

No. 2002-171

AN ACT

HB 2055

Requiring certain elder care facilities to provide refunds and payments in certain circumstances; providing for inventory of personal property; authorizing the storage of personal property by elder care facilities; providing for applicability of other laws; and imposing a penalty.

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

Section 1. Short title.

This act shall be known and may be cited as the Elder Care Payment Restitution Act.

Section 2. Definitions.

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

“Consumer.” A person who is at least 60 years old and receives elder care in or from a facility.

“Elder care.” Services or treatment provided to meet a consumer’s need for personal care or health care, including, but not limited to, homemaker services, assistance with activities of daily living, physical therapy, occupational therapy, speech therapy, medical social services, home care aide services, companion care services, private duty nursing services, respiratory therapy, intravenous therapy and in-home dialysis and durable medical equipment services, which are routinely provided unsupervised and require interaction with the consumer. The term does not include durable medical equipment delivery, security deposit or application fees unrelated to the resident monthly charges for elder care services.

“Facility.” Any of the following:

(1) A home which provides domiciliary care as defined in section 2202-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(2) A personal care home as defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

(3) A long-term care nursing facility as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

(4) An older adult daily living center as defined in section 2 of the act of July 11, 1990 (P.L.499, No.118), known as the Older Adult Daily Living Centers Licensing Act.

“Home health care agency.” Any of the following:

(1) A home health care organization or agency licensed by the Department of Health.

(2) A public or private agency or organization, or part of an agency or organization, which provides elder care to a person in the person's place of residence.

"Payment." A transfer of any or all moneys or other property transferred or promised to be transferred as full or partial consideration for elder care of a specified consumer by a facility. The term shall not include any copayment or partial payment made by a consumer for publicly funded elder care nor a payment made by a Federal or State program on behalf of a consumer.

Section 3. Payment refunds.

(a) Refunds required.—

(1) A "personal care home," as defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, that collects payment from a consumer shall, within 30 days from the date that the living unit is cleared of the consumer's personal property as a result of the consumer's death, pay the personal representative or guardian of the consumer the amount of the difference between any payment made, including any unpaid interest thereon, and the cost of elder care actually provided to the consumer.

(2) A "long-term care nursing facility," as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, that collects payment from a consumer shall, within 60 days from the date of the death of the consumer, pay the personal representative or guardian of the consumer the amount of the difference between any payment made, including any unpaid interest thereon, and the cost of elder care actually provided to the consumer.

(3) A facility, except for a facility subject to paragraph (1) or (2), or a home health care agency that collects payment from a consumer shall, within 30 days from the date of the death of the consumer, pay the personal representative or guardian of the consumer the amount of the difference between any payment made, including any unpaid interest thereon, and the cost of elder care actually provided to the consumer.

(4) Any clause within a contractual agreement which imposes such elder care costs and which is entered into between the consumer and the facility on or after the effective date of this act that does not meet the standards established by this act shall be null and void.

(b) Liability for noncompliance.—If the facility or home health care agency fails to pay the personal representative or guardian as required by this section, the facility shall be liable to the personal representative or guardian for twice that portion of the payment, including any unpaid interest thereon, that exceeds the cost of the elder care actually provided, as determined by a court having jurisdiction in civil actions at law. This subsection shall not apply if the facility can demonstrate that, after good faith efforts, it was unable to contact the personal representative or guardian as required by this act.

Section 4. Inventory.

A facility shall contact the consumer's personal representative or guardian within 24 hours after the consumer's death to arrange for an inventory of the consumer's personal property.

Section 5. Storage.

A facility, after the death of the consumer and after completing an inventory, may place a consumer's personal property into storage. Any facility that places items into storage shall do so without charging a fee to the consumer's estate or the consumer's family. The facility shall hold items under this section for a period up to 30 days. If the items held in storage are not claimed by the consumer's estate or the consumer's family at the end of the 30-day period, the facility shall send notice by certified mail to the personal representative stating that if items in storage are not removed within 14 days, the facility may dispose of the property.

Section 6. Applicability of other law.

The remedies of this act shall be in addition to those provided under the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act. The requirements of Chapter 7 of the Older Adults Protective Services Act imposed on facilities which provide services to individuals with mental retardation in residences licensed by the Department of Public Welfare or funded through a county mental retardation program shall apply only to the consumers and older adults as that term is defined in the Older Adult Protective Services Act. The provisions of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the Mental Health and Mental Retardation Act of 1966, and all related regulations shall continue to be applicable to such facilities.

Section 7. Penalty for noncompliance.

The owner of a facility or home health care agency that intentionally or willfully fails to comply with this act commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of \$2,500 or imprisonment for not more than one year, or both.

Section 8. Effective date.

This act shall take effect in 60 days.

APPROVED—The 9th day of December, A.D. 2002.

MARK S. SCHWEIKER