



Rep. William Davis

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1 AMENDMENT TO HOUSE BILL 865

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 865 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The MC/DD Act is amended by adding Section  
5 3-305.5 as follows:

6 (210 ILCS 46/3-305.5 new)

7 Sec. 3-305.5. Violation of the Nurse Practice Act. A  
8 facility that fails to submit any required report under Section  
9 85-10 of the Nurse Practice Act is subject to discipline under  
10 this Article.

11 Section 10. The Nurse Practice Act is amended by adding  
12 Article 85 as follows:

13 (225 ILCS 65/Art. 85 heading new)

14 ARTICLE 85. BASIC SUCTIONING AIDE PILOT PROGRAM

1 (225 ILCS 65/85-5 new)

2 Sec. 85-5. Definitions. For the purposes of this Article  
3 only:

4 "Basic suctioning" means the process of using oral  
5 suctioning of the upper airway to remove foreign matter, such  
6 as mucus, fluids, or blood, which may involve the use of a  
7 Yankauer suction catheter.

8 "Basic suctioning aide" means a person who has met the  
9 qualifications for licensure under this Article who assists  
10 with basic suctioning administration while under the  
11 supervision of a registered professional nurse (RN) in a  
12 facility licensed under the MC/DD Act.

13 "Qualified employer" means a facility in good standing  
14 under the MC/DD Act.

15 (225 ILCS 65/85-10 new)

16 Sec. 85-10. Pilot program.

17 (a) The Department shall administer and enforce a Licensed  
18 Basic Suctioning Aide Pilot Program. The program shall last for  
19 a period of 3 years, as determined by rule. During the 3-year  
20 pilot program, the Department shall license and regulate  
21 licensed basic suctioning aides. The Department may consult  
22 with the Department of Public Health as necessary to properly  
23 administer and enforce this Article.

24 (b) To be approved as a qualified facility for the duration

1 of the pilot program, a facility must:

2 (1) be a licensed facility in good standing under the  
3 MC/DD Act;

4 (2) certify that the employment of a licensed basic  
5 suctioning aide will not replace or diminish the employment  
6 of a registered nurse or licensed practical nurse at the  
7 facility;

8 (3) certify that a registered nurse will be on-duty and  
9 present in the facility to delegate and supervise the basic  
10 suctioning administration by a licensed basic suctioning  
11 aide at all times;

12 (4) certify that, with the exception of licensed health  
13 care professionals, only licensed basic suctioning aides  
14 will be employed in the capacity of administering basic  
15 suctioning; and

16 (5) provide information regarding patient safety,  
17 efficiency, and errors as determined by the Department;  
18 failure to submit any required report may be grounds for  
19 discipline or sanctions under this Act, the Nursing Home  
20 Administrators Licensing and Disciplinary Act, or the  
21 MC/DD Act.

22 The Department shall submit a report regarding patient  
23 safety, efficiency, and errors, as determined by rule, to the  
24 General Assembly no later than 6 months after termination of  
25 the pilot program.

1 (225 ILCS 65/85-15 new)

2 Sec. 85-15. Licensure requirement; exempt activities.

3 (a) On and after January 1, 2017, no person shall practice  
4 as a basic suctioning aide or hold himself or herself out as a  
5 licensed basic suctioning aide in this State unless he or she  
6 is licensed under this Article.

7 (b) Nothing in this Article shall be construed as  
8 preventing or restricting the practice, services, or  
9 activities of:

10 (1) any person licensed in this State by any other law  
11 from engaging in the profession or occupation for which he  
12 or she is licensed;

13 (2) any person employed as a basic suctioning aide by  
14 the government of the United States, if such person  
15 practices as a basic suctioning aide solely under the  
16 direction or control of the organization by which he or she  
17 is employed; or

18 (3) any person pursuing a course of study leading to a  
19 certificate in basic suctioning at an accredited or  
20 approved educational program if such activities and  
21 services constitute a part of a supervised course of study  
22 and if such person is designated by a title which clearly  
23 indicates his or her status as a student or trainee.

24 (c) Nothing in this Article shall be construed to limit the  
25 delegation of tasks or duties by a physician, dentist, advanced  
26 practice nurse, or podiatric physician as authorized by law.

1 (225 ILCS 65/85-20 new)

2 Sec. 85-20. Scope of practice.

3 (a) A licensed basic suctioning aide may only practice in a  
4 qualified facility.

5 (b) Licensed basic suctioning aides must be supervised by  
6 and receive delegation by a registered nurse that is on-duty  
7 and present in the facility at all times.

8 (c) Licensed basic suctioning aides shall not administer  
9 any basic suctioning until a physician has conducted an initial  
10 assessment of the resident.

11 (225 ILCS 65/85-25 new)

12 Sec. 85-25. Unlicensed practice; violation; civil penalty.

13 (a) In addition to any other penalty provided by law, any  
14 person who practices, offers to practice, attempts to practice,  
15 or holds oneself out to practice as a basic suctioning aide  
16 without being licensed under this Act shall, in addition to any  
17 other penalty provided by law, pay a civil penalty to the  
18 Department in an amount not to exceed \$10,000 for each offense  
19 as determined by the Department. The civil penalty shall be  
20 assessed by the Department after a hearing is held in  
21 accordance with the provisions set forth in this Act regarding  
22 the provision of a hearing for the discipline of a licensee.

23 (b) The Department has the authority and power to  
24 investigate any and all unlicensed activity.

1        (c) The civil penalty shall be paid within 60 days after  
2 the effective date of the order imposing the civil penalty. The  
3 order shall constitute a judgment and may be filed and  
4 execution had thereon in the same manner as any judgment from  
5 any court of record.

6            (225 ILCS 65/85-30 new)

7        Sec. 85-30. Applications for original licensure.  
8 Applications for original licensure shall be made to the  
9 Department in writing on forms prescribed by the Department and  
10 shall be accompanied by the required fee, which shall not be  
11 returnable. The application shall require such information as,  
12 in the judgment of the Department, will enable the Department  
13 to pass on the qualifications of the applicant for licensure.  
14 Applicants have 3 years after the date of application to  
15 complete the application process. If the process has not been  
16 completed within 3 years, the application shall be denied, the  
17 fee forfeited, and the applicant must reapply and meet the  
18 requirements in effect at the time of reapplication.

19            (225 ILCS 65/85-35 new)

20        Sec. 85-35. Examinations. The Department shall authorize  
21 examinations of applicants for a license under this Article at  
22 the times and place as it may designate. The examination shall  
23 be of a character to give a fair test of the qualifications of  
24 the applicant to practice as a basic suctioning aide.

1       Applicants for examination as a basic suctioning aide shall  
2 be required to pay, either to the Department or the designated  
3 testing service, a fee covering the cost of providing the  
4 examination. Failure to appear for the examination on the  
5 scheduled date, at the time and place specified, after the  
6 applicant's application for examination has been received and  
7 acknowledged by the Department or the designated testing  
8 service, shall result in the forfeiture of the examination fee.

9       If an applicant fails to pass an examination for  
10 registration under this Act within 3 years after filing his or  
11 her application, the application shall be denied. The applicant  
12 may thereafter make a new application accompanied by the  
13 required fee; however, the applicant shall meet all  
14 requirements in effect at the time of subsequent application  
15 before obtaining licensure. The Department may employ  
16 consultants for the purposes of preparing and conducting  
17 examinations.

18       (225 ILCS 65/85-40 new)

19       Sec. 85-40. Licensure by examination. An applicant for  
20 licensure by examination to practice as a licensed basic  
21 suctioning aide must:

22           (1) submit a completed written application on forms  
23 provided by the Department and fees as established by the  
24 Department;

25           (2) be age 18 or older;

1           (3) have a high school diploma or a certificate of  
2 general education development (GED);

3           (4) demonstrate the ability to speak, read, and write  
4 the English language, as determined by rule;

5           (5) be currently certified in good standing as a  
6 certified nursing assistant;

7           (6) submit to the criminal history records check  
8 required under Section 50-35 of this Act;

9           (7) have not engaged in conduct or behavior determined  
10 to be grounds for discipline under this Act;

11           (8) be currently certified to perform cardiopulmonary  
12 resuscitation by the American Heart Association or  
13 American Red Cross;

14           (9) have successfully completed a course of study  
15 approved by the Department as defined by rule; to be  
16 approved, the program must include a minimum of 8 hours of  
17 classroom-based suctioning aide education and a minimum of  
18 5 hours of registered nurse-supervised clinical practicum  
19 with progressive responsibility of patient suctioning  
20 assistance; such course of study and training may be  
21 developed by the qualified facility staff with approval by  
22 the Department;

23           (10) have successfully completed the Basic Suctioning  
24 Aide Certification Examination or other examination  
25 authorized by the Department; and

26           (11) submit proof of employment by a qualifying

1           facility.

2           (225 ILCS 65/85-45 new)

3           Sec. 85-45. Expiration of license. The expiration date for  
4 each license to practice as a licensed basic suctioning aide  
5 shall be set by the rule. Licenses under this Article may not  
6 be renewed or restored.

7           (225 ILCS 65/85-50 new)

8           Sec. 85-50. Administration and enforcement. Licenses  
9 issued under this Article are subject to Article 70, including  
10 grounds for disciplinary action under Section 70-5 of this Act.

11           (225 ILCS 65/85-55 new)

12           Sec. 85-55. Title. Any person who is issued a license as a  
13 basic suctioning aide under the terms of this Act shall use the  
14 words "licensed basic suctioning aide" in connection with his  
15 or her name to denote his or her licensure under this Act.

16           (225 ILCS 65/85-60 new)

17           Sec. 85-60. Rules. The Department shall file rules to  
18 administer this Article within 90 days after the effective date  
19 of this amendatory Act of the 99th General Assembly.

20           Section 15. The Nursing Home Administrators Licensing and  
21 Disciplinary Act is amended by changing Section 17 as follows:

1 (225 ILCS 70/17) (from Ch. 111, par. 3667)

2 Sec. 17. Grounds for disciplinary action.

3 (a) The Department may impose fines not to exceed \$10,000  
4 or may refuse to issue or to renew, or may revoke, suspend,  
5 place on probation, censure, reprimand or take other  
6 disciplinary or non-disciplinary action with regard to the  
7 license of any person, for any one or combination of the  
8 following causes:

9 (1) Intentional material misstatement in furnishing  
10 information to the Department.

11 (2) Conviction of or entry of a plea of guilty or nolo  
12 contendere to any crime that is a felony under the laws of  
13 the United States or any state or territory thereof or a  
14 misdemeanor of which an essential element is dishonesty or  
15 that is directly related to the practice of the profession  
16 of nursing home administration.

17 (3) Making any misrepresentation for the purpose of  
18 obtaining a license, or violating any provision of this  
19 Act.

20 (4) Immoral conduct in the commission of any act, such  
21 as sexual abuse or sexual misconduct, related to the  
22 licensee's practice.

23 (5) Failing to respond within 30 days, to a written  
24 request made by the Department for information.

25 (6) Engaging in dishonorable, unethical or

1 unprofessional conduct of a character likely to deceive,  
2 defraud or harm the public.

3 (7) Habitual use or addiction to alcohol, narcotics,  
4 stimulants, or any other chemical agent or drug which  
5 results in the inability to practice with reasonable  
6 judgment, skill or safety.

7 (8) Discipline by another U.S. jurisdiction if at least  
8 one of the grounds for the discipline is the same or  
9 substantially equivalent to those set forth herein.

10 (9) A finding by the Department that the licensee,  
11 after having his or her license placed on probationary  
12 status has violated the terms of probation.

13 (10) Willfully making or filing false records or  
14 reports in his or her practice, including but not limited  
15 to false records filed with State agencies or departments.

16 (11) Physical illness, mental illness, or other  
17 impairment or disability, including, but not limited to,  
18 deterioration through the aging process, or loss of motor  
19 skill that results in the inability to practice the  
20 profession with reasonable judgment, skill or safety.

21 (12) Disregard or violation of this Act or of any rule  
22 issued pursuant to this Act.

23 (13) Aiding or abetting another in the violation of  
24 this Act or any rule or regulation issued pursuant to this  
25 Act.

26 (14) Allowing one's license to be used by an unlicensed

1 person.

2 (15) (Blank).

3 (16) Professional incompetence in the practice of  
4 nursing home administration.

5 (17) Conviction of a violation of Section 12-19 or  
6 subsection (a) of Section 12-4.4a of the Criminal Code of  
7 1961 or the Criminal Code of 2012 for the abuse and  
8 criminal neglect of a long term care facility resident.

9 (18) Violation of the Nursing Home Care Act, the  
10 Specialized Mental Health Rehabilitation Act of 2013, the  
11 ID/DD Community Care Act, or the MC/DD Act or of any rule  
12 issued under the Nursing Home Care Act, the Specialized  
13 Mental Health Rehabilitation Act of 2013, the ID/DD  
14 Community Care Act, or the MC/DD Act. A final adjudication  
15 of a Type "AA" violation of the Nursing Home Care Act made  
16 by the Illinois Department of Public Health, as identified  
17 by rule, relating to the hiring, training, planning,  
18 organizing, directing, or supervising the operation of a  
19 nursing home and a licensee's failure to comply with this  
20 Act or the rules adopted under this Act, shall create a  
21 rebuttable presumption of a violation of this subsection.

22 (19) Failure to report to the Department any adverse  
23 final action taken against the licensee by a licensing  
24 authority of another state, territory of the United States,  
25 or foreign country; or by any governmental or law  
26 enforcement agency; or by any court for acts or conduct

1 similar to acts or conduct that would constitute grounds  
2 for disciplinary action under this Section.

3 (20) Failure to report to the Department the surrender  
4 of a license or authorization to practice as a nursing home  
5 administrator in another state or jurisdiction for acts or  
6 conduct similar to acts or conduct that would constitute  
7 grounds for disciplinary action under this Section.

8 (21) Failure to report to the Department any adverse  
9 judgment, settlement, or award arising from a liability  
10 claim related to acts or conduct similar to acts or conduct  
11 that would constitute grounds for disciplinary action  
12 under this Section.

13 (22) Failure to submit any required report under  
14 Sections ~~Section~~ 80-10 and 85-10 of the Nurse Practice Act.

15 All proceedings to suspend, revoke, place on probationary  
16 status, or take any other disciplinary action as the Department  
17 may deem proper, with regard to a license on any of the  
18 foregoing grounds, must be commenced within 5 years next after  
19 receipt by the Department of (i) a complaint alleging the  
20 commission of or notice of the conviction order for any of the  
21 acts described herein or (ii) a referral for investigation  
22 under Section 3-108 of the Nursing Home Care Act.

23 The entry of an order or judgment by any circuit court  
24 establishing that any person holding a license under this Act  
25 is a person in need of mental treatment operates as a  
26 suspension of that license. That person may resume their

1 practice only upon the entry of a Department order based upon a  
2 finding by the Board that they have been determined to be  
3 recovered from mental illness by the court and upon the Board's  
4 recommendation that they be permitted to resume their practice.

5 The Department, upon the recommendation of the Board, may  
6 adopt rules which set forth standards to be used in determining  
7 what constitutes:

8 (i) when a person will be deemed sufficiently  
9 rehabilitated to warrant the public trust;

10 (ii) dishonorable, unethical or unprofessional conduct  
11 of a character likely to deceive, defraud, or harm the  
12 public;

13 (iii) immoral conduct in the commission of any act  
14 related to the licensee's practice; and

15 (iv) professional incompetence in the practice of  
16 nursing home administration.

17 However, no such rule shall be admissible into evidence in  
18 any civil action except for review of a licensing or other  
19 disciplinary action under this Act.

20 In enforcing this Section, the Department or Board, upon a  
21 showing of a possible violation, may compel any individual  
22 licensed to practice under this Act, or who has applied for  
23 licensure pursuant to this Act, to submit to a mental or  
24 physical examination, or both, as required by and at the  
25 expense of the Department. The examining physician or  
26 physicians shall be those specifically designated by the

1 Department or Board. The Department or Board may order the  
2 examining physician to present testimony concerning this  
3 mental or physical examination of the licensee or applicant. No  
4 information shall be excluded by reason of any common law or  
5 statutory privilege relating to communications between the  
6 licensee or applicant and the examining physician. The  
7 individual to be examined may have, at his or her own expense,  
8 another physician of his or her choice present during all  
9 aspects of the examination. Failure of any individual to submit  
10 to mental or physical examination, when directed, shall be  
11 grounds for suspension of his or her license until such time as  
12 the individual submits to the examination if the Department  
13 finds, after notice and hearing, that the refusal to submit to  
14 the examination was without reasonable cause.

15 If the Department or Board finds an individual unable to  
16 practice because of the reasons set forth in this Section, the  
17 Department or Board shall require such individual to submit to  
18 care, counseling, or treatment by physicians approved or  
19 designated by the Department or Board, as a condition, term, or  
20 restriction for continued, reinstated, or renewed licensure to  
21 practice; or in lieu of care, counseling, or treatment, the  
22 Department may file, or the Board may recommend to the  
23 Department to file, a complaint to immediately suspend, revoke,  
24 or otherwise discipline the license of the individual. Any  
25 individual whose license was granted pursuant to this Act or  
26 continued, reinstated, renewed, disciplined or supervised,

1 subject to such terms, conditions or restrictions who shall  
2 fail to comply with such terms, conditions or restrictions  
3 shall be referred to the Secretary for a determination as to  
4 whether the licensee shall have his or her license suspended  
5 immediately, pending a hearing by the Department. In instances  
6 in which the Secretary immediately suspends a license under  
7 this Section, a hearing upon such person's license must be  
8 convened by the Board within 30 days after such suspension and  
9 completed without appreciable delay. The Department and Board  
10 shall have the authority to review the subject administrator's  
11 record of treatment and counseling regarding the impairment, to  
12 the extent permitted by applicable federal statutes and  
13 regulations safeguarding the confidentiality of medical  
14 records.

15 An individual licensed under this Act, affected under this  
16 Section, shall be afforded an opportunity to demonstrate to the  
17 Department or Board that he or she can resume practice in  
18 compliance with acceptable and prevailing standards under the  
19 provisions of his or her license.

20 (b) Any individual or organization acting in good faith,  
21 and not in a wilful and wanton manner, in complying with this  
22 Act by providing any report or other information to the  
23 Department, or assisting in the investigation or preparation of  
24 such information, or by participating in proceedings of the  
25 Department, or by serving as a member of the Board, shall not,  
26 as a result of such actions, be subject to criminal prosecution

1 or civil damages.

2 (c) Members of the Board, and persons retained under  
3 contract to assist and advise in an investigation, shall be  
4 indemnified by the State for any actions occurring within the  
5 scope of services on or for the Board, done in good faith and  
6 not wilful and wanton in nature. The Attorney General shall  
7 defend all such actions unless he or she determines either that  
8 there would be a conflict of interest in such representation or  
9 that the actions complained of were not in good faith or were  
10 wilful and wanton.

11 Should the Attorney General decline representation, a  
12 person entitled to indemnification under this Section shall  
13 have the right to employ counsel of his or her choice, whose  
14 fees shall be provided by the State, after approval by the  
15 Attorney General, unless there is a determination by a court  
16 that the member's actions were not in good faith or were wilful  
17 and wanton.

18 A person entitled to indemnification under this Section  
19 must notify the Attorney General within 7 days of receipt of  
20 notice of the initiation of any action involving services of  
21 the Board. Failure to so notify the Attorney General shall  
22 constitute an absolute waiver of the right to a defense and  
23 indemnification.

24 The Attorney General shall determine within 7 days after  
25 receiving such notice, whether he or she will undertake to  
26 represent a person entitled to indemnification under this

1 Section.

2 (d) The determination by a circuit court that a licensee is  
3 subject to involuntary admission or judicial admission as  
4 provided in the Mental Health and Developmental Disabilities  
5 Code, as amended, operates as an automatic suspension. Such  
6 suspension will end only upon a finding by a court that the  
7 patient is no longer subject to involuntary admission or  
8 judicial admission and issues an order so finding and  
9 discharging the patient; and upon the recommendation of the  
10 Board to the Secretary that the licensee be allowed to resume  
11 his or her practice.

12 (e) The Department may refuse to issue or may suspend the  
13 license of any person who fails to file a return, or to pay the  
14 tax, penalty or interest shown in a filed return, or to pay any  
15 final assessment of tax, penalty or interest, as required by  
16 any tax Act administered by the Department of Revenue, until  
17 such time as the requirements of any such tax Act are  
18 satisfied.

19 (f) The Department of Public Health shall transmit to the  
20 Department a list of those facilities which receive an "A"  
21 violation as defined in Section 1-129 of the Nursing Home Care  
22 Act.

23 (Source: P.A. 98-104, eff. 7-22-13; 98-990, eff. 8-18-14;  
24 99-180, eff. 7-29-15.)

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.".