certificate shall constitute a separate offense.

§ 1079. Denial, nonrenewal, or revocation

(a) Whenever a caregiver does not certify compliance or whenever upon inspection the department observes noncompliance with applicable department regulations, the department shall give written notice thereof to the offending person. Such notice shall deny issuance of a registration certificate, deny renewal of a registration certificate, or shall require the offending person to take action to bring the facility into compliance with

regulations.

(b) The department shall refuse to issue or renew a registration certificate or shall revoke a registration certificate for any of the following reasons:

(1) Noncompliance with department regulations.

(2) Fraud or deceit in the self-certification process.

(3) Lending, borrowing, or using the registration certificate of another caregiver, or in any knowingly aiding the improper issuance of a registration certificate.

(4) Gross incompetence, negligence, or misconduct in operating the facility.

(5) Mistreating or abusing children cared for in the facility.

§ 1080. Emergency closure

If the department, or authorized agent of the department observes a condition at a family day care home which places the children cared for therein in immediate life-threatening danger, the department shall maintain an action in the name of the Commonwealth for an injunction or other process restraining or prohibiting the operation of the facility.

(D) PERSONAL CARE HOME

§ 1085. Classification of violations

The department shall classify each violation of its regulations by personal care homes or assisted living residences 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.

§ 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 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 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.

(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.

§ 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 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.

§ 1088. Personal care home information

The department shall post information on its Internet website relating to the licensure and inspection of personal care homes. The information shall be updated at least annually. The information shall include the following:

(1) Number of licensed personal care homes.

(2) Number of residents in licensed personal care homes.

(3) Number of personal care homes which have received an annual inspection.

(4) Number of personal care home inspectors, Statewide and by region.

(5) Ratio of department staff responsible for the licensure and inspection of personal care homes divided by the total number of licensed personal care homes.

(6) Number of personal care homes operating with a provisional license, Statewide and by county.

(7) Number of personal care homes operating with a full license, Statewide and by county.

(8) Number of personal care homes which the department has closed or taken legal action to close.

(9) For each personal care home, a licensing inspection summary which lists any violation under this article.

(10) Summary of types of violations which are listed in licensing inspection summaries, in accordance with the classification of violations set forth under this article.

(11) Upon implementation of a financial penalty program, the Internet website shall include information relating to assessed financial penalties against licensed personal care homes as provided for in this article.

(12) A summary of the specific plans of the department to ensure compliance with this article regarding inspection of licensed personal care homes and enforcement of regulations.

(13) Other information the department deems pertinent.