



Sen. Jacqueline Y. Collins

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10100SB1510sam002

LRB101 08498 CPF 59131 a

1 AMENDMENT TO SENATE BILL 1510

2 AMENDMENT NO. _____. Amend Senate Bill 1510, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Nursing Home Care Act is amended by
6 changing Sections 2-106.1, 2-204, 3-202.05, and 3-209 and by
7 adding Section 3-305.8 as follows:

8 (210 ILCS 45/2-106.1)

9 Sec. 2-106.1. Drug treatment.

10 (a) A resident shall not be given unnecessary drugs. An
11 unnecessary drug is any drug used in an excessive dose,
12 including in duplicative therapy; for excessive duration;
13 without adequate monitoring; without adequate indications for
14 its use; or in the presence of adverse consequences that
15 indicate the drugs should be reduced or discontinued. The
16 Department shall adopt, by rule, the standards for unnecessary

1 drugs contained in interpretive guidelines issued by the United
2 States Department of Health and Human Services for the purposes
3 of administering Titles XVIII and XIX of the Social Security
4 Act.

5 (b) Psychotropic medication shall not be administered
6 ~~prescribed~~ without the informed consent of the resident or~~7~~ the
7 resident's surrogate decision maker ~~guardian, or other~~
8 ~~authorized representative~~. "Psychotropic medication" means
9 medication that is used for or listed as used for psychotropic
10 ~~antipsychotic~~, antidepressant, antimanic, or antianxiety
11 behavior modification or behavior management purposes in the
12 latest editions of the AMA Drug Evaluations or the Physician's
13 Desk Reference. No later than January 1, 2021, the ~~The~~
14 Department shall adopt, by rule, a protocol specifying how
15 informed consent for psychotropic medication may be obtained or
16 refused. The protocol shall require, at a minimum, a discussion
17 between (i) the resident or the resident's surrogate decision
18 maker ~~authorized representative~~ and (ii) the resident's
19 physician, a registered pharmacist (who is not a dispensing
20 pharmacist for the facility where the resident lives), or a
21 licensed nurse about the possible risks and benefits of a
22 recommended medication and the use of standardized consent
23 forms designated by the Department. The protocol shall include
24 informing the resident, surrogate decision maker, or both of
25 the existence of a copy of: the resident's care plan; the
26 facility policies and procedures adopted in compliance with

1 subsection (b-15) of this Section; and that all of the
2 resident's care plans and the facility's policies are available
3 to the resident or surrogate decision maker upon request. Each
4 form developed by the Department (i) shall be written in plain
5 language, (ii) shall be able to be downloaded from the
6 Department's official website, (iii) shall include information
7 specific to the psychotropic medication for which consent is
8 being sought, and (iv) shall be used for every resident for
9 whom psychotropic drugs are prescribed. The Department shall
10 utilize the rules, protocols, and forms previously developed
11 and implemented under the Specialized Mental Health
12 Rehabilitation Act of 2013, except to the extent that this Act
13 requires a different procedure, and except that the maximum
14 possible period for informed consent shall be until: (1) a
15 change in the prescription occurs, either as to type of
16 psychotropic medication or dosage; or (2) a resident's care
17 plan changes. The Department shall not be liable for the
18 implementation of these rules, protocols, or forms. In addition
19 to creating those forms, the Department shall approve the use
20 of any other informed consent forms that meet criteria
21 developed by the Department. At the discretion of the
22 Department, informed consent forms may include side effects
23 that the Department reasonably believes are more common, with a
24 direction that more complete information can be found via a
25 link on the Department's website to third-party websites with
26 more complete information, such as the United States Food and

1 Drug Administration's website. The Department or a facility
2 shall incur no liability for information provided on a consent
3 form so long as the consent form is substantially accurate
4 based upon generally accepted medical principles and, in the
5 case of the Department's liability, if the Department
6 references the website links.

7 Informed consent shall be sought by the facility from the
8 resident unless the resident's attending physician determines
9 that the resident lacks decisional capacity, as determined
10 under the Health Care Surrogate Act. If the resident lacks
11 decisional capacity, the facility shall seek informed consent
12 from the resident's surrogate decision maker.

13 For the purpose of this Section, "surrogate decision maker"
14 means the following persons to be given priority in the order
15 presented: (1) the guardian of the resident appointed under the
16 Uniform Adult Guardianship and Protection Proceedings
17 Jurisdiction Act; (2) the resident's attorney-in-fact who has
18 been designated under the Mental Health Treatment Preference
19 Declaration Act; (3) the resident's health care agent who has
20 the authority to give consent under the Illinois Power of
21 Attorney Act; (4) the resident's surrogate decision maker under
22 the Health Care Surrogate Act; and (5) the resident's resident
23 representative, as that term is defined under Section 483.5 of
24 Title 42 of the Code of Federal Regulations.

25 In addition to any other penalty prescribed by law, a
26 facility that is found to have violated this subsection, or the

1 federal certification requirement that informed consent be
2 obtained before administering a psychotropic medication, shall
3 thereafter be required to obtain the signatures of 2 licensed
4 health care professionals on every form purporting to give
5 informed consent for the administration of a psychotropic
6 medication, certifying the personal knowledge of each health
7 care professional that the consent was obtained in compliance
8 with the requirements of this subsection.

9 (b-5) A facility must obtain voluntary informed consent, in
10 writing, from a resident or the resident's surrogate decision
11 maker before administering or dispensing a psychotropic
12 medication to that resident.

13 (b-10) No facility shall deny admission or continued
14 residency to a person on the basis of the person's or
15 resident's, or the person's or resident's surrogate decision
16 maker's, refusal of the administration of psychotropic
17 medication, unless the facility can demonstrate that the
18 resident's refusal would place the health and safety of the
19 resident, the facility staff, other residents, or visitors at
20 risk.

21 A facility that alleges that the resident's refusal to
22 consent to the administration of psychotropic medication will
23 place the health and safety of the resident, the facility
24 staff, other residents, or visitors at risk must: (1) document
25 the alleged risk in detail; (2) present this documentation to
26 the resident or the resident's surrogate decision maker, to the

1 Department, and to the Office of the State Long Term Care
2 Ombudsman; and (3) inform the resident or his or her surrogate
3 decision maker of his or her right to appeal to the Department.
4 The documentation of the alleged risk shall include a
5 description of all nonpharmacological or alternative care
6 options attempted and why they were unsuccessful.

7 (b-15) Within 100 days after the effective date of this
8 amendatory Act of the 101st General Assembly, all facilities
9 shall implement written policies and procedures for compliance
10 with this Section. The Department shall thereafter have the
11 discretion to review these written policies and procedures and
12 either:

13 (1) give written notice to the facility that the
14 policies or procedures are sufficient to demonstrate the
15 facility's intent to comply this Section; or

16 (2) provide written notice to the facility that the
17 proposed policies and procedures are deficient, identify
18 the areas that are deficient, and provide 30 days for the
19 facility to submit amended policies and procedures that
20 demonstrate its intent to comply with this Section.

21 A facility's failure to submit the documentation required
22 under this subsection is sufficient to demonstrate its intent
23 to not comply with this Section and shall be grounds for review
24 by the Department.

25 All facilities must provide training and education, as
26 required under this Section, to all personnel involved in

1 providing care to residents and train and educate such
2 personnel on the methods and procedures to effectively
3 implement the facility's policies. Training and education
4 provided under this Section must be documented in each
5 personnel file.

6 (b-20) Any violation of this Section may be reported to the
7 Department for review. At its discretion, the Department may
8 proceed with disciplinary action against the licensee of the
9 facility and facility administrative personnel. In any
10 administrative disciplinary action under this subsection, the
11 Department shall have the discretion to determine the gravity
12 of the violation and, taking into account mitigating and
13 aggravating circumstances and facts, may adjust the
14 disciplinary action accordingly.

15 (b-25) A violation of informed consent that, for an
16 individual resident, lasts for 7 days or more under this
17 Section is, at a minimum, a Type "A" violation. A second
18 violation of informed consent within a year from a previous
19 violation in the same facility regardless of the duration of
20 the second violation is, at a minimum, a Type "A" violation.

21 (b-30) Any violation of this Section by a facility may be
22 prosecuted by an action brought by the Attorney General of
23 Illinois for injunctive relief, civil penalties, or both
24 injunctive relief and civil penalties in the name of the People
25 of Illinois. The Attorney General may initiate such action upon
26 his or her own complaint or the complaint of any other

1 interested party.

2 (b-35) Any resident who has been administered a
3 psychotropic medication in violation of this Section may bring
4 an action for injunctive relief, civil damages, and costs and
5 attorney's fees against any person and facility responsible for
6 the violation.

7 (b-40) An action under this Section must be filed within 2
8 years of either the date of discovery of the violation that
9 gave rise to the claim or the last date of an instance of a
10 noncompliant administration of psychotropic medication to the
11 resident, whichever is later.

12 (b-45) A facility subject to action under this Section
13 shall be liable for damages of up to \$500 for each day that the
14 facility or person violates the requirements of this Section.

15 (b-55) The rights provided for in this Section are
16 cumulative to existing resident rights. No part of this Section
17 shall be interpreted as abridging, abrogating, or otherwise
18 diminishing existing resident rights or causes of action at law
19 or equity.

20 (c) The requirements of this Section are intended to
21 control in a conflict with the requirements of Sections 2-102
22 and 2-107.2 of the Mental Health and Developmental Disabilities
23 Code with respect to the administration of psychotropic
24 medication.

25 (Source: P.A. 95-331, eff. 8-21-07; 96-1372, eff. 7-29-10.)

1 (210 ILCS 45/2-204) (from Ch. 111 1/2, par. 4152-204)

2 Sec. 2-204. The Director shall appoint a Long-Term Care
3 Facility Advisory Board to consult with the Department and the
4 residents' advisory councils created under Section 2-203.

5 (a) The Board shall be comprised of the following persons:

6 (1) The Director who shall serve as chairman, ex
7 officio and nonvoting; and

8 (2) One representative each of the Department of
9 Healthcare and Family Services, the Department of Human
10 Services, the Department on Aging, and the Office of the
11 State Fire Marshal, all nonvoting members;

12 (3) One member who shall be a physician licensed to
13 practice medicine in all its branches;

14 (4) One member who shall be a registered nurse selected
15 from the recommendations of professional nursing
16 associations;

17 (5) Four members who shall be selected from the
18 recommendations by organizations whose membership consists
19 of facilities;

20 (6) Two members who shall represent the general public
21 who are not members of a residents' advisory council
22 established under Section 2-203 and who have no
23 responsibility for management or formation of policy or
24 financial interest in a facility;

25 (7) One member who is a member of a residents' advisory
26 council established under Section 2-203 and is capable of

1 actively participating on the Board, or, if the Department
2 is unable to identify a member meeting these requirements,
3 one member who shall be a certified sub-state ombudsman
4 experienced in working with resident councils; and

5 (8) One member who shall be selected from the
6 recommendations of consumer organizations which engage
7 solely in advocacy or legal representation on behalf of
8 residents and their immediate families; ~~and~~

9 (9) One member who is from a nongovernmental statewide
10 organization that advocates for seniors and Illinois
11 residents over the age of 50;

12 (10) One member who is from a statewide association
13 dedicated to Alzheimer's disease care, support, and
14 research;

15 (11) One member who is a member of a trade or labor
16 union representing persons who provide care services in
17 facilities; and

18 (12) One member who advocates for the welfare, rights,
19 and care of long-term care residents and represents family
20 caregivers of residents in facilities.

21 (b) The terms of those members of the Board appointed prior
22 to the effective date of this amendatory Act of 1988 shall
23 expire on December 31, 1988. Members of the Board created by
24 this amendatory Act of 1988 shall be appointed to serve for
25 terms as follows: 3 for 2 years, 3 for 3 years and 3 for 4
26 years. The member of the Board added by this amendatory Act of

1 1989 shall be appointed to serve for a term of 4 years. Each
2 successor member shall be appointed for a term of 4 years. Any
3 member appointed to fill a vacancy occurring prior to the
4 expiration of the term for which his predecessor was appointed
5 shall be appointed for the remainder of such term. The Board
6 shall meet as frequently as the chairman deems necessary, but
7 not less than 4 times each year. Upon request by 4 or more
8 members the chairman shall call a meeting of the Board. The
9 affirmative vote of 7 ~~6~~ members of the Board shall be necessary
10 for Board action. A member of the Board can designate a
11 replacement to serve at the Board meeting and vote in place of
12 the member by submitting a letter of designation to the
13 chairman prior to or at the Board meeting. The Board members
14 shall be reimbursed for their actual expenses incurred in the
15 performance of their duties.

16 (c) The Advisory Board shall advise the Department of
17 Public Health on all aspects of its responsibilities under this
18 Act and the Specialized Mental Health Rehabilitation Act of
19 2013, including the format and content of any rules promulgated
20 ~~by the Department of Public Health. Any such rules, except~~
21 ~~emergency rules promulgated pursuant to Section 5-45 of the~~
22 ~~Illinois Administrative Procedure Act, promulgated without~~
23 ~~obtaining the advice of the Advisory Board are null and void.~~
24 In the event that the Department fails to follow the advice of
25 the Board, the Department shall, prior to the promulgation of
26 such rules, transmit a written explanation of the reason

1 thereof to the Board. During its review of rules, the Board
2 shall analyze the economic and regulatory impact of those
3 rules. ~~If the Advisory Board, having been asked for its advice,~~
4 ~~fails to advise the Department within 90 days, the rules shall~~
5 ~~be considered acted upon.~~

6 (Source: P.A. 97-38, eff. 6-28-11; 98-104, eff. 7-22-13;
7 98-463, eff. 8-16-13.)

8 (210 ILCS 45/3-202.05)

9 Sec. 3-202.05. Staffing ratios effective July 1, 2010 and
10 thereafter.

11 (a) For the purpose of computing staff to resident ratios,
12 direct care staff shall include:

- 13 (1) registered nurses;
- 14 (2) licensed practical nurses;
- 15 (3) certified nurse assistants;
- 16 (4) psychiatric services rehabilitation aides;
- 17 (5) rehabilitation and therapy aides;
- 18 (6) psychiatric services rehabilitation coordinators;
- 19 (7) assistant directors of nursing;
- 20 (8) 50% of the Director of Nurses' time; and
- 21 (9) 30% of the Social Services Directors' time.

22 The Department shall, by rule, allow certain facilities
23 subject to 77 Ill. Admin. Code 300.4000 and following (Subpart
24 S) to utilize specialized clinical staff, as defined in rules,
25 to count towards the staffing ratios.

1 Within 120 days of the effective date of this amendatory
2 Act of the 97th General Assembly, the Department shall
3 promulgate rules specific to the staffing requirements for
4 facilities federally defined as Institutions for Mental
5 Disease. These rules shall recognize the unique nature of
6 individuals with chronic mental health conditions, shall
7 include minimum requirements for specialized clinical staff,
8 including clinical social workers, psychiatrists,
9 psychologists, and direct care staff set forth in paragraphs
10 (4) through (6) and any other specialized staff which may be
11 utilized and deemed necessary to count toward staffing ratios.

12 Within 120 days of the effective date of this amendatory
13 Act of the 97th General Assembly, the Department shall
14 promulgate rules specific to the staffing requirements for
15 facilities licensed under the Specialized Mental Health
16 Rehabilitation Act of 2013. These rules shall recognize the
17 unique nature of individuals with chronic mental health
18 conditions, shall include minimum requirements for specialized
19 clinical staff, including clinical social workers,
20 psychiatrists, psychologists, and direct care staff set forth
21 in paragraphs (4) through (6) and any other specialized staff
22 which may be utilized and deemed necessary to count toward
23 staffing ratios.

24 (b) (Blank). ~~Beginning January 1, 2011, and thereafter,~~
25 ~~light intermediate care shall be staffed at the same staffing~~
26 ~~ratio as intermediate care.~~

1 (b-5) For purposes of the minimum staffing ratios in this
2 Section, all residents shall be classified as requiring either
3 skilled care or intermediate care.

4 As used in this subsection:

5 "Intermediate care" means basic nursing care and other
6 restorative services under periodic medical direction.

7 "Skilled care" means skilled nursing care, continuous
8 skilled nursing observations, restorative nursing, and other
9 services under professional direction with frequent medical
10 supervision.

11 (c) Facilities shall notify the Department within 60 days
12 after the effective date of this amendatory Act of the 96th
13 General Assembly, in a form and manner prescribed by the
14 Department, of the staffing ratios in effect on the effective
15 date of this amendatory Act of the 96th General Assembly for
16 both intermediate and skilled care and the number of residents
17 receiving each level of care.

18 (d) (1) ~~(Blank). Effective July 1, 2010, for each resident~~
19 ~~needing skilled care, a minimum staffing ratio of 2.5 hours of~~
20 ~~nursing and personal care each day must be provided; for each~~
21 ~~resident needing intermediate care, 1.7 hours of nursing and~~
22 ~~personal care each day must be provided.~~

23 (2) ~~(Blank). Effective January 1, 2011, the minimum~~
24 ~~staffing ratios shall be increased to 2.7 hours of nursing and~~
25 ~~personal care each day for a resident needing skilled care and~~
26 ~~1.9 hours of nursing and personal care each day for a resident~~

1 ~~needing intermediate care.~~

2 (3) (Blank). ~~Effective January 1, 2012, the minimum~~
3 ~~staffing ratios shall be increased to 3.0 hours of nursing and~~
4 ~~personal care each day for a resident needing skilled care and~~
5 ~~2.1 hours of nursing and personal care each day for a resident~~
6 ~~needing intermediate care.~~

7 (4) (Blank). ~~Effective January 1, 2013, the minimum~~
8 ~~staffing ratios shall be increased to 3.4 hours of nursing and~~
9 ~~personal care each day for a resident needing skilled care and~~
10 ~~2.3 hours of nursing and personal care each day for a resident~~
11 ~~needing intermediate care.~~

12 (5) Effective January 1, 2014, the minimum staffing ratios
13 shall be increased to 3.8 hours of nursing and personal care
14 each day for a resident needing skilled care and 2.5 hours of
15 nursing and personal care each day for a resident needing
16 intermediate care.

17 (e) Ninety days after the effective date of this amendatory
18 Act of the 97th General Assembly, a minimum of 25% of nursing
19 and personal care time shall be provided by licensed nurses,
20 with at least 10% of nursing and personal care time provided by
21 registered nurses. These minimum requirements shall remain in
22 effect until an acuity based registered nurse requirement is
23 promulgated by rule concurrent with the adoption of the
24 Resource Utilization Group classification-based payment
25 methodology, as provided in Section 5-5.2 of the Illinois
26 Public Aid Code. Registered nurses and licensed practical

1 nurses employed by a facility in excess of these requirements
2 may be used to satisfy the remaining 75% of the nursing and
3 personal care time requirements. Notwithstanding this
4 subsection, no staffing requirement in statute in effect on the
5 effective date of this amendatory Act of the 97th General
6 Assembly shall be reduced on account of this subsection.

7 (f) The Department shall adopt rules on or before January
8 1, 2020 establishing a system for determining compliance with
9 minimum direct care staffing standards and the requirements of
10 77 Ill. Adm. Code 300.1230. Compliance shall be determined at
11 least quarterly using the Centers for Medicare and Medicaid
12 Services' payroll-based journal and the facility's census and
13 payroll data, which shall be obtained quarterly by the
14 Department. The Department shall, at minimum, use the quarterly
15 payroll-based journal and census and payroll data to calculate
16 the number of hours provided per resident per day and compare
17 this ratio to the minimums required by this Section as impacted
18 by a waiver of the percentage requirement under Section
19 3-303.1. The Department shall publish the data quarterly on its
20 website.

21 In enforcing the minimum staffing ratios, the Department
22 shall take into account that transitions between intermediate
23 care and skilled care occur regularly.

24 (g) The Department shall adopt rules by January 1, 2020
25 establishing monetary penalties for facilities not in
26 compliance with minimum staffing standards under this Section.

1 No monetary penalty may be issued during the implementation
2 period, which shall be July 1, 2020 through September 30, 2020.
3 If a facility is found to be noncompliant during the
4 implementation period, the Department shall provide a written
5 notice identifying the staffing deficiency and require the
6 facility to provide a sufficiently detailed correction plan to
7 meet the statutory minimum staffing levels. Monetary penalties
8 shall be imposed beginning no later than October 1, 2020 and
9 quarterly thereafter and shall be based on the latest quarter
10 for which the Department has data.

11 Monetary penalties shall be established based on a formula
12 that calculates the cost of wages and benefits for the missing
13 staff hours and shall be no less than twice the calculated cost
14 of wages and benefits for the missing staff hours during the
15 quarter. The penalty shall be imposed regardless of whether the
16 facility has committed other violations of this Act during the
17 same quarter. The penalty may not be waived; however, if the
18 violation is not more than a 5% deviation of the required
19 minimum staffing requirements, the Department shall have the
20 discretion to determine the gravity of the violation and,
21 taking into account mitigating and aggravating circumstances
22 and facts, may reduce the penalty amount. Nothing in this
23 Section precludes a facility from being given a high risk
24 designation for failing to comply with this Section that, when
25 cited with other violations of this Act, increases the
26 otherwise applicable penalty.

1 (h) A violation of the minimum staffing requirements under
2 this Section is, at minimum, a Type "B" violation. In the event
3 that the violation is not more than a 5% percent deviation of
4 the required minimum staffing requirements, the Department
5 shall have the discretion to determine the gravity of the
6 violation and, taking into account mitigating and aggravating
7 circumstances and facts, may assess a different type or class
8 of violation.

9 (Source: P.A. 97-689, eff. 6-14-12; 98-104, eff. 7-22-13.)

10 (210 ILCS 45/3-209) (from Ch. 111 1/2, par. 4153-209)

11 Sec. 3-209. Required posting of information.

12 (a) Every facility shall conspicuously post for display in
13 an area of its offices accessible to residents, employees, and
14 visitors the following:

15 (1) Its current license;

16 (2) A description, provided by the Department, of
17 complaint procedures established under this Act and the
18 name, address, and telephone number of a person authorized
19 by the Department to receive complaints;

20 (3) A copy of any order pertaining to the facility
21 issued by the Department or a court; and

22 (4) A list of the material available for public
23 inspection under Section 3-210.

24 (b) A facility that has received a notice of violation for
25 a violation of the minimum staffing requirements under Section

1 3-202.05 shall display, for 6 months following the date that
2 the notice of violation was issued, a notice stating in Calibri
3 (body) font and 26-point type in black letters on an 8.5 by 11
4 inch white paper the following:

5 "Notice Dated:

6 This facility did not have enough staff to meet the minimum
7 staffing ratios for facility residents during the period from
8 to Posted at the direction of the Illinois
9 Department of Public Health."

10 The notice must be posted, at a minimum, at all publicly used
11 exterior entryways into the facility, inside the main entrance
12 lobby, and next to any registration desk for easily accessible
13 viewing. The notice must also be posted on the main page of the
14 facility's website. The Department shall have the discretion to
15 determine the gravity of any violation and, taking into account
16 mitigating and aggravating circumstances and facts, may reduce
17 the requirement of, and amount of time for, posting the notice.

18 (Source: P.A. 81-1349.)

19 (210 ILCS 45/3-305.8 new)

20 Sec. 3-305.8. Database of nursing home quarterly reports
21 and citations.

22 (a) The Department shall publish the quarterly reports of
23 facilities in violation of this Act in an easily searchable,

1 comprehensive, and downloadable electronic database on the
2 Department's website in language that is easily understood. The
3 database shall include quarterly reports of all facilities that
4 have violated this Act starting from 2005 and shall continue
5 indefinitely. The database shall be in an electronic format
6 with active hyperlinks to individual facility citations. The
7 database shall be updated quarterly and shall be electronically
8 searchable using a facility's name and address and the facility
9 owner's name and address.

10 (b) In lieu of the database under subsection (a), the
11 Department may publish the list mandated under Section 3-304 in
12 an easily searchable, comprehensive, and downloadable
13 electronic database on the Department's website in plain
14 language. The database shall include the information from all
15 such lists since 2005 and shall continue indefinitely. The
16 database shall be in an electronic format with active
17 hyperlinks to individual facility citations. The database
18 shall be updated quarterly and shall be electronically
19 searchable using a facility's name and address and the facility
20 owner's name and address.

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.".