
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1270 Session of
2020

INTRODUCED BY MUTH, COLLETT, IOVINO, FONTANA, BREWSTER, COSTA,
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SEPTEMBER 3, 2020

REFERRED TO HEALTH AND HUMAN SERVICES, SEPTEMBER 3, 2020

AN ACT

1 Providing for public health emergency facility safety.

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

4 Section 1. Short title.

5 This act shall be known and may be cited as the Public Health
6 Emergency Facility Safety Act.

7 Section 2. Definitions.

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

11 "Agent of the resident." An individual who has a power of
12 attorney or health care power of attorney for a resident in
13 accordance with 20 Pa.C.S. Chs. 54 (relating to health care) and
14 56 (relating to powers of attorney).

15 "COVID-19." The coronavirus disease 2019, an infectious
16 disease caused by severe acute respiratory syndrome coronavirus
17 2 that was first identified during December 2019 in Wuhan,

1 China.

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

3 "Do-not-resuscitate order." As the term "out-of-hospital do-
4 not-resuscitate order" is defined in 20 Pa.C.S. § 5483 (relating
5 to definitions).

6 "Facility." Any of the following:

7 (1) Any of the following entities as defined in section
8 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as
9 the Health Care Facilities Act:

10 (i) A long-term care nursing facility.

11 (ii) A home health care agency.

12 (iii) A home care agency.

13 (iv) A hospice.

14 (2) Any of the following entities as defined in section
15 1001 of the act of June 13, 1967 (P.L.31, No.21), known as
16 the Human Services Code:

17 (i) A personal care home.

18 (ii) An assisted living residence.

19 (3) A veterans' home that is operated by the Department
20 of Military and Veterans Affairs.

21 (4) Domiciliary care as defined in section 2202-A of the
22 act of April 9, 1929 (P.L.177, No.175), known as The
23 Administrative Code of 1929.

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

27 "Facility outbreak." An outbreak of a disease within a
28 facility that has the following characteristics:

29 (1) Is believed to be caused by the emergence and spread
30 of a novel or previously eradicated infectious disease.

1 (2) Poses a high probability of any of the following in
2 the affected population:

3 (i) Death.

4 (ii) Serious or long-term disability.

5 (iii) Exposure to an infectious disease, which poses
6 a significant risk of substantial present or future harm
7 to the health and safety of the residents and staff of a
8 facility.

9 "Health information." Includes positive or presumed positive
10 infectious disease test results, additions of medical treatments
11 or interventions, changes in medications and medical
12 appointments.

13 "Health notification." An agreement between a facility and a
14 resident or an agent of the resident to address the types of
15 health information, methods and frequency of communications
16 provided by the facility to the resident or agent of the
17 resident regarding the health of the resident.

18 "Infectious disease." A contagious disease that is caused by
19 a microorganism, such as a bacterium, virus or protozoan, which
20 is not normally found in the human body and which is capable of
21 causing infection in humans.

22 "Long-term care facility." Any of the following:

23 (1) A long-term care nursing facility as defined in
24 section 802.1 of the Health Care Facilities Act.

25 (2) A personal care home as defined in section 1001 of
26 the Human Services Code.

27 (3) An assisted living residence as defined in section
28 1001 of the Human Services Code.

29 "POLST." A physician order for life-sustaining treatment in
30 which one or more medical orders are issued for the care of an

1 individual regarding cardiopulmonary resuscitation or other
2 medical interventions that are entered into agreement with the
3 voluntary consent of the individual or surrogate decisionmaker
4 and a health care practitioner.

5 "Public health emergency." A declaration of disaster
6 emergency in accordance with 35 Pa.C.S. Ch. 73 Subch. A
7 (relating to the Governor and disaster emergencies) of an
8 occurrence or imminent threat of a disease or condition of
9 critical public health importance or a declaration of disaster
10 emergency by a governing body of a political subdivision under
11 35 Pa.C.S. Ch. 75 (relating to local organizations and services)
12 of an occurrence or imminent threat of a disease within the
13 county that has the following characteristics:

14 (1) Is believed to be caused by any of the following:

15 (i) The emergence and spread of a novel or
16 previously controlled or eradicated infectious disease.

17 (ii) An infectious disease epidemic in this
18 Commonwealth or a pandemic.

19 (2) Poses a high probability of any of the following in
20 the affected population:

21 (i) Death.

22 (ii) Serious or long-term disability.

23 (iii) Widespread exposure to an infectious disease,
24 which poses a significant risk of substantial present or
25 future harm to health and safety.

26 "Relative of a resident." An individual who:

27 (1) is related to a resident;

28 (2) has assisted the resident in the admission into or
29 the receipt of services from a facility; and

30 (3) does not have a power of attorney or health care

1 power of attorney for the resident in accordance with 20
2 Pa.C.S. Chs. 54 and 56.

3 "Resident." A resident of a facility or a recipient of
4 services provided by a facility.

5 Section 3. Health notification protocols.

6 (a) Contents.--Within 30 days of the effective date of this
7 section, the appropriate State licensing department of a
8 facility shall establish protocols that provide for the
9 following:

10 (1) Requirements for the facility to:

11 (i) Communicate with a resident and an agent of the
12 resident within 72 hours of the declaration of a public
13 health emergency or a facility outbreak to:

14 (A) Review the current health notification
15 agreement and any current do-not-resuscitate order or
16 POLST for the resident.

17 (B) Inform the resident and agent of the
18 resident of additional health notifications that are
19 available for providing information regarding the
20 resident's health to the agent of the resident.

21 (C) Inform the resident and agent of the
22 resident of the option to change the do-not-
23 resuscitate order or POLST for the resident and the
24 risks involved with the available options.

25 (D) Notify the agent of the resident in the
26 event of a change in the resident's health status
27 within 24 hours of the health status change.

28 (ii) Make revisions to the following:

29 (A) The health notification agreement in
30 accordance with the selections made by a resident or

1 an agent of the resident under paragraph (2).

2 (B) The do-not-resuscitate order or POLST in
3 accordance with the decisions made by a resident or
4 an agent of the resident under paragraph (2).

5 (iii) Communicate with a resident and a relative of
6 a resident within 72 hours of the declaration of a public
7 health emergency or a facility outbreak to:

8 (A) Provide information regarding powers of
9 attorney and health care powers of attorney under 20
10 Pa.C.S. Chs. 54 (relating to health care) and 56
11 (relating to powers of attorney).

12 (B) Encourage the resident and relative of the
13 resident to consider using a power of attorney or
14 health care power of attorney.

15 (iv) Communicate with the resident, agent of the
16 resident and all staff working within the facility
17 regarding how the facility plans to implement the safety
18 guidelines offered by the Centers for Disease Control and
19 Prevention, the department and any executive order
20 offered by the Governor through all stages of the public
21 health emergency. Information, including, but not limited
22 to, staff-to-resident ratios, mitigation efforts utilized
23 and compliance with the safety protocols adopted by the
24 facility shall be published on the facility's publicly
25 accessible Internet website.

26 (2) The ability of a resident or an agent of the
27 resident to:

28 (i) Select additional or remove existing health
29 notifications under the health notification agreement.

30 (ii) Make changes to the do-not-resuscitate order or

1 POLST.

2 (b) Collaboration.--Each State licensing department of a
3 facility shall collaborate to establish uniform protocols to the
4 extent feasible.

5 (c) Fines.--Each State licensing department of a facility
6 shall establish an administrative fine of up to \$500 for each
7 instance of noncompliance with the provisions of this section.

8 (d) Compliance with other laws.--The protocols under this
9 section shall comply with all applicable Federal and State
10 health information privacy laws.

11 Section 4. Facilities with positive COVID-19 test results.

12 Within 30 days of the effective date of this section, the
13 department shall develop guidelines or revise current guidelines
14 to provide for all of the following:

15 (1) The safety and protection from COVID-19 of residents
16 and staff of a facility that is not subject to the measures
17 for the safety and protection of residents and staff in long-
18 term care facilities from COVID-19 as contained in the
19 guidance issued prior to the effective date of this section
20 by the Centers for Disease Control and Prevention and the
21 department. The guidelines under this paragraph shall
22 incorporate the measures to increase compliance addressed
23 under paragraph (2) for facilities that have one or more
24 confirmed positive or presumed positive tests of COVID-19.

25 (2) Measures to increase compliance with the guidance
26 issued prior to the effective date of this section by the
27 Centers for Disease Control and Prevention and the department
28 for the safety and protection of residents and staff in long-
29 term care facilities from COVID-19 for facilities that have
30 one or more residents or long-term care facility staff that

1 have confirmed positive or presumed positive tests of COVID-
2 19.

3 Section 5. Essential workforce and employee protections.

4 (a) Essential employee.--A direct care worker who is an
5 employee of a facility or a contracted professional shall be
6 considered an essential employee of the facility unless the
7 services or treatment provided by the individual can be
8 delivered through an alternative method that yields the same
9 quality of care to a resident of the facility.

10 (b) Retaliation prohibited.--An employee or contracted
11 professional working within a facility shall not be subject to
12 retaliation after reporting a facility for noncompliance with
13 this act or the guidelines issued by the Centers for Disease
14 Control and Prevention or the department.

15 Section 6. Inspections, assessments and audits.

16 (a) Duties.--Notwithstanding any provision of law, during a
17 public health emergency or a facility outbreak, the appropriate
18 State licensing department of a facility:

19 (1) Shall conduct regular in-person inspections of the
20 facility for compliance with guidelines from the Centers for
21 Disease Control and Prevention and the department for the
22 safety and protection of residents and staff in the facility.

23 (2) Shall conduct an inspection of the facility upon
24 receipt of a complaint from a resident, an agent of the
25 resident, a relative of the resident or a member of the
26 facility staff that the facility is not complying with the
27 guidance from the Centers for Disease Control and Prevention
28 and the department for the protection of residents and staff
29 in the facility and to further address additional safety
30 measures following the occurrence of positive or presumed

1 positive test results in the facility. The inspection shall
2 address the subject matter of the complaint.

3 (3) May conduct in-person spot assessments of the
4 facility to ensure compliance with the guidance from the
5 Centers for Disease Control and Prevention and the department
6 for the protection of residents and staff in the facility and
7 to further address additional safety measures following the
8 occurrence of positive or presumed positive test results in
9 the facility.

10 (4) May not waive the inspections or in-person spot
11 assessments of the facility under this subsection.

12 (b) Audit.--The Office of Auditor General shall regularly
13 audit the records of the department during a public health
14 emergency or facility outbreak to ensure the accurate and timely
15 dissemination of public information reported to the department
16 by facilities in compliance with the guidance from the Centers
17 for Disease Control and Prevention and the department for the
18 protection of people in a facility regarding an infectious
19 disease that is the subject of a public health emergency or a
20 facility outbreak. The following shall apply:

21 (1) The audit must also include thorough investigation
22 of the manner in which any Federal or State appropriation
23 made available after the declaration of a public health
24 emergency is utilized in the facility, to ensure that aid is
25 directly used for mitigation efforts, supplies and workforce
26 payroll to protect both employees and residents and ensure
27 safe staff-to-resident ratios in accordance with 28 Pa. Code
28 § 211.12 (relating to nursing services).

29 (2) The findings of the audit shall be made available on
30 the publicly accessible Internet website of the facility and

1 updated as necessary.

2 Section 7. Appropriation.

3 The General Assembly shall appropriate any additional funding
4 necessary from the General Fund to the department to carry out
5 the requirements of this act.

6 Section 8. Effective date.

7 This act shall take effect immediately.