
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 890 Session of
2021

INTRODUCED BY HOHENSTEIN, BOBACK, CIRESI, DEASY, DRISCOLL, HILL-
EVANS, HOWARD, ISAACSON, NEILSON, O'MARA, SANCHEZ,
SHUSTERMAN, SIMS AND WEBSTER, MARCH 15, 2021

REFERRED TO COMMITTEE ON HEALTH, MARCH 15, 2021

AN ACT

1 Establishing generator requirements for long-term care nursing
2 facilities, assisted living residences, nursing homes,
3 personal care homes and hospices; providing for powers and
4 duties of the Department of Health and other State agencies;
5 and imposing penalties.

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

8 Section 1. Definitions.

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

12 "Appropriate agency." An agency authorized to license or
13 otherwise regulate a facility in this Commonwealth, including,
14 but not limited to, the Department of Human Services.

15 "Comfortable and safe temperature level." The ambient
16 temperature in a range that minimizes residents' susceptibility
17 to loss of body heat or susceptibility to high indoor
18 temperatures.

19 "COVID-19." The novel coronavirus disease identified as an

1 infectious disease caused by severe acute respiratory syndrome
2 coronavirus 2 that was first identified in December 2019.

3 "Department." The Department of Health of the Commonwealth.

4 "Facility." The term includes:

5 (1) A hospice and a long-term care nursing facility as
6 those terms are defined in section 802.1 of the act of July
7 19, 1979 (P.L.130, No.48), known as the Health Care
8 Facilities Act.

9 (2) An assisted living residence, a nursing home and a
10 personal care home as those terms are defined in section 1001
11 of the act of June 13, 1967 (P.L.31, No.21), known as the
12 Human Services Code.

13 "Infectious agent." Any microorganism, such as a virus,
14 bacterium, fungus, protozoan or parasite, that is capable of
15 being communicated by invasion and multiplication in the human
16 body and capable of causing disease.

17 "Infectious disease." A disease caused by an infectious
18 agent which is not normally found in the human body, which can
19 be transmitted, directly or indirectly, from one individual to
20 another and which is capable of causing death or disability. The
21 term shall include any infectious disease caused by an
22 infectious agent which can be transmitted from an animal or
23 insect to humans.

24 "Power outage." A short-term or long-term electric power
25 loss in a given area or section of the electric transmission
26 grid that could affect a single home, building or larger
27 geographic region.

28 Section 2. Generator acquisition plan required.

29 (a) General rule.--Notwithstanding any other provision of
30 law or regulation, within 90 days of the effective date of this

1 section, each facility shall provide to the department or the
2 appropriate agency, in writing, a detailed plan. The plan must:

3 (1) Demonstrate the acquisition of:

4 (i) A generator or sufficient generators to ensure
5 that the ambient temperature in all areas of the facility
6 accessible to residents, employees and visitors is
7 maintained at a comfortable and safe temperature level of
8 not less than 71 degrees Fahrenheit nor more than 80
9 degrees Fahrenheit in the event of a power outage.

10 (ii) A sufficient fuel supply to ensure that in the
11 event of a power outage, adequate fuel will be available
12 for the continual operation of the generator or
13 generators.

14 (iii) The services necessary to install, maintain
15 and periodically service or test the generator or
16 generators and any other associated equipment to ensure
17 safe and efficient operation of the generator or
18 generators and the maintenance and storage of the fuel
19 supply.

20 (2) Provide the time-frame for acquisition and
21 installation of a generator or sufficient generators in
22 accordance with paragraph (1).

23 (3) Outline the policies and procedures that will be
24 instituted to ensure the health, safety and comfort of
25 residents of the facility in the event of a power outage.

26 (4) Identify the employee or employees designated by the
27 facility to notify the facility administrator, physician or
28 any other official or employee of the facility of a power
29 outage at the onset of the power outage or other emergency.
30 Notification under this paragraph shall be made within 30

1 minutes of the onset of a power outage or emergency.

2 (5) Identify available sites within or outside the
3 facility where residents may be relocated if a comfortable
4 and safe temperature level in the facility cannot be
5 maintained and the situation presents a threat to the health
6 and safety of the residents.

7 (6) Outline any existing agreement or plan for emergency
8 situations, including, but not limited to, an agreement or
9 plan for the provision of emergency services and repairs in
10 the event of a power outage or an electrical, heating,
11 ventilation or air conditioning failure or malfunction.

12 (7) Detail policies and procedures ensuring the
13 effective and immediate activation and operation of the
14 generator or generators and the maintenance of an adequate
15 fuel supply required for their efficient and continual
16 operation during a power outage or other failure.

17 (8) Include any other information required by the
18 department.

19 (b) Implementation of plan.--Each facility's plan shall
20 become effective and implemented within 60 days of receipt of
21 approval of the plan from the department or other appropriate
22 agency.

23 Section 3. Infectious disease outbreak.

24 In the event of a proclamation of a disaster emergency issued
25 by the Governor under 35 Pa.C.S. § 7301(a) (relating to general
26 authority of the Governor), as the result of an outbreak of an
27 infectious disease, such as COVID-19, the department or an
28 appropriate agency shall require a separate generator
29 acquisition plan for any separate facility used to house
30 residents.

1 Section 4. Duties of the department or appropriate agency.

2 (a) Approval.--The department or an appropriate agency shall
3 approve each facility's plan within 90 days of receipt of the
4 plan unless the department determines that additional time is
5 necessary for a facility to implement its plan. Additional time
6 under this subsection may not exceed 30 days.

7 (b) Inspections.--The department or appropriate agency shall
8 conduct periodic inspections of each facility to ensure
9 compliance with this act. The inspections may be conducted
10 during any existing inspection requirement provided under law,
11 during an annual license renewal process or during the initial
12 application for licensure as determined appropriate by the
13 department or appropriate agency.

14 (c) Regulations.--The department and appropriate agencies
15 shall collaborate to promulgate uniform regulations to carry out
16 and enforce the provisions of this act.

17 Section 5. Penalty for noncompliance.

18 (a) Suspension of license.--The department or an appropriate
19 agency may suspend a facility's license for failure to comply
20 with the requirements of this act.

21 (b) Civil penalty.--The following apply:

22 (1) In addition to proceeding under any other remedy
23 available at law or in equity for a violation of a provision
24 of this act or a rule or regulation adopted, order issued or
25 plan approved by the department or appropriate agency under
26 this act, the department or appropriate agency may assess a
27 civil penalty of not more than \$1,000 for the first day of
28 each offense and \$500 for each additional day of continuing
29 violation. The factors for consideration in determining the
30 amount of the penalty are as follows:

- 1 (i) The gravity of the violation.
- 2 (ii) The potential harm to the residents of the
- 3 facility and the residents' families.
- 4 (iii) The financial impact and potential effect on
- 5 first responders and other emergency services providers.
- 6 (iv) The willfulness of the violation.
- 7 (v) Previous violations related to the health and
- 8 safety of facility residents.
- 9 (vi) The economic benefit to the facility for
- 10 failure to comply.

11 (2) If the department or appropriate agency finds that a
12 violation did not cause harm to the health and safety or an
13 adverse financial impact on first responders or other
14 emergency services providers, the department may issue a
15 warning in lieu of assessing a penalty if the owner or
16 operator of the facility, upon notice, takes immediate action
17 to resolve the violation and comply with the requirements of
18 this act.

19 (c) Collection.--If a facility is unable to pay the civil
20 penalty or if a person fails to pay all or a portion of the
21 penalty, the department or appropriate agency may refer the
22 matter to the Office of General Counsel or the Office of
23 Attorney General, which shall institute an action in the
24 appropriate court to recover the civil penalty. Any penalty
25 assessed shall act as a lien on the property of the person
26 against whom the penalty has been assessed.

27 (d) Limitation of liability.--If a person is fully and
28 properly implementing a plan under section 2, as approved by the
29 department or appropriate agency, the implementation shall be
30 given appropriate consideration as a mitigating factor in any

- 1 civil action for penalties under this section.
- 2 Section 6. Effective date.
- 3 This act shall take effect in 60 days.