



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5761

by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.875 new

Creates the Nursing Home Accountability Act. Defines terms. Requires certain nursing facilities to report specified information concerning wages of their employees as part of an annual cost report. Requires the Department of Public Health to compare the information to the living wage certification standards. Contains provisions concerning the reporting, determinations, posting, and effect of such certification. Contains penalty, inspection of records, and rulemaking provisions. Requires the Department of Healthcare and Family Services, based on required reports by facilities, to determine if an employee of a facility is a recipient of public assistance for the purpose of imposing an employer responsibility penalty. Contains provisions concerning medical assistance information, prohibited practices, employee remedies, administrative appeals, and confidentiality. Establishes the Employer Responsibility for Public Assistance Fund as a special fund in the State treasury (and makes a conforming change in the State Finance Act). Provides that the Department of Healthcare and Family Services may use money in the Employer Responsibility for Public Assistance Fund for specified purposes. Provides for a direct service minimum that sets a 50% direct service worker expenditure threshold that covered facilities shall meet using their medical assistance program funds. Contains provisions concerning reporting requirements, the calculation and determination of the direct service minimum, and repayment of medical assistance program payments in the event a facility does not meet the direct service minimum. Provides that the provisions of the Act are severable. Effective 90 days after becoming law.

LRB099 19805 MJP 44204 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 ARTICLE 1

5 GENERAL PROVISIONS

6 Section 1-1. Short title. This Act may be cited as the
7 Nursing Home Accountability Act.

8 Section 1-5. Legislative findings. The General Assembly
9 finds the following:

10 (1) Illinois has a large and growing population of
11 seniors and individuals with disabilities who may at some
12 point require nursing facility care.

13 (2) Nursing facilities are predominately
14 taxpayer-funded through reimbursements from the medical
15 assistance program and Medicare program.

16 (3) The State of Illinois should have assurances that
17 taxpayer funds are being used by nursing facilities engaged
18 in good care practices and workforce practices rather than
19 for the profit of nursing facilities.

20 (4) Nursing facilities that receive public money have a
21 responsibility to report to their residents, the families
22 of their residents, and the taxpayers of this State about

1 the minimum hourly wage rates paid to their employees and
2 the number of their employees receiving public assistance,
3 so that the public may make informed decisions about the
4 quality and administration of nursing facilities.

5 (5) According to 2014 Long-term Care Facilities' Cost
6 Reports data, the average hourly wage for nurse assistants
7 in Illinois is \$11.82, the average wage for cooks is
8 \$10.76, and the average wage for housekeepers is \$10.38. In
9 many facilities, the average wages for these and other job
10 titles is below \$10 per hour. Many long-term care
11 facilities do not pay nurse assistants, cooks, or
12 housekeepers a living wage of \$15 per hour.

13 (6) Nursing facilities that pay a living wage of \$15
14 per hour should be recognized with a certification from the
15 State that can be prominently displayed on-site and on
16 their publicly accessible Internet website.

17 (7) The high rate of staff turnover is a chronic
18 problem in nursing facilities. Turnover of certified nurse
19 aides is particularly high. Studies have addressed the
20 importance of continuity of care and the need to stabilize
21 the work force in nursing facilities to improve quality
22 care. Higher wages may actually help nursing facilities
23 reduce turnover and fill vacancies and can lead to greater
24 worker productivity by improving morale and overall job
25 satisfaction.

26 (8) Nursing facility employees deserve affordable,

1 comprehensive, employer-provided health insurance
2 coverage. Unfortunately, federal law imposes no penalty on
3 employers who fail to offer affordable, comprehensive
4 health coverage to employees and whose employees receive
5 coverage through the taxpayer-funded medical assistance
6 program.

7 (9) An employer who fails to provide affordable,
8 comprehensive coverage to low-wage workers covered by
9 medical assistance shifts the cost of health care coverage
10 from the employer to the taxpayer. Controlling health care
11 costs can be more readily achieved if a greater share of
12 working people and their families have employer-provided
13 health benefits so that cost shifting is minimized.

14 (10) Nursing facility payment rates under Illinois
15 Medicaid are set based on the expectation that most of the
16 payments will be used to provide services to nursing
17 facility residents to maintain and enhance their
18 well-being. Specifically, the nursing component of a
19 facility's rate is set based on the expected cost of
20 registered nurses, nurse aides, and several other staff
21 types providing the hours of care determined necessary for
22 the well-being of facility residents. The support
23 component of a facility's rate is intended to pay for
24 dietary, housekeeping, and other support services for
25 residents.

26 (11) In State-funded home care programs, the State

1 requires participating home care agencies to show that they
2 have spent 77% of program revenue on direct service worker
3 wages and benefits. This has been an effective policy tool
4 ensuring State funds are used as intended in home care,
5 which, alongside nursing facility care, is the other major
6 long-term care service in Illinois Medicaid.

7 (12) While the Department of Healthcare and Family
8 Services collects extensive financial reporting data from
9 each nursing facility participating in Illinois Medicaid
10 each year, the Department does not take similar measures to
11 ensure nursing facilities use State funds on the direct
12 service workforce.

13 (13) The State should act to ensure that taxpayer
14 dollars spent on care in nursing facilities are actually
15 used for the direct services to residents that they are
16 intended to provide.

17 Section 1-10. Purposes. The purposes of this Act are to:

18 (1) create a living wage certification program for each
19 nursing facility that provides a base hourly wage of \$15
20 per hour for each directly employed or subcontracted
21 employee of the nursing facility;

22 (2) encourage the provision of a living wage to each
23 nursing facility employee by providing information to each
24 nursing facility resident and the public on the wage rates
25 being paid to the employees of the nursing facility;

1 (3) ensure that each nursing facility pays a nursing
2 facility employer responsibility penalty for health
3 coverage received by each employee of the nursing facility
4 through the medical assistance program and other public
5 assistance programs fully or partially funded by the State,
6 with that penalty based on the costs incurred by the State
7 for providing these benefits to the employee of the nursing
8 facility;

9 (4) ensure that each nursing facility employee who
10 receives public assistance is protected from possible
11 retaliation by the nursing facility for seeking or
12 obtaining that assistance; and

13 (5) establish a direct service worker minimum
14 percentage for nursing facilities participating in the
15 medical assistance program to encourage the facilities to
16 spend medical assistance program funds providing service
17 to residents, and require repayment of a portion of medical
18 assistance program funds if they do not.

19 Section 1-15. Definitions. As used in this Act, unless the
20 context clearly requires otherwise:

21 "Base hourly wage" means the hourly wage of an employee
22 that is exclusive of:

23 (1) deductions for payroll taxes, benefits, or other
24 employment charges; and

25 (2) adjustments for overtime compensation.

1 "Covered employee" means an employee who:

2 (1) is a recipient of public assistance;

3 (2) works an average of 20 hours or more per week for
4 the nursing facility; and

5 (3) works more than 45 days during the calendar year
6 for the nursing facility.

7 "Covered employee" includes an individual who is a leased
8 employee or otherwise under the direction and control of the
9 nursing facility.

10 "Direct service worker" means registered nurses, licensed
11 practical nurses, certified nurse assistants, therapists,
12 rehabilitation aides, therapy aides, psychiatric service
13 aides, activity aides, social service workers, dietary aides,
14 housekeepers, and laundry employees. This is the workforce
15 that, primarily through interpersonal contact with residents,
16 helps maintain resident well-being and provides the type of
17 services the medical assistance program pays for through the
18 nursing component rate for nursing facilities, as well as
19 certain services of the type the medical assistance program
20 pays for through the support component rate for nursing
21 facilities, described in Sections 5-5.4 and 5-5.4d of the
22 Illinois Public Aid Code.

23 "Direct service worker percentage" means a nursing
24 facility's direct service worker wages, benefits, and payroll
25 taxes per patient day divided by its Medicaid revenue per
26 patient day.

1 "Employee" means an individual who is employed directly or
2 subcontracted by the nursing facility on a full-time,
3 part-time, temporary, or seasonal basis.

4 "Fund" means the Employer Responsibility for Public
5 Assistance Fund established under Section 10-40 of this Act.

6 "Living wage certification standard" means the base hourly
7 wage of \$15, which shall be adjusted annually by the Department
8 of Healthcare and Family Services in consultation with the
9 Illinois Department of Labor to reflect any increase in the
10 appropriate regional Consumer Price Index.

11 "Medical assistance program" means the program established
12 in Article V of the Illinois Public Aid Code.

13 "Nursing facility" means both:

14 (1) a long-term care facility as defined in the Nursing
15 Home Care Act; and

16 (2) each member of a controlled group of corporations,
17 as defined in Section 1563(a) of the Internal Revenue Code.

18 "Public assistance" includes, but is not limited to,
19 assistance under the medical assistance program, cash
20 assistance, or another benefit under a program that is wholly
21 or partially funded by the State. "Public assistance" does not
22 include the assistance provided under the federal Children's
23 Health Insurance Program, Supplemental Nutrition Assistance
24 Program, or Low-Income Home Energy Assistance Program.

1 that is verifiable and able to be audited.

2 Section 5-10. Determination and certification.

3 (a) The Department of Public Health shall determine whether
4 a nursing facility qualifies for a living wage certification by
5 comparing the information provided under Section 5-5 of this
6 Act to the living wage certification standard for the
7 corresponding period.

8 (b) The Department of Public Health shall issue a
9 certification document to each nursing facility whose
10 employees all meet the living wage certification standard. The
11 document shall detail the nursing facility's certification as
12 an employer that provides wages to its employees that meet the
13 living wage certification standard.

14 (c) The analysis of information provided and the issuance
15 of a certification document under this Section shall occur
16 annually.

17 Section 5-15. Posting of information.

18 (a) The Department of Public Health shall post the
19 following on its publicly accessible Internet website,
20 including the page dedicated to long-term care facility
21 information, or other appropriate websites of the State:

22 (1) The information provided under Section 5-5 of this
23 Act.

24 (2) The list of nursing facilities that have received a

1 certification document under Section 5-10 of this Act for
2 the current year.

3 (b) Each nursing facility shall post the following in a
4 publicly accessible area of the nursing facility:

5 (1) The information provided under Section 5-5 of this
6 Act.

7 (2) The certification document under Section 5-10 of
8 this Act that the nursing facility received for the current
9 year, if it received one.

10 Section 5-20. Effect of certification. Nothing in this
11 Article shall require a nursing facility to provide wages to
12 some or all of its employees in an amount equal to or exceeding
13 the living wage certification standard.

14 Section 5-25. Inspection of records and data. The
15 Department of Public Health shall inspect payroll records and
16 other data under Section 5-5 of this Act during the annual
17 inspection of the nursing facility to verify that the
18 information provided under Section 5-5 of this Act is complete
19 and accurate.

20 Section 5-30. Administration by Department of Public
21 Health. The Department of Public Health shall adopt rules
22 necessary to implement this Article.

1 Section 5-35. Civil penalties.

2 (a) The Department of Public Health shall impose a civil
3 penalty upon a nursing facility that fails to:

4 (1) provide complete, accurate, timely, or properly
5 formatted information that is required under Section 5-5 of
6 this Act; or

7 (2) submit the information under Section 5-5 of this
8 Act for inspection as required by Section 5-25 of this Act.

9 (b) The Department of Public Health shall determine the
10 appropriate amount of the penalty imposed under subsection (a)
11 of this Section.

12 ARTICLE 10

13 NURSING FACILITY

14 EMPLOYER RESPONSIBILITY PENALTY

15 Section 10-5. Reporting requirements. Each nursing
16 facility shall annually provide information required by the
17 Department of Healthcare and Family Services to administer and
18 enforce the provisions of this Article, including, but not
19 limited to:

20 (a) the Social Security number of each employee of the
21 nursing facility;

22 (b) the number of hours that the employee worked at the
23 nursing facility during the fiscal year; and

24 (c) the number of days that the employee was employed at

1 the nursing facility during the fiscal year.

2 Section 10-10. Determinations. The Department of
3 Healthcare and Family Services shall match Social Security
4 numbers of recipients of public assistance with the information
5 provided under Section 10-5 of this Act, to determine if the
6 nursing facility is subject to an employer responsibility
7 penalty under this Article.

8 Section 10-15. Employer responsibility penalty.

9 (a) A nursing facility shall be subject to an employer
10 responsibility penalty if it employs an employee who is a
11 recipient of public assistance.

12 (b) The amount of the penalty shall be determined as
13 follows:

14 (1) The amount of the employer responsibility penalty
15 shall be based on the actual cost of providing public
16 assistance to each covered employee for the most recent
17 fiscal year.

18 (2) The employer responsibility penalty for each
19 covered employee shall be determined by multiplying the
20 actual cost of providing public assistance to the covered
21 employee by a fraction, the numerator of which is the
22 amount of annualized hours worked by the covered employee
23 per year and the denominator of which is 1,820 hours per
24 year.

1 (3) An employer responsibility penalty may not exceed
2 100% of the actual cost of providing public assistance to
3 the covered employee.

4 (c) The Department of Healthcare and Family Services shall
5 annually send a notice of the following to each nursing
6 facility that is subject to an employer responsibility penalty
7 under this Article:

8 (1) The amount of the employer responsibility penalty
9 imposed.

10 (2) The date on which payment is due.

11 (d) A nursing facility shall pay any employer
12 responsibility penalty imposed under this Article to the
13 Department of Healthcare and Family Services for deposit into
14 the fund established under Section 10-40 of this Act.

15 (e) Interest shall be determined as follows:

16 (1) Interest shall be assessed at 10% per annum on an
17 employer responsibility penalty that is not paid on or
18 before the due date of the payment.

19 (2) Interest under this subsection (e) shall begin to
20 accrue the day after the due date of the employer
21 responsibility penalty.

22 (3) Interest under this subsection (e) shall be
23 deposited into the fund established under Section 10-40 of
24 this Act.

25 (f) If an employer responsibility penalty is not paid
26 within 60 days after the due date of the payment, an interest

1 penalty equal to the interest charged under subsection (e)
2 shall be assessed and due for each month, or part thereof, that
3 the employer responsibility penalty payment is not received.

4 The additional interest penalty under this subsection (f)
5 shall be deposited in the fund under Section 10-40 of this Act.

6 (g) If a nursing facility is a medical assistance provider
7 or is related through common ownership or control, as defined
8 in 42 CFR 413.17(b) (relating to cost to related
9 organizations), to a medical assistance provider and the
10 nursing facility fails to pay all or part of an employer
11 responsibility penalty within 60 days after the due date of the
12 payment, the Department of Healthcare and Family Services may
13 deduct the unpaid penalty and any interest owed on the penalty
14 from any medical assistance program payment due to the nursing
15 facility until the full amount due under this Section is
16 recovered.

17 A deduction under this subsection (g) may be made:

18 (1) only after written notice to the nursing facility
19 under paragraph (1); and

20 (2) in amounts over a period of time, taking into
21 account the financial condition of the nursing facility.

22 (h) Within 60 days after the end of each calendar quarter,
23 the Department of Healthcare and Family Services shall notify
24 the Department of Public Health of each nursing facility with
25 penalty or interest amounts that have remained unpaid for 90
26 days or more.

1 The Department of Public Health may not renew the license
2 of a nursing facility unless:

3 (1) the Department of Healthcare and Family Services
4 notifies the Department of Public Health that the nursing
5 facility has paid any outstanding amount due under this
6 Section in its entirety; or

7 (2) the Department of Healthcare and Family Services
8 agrees to permit the nursing facility to repay the
9 outstanding amount due under this Section in installments
10 and that, to date, the nursing facility has paid the
11 installments in the amount and by the date required by the
12 Department of Healthcare and Family Services.

13 (i) After a nursing facility changes ownership or control,
14 the successor shall be liable for the outstanding amount due
15 under this Section from the nursing facility before the change
16 of ownership or control.

17 Section 10-20. Information regarding medical assistance.

18 (a) Each nursing facility shall provide information to each
19 newly hired and existing employee regarding the availability of
20 medical assistance coverage for a low-income employee.

21 (b) The Department of Healthcare and Family Services shall
22 develop a simple, uniform written notice containing the
23 information required under this Section.

24 Section 10-25. Prohibited practices. A nursing facility

1 may not:

2 (1) designate an employee as an independent
3 contractor, reduce an employee's hours of work, or
4 terminate an employee if the purpose of the action is to
5 avoid the obligations under this Article;

6 (2) request or otherwise seek to obtain information on
7 the income, family income, or other eligibility
8 requirements for public assistance regarding an employee,
9 other than the information about the employee's employment
10 status otherwise known to the nursing facility and
11 consistent with federal and State law;

12 (3) require as a condition of employment that an
13 employee not enroll or withdraw from enrollment in public
14 assistance;

15 (4) encourage or discourage an employee to enroll in
16 public assistance for which the employee is eligible, but
17 the nursing facility may provide information on public
18 assistance as otherwise provided by federal or State law;
19 or

20 (5) discharge or in any manner discriminate or
21 retaliate against an employee who enrolls in public
22 assistance.

23 Section 10-30. Employee remedies. An employee of a nursing
24 facility who is discharged, threatened with discharge,
25 demoted, suspended, or in any other manner discriminated or

1 retaliated against in the terms and conditions of employment by
2 the nursing facility because the employee has enrolled in
3 public assistance shall be entitled to reinstatement and
4 reimbursement for lost wages and work benefits caused by the
5 acts of the nursing facility.

6 Section 10-35. Administrative appeal. A nursing facility
7 that is aggrieved by a determination of the Department of
8 Healthcare and Family Services under this Article may file a
9 request for review of whether the Department of Healthcare and
10 Family Services correctly determined the number of covered
11 employees that are the subject of the penalty through the
12 Department's administrative procedures for appeals.

13 Section 10-40. Employer Responsibility for Public
14 Assistance Fund.

15 (a) There is created in the State treasury the Employer
16 Responsibility for Public Assistance Fund.

17 (b) The Employer Responsibility for Public Assistance Fund
18 shall receive money from the employer responsibility penalty,
19 interest, and other penalties under Section 10-15.

20 (c) The Department of Healthcare and Family Services may
21 use money in the Fund to pay:

22 (1) the State's share of public assistance costs for
23 covered employees; and

24 (2) the costs to implement and administer this Article.

1 Section 10-45. Confidentiality. Each document and record
2 that contains personal or identifying information and results
3 from the operation of Sections 10-5 and 10-10 of this Act shall
4 be subject to the confidentiality requirements and privacy
5 standards under the Health Insurance Portability and
6 Accountability Act of 1996.

7 Section 10-50. Administration by the Department of
8 Healthcare and Family Services. The Department of Healthcare
9 and Family Services shall adopt rules necessary to implement
10 this Article.

11 ARTICLE 15

12 DIRECT SERVICE MINIMUM

13 Section 15-5. Reporting requirements.

14 (a) Beginning 90 days after the effective date of this
15 Section, each nursing facility that is certified to participate
16 in the medical assistance program shall provide as part of its
17 financial reporting under Sections 5-5.7 and 5B-5 of the
18 Illinois Public Aid Code information necessary for the
19 Department of Healthcare and Family Services to administer and
20 enforce the provisions of this Article.

21 (b) Information provided shall be subject to the audit
22 provisions under Section 5-5.7 of the Illinois Public Aid Code

1 and comply with any uniform standards and charting of accounts
2 developed under Sections 5-5.7 and 5B-5 of the Illinois Public
3 Aid Code.

4 Section 15-10. Calculation and determination.

5 (a) The Department of Healthcare and Family Services shall
6 examine information on medical assistance program revenue and
7 the split between spending on direct service worker costs
8 versus other items (including, but not limited to,
9 administrative expenses, capital expenses, and owner profits),
10 provided under Section 15-5 of this Act, to determine if the
11 nursing facility's direct service worker percentage is at or
12 above 50% or not.

13 (b) A nursing facility's direct service worker spending per
14 patient day will be calculated by dividing the sum of direct
15 service worker wages, benefits, and payroll taxes by total
16 patient days.

17 (c) A nursing facility's Medicaid revenue per patient day
18 shall be calculated by dividing total Medicaid revenue by
19 Medicaid patient days.

20 Section 15-15. Repayment of medical assistance program
21 payments.

22 (a) If a nursing facility's direct service worker
23 percentage is determined to be below 50% under Section 15-10 of
24 this Act, the nursing facility shall repay a portion of its

1 medical assistance program payments based on how far its direct
2 service worker percentage is below this minimum percentage. The
3 amount of repayment shall be determined by multiplying total
4 medical assistance program payments times the difference of 50%
5 and the facility's direct service worker percentage.

6 (b) The Department of Healthcare and Family Services shall
7 send notice to a nursing facility subject to repayment stating:

8 (1) the amount that must be repaid; and

9 (2) the date on which payment is due.

10 (c) If a nursing facility fails to pay all or part of a
11 repayment within 60 days after the due date of the repayment,
12 the Department of Healthcare and Family Services may deduct the
13 unpaid amount from any medical assistance program payment due
14 to the nursing facility until the full amount due under this
15 Section is recovered.

16 A deduction this subsection may be made:

17 (1) only after written notice to the nursing facility;

18 and

19 (2) in amounts over a period of time, taking into
20 account the financial condition of the nursing facility.

21 (d) Within 60 days after the end of each calendar quarter,
22 the Department of Healthcare and Family Services shall notify
23 the Department of Public Health of each nursing facility with
24 repayment amounts that have remained unpaid for 90 days or
25 more.

26 The Department of Public Health may not renew the license

1 of a nursing facility unless:

2 (1) the Department of Healthcare and Family Services
3 notifies the Department of Public Health that the nursing
4 facility has paid any outstanding amount due under this
5 Section in its entirety; or

6 (2) the Department of Healthcare and Family Services
7 agrees to permit the nursing facility to repay the
8 outstanding amount due under this Section in installments
9 and that, to date, the nursing facility has paid the
10 installments in the amount and by the date required by the
11 Department of Healthcare and Family Services.

12 (e) After a nursing facility changes ownership or control,
13 the successor shall be liable for the outstanding amount due
14 under this Section from the nursing facility before the change
15 of ownership or control.

16 (f) Other Department of Healthcare and Family Services
17 repayment procedures shall be broadly consistent with Part 140
18 of Title 89 of the Illinois Administrative Code regarding
19 nursing facility payment and Department practices.

20 Section 15-20. Administration by the Department of
21 Healthcare and Family Services. The Department of Healthcare
22 and Family Services shall adopt rules necessary to implement
23 this Article.

24

ARTICLE 90

1 AMENDATORY PROVISIONS

2 Section 90. The State Finance Act is amended by adding
3 Section 5.875 as follows:

4 (30 ILCS 105/5.875 new)

5 Sec. 5.875. The Employer Responsibility for Public
6 Assistance Fund.

7 ARTICLE 99

8 SEVERABILITY; EFFECTIVE DATE

9 Section 99-97. Severability. The provisions of this Act
10 are severable. If any provision of this Act or its application
11 to any person or circumstance is held invalid, the invalidity
12 shall not affect other provisions or applications of this Act
13 that can be given effect without the invalid provision or
14 application.

15 Section 99-99. Effective date. This Act takes effect in 90
16 days after becoming law.