

**ARTICLE X
OF THE PUBLIC
WELFARE CODE**

Act of June 13, 1967, P.L.31, No. 21

62 P.S. § § 901-922 and 1001-1087

PENNSYLVANIA STATUTES
TITLE 62.
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.

"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, 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" 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.

§ 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.

§§ 1004, 1005. Reserved for future legislation.

§ 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.

§§ 1010 to 1015. Reserved for future legislation.

§ 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.

§ 1017. Reserved for future legislation.

§ 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.

§§ 1019, 1020. Reserved for future legislation.

§ 1021. Regulations

The department is hereby authorized and empowered to adopt regulations establishing minimum standards for building, equipment, operation, care, program and services and for the issuance of licenses.

§§ 1022 to 1025. Reserved for future legislation.

§ 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.

§§ 1027 to 1030. Reserved for future legislation.

§ 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, 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) 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.

§ 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.

§ 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.

§ 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 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.

§ 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.

§ 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.