



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB2423

Introduced 2/17/2021, by Rep. Robert Rita

SYNOPSIS AS INTRODUCED:

210 ILCS 45/3-202.05
210 ILCS 45/3-206a new

Amends the Nursing Home Care Act. Provides that the Department of Public Health shall certify the Temporary Nursing Assistant Training Program that it implemented by emergency rule. Provides that the Department shall deem an individual who has completed a training program and competency assessment under the Temporary Nursing Assistant Training Program as satisfying the requirement of completing a nurse aide training and competency evaluation program approved by the State under specified eligibility provisions. Provides that a person shall be deemed to have completed the eligibility provisions if they have completed all nursing assistant training and competency evaluation program requirements and shall be placed on the State nurse aide registry as "active". Provides that temporary nursing assistants must enroll in an approved certified nursing assistant training program no later than 2 years after completion of the Temporary Nursing Assistant Training Program. Provides that, once enrolled in the certified nursing assistant training program, the individual may work as a nursing assistant in training and continue to practice the same skills he or she did as a temporary nursing assistant and new competencies he or she has learned in his or her certified nursing assistant training. Makes conforming changes.

LRB102 15042 SPS 20397 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 WHEREAS, During the COVID-19 pandemic, federal and State
3 regulatory and statutory provisions have been waived to assist
4 in the hiring of temporary nurse assistants; and

5 WHEREAS, Individuals have served admirably and
6 compassionately in this capacity and have demonstrated through
7 accelerated training and experience competency to transition
8 to fully registered status as a nurse aide; and

9 WHEREAS, This program created 1,700 jobs in communities
10 where people found themselves out of work due to closures and
11 gave them a pathway to excel in the healthcare career ladder;
12 and

13 WHEREAS, Upon the cessation of the program on January
14 18th, 2021, many nursing homes have continued to receive
15 applications from a number of unemployed individuals wanting
16 to join the Temporary Nursing Assistant Training Program; and

17 WHEREAS, While nursing homes are experiencing shortages in
18 staff, State certification of the Program will provide
19 additional help to care for loved ones, create jobs, and
20 expand the need of increased workforce in the nursing home
21 sector as they transition into a certified nurse assistant
22 certification; and

1 WHEREAS, Temporary nurse assistants are required to
2 successfully complete a State-approved training and evaluation
3 in order to be employed as a nurse aide in a skilled nursing
4 facility; and

5 WHEREAS, The purpose of this training is to ensure that
6 nurse aides have the education, practical knowledge, and
7 skills needed to care for residents of facilities
8 participating in the Medicare and Medicaid programs; and

9 WHEREAS, As a matter of public policy, the Temporary
10 Nursing Assistant Program should take into account training
11 and experience acquired during the COVID-19 pandemic to
12 transition these individuals to placement on the State's nurse
13 aide registry; therefore

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

16 Section 5. The Nursing Home Care Act is amended by
17 changing Section 3-202.05 and by adding Section 3-206a as
18 follows:

19 (210 ILCS 45/3-202.05)

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

1 thereafter.

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

4 (1) registered nurses;

5 (2) licensed practical nurses;

6 (3) certified nurse assistants;

7 (4) psychiatric services rehabilitation aides;

8 (5) rehabilitation and therapy aides;

9 (6) psychiatric services rehabilitation coordinators;

10 (7) assistant directors of nursing;

11 (8) 50% of the Director of Nurses' time; ~~and~~

12 (9) 30% of the Social Services Directors' time; and ~~and~~

13 (10) temporary nursing assistants in the Temporary

14 Nursing Assistants Training Program under Section 3-206a.

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

19 Within 120 days of the effective date of this amendatory
20 Act of the 97th General Assembly, the Department shall
21 promulgate rules specific to the staffing requirements for
22 facilities federally defined as Institutions for Mental
23 Disease. These rules shall recognize the unique nature of
24 individuals with chronic mental health conditions, shall
25 include minimum requirements for specialized clinical staff,
26 including clinical social workers, psychiatrists,

1 psychologists, and direct care staff set forth in paragraphs
2 (4) through (6) and any other specialized staff which may be
3 utilized and deemed necessary to count toward staffing ratios.

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

16 (b) (Blank).

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

20 As used in this subsection:

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

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

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

8 (d) (1) (Blank).

9 (2) (Blank).

10 (3) (Blank).

11 (4) (Blank).

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

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

8 (f) The Department shall submit proposed rules for
9 adoption by January 1, 2020 establishing a system for
10 determining compliance with minimum staffing set forth in this
11 Section and the requirements of 77 Ill. Adm. Code 300.1230
12 adjusted for any waivers granted under Section 3-303.1.
13 Compliance shall be determined quarterly by comparing the
14 number of hours provided per resident per day using the
15 Centers for Medicare and Medicaid Services' payroll-based
16 journal and the facility's daily census, broken down by
17 intermediate and skilled care as self-reported by the facility
18 to the Department on a quarterly basis. The Department shall
19 use the quarterly payroll-based journal and the self-reported
20 census to calculate the number of hours provided per resident
21 per day and compare this ratio to the minimum staffing
22 standards required under this Section, as impacted by any
23 waivers granted under Section 3-303.1. Discrepancies between
24 job titles contained in this Section and the payroll-based
25 journal shall be addressed by rule.

26 (g) The Department shall submit proposed rules for

1 adoption by January 1, 2020 establishing monetary penalties
2 for facilities not in compliance with minimum staffing
3 standards under this Section. No monetary penalty may be
4 issued for noncompliance during the implementation period,
5 which shall be July 1, 2020 through September 30, 2020. If a
6 facility is found to be noncompliant during the implementation
7 period, the Department shall provide a written notice
8 identifying the staffing deficiencies and require the facility
9 to provide a sufficiently detailed correction plan to meet the
10 statutory minimum staffing levels. Monetary penalties shall be
11 imposed beginning no later than January 1, 2021 and quarterly
12 thereafter and shall be based on the latest quarter for which
13 the Department has data. Monetary penalties shall be
14 established based on a formula that calculates on a daily
15 basis the cost of wages and benefits for the missing staffing
16 hours. All notices of noncompliance shall include the
17 computations used to determine noncompliance and establishing
18 the variance between minimum staffing ratios and the
19 Department's computations. The penalty for the first offense
20 shall be 125% of the cost of wages and benefits for the missing
21 staffing hours. The penalty shall increase to 150% of the cost
22 of wages and benefits for the missing staffing hours for the
23 second offense and 200% the cost of wages and benefits for the
24 missing staffing hours for the third and all subsequent
25 offenses. The penalty shall be imposed regardless of whether
26 the facility has committed other violations of this Act during

1 the same period that the staffing offense occurred. The
2 penalty may not be waived, but the Department shall have the
3 discretion to determine the gravity of the violation in
4 situations where there is no more than a 10% deviation from the
5 staffing requirements and make appropriate adjustments to the
6 penalty. The Department is granted discretion to waive the
7 penalty when unforeseen circumstances have occurred that
8 resulted in call-offs of scheduled staff. This provision shall
9 be applied no more than 6 times per quarter. Nothing in this
10 Section diminishes a facility's right to appeal.

11 (Source: P.A. 101-10, eff. 6-5-19.)

12 (210 ILCS 45/3-206a new)

13 Sec. 3-206a. Certification of temporary nursing
14 assistants.

15 (a) The Department shall certify the Temporary Nursing
16 Assistant Training Program that it implemented by emergency
17 rule under 77 Ill. Adm. Code 395.2.

18 (b) Notwithstanding the State-approved nurse aide training
19 programs, the Department shall deem an individual as
20 satisfying the requirement of completing a nurse aide training
21 and competency evaluation program approved by the State if:

22 (1) the individual successfully completed a training
23 program and competency assessment under the Temporary
24 Nursing Assistant Training Program, including online
25 training and an online examination;

1 (2) the individual completed a minimum of 80 hours of
2 temporary nursing assistant or supervised practical nurse
3 aide training, on-the-job training apprenticeship, or
4 regular in-services nurse aide education during the
5 declared COVID-19 emergency under the supervision of a
6 licensed or registered nurse; or

7 (3) the individual's competency has been established
8 by one of the following:

9 (A) successful completion of the State temporary
10 nursing assistant examination;

11 (B) certification by a site administrator
12 responsible for assessing the individual's competency
13 skills as part of an approved apprenticeship program;
14 or

15 (C) through an assessment in all areas of required
16 nurse aide training as provided for in 42 CFR
17 483.152(b) by the hiring entity.

18 (c) Individuals who meet the eligibility provisions in
19 subsection (b) shall be deemed to have completed all nursing
20 assistant training and competency evaluation program
21 requirements and shall be placed on the State nurse aide
22 registry as "active".

23 (d) Temporary nursing assistants must enroll in an
24 approved certified nursing assistant training program within 2
25 years of completion of the Temporary Nursing Assistant
26 Training Program.

1 The individual shall receive one hour of credit for every
2 hour employed as a temporary nursing assistant, up to 40
3 hours.

4 Once enrolled in the certified nursing assistant training
5 program, the individual may work as a nursing assistant in
6 training and continue to practice the same skills he or she did
7 as a temporary nursing assistant and new competencies he or
8 she has learned in his or her certified nursing assistant
9 training.

10 (e) The Department shall incorporate this Section as part
11 of the State-approved nurse aide training programs.