Sen. Jacqueline Y. Collins

Filed: 3/4/2019

AMENDMENT TO SENATE BILL 1510

AMENDMENT NO. _____. Amend Senate Bill 1510 by replacing everything after the enacting clause with the following:

"Section 5. The Nursing Home Care Act is amended by changing Sections 2-106.1, 2-204, 3-202.05, 3-209, and 3-305 and by adding Section 3-305.8 as follows:

(210 ILCS 45/2-106.1)

Sec. 2-106.1. Drug treatment.

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

States Department of Health and Human Services for the purposes of administering Titles XVIII and XIX of the Social Security Act.

(b) Psychotropic medication shall not be prescribed without the informed consent of the resident, the resident's guardian, or other authorized representative. "Psychotropic medication" means medication that is used for or listed as used for antipsychotic, antidepressant, antimanic, or antianxiety behavior modification or behavior management purposes in the latest editions of the AMA Drug Evaluations or the Physician's Desk Reference. No later than January 1, 2020, the ~~The~~ Department shall adopt, by rule, a protocol specifying how informed consent for psychotropic medication may be obtained or refused. The protocol shall require, at a minimum, a discussion between (i) the resident or the resident's authorized representative and (ii) the resident's physician, a registered pharmacist (who is not a dispensing pharmacist for the facility where the resident lives), or a licensed nurse about the possible risks and benefits of a recommended medication and the use of standardized consent forms designated by the Department. Each form developed by the Department (i) shall be written in plain language, (ii) shall be able to be downloaded from the Department's official website, (iii) shall include information specific to the psychotropic medication for which consent is being sought, and (iv) shall be used for every resident for whom psychotropic drugs are prescribed. In addition to creating

those forms, the Department shall approve the use of any other informed consent forms that meet criteria developed by the Department.

In addition to any other penalty prescribed by law, a facility that is found to have violated this subsection, or the federal certification requirement that informed consent be obtained before administering a psychotropic medication, shall thereafter be required to obtain the signatures of 2 licensed health care professionals on every form purporting to give informed consent for the administration of a psychotropic medication, certifying the personal knowledge of each health care professional that the consent was obtained in compliance with the requirements of this subsection.

(b-5) A prescribing clinician must obtain voluntary informed consent, in writing, from a resident or the resident's legal representative before authorizing the administration of a psychotropic medication to that resident. Voluntary informed consent shall, at minimum, consist of a written and signed affirmation from the resident or the resident's legal representative that he or she has been informed of all pertinent information concerning the administration of psychotropic medication in language that the signer can reasonably be expected to understand. The pertinent information shall include, but not be limited to:

(1) the reason for the drug's prescription and the intended effect of the drug on the resident's condition;

(2) the nature of the drug and the procedure for its administration, including dosage, administration schedule, method of delivery, and expected duration for the drug to be administered;

(3) the probable degree of improvement expected from the recommended administration of the drug;

(4) the risks and likely side effects associated with administration of the drug;

(5) the right of the resident or the resident's legal representative to refuse the administration of the psychotropic medication and the medical and clinical consequences of such refusal; and

(6) an explanation of care alternatives to the administration of psychotropic medication and the resident's right to choose such alternatives.

A prescribing clinician shall inform the resident or the resident's legal representative of the existence of the resident's managed care plan and of the facility's policies and procedures for compliance with informed consent requirements and shall make these available to the resident or resident's legal representative prior to administering any antipsychotic drug and upon request.

(b-10) No facility or managed care plan shall deny admission or continued residency to a person on the basis of the person's or resident's, or the person's or resident's legal representative's, refusal of the administration of

psychotropic medication, unless the prescribing clinician or facility can demonstrate that the resident's refusal would place the health and safety of the resident, the facility staff, other residents, or visitors at risk.

A facility that alleges that the resident's refusal to consent to the administration of psychotropic medication will place the health and safety of the resident, the facility staff, other residents, or visitors at risk must: (1) document the alleged risk in detail; (2) present this documentation to the resident or the resident's legal representative, to the Department, and to the Office of the State Long Term Care Ombudsman; and (3) inform the resident or his or her legal representative of his or her right to appeal to the Department. The documentation of the alleged risk shall include a description of all nonpharmacological or alternative care options attempted and why they were unsuccessful.

(b-15) Within 100 days after the effective date of this amendatory Act of the 101st General Assembly, all facilities must submit to the Department written policies and procedures for compliance with this Section. The Department shall review these written policies and procedures and either:

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

(2) provide written notice to the facility that the proposed policies and procedures are deficient, identify

the areas that are deficient, and provide 30 days for the facility to submit amended policies and procedures that demonstrate its intent to comply with this Section.

A facility's failure to submit the documentation sufficient to demonstrate its intent to comply with this Section shall be grounds for review under the Department's facility licensure and survey process, the imposition of sanctions by the State, or both.

All facilities must provide training and education, as required under this Section, to all personnel involved in providing care to residents and train and educate such personnel on the methods and procedures to effectively implement the facility's policies. Training and education provided under this Section must be documented in each personnel file.

(b-20) Any violation of this Section may be reported to the Department for review. At its discretion, the Department may proceed with disciplinary action against the licensee of the facility and facility administrative personnel.

(b-25) A violation of informed consent under this Section is, at minimum, a Type "A" violation.

(b-30) Any violation of this Section by a prescribing clinician or facility may be prosecuted by an action brought by the Attorney General of Illinois for injunctive relief, civil penalties, or both injunctive relief and civil penalties in the name of the People of Illinois. The Attorney General may

initiate such action upon his or her own complaint or the complaint of any other interested party.

(b-35) Any resident who has been prescribed or has been administered a psychotropic medication in violation of this Section may bring an action for injunctive relief, civil damages, and costs and attorney's fees against any person and facility responsible for the violation. Such claim is separate and distinct from any claims of negligence, malpractice, or any other claims arising from or related to the resident's care. A claim under this Section may be brought by the resident, the resident's legal representative on behalf of the resident, the resident's estate, or any of the resident's survivors.

(b-40) An action pursuant to this Section must be filed within 2 years of either the date of discovery of the violation that gave rise to the claim or the last date of an instance of a noncompliant administration of an antipsychotic drug to the resident, whichever is later.

(b-45) A prescribing clinician or facility subject to action under this Section shall be liable for damages of up to $500 for each day that the facility or person violates the requirements of this Section, as well as costs and attorney's fees.

(b-50) Any violation of this Section shall serve as prima facie evidence of abuse or criminal neglect of a person in a long-term care facility under Section 12-4.4a of the Criminal Code of 2012.

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

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

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

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

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

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

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

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

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

(4) One member who shall be a registered nurse selected

from the recommendations of professional nursing associations;

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

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

(7) One member who is a member of a residents' advisory council established under Section 2-203 and is capable of actively participating on the Board; ~~and~~

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

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

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

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

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

(b) The terms of those members of the Board appointed prior to the effective date of this amendatory Act of 1988 shall expire on December 31, 1988. Members of the Board created by this amendatory Act of 1988 shall be appointed to serve for terms as follows: 3 for 2 years, 3 for 3 years and 3 for 4 years. The member of the Board added by this amendatory Act of 1989 shall be appointed to serve for a term of 4 years. Each successor member shall be appointed for a term of 4 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Board shall meet as frequently as the chairman deems necessary, but not less than 4 times each year. Upon request by 4 or more members the chairman shall call a meeting of the Board. The affirmative vote of 7 ~~6~~ members of the Board shall be necessary for Board action. A member of the Board can designate a replacement to serve at the Board meeting and vote in place of the member by submitting a letter of designation to the chairman prior to or at the Board meeting. The Board members shall be reimbursed for their actual expenses incurred in the performance of their duties.

(c) The Advisory Board shall advise the Department of Public Health on all aspects of its responsibilities under this

Act and the Specialized Mental Health Rehabilitation Act of 2013, including the format and content of any rules promulgated by the Department of Public Health. Any such rules, except emergency rules promulgated pursuant to Section 5-45 of the Illinois Administrative Procedure Act, promulgated without obtaining the advice of the Advisory Board are null and void. In the event that the Department fails to follow the advice of the Board, the Department shall, prior to the promulgation of such rules, transmit a written explanation of the reason thereof to the Board. During its review of rules, the Board shall analyze the economic and regulatory impact of those rules. If the Advisory Board, having been asked for its advice, fails to advise the Department within 90 days, the rules shall be considered acted upon.

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

(210 ILCS 45/3-202.05)

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

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

(1) registered nurses;

(2) licensed practical nurses;

(3) certified nurse assistants;

(4) psychiatric services rehabilitation aides;

(5) rehabilitation and therapy aides;

(6) psychiatric services rehabilitation coordinators;

(7) assistant directors of nursing;

(8) 50% of the Director of Nurses' time; and

(9) 30% of the Social Services Directors' time.

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

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

Within 120 days of the effective date of this amendatory Act of the 97th General Assembly, the Department shall promulgate rules specific to the staffing requirements for facilities licensed under the Specialized Mental Health Rehabilitation Act of 2013. These rules shall recognize the unique nature of individuals with chronic mental health

conditions, shall include minimum requirements for specialized clinical staff, including clinical social workers, psychiatrists, psychologists, and direct care staff set forth in paragraphs (4) through (6) and any other specialized staff which may be utilized and deemed necessary to count toward staffing ratios.

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

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

As used in this subsection:

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

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

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

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

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

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

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

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

(e) Ninety days after the effective date of this amendatory

Act of the 97th General Assembly, a minimum of 25% of nursing and personal care time shall be provided by licensed nurses, with at least 10% of nursing and personal care time provided by registered nurses. These minimum requirements shall remain in effect until an acuity based registered nurse requirement is promulgated by rule concurrent with the adoption of the Resource Utilization Group classification-based payment methodology, as provided in Section 5-5.2 of the Illinois Public Aid Code. Registered nurses and licensed practical nurses employed by a facility in excess of these requirements may be used to satisfy the remaining 75% of the nursing and personal care time requirements. Notwithstanding this subsection, no staffing requirement in statute in effect on the effective date of this amendatory Act of the 97th General Assembly shall be reduced on account of this subsection.

(f) The Department shall adopt rules on or before January 1, 2020 establishing a system for determining compliance with minimum direct care staffing standards. Compliance shall be determined at least quarterly using the Centers for Medicare and Medicaid Services' payroll-based journal and the facility's census and payroll data, which shall be obtained quarterly by the Department. The Department shall, at minimum, use the quarterly payroll-based journal and census and payroll data to calculate the number of hours provided per resident per day and compare this ratio to the minimums required by this Section. The Department shall publish the data quarterly on its

website.

(g) The Department shall adopt rules by January 1, 2020 establishing monetary penalties for facilities not in compliance with minimum staffing standards under this Section. Monetary penalties shall be imposed beginning no later than October 1, 2020 and quarterly thereafter and shall be based on the latest quarter for which the Department has data.

Monetary penalties shall be established based on a formula that calculates the cost of wages and benefits for the missing staff hours and shall be no less than twice the calculated cost of wages and benefits for the missing staff hours during the quarter or the minimum penalty for a Type "B" violation, whichever is greater. The penalty shall be imposed regardless of whether the facility has committed other violations of this Act during the same quarter. The penalty may not be waived. Nothing in this Section precludes a facility from being given a high risk designation for failing to comply with this Section that, when cited with other violations of this Act, increases the otherwise-applicable penalty.

(h) A violation of the minimum staffing requirements under this Section is, at minimum, a Type "B" violation.

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

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

Sec. 3-209. Required posting of information.

(a) Every facility shall conspicuously post for display in

an area of its offices accessible to residents, employees, and visitors the following:

(1) Its current license;

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

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

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

(b) A facility that has received a notice of violation for having violated the minimum staffing requirements under Section 3-202.05 shall display, for 3 months following the date that the notice of violation was issued, a notice stating that the facility did not have enough staff to meet the needs of the facility's residents during the quarter cited in the notice of violation. Notices must be posted, at a minimum, at all exterior and interior entryways into the facility for easily accessible viewing.

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

(210 ILCS 45/3-305) (from Ch. 111 1/2, par. 4153-305)

Sec. 3-305. The license of a facility which is in violation of this Act or any rule adopted thereunder may be subject to the penalties or fines levied by the Department as specified in

this Section.

(1) A licensee who commits a Type "AA" violation as defined in Section 1-128.5 is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine up to $25,000 per violation.

(1.5) A licensee who commits a Type "A" violation as defined in Section 1-129 is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine of up to $12,500 per violation.

(2) A licensee who commits a Type "B" violation as defined in Section 1-130 shall be assessed a fine of up to $1,100 per violation <u>or the monetary penalty specified in subsection (g) of Section 3-202.05, whichever is greater</u>.

(2.5) A licensee who commits 10 or more Type "C" violations, as defined in Section 1-132, in a single survey shall be assessed a fine of up to $250 per violation. A licensee who commits one or more Type "C" violations with a high risk designation, as defined by rule, shall be assessed a fine of up to $500 per violation.

(3) A licensee who commits a Type "AA" or Type "A" violation as defined in Section 1-128.5 or 1-129 which continues beyond the time specified in paragraph (a) of Section 3-303 which is cited as a repeat violation shall have its license revoked and shall be assessed a fine of 3 times the

fine computed per resident per day under subsection (1).

(4) A licensee who fails to satisfactorily comply with an accepted plan of correction for a Type "B" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 or the rules promulgated thereunder shall be automatically issued a conditional license for a period of not less than 6 months. A second or subsequent acceptable plan of correction shall be filed. A fine shall be assessed in accordance with subsection (2) when cited for the repeat violation. This fine shall be computed for all days of the violation, including the duration of the first plan of correction compliance time.

(5) For the purpose of computing a penalty under subsections (2) through (4), the number of residents per day shall be based on the average number of residents in the facility during the 30 days preceding the discovery of the violation.

(6) When the Department finds that a provision of Article II has been violated with regard to a particular resident, the Department shall issue an order requiring the facility to reimburse the resident for injuries incurred, or $100, whichever is greater. In the case of a violation involving any action other than theft of money belonging to a resident, reimbursement shall be ordered only if a provision of Article II has been violated with regard to that or any other resident of the facility within the 2 years immediately preceding the

violation in question.

(7) For purposes of assessing fines under this Section, a repeat violation shall be a violation which has been cited during one inspection of the facility for which an accepted plan of correction was not complied with or a new citation of the same rule if the licensee is not substantially addressing the issue routinely throughout the facility.

(7.5) If an occurrence results in more than one type of violation as defined in this Act (that is, a Type "AA", Type "A", Type "B", or Type "C" violation), the Department shall assess only one fine, which shall not exceed the maximum fine that may be assessed for the most serious type of violation charged. For purposes of the preceding sentence, a Type "AA" violation is the most serious type of violation that may be charged, followed by a Type "A", Type "B", or Type "C" violation, in that order.

(8) The minimum and maximum fines that may be assessed pursuant to this Section shall be twice those otherwise specified for any facility that willfully makes a misstatement of fact to the Department, or willfully fails to make a required notification to the Department, if that misstatement or failure delays the start of a surveyor or impedes a survey.

(9) High risk designation. If the Department finds that a facility has violated a provision of the Illinois Administrative Code that has a high risk designation, or that a facility has violated the same provision of the Illinois

Administrative Code 3 or more times in the previous 12 months, the Department may assess a fine of up to 2 times the maximum fine otherwise allowed.

(10) If a licensee has paid a civil monetary penalty imposed pursuant to the Medicare and Medicaid Certification Program for the equivalent federal violation giving rise to a fine under this Section, the Department shall offset the fine by the amount of the civil monetary penalty. The offset may not reduce the fine by more than 75% of the original fine, however. (Source: P.A. 98-104, eff. 7-22-13.)

(210 ILCS 45/3-305.8 new)

Sec. 3-305.8. Database of nursing home quarterly reports and citations. The Department shall publish the quarterly reports of facilities in violation of this Act in an easily searchable, comprehensive, and downloadable electronic database on the Department's website in language that is easily understood. The database shall include quarterly reports of all facilities that have violated this Act starting from 2005 and shall continue indefinitely. The database shall be in an electronic format with active hyperlinks to individual facility citations. The database shall be updated quarterly and shall be electronically searchable using a facility's name and address, the facility owner's name and address, and the House and Senate legislative districts in which the facility is located.

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