



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB2541

Introduced 1/28/2020, by Sen. Heather A. Steans

SYNOPSIS AS INTRODUCED:

5 ILCS 100/5-45.1 new
305 ILCS 5/5-5.4

from Ch. 23, par. 5-5.4

Amends the Medical Assistance Article of the Illinois Public Aid Code. Provides that for facilities licensed by the Department of Public Health under the ID/DD Community Care Act as ID/DD Facilities and under the MC/DD Act as MC/DD Facilities, subject to federal approval, the rates taking effect on the latter of the approval date of the State Plan Amendment for these facilities or the Waiver Amendment for the home and community-based services settings shall include an increase sufficient to provide a \$0.26 per hour wage increase to the base wage for non-executive staff. Requires the Department to adopt emergency rules. Amends the Illinois Administrative Procedure Act. Provides that emergency rules may be adopted to implement the provisions of the amendatory Act. Effective immediately.

LRB101 18248 KTG 67690 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning public aid.

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

4 Section 5. The Illinois Administrative Procedure Act is
5 amended by adding Section 5-45.1 as follows:

6 (5 ILCS 100/5-45.1 new)

7 Sec. 5-45.1. Emergency rulemaking; ID/DD and MC/DD
8 facility rates. To provide for the expeditious and timely
9 implementation of changes made to Section 5-5.4 of the Illinois
10 Public Aid Code by this amendatory Act of the 101st General
11 Assembly, emergency rules implementing the changes made to
12 Section 5-5.4 of the Illinois Public Aid Code by this
13 amendatory Act of the 101st General Assembly may be adopted in
14 accordance with Section 5-45 by the Department of Healthcare
15 and Family Services. The adoption of emergency rules authorized
16 by Section 5-45 and this Section is deemed to be necessary for
17 the public interest, safety, and welfare.

18 This Section is repealed on January 1, 2026.

19 Section 10. The Illinois Public Aid Code is amended by
20 changing Section 5-5.4 as follows:

21 (305 ILCS 5/5-5.4) (from Ch. 23, par. 5-5.4)

1 Sec. 5-5.4. Standards of Payment - Department of Healthcare
2 and Family Services. The Department of Healthcare and Family
3 Services shall develop standards of payment of nursing facility
4 and ICF/DD services in facilities providing such services under
5 this Article which:

6 (1) Provide for the determination of a facility's payment
7 for nursing facility or ICF/DD services on a prospective basis.
8 The amount of the payment rate for all nursing facilities
9 certified by the Department of Public Health under the ID/DD
10 Community Care Act or the Nursing Home Care Act as Intermediate
11 Care for the Developmentally Disabled facilities, Long Term
12 Care for Under Age 22 facilities, Skilled Nursing facilities,
13 or Intermediate Care facilities under the medical assistance
14 program shall be prospectively established annually on the
15 basis of historical, financial, and statistical data
16 reflecting actual costs from prior years, which shall be
17 applied to the current rate year and updated for inflation,
18 except that the capital cost element for newly constructed
19 facilities shall be based upon projected budgets. The annually
20 established payment rate shall take effect on July 1 in 1984
21 and subsequent years. No rate increase and no update for
22 inflation shall be provided on or after July 1, 1994, unless
23 specifically provided for in this Section. The changes made by
24 Public Act 93-841 extending the duration of the prohibition
25 against a rate increase or update for inflation are effective
26 retroactive to July 1, 2004.

1 For facilities licensed by the Department of Public Health
2 under the Nursing Home Care Act as Intermediate Care for the
3 Developmentally Disabled facilities or Long Term Care for Under
4 Age 22 facilities, the rates taking effect on July 1, 1998
5 shall include an increase of 3%. For facilities licensed by the
6 Department of Public Health under the Nursing Home Care Act as
7 Skilled Nursing facilities or Intermediate Care facilities,
8 the rates taking effect on July 1, 1998 shall include an
9 increase of 3% plus \$1.10 per resident-day, as defined by the
10 Department. For facilities licensed by the Department of Public
11 Health under the Nursing Home Care Act as Intermediate Care
12 Facilities for the Developmentally Disabled or Long Term Care
13 for Under Age 22 facilities, the rates taking effect on January
14 1, 2006 shall include an increase of 3%. For facilities
15 licensed by the Department of Public Health under the Nursing
16 Home Care Act as Intermediate Care Facilities for the
17 Developmentally Disabled or Long Term Care for Under Age 22
18 facilities, the rates taking effect on January 1, 2009 shall
19 include an increase sufficient to provide a \$0.50 per hour wage
20 increase for non-executive staff. For facilities licensed by
21 the Department of Public Health under the ID/DD Community Care
22 Act as ID/DD Facilities the rates taking effect within 30 days
23 after July 6, 2017 (the effective date of Public Act 100-23)
24 shall include an increase sufficient to provide a \$0.75 per
25 hour wage increase for non-executive staff. The Department
26 shall adopt rules, including emergency rules under subsection

1 (y) of Section 5-45 of the Illinois Administrative Procedure
2 Act, to implement the provisions of this paragraph. For
3 facilities licensed by the Department of Public Health under
4 the ID/DD Community Care Act as ID/DD Facilities and under the
5 MC/DD Act as MC/DD Facilities, the rates taking effect within
6 30 days after the effective date of this amendatory Act of the
7 100th General Assembly shall include an increase sufficient to
8 provide a \$0.50 per hour wage increase for non-executive
9 front-line personnel, including, but not limited to, direct
10 support persons, aides, front-line supervisors, qualified
11 intellectual disabilities professionals, nurses, and
12 non-administrative support staff. The Department shall adopt
13 rules, including emergency rules under subsection (bb) of
14 Section 5-45 of the Illinois Administrative Procedure Act, to
15 implement the provisions of this paragraph.

16 For facilities licensed by the Department of Public Health
17 under the Nursing Home Care Act as Intermediate Care for the
18 Developmentally Disabled facilities or Long Term Care for Under
19 Age 22 facilities, the rates taking effect on July 1, 1999
20 shall include an increase of 1.6% plus \$3.00 per resident-day,
21 as defined by the Department. For facilities licensed by the
22 Department of Public Health under the Nursing Home Care Act as
23 Skilled Nursing facilities or Intermediate Care facilities,
24 the rates taking effect on July 1, 1999 shall include an
25 increase of 1.6% and, for services provided on or after October
26 1, 1999, shall be increased by \$4.00 per resident-day, as

1 defined by the Department.

2 For facilities licensed by the Department of Public Health
3 under the Nursing Home Care Act as Intermediate Care for the
4 Developmentally Disabled facilities or Long Term Care for Under
5 Age 22 facilities, the rates taking effect on July 1, 2000
6 shall include an increase of 2.5% per resident-day, as defined
7 by the Department. For facilities licensed by the Department of
8 Public Health under the Nursing Home Care Act as Skilled
9 Nursing facilities or Intermediate Care facilities, the rates
10 taking effect on July 1, 2000 shall include an increase of 2.5%
11 per resident-day, as defined by the Department.

12 For facilities licensed by the Department of Public Health
13 under the Nursing Home Care Act as skilled nursing facilities
14 or intermediate care facilities, a new payment methodology must
15 be implemented for the nursing component of the rate effective
16 July 1, 2003. The Department of Public Aid (now Healthcare and
17 Family Services) shall develop the new payment methodology
18 using the Minimum Data Set (MDS) as the instrument to collect
19 information concerning nursing home resident condition
20 necessary to compute the rate. The Department shall develop the
21 new payment methodology to meet the unique needs of Illinois
22 nursing home residents while remaining subject to the
23 appropriations provided by the General Assembly. A transition
24 period from the payment methodology in effect on June 30, 2003
25 to the payment methodology in effect on July 1, 2003 shall be
26 provided for a period not exceeding 3 years and 184 days after

1 implementation of the new payment methodology as follows:

2 (A) For a facility that would receive a lower nursing
3 component rate per patient day under the new system than
4 the facility received effective on the date immediately
5 preceding the date that the Department implements the new
6 payment methodology, the nursing component rate per
7 patient day for the facility shall be held at the level in
8 effect on the date immediately preceding the date that the
9 Department implements the new payment methodology until a
10 higher nursing component rate of reimbursement is achieved
11 by that facility.

12 (B) For a facility that would receive a higher nursing
13 component rate per patient day under the payment
14 methodology in effect on July 1, 2003 than the facility
15 received effective on the date immediately preceding the
16 date that the Department implements the new payment
17 methodology, the nursing component rate per patient day for
18 the facility shall be adjusted.

19 (C) Notwithstanding paragraphs (A) and (B), the
20 nursing component rate per patient day for the facility
21 shall be adjusted subject to appropriations provided by the
22 General Assembly.

23 For facilities licensed by the Department of Public Health
24 under the Nursing Home Care Act as Intermediate Care for the
25 Developmentally Disabled facilities or Long Term Care for Under
26 Age 22 facilities, the rates taking effect on March 1, 2001

1 shall include a statewide increase of 7.85%, as defined by the
2 Department.

3 Notwithstanding any other provision of this Section, for
4 facilities licensed by the Department of Public Health under
5 the Nursing Home Care Act as skilled nursing facilities or
6 intermediate care facilities, except facilities participating
7 in the Department's demonstration program pursuant to the
8 provisions of Title 77, Part 300, Subpart T of the Illinois
9 Administrative Code, the numerator of the ratio used by the
10 Department of Healthcare and Family Services to compute the
11 rate payable under this Section using the Minimum Data Set
12 (MDS) methodology shall incorporate the following annual
13 amounts as the additional funds appropriated to the Department
14 specifically to pay for rates based on the MDS nursing
15 component methodology in excess of the funding in effect on
16 December 31, 2006:

17 (i) For rates taking effect January 1, 2007,
18 \$60,000,000.

19 (ii) For rates taking effect January 1, 2008,
20 \$110,000,000.

21 (iii) For rates taking effect January 1, 2009,
22 \$194,000,000.

23 (iv) For rates taking effect April 1, 2011, or the
24 first day of the month that begins at least 45 days after
25 the effective date of this amendatory Act of the 96th
26 General Assembly, \$416,500,000 or an amount as may be

1 necessary to complete the transition to the MDS methodology
2 for the nursing component of the rate. Increased payments
3 under this item (iv) are not due and payable, however,
4 until (i) the methodologies described in this paragraph are
5 approved by the federal government in an appropriate State
6 Plan amendment and (ii) the assessment imposed by Section
7 5B-2 of this Code is determined to be a permissible tax
8 under Title XIX of the Social Security Act.

9 Notwithstanding any other provision of this Section, for
10 facilities licensed by the Department of Public Health under
11 the Nursing Home Care Act as skilled nursing facilities or
12 intermediate care facilities, the support component of the
13 rates taking effect on January 1, 2008 shall be computed using
14 the most recent cost reports on file with the Department of
15 Healthcare and Family Services no later than April 1, 2005,
16 updated for inflation to January 1, 2006.

17 For facilities licensed by the Department of Public Health
18 under the Nursing Home Care Act as Intermediate Care for the
19 Developmentally Disabled facilities or Long Term Care for Under
20 Age 22 facilities, the rates taking effect on April 1, 2002
21 shall include a statewide increase of 2.0%, as defined by the
22 Department. This increase terminates on July 1, 2002; beginning
23 July 1, 2002 these rates are reduced to the level of the rates
24 in effect on March 31, 2002, as defined by the Department.

25 For facilities licensed by the Department of Public Health
26 under the Nursing Home Care Act as skilled nursing facilities

1 or intermediate care facilities, the rates taking effect on
2 July 1, 2001 shall be computed using the most recent cost
3 reports on file with the Department of Public Aid no later than
4 April 1, 2000, updated for inflation to January 1, 2001. For
5 rates effective July 1, 2001 only, rates shall be the greater
6 of the rate computed for July 1, 2001 or the rate effective on
7 June 30, 2001.

8 Notwithstanding any other provision of this Section, for
9 facilities licensed by the Department of Public Health under
10 the Nursing Home Care Act as skilled nursing facilities or
11 intermediate care facilities, the Illinois Department shall
12 determine by rule the rates taking effect on July 1, 2002,
13 which shall be 5.9% less than the rates in effect on June 30,
14 2002.

15 Notwithstanding any other provision of this Section, for
16 facilities licensed by the Department of Public Health under
17 the Nursing Home Care Act as skilled nursing facilities or
18 intermediate care facilities, if the payment methodologies
19 required under Section 5A-12 and the waiver granted under 42
20 CFR 433.68 are approved by the United States Centers for
21 Medicare and Medicaid Services, the rates taking effect on July
22 1, 2004 shall be 3.0% greater than the rates in effect on June
23 30, 2004. These rates shall take effect only upon approval and
24 implementation of the payment methodologies required under
25 Section 5A-12.

26 Notwithstanding any other provisions of this Section, for

1 facilities licensed by the Department of Public Health under
2 the Nursing Home Care Act as skilled nursing facilities or
3 intermediate care facilities, the rates taking effect on
4 January 1, 2005 shall be 3% more than the rates in effect on
5 December 31, 2004.

6 Notwithstanding any other provision of this Section, for
7 facilities licensed by the Department of Public Health under
8 the Nursing Home Care Act as skilled nursing facilities or
9 intermediate care facilities, effective January 1, 2009, the
10 per diem support component of the rates effective on January 1,
11 2008, computed using the most recent cost reports on file with
12 the Department of Healthcare and Family Services no later than
13 April 1, 2005, updated for inflation to January 1, 2006, shall
14 be increased to the amount that would have been derived using
15 standard Department of Healthcare and Family Services methods,
16 procedures, and inflators.

17 Notwithstanding any other provisions of this Section, for
18 facilities licensed by the Department of Public Health under
19 the Nursing Home Care Act as intermediate care facilities that
20 are federally defined as Institutions for Mental Disease, or
21 facilities licensed by the Department of Public Health under
22 the Specialized Mental Health Rehabilitation Act of 2013, a
23 socio-development component rate equal to 6.6% of the
24 facility's nursing component rate as of January 1, 2006 shall
25 be established and paid effective July 1, 2006. The
26 socio-development component of the rate shall be increased by a

1 factor of 2.53 on the first day of the month that begins at
2 least 45 days after January 11, 2008 (the effective date of
3 Public Act 95-707). As of August 1, 2008, the socio-development
4 component rate shall be equal to 6.6% of the facility's nursing
5 component rate as of January 1, 2006, multiplied by a factor of
6 3.53. For services provided on or after April 1, 2011, or the
7 first day of the month that begins at least 45 days after the
8 effective date of this amendatory Act of the 96th General
9 Assembly, whichever is later, the Illinois Department may by
10 rule adjust these socio-development component rates, and may
11 use different adjustment methodologies for those facilities
12 participating, and those not participating, in the Illinois
13 Department's demonstration program pursuant to the provisions
14 of Title 77, Part 300, Subpart T of the Illinois Administrative
15 Code, but in no case may such rates be diminished below those
16 in effect on August 1, 2008.

17 For facilities licensed by the Department of Public Health
18 under the Nursing Home Care Act as Intermediate Care for the
19 Developmentally Disabled facilities or as long-term care
20 facilities for residents under 22 years of age, the rates
21 taking effect on July 1, 2003 shall include a statewide
22 increase of 4%, as defined by the Department.

23 For facilities licensed by the Department of Public Health
24 under the Nursing Home Care Act as Intermediate Care for the
25 Developmentally Disabled facilities or Long Term Care for Under
26 Age 22 facilities, the rates taking effect on the first day of

1 the month that begins at least 45 days after the effective date
2 of this amendatory Act of the 95th General Assembly shall
3 include a statewide increase of 2.5%, as defined by the
4 Department.

5 Notwithstanding any other provision of this Section, for
6 facilities licensed by the Department of Public Health under
7 the Nursing Home Care Act as skilled nursing facilities or
8 intermediate care facilities, effective January 1, 2005,
9 facility rates shall be increased by the difference between (i)
10 a facility's per diem property, liability, and malpractice
11 insurance costs as reported in the cost report filed with the
12 Department of Public Aid and used to establish rates effective
13 July 1, 2001 and (ii) those same costs as reported in the
14 facility's 2002 cost report. These costs shall be passed
15 through to the facility without caps or limitations, except for
16 adjustments required under normal auditing procedures.

17 Rates established effective each July 1 shall govern
18 payment for services rendered throughout that fiscal year,
19 except that rates established on July 1, 1996 shall be
20 increased by 6.8% for services provided on or after January 1,
21 1997. Such rates will be based upon the rates calculated for
22 the year beginning July 1, 1990, and for subsequent years
23 thereafter until June 30, 2001 shall be based on the facility
24 cost reports for the facility fiscal year ending at any point
25 in time during the previous calendar year, updated to the
26 midpoint of the rate year. The cost report shall be on file

1 with the Department no later than April 1 of the current rate
2 year. Should the cost report not be on file by April 1, the
3 Department shall base the rate on the latest cost report filed
4 by each skilled care facility and intermediate care facility,
5 updated to the midpoint of the current rate year. In
6 determining rates for services rendered on and after July 1,
7 1985, fixed time shall not be computed at less than zero. The
8 Department shall not make any alterations of regulations which
9 would reduce any component of the Medicaid rate to a level
10 below what that component would have been utilizing in the rate
11 effective on July 1, 1984.

12 (2) Shall take into account the actual costs incurred by
13 facilities in providing services for recipients of skilled
14 nursing and intermediate care services under the medical
15 assistance program.

16 (3) Shall take into account the medical and psycho-social
17 characteristics and needs of the patients.

18 (4) Shall take into account the actual costs incurred by
19 facilities in meeting licensing and certification standards
20 imposed and prescribed by the State of Illinois, any of its
21 political subdivisions or municipalities and by the U.S.
22 Department of Health and Human Services pursuant to Title XIX
23 of the Social Security Act.

24 The Department of Healthcare and Family Services shall
25 develop precise standards for payments to reimburse nursing
26 facilities for any utilization of appropriate rehabilitative

1 personnel for the provision of rehabilitative services which is
2 authorized by federal regulations, including reimbursement for
3 services provided by qualified therapists or qualified
4 assistants, and which is in accordance with accepted
5 professional practices. Reimbursement also may be made for
6 utilization of other supportive personnel under appropriate
7 supervision.

8 The Department shall develop enhanced payments to offset
9 the additional costs incurred by a facility serving exceptional
10 need residents and shall allocate at least \$4,000,000 of the
11 funds collected from the assessment established by Section 5B-2
12 of this Code for such payments. For the purpose of this
13 Section, "exceptional needs" means, but need not be limited to,
14 ventilator care and traumatic brain injury care. The enhanced
15 payments for exceptional need residents under this paragraph
16 are not due and payable, however, until (i) the methodologies
17 described in this paragraph are approved by the federal
18 government in an appropriate State Plan amendment and (ii) the
19 assessment imposed by Section 5B-2 of this Code is determined
20 to be a permissible tax under Title XIX of the Social Security
21 Act.

22 Beginning January 1, 2014 the methodologies for
23 reimbursement of nursing facility services as provided under
24 this Section 5-5.4 shall no longer be applicable for services
25 provided on or after January 1, 2014.

26 No payment increase under this Section for the MDS

1 methodology, exceptional care residents, or the
2 socio-development component rate established by Public Act
3 96-1530 of the 96th General Assembly and funded by the
4 assessment imposed under Section 5B-2 of this Code shall be due
5 and payable until after the Department notifies the long-term
6 care providers, in writing, that the payment methodologies to
7 long-term care providers required under this Section have been
8 approved by the Centers for Medicare and Medicaid Services of
9 the U.S. Department of Health and Human Services and the
10 waivers under 42 CFR 433.68 for the assessment imposed by this
11 Section, if necessary, have been granted by the Centers for
12 Medicare and Medicaid Services of the U.S. Department of Health
13 and Human Services. Upon notification to the Department of
14 approval of the payment methodologies required under this
15 Section and the waivers granted under 42 CFR 433.68, all
16 increased payments otherwise due under this Section prior to
17 the date of notification shall be due and payable within 90
18 days of the date federal approval is received.

19 On and after July 1, 2012, the Department shall reduce any
20 rate of reimbursement for services or other payments or alter
21 any methodologies authorized by this Code to reduce any rate of
22 reimbursement for services or other payments in accordance with
23 Section 5-5e.

24 For facilities licensed by the Department of Public Health
25 under the ID/DD Community Care Act as ID/DD Facilities and
26 under the MC/DD Act as MC/DD Facilities, subject to federal

1 approval, the rates taking effect for services delivered on or
2 after August 1, 2019 shall be increased by 3.5% over the rates
3 in effect on June 30, 2019. The Department shall adopt rules,
4 including emergency rules under subsection (ii) of Section 5-45
5 of the Illinois Administrative Procedure Act, to implement the
6 provisions of this Section, including wage increases for direct
7 care staff.

8 For facilities licensed by the Department of Public Health
9 under the ID/DD Community Care Act as ID/DD Facilities and
10 under the MC/DD Act as MC/DD Facilities, subject to federal
11 approval, the rates taking effect on the latter of the approval
12 date of the State Plan Amendment for these facilities or the
13 Waiver Amendment for the home and community-based services
14 settings shall include an increase sufficient to provide a
15 \$0.26 per hour wage increase to the base wage for non-executive
16 staff. The Department shall adopt rules, including emergency
17 rules under subsection (ii) of Section 5-45 of the Illinois
18 Administrative Procedure Act, to implement the provisions of
19 this Section, including wage increases for direct care staff.

20 (Source: P.A. 100-23, eff. 7-6-17; 100-587, eff. 6-4-18;
21 101-10, eff. 6-5-19.)

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