



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4674

Introduced 1/21/2022, by Rep. Maurice A. West, II

SYNOPSIS AS INTRODUCED:

210 ILCS 45/3-212
210 ILCS 45/3-702

from Ch. 111 1/2, par. 4153-212
from Ch. 111 1/2, par. 4153-702

Amends the Nursing Home Care Act. Requires the Department of Public Health to establish by rule guidelines for required continuing education of all employees who inspect, survey, or evaluate a facility and to offer continuing education opportunities at least quarterly. Provides that the Department shall notify a facility and complainant of its findings regarding a complainant's complaint within 5 calendar days (rather than 10 days) of the determination. Provides that employees of a State or unit of local government agency charged with inspecting, surveying, or evaluating facilities are required to complete at least 10 hours of continuing education annually. Provides that if a facility is found to have violated any provision of the Act or rule adopted under the Act, the facility shall develop a plan of correction to address deficiencies indicated in a statement of deficiency. Requires the Department to approve or deny the plan of correction within 72 hours after receiving the plan of correction. Provides that the Department shall conduct an annual review of all survey activity from the preceding calendar year (rather than conduct an annual review) and make a report including specified information concerning the complaint and survey process. Contains other provisions.

LRB102 23801 CPF 32992 b

1 AN ACT concerning regulation.

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

4 Section 5. The Nursing Home Care Act is amended by
5 changing Sections 3-212 and 3-702 as follows:

6 (210 ILCS 45/3-212) (from Ch. 111 1/2, par. 4153-212)

7 Sec. 3-212. Inspection.

8 (a) The Department, whenever it deems necessary in
9 accordance with subsection (b), shall inspect, survey and
10 evaluate every facility to determine compliance with
11 applicable licensure requirements and standards. Submission of
12 a facility's current Consumer Choice Information Report
13 required by Section 2-214 shall be verified at time of
14 inspection. An inspection should occur within 120 days prior
15 to license renewal. The Department may periodically visit a
16 facility for the purpose of consultation. An inspection,
17 survey, or evaluation, other than an inspection of financial
18 records, shall be conducted without prior notice to the
19 facility. A visit for the sole purpose of consultation may be
20 announced. The Department shall provide training to surveyors
21 about the appropriate assessment, care planning, and care of
22 persons with mental illness (other than Alzheimer's disease or
23 related disorders) to enable its surveyors to determine

1 whether a facility is complying with State and federal
2 requirements about the assessment, care planning, and care of
3 those persons.

4 (a-1) An employee of a State or unit of local government
5 agency charged with inspecting, surveying, and evaluating
6 facilities who directly or indirectly gives prior notice of an
7 inspection, survey, or evaluation, other than an inspection of
8 financial records, to a facility or to an employee of a
9 facility is guilty of a Class A misdemeanor.

10 An inspector or an employee of the Department who
11 intentionally prenotifies a facility, orally or in writing, of
12 a pending complaint investigation or inspection shall be
13 guilty of a Class A misdemeanor. Superiors of persons who have
14 prenotified a facility shall be subject to the same penalties,
15 if they have knowingly allowed the prenotification. A person
16 found guilty of prenotifying a facility shall be subject to
17 disciplinary action by his or her employer.

18 If the Department has a good faith belief, based upon
19 information that comes to its attention, that a violation of
20 this subsection has occurred, it must file a complaint with
21 the Attorney General or the State's Attorney in the county
22 where the violation took place within 30 days after discovery
23 of the information.

24 (a-2) An employee of a State or unit of local government
25 agency charged with inspecting, surveying, or evaluating
26 facilities who willfully profits from violating the

1 confidentiality of the inspection, survey, or evaluation
2 process shall be guilty of a Class 4 felony and that conduct
3 shall be deemed unprofessional conduct that may subject a
4 person to loss of his or her professional license. An action to
5 prosecute a person for violating this subsection (a-2) may be
6 brought by either the Attorney General or the State's Attorney
7 in the county where the violation took place.

8 (a-3) The Department shall by rule establish guidelines
9 for required continuing education of all employees who
10 inspect, survey, or evaluate a facility. The Department shall
11 offer continuing education opportunities at least quarterly.
12 Employees of a State or unit of local government agency
13 charged with inspecting, surveying, or evaluating a facility
14 are required to complete at least 10 hours of continuing
15 education annually. Qualifying hours of continuing education
16 shall only be offered by the Department. Content presented
17 during the continuing education shall be consistent throughout
18 the State, regardless of survey region. The continuing
19 education required by this subsection is separate from any
20 continuing education required for any license that the
21 employee holds.

22 (b) In determining whether to make more than the required
23 number of unannounced inspections, surveys and evaluations of
24 a facility the Department shall consider one or more of the
25 following: previous inspection reports; the facility's history
26 of compliance with standards, rules and regulations

1 promulgated under this Act and correction of violations,
2 penalties or other enforcement actions; the number and
3 severity of complaints received about the facility; any
4 allegations of resident abuse or neglect; weather conditions;
5 health emergencies; other reasonable belief that deficiencies
6 exist.

7 (b-1) The Department shall not be required to determine
8 whether a facility certified to participate in the Medicare
9 program under Title XVIII of the Social Security Act, or the
10 Medicaid program under Title XIX of the Social Security Act,
11 and which the Department determines by inspection under this
12 Section or under Section 3-702 of this Act to be in compliance
13 with the certification requirements of Title XVIII or XIX, is
14 in compliance with any requirement of this Act that is less
15 stringent than or duplicates a federal certification
16 requirement. In accordance with subsection (a) of this Section
17 or subsection (d) of Section 3-702, the Department shall
18 determine whether a certified facility is in compliance with
19 requirements of this Act that exceed federal certification
20 requirements. If a certified facility is found to be out of
21 compliance with federal certification requirements, the
22 results of an inspection conducted pursuant to Title XVIII or
23 XIX of the Social Security Act may be used as the basis for
24 enforcement remedies authorized and commenced, with the
25 Department's discretion to evaluate whether penalties are
26 warranted, under this Act. Enforcement of this Act against a

1 certified facility shall be commenced pursuant to the
2 requirements of this Act, unless enforcement remedies sought
3 pursuant to Title XVIII or XIX of the Social Security Act
4 exceed those authorized by this Act. As used in this
5 subsection, "enforcement remedy" means a sanction for
6 violating a federal certification requirement or this Act.

7 (c) Upon completion of each inspection, survey and
8 evaluation, the appropriate Department personnel who conducted
9 the inspection, survey or evaluation shall submit a copy of
10 their report to the licensee upon exiting the facility, and
11 shall submit the actual report to the appropriate regional
12 office of the Department. Such report and any recommendations
13 for action by the Department under this Act shall be
14 transmitted to the appropriate offices of the associate
15 director of the Department, together with related comments or
16 documentation provided by the licensee which may refute
17 findings in the report, which explain extenuating
18 circumstances that the facility could not reasonably have
19 prevented, or which indicate methods and timetables for
20 correction of deficiencies described in the report. Without
21 affecting the application of subsection (a) of Section 3-303,
22 any documentation or comments of the licensee shall be
23 provided within 10 days of receipt of the copy of the report.
24 Such report shall recommend to the Director appropriate action
25 under this Act with respect to findings against a facility.
26 The Director shall then determine whether the report's

1 findings constitute a violation or violations of which the
2 facility must be given notice. Such determination shall be
3 based upon the severity of the finding, the danger posed to
4 resident health and safety, the comments and documentation
5 provided by the facility, the diligence and efforts to correct
6 deficiencies, correction of the reported deficiencies, the
7 frequency and duration of similar findings in previous reports
8 and the facility's general inspection history. Violations
9 shall be determined under this subsection no later than 75
10 days after completion of each inspection, survey and
11 evaluation.

12 (d) The Department shall maintain all inspection, survey
13 and evaluation reports for at least 5 years in a manner
14 accessible to and understandable by the public.

15 (e) Revisit surveys. The Department shall conduct a
16 revisit to its licensure and certification surveys, consistent
17 with federal regulations and guidelines.

18 (f) Notwithstanding any other provision of this Act, the
19 Department shall, no later than 180 days after the effective
20 date of this amendatory Act of the 98th General Assembly,
21 implement a single survey process that encompasses federal
22 certification and State licensure requirements, health and
23 life safety requirements, and an enhanced complaint
24 investigation initiative.

25 (1) To meet the requirement of a single survey
26 process, the portions of the health and life safety survey

1 associated with federal certification and State licensure
2 surveys must be started within 7 working days of each
3 other. Nothing in this paragraph (1) of subsection (f) of
4 this Section applies to a complaint investigation.

5 (2) The enhanced complaint and incident report
6 investigation initiative shall permit the facility to
7 challenge the amount of the fine due to the excessive
8 length of the investigation which results in one or more
9 of the following conditions:

10 (A) prohibits the timely development and
11 implementation of a plan of correction;

12 (B) creates undue financial hardship impacting the
13 quality of care delivered to the resident;

14 (C) delays initiation of corrective training; and

15 (D) negatively impacts quality assurance and
16 patient improvement standards.

17 This paragraph (2) does not apply to complaint
18 investigations exited within 14 working days or a
19 situation that triggers an extended survey.

20 (Source: P.A. 98-104, eff. 7-22-13.)

21 (210 ILCS 45/3-702) (from Ch. 111 1/2, par. 4153-702)

22 Sec. 3-702. (a) A person who believes that this Act or a
23 rule promulgated under this Act may have been violated may
24 request an investigation. The request may be submitted to the
25 Department in writing, by telephone, by electronic means, or

1 by personal visit. An oral complaint shall be reduced to
2 writing by the Department. The Department shall make
3 available, through its website and upon request, information
4 regarding the oral and phone intake processes and the list of
5 questions that will be asked of the complainant. The
6 Department shall request information identifying the
7 complainant, including the name, address and telephone number,
8 to help enable appropriate follow-up. The Department shall act
9 on such complaints via on-site visits or other methods deemed
10 appropriate to handle the complaints with or without such
11 identifying information, as otherwise provided under this
12 Section. The complainant shall be informed that compliance
13 with such request is not required to satisfy the procedures
14 for filing a complaint under this Act. The Department must
15 notify complainants that complaints with less information
16 provided are far more difficult to respond to and investigate.

17 (b) The substance of the complaint shall be provided in
18 writing to the licensee, owner, or administrator upon ~~no~~
19 ~~earlier than at~~ the commencement of an on-site inspection of
20 the facility which takes place pursuant to the complaint.

21 (c) The Department shall not disclose the name of the
22 complainant unless the complainant consents in writing to the
23 disclosure or the investigation results in a judicial
24 proceeding, or unless disclosure is essential to the
25 investigation. The complainant shall be given the opportunity
26 to withdraw the complaint before disclosure. Upon the request

1 of the complainant, the Department may permit the complainant
2 or a representative of the complainant to accompany the person
3 making the on-site inspection of the facility.

4 (d) Upon receipt of a complaint, the Department shall
5 determine whether this Act or a rule promulgated under this
6 Act has been or is being violated. The Department shall
7 investigate all complaints alleging abuse or neglect within 7
8 calendar days after the receipt of the complaint except that
9 complaints of abuse or neglect which indicate that a
10 resident's life or safety is in imminent danger shall be
11 investigated within 24 hours after receipt of the complaint.
12 All other complaints shall be investigated within 30 calendar
13 days after the receipt of the complaint. The Department
14 employees investigating a complaint shall conduct a brief,
15 informal exit conference with the facility to alert its
16 administration of any suspected serious deficiency that poses
17 a direct threat to the health, safety or welfare of a resident
18 to enable an immediate correction for the alleviation or
19 elimination of such threat. Such information and findings
20 discussed in the brief exit conference shall become a part of
21 the investigating record but shall not in any way constitute
22 an official or final notice of violation as provided under
23 Section 3-301. All complaints shall be classified as "an
24 invalid report", "a valid report", or "an undetermined
25 report". For any complaint classified as "a valid report", the
26 Department must determine within 7 calendar ~~30 working~~ days

1 after any Department employee enters a facility to begin an
2 on-site inspection if any rule or provision of this Act has
3 been or is being violated.

4 (d-1) The Department shall, whenever possible, combine an
5 on-site investigation of a complaint in a facility with other
6 inspections in order to avoid duplication of inspections.

7 (e) In all cases, the Department shall inform the
8 complainant of its findings within 5 calendar ~~10~~ days of its
9 determination unless otherwise indicated by the complainant,
10 and the complainant may direct the Department to send a copy of
11 such findings to another person. The Department's findings may
12 include comments or documentation provided by either the
13 complainant or the licensee pertaining to the complaint. The
14 Department shall also notify the facility of such findings
15 within 5 calendar ~~10~~ days of the determination, but the name of
16 the complainant or residents shall not be disclosed in this
17 notice to the facility. The notice or statement of deficiency
18 of such findings shall include a copy of the written
19 determination; the correction order, if any; the warning
20 notice, if any; the inspection report; or the State licensure
21 form on which the violation is listed. If a facility is found
22 to have violated any provision of this Act or rule adopted
23 under this Act, the facility shall develop a plan of
24 correction to address deficiencies indicated in a statement of
25 deficiency. The facility shall submit the plan of correction
26 to the Department for approval. The Department must approve or

1 deny the plan of correction within 72 hours after receiving
2 the plan of correction. If the facility's plan of correction
3 is denied, the Department must notify the facility within 48
4 hours after the denial determination and provide specific
5 reasons for the denial, a process to remedy the denial, and
6 requests for additional information, as needed, and complete
7 the plan of correction determination process within 48 hours
8 after receiving requested information from the facility. The
9 Department shall complete an on-site revisit or desk revisit
10 within 7 calendar days after approval of the facility's plan
11 of correction. During the on-site or desk revisit, the
12 Department must address the approved plan of correction and
13 clear any outstanding violation for which a plan of correction
14 has been approved before beginning a new complaint
15 investigation or annual review. If the Department receives an
16 abuse or neglect complaint that indicates a resident is in
17 immediate danger within the same time frame during which an
18 on-site revisit must be completed, the Department must conduct
19 the on-site revisit simultaneously with the new complaint
20 investigation. Under no circumstance may a violation remain
21 open if the Department has approved the facility's plan of
22 correction. If a facility fails to remedy the violation for
23 which an on-site revisit is being conducted, the facility must
24 correct any outstanding violation. Once the facility has
25 notified the Department that the facility is in compliance
26 with the plan of correction, the Department must complete an

1 on-site revisit within 7 calendar days. If the Department
2 fails to complete a revisit within 7 calendar days after
3 approving a facility's plan of correction, the facility shall
4 be considered to be in substantial compliance.

5 (f) A written determination, correction order, or warning
6 notice concerning a complaint, together with the facility's
7 response, shall be available for public inspection, but the
8 name of the complainant or resident shall not be disclosed
9 without his consent.

10 (g) A complainant who is dissatisfied with the
11 determination or investigation by the Department may request a
12 hearing under Section 3-703. The facility shall be given
13 notice of any such hearing and may participate in the hearing
14 as a party. If a facility requests a hearing under Section
15 3-703 which concerns a matter covered by a complaint, the
16 complainant shall be given notice and may participate in the
17 hearing as a party. A request for a hearing by either a
18 complainant or a facility shall be submitted in writing to the
19 Department within 30 days after the mailing of the
20 Department's findings as described in subsection (e) of this
21 Section. Upon receipt of the request the Department shall
22 conduct a hearing as provided under Section 3-703.

23 (g-5) The Department shall conduct an annual review of all
24 survey activity from the preceding calendar year and make a
25 report concerning the complaint and survey process. The report
26 shall include, but not be limited to: ~~that includes~~ the total

1 number of complaints received; the total number of 24-hour,
2 7-day, and 30-day complaints;~~7~~ the breakdown of anonymous and
3 non-anonymous complaints; and whether the number of complaints
4 that were substantiated versus unsubstantiated; or not, the
5 total number of substantiated complaints that were completed
6 in the time frame determined under subsection (d); the total
7 number of informal dispute resolutions requested; the total
8 number of informal dispute resolution requests approved; the
9 total number of informal dispute resolutions that were
10 overturned or reduced in severity; the total number of
11 independent informal dispute resolutions requested; the total
12 number of independent informal dispute resolution requests
13 approved; the total number of independent informal dispute
14 resolutions that were overturned or reduced in severity; the
15 total number of revisits not completed within the statutorily
16 mandated time frames; the total number of nurse surveyors
17 hired during the calendar year; the total number of nurse
18 surveyors who left Department employment; the total number of
19 nurse surveyors who transferred to other positions within the
20 Department or transferred to another State agency; the total
21 number of Department employees entering long-term care
22 facilities for any reason who are fully vaccinated for
23 influenza and COVID-19; the total number of Department
24 employees entering long-term care facilities for any reason
25 who are not fully vaccinated for influenza and COVID-19; the
26 total number of Department employees who enter long-term care

1 facilities and who have tested positive for COVID-19; and any
2 other complaint information requested by the Long-Term Care
3 Facility Advisory Board created under Section 2-204 of this
4 Act or the Illinois Long-Term Care Council created under
5 Section 4.04a of the Illinois Act on the Aging. All of the
6 listed reporting criteria in this subsection and additional
7 complaint information requested by the Long-Term Care Facility
8 Advisory Board, the Illinois Long-Term Care Council, or the
9 General Assembly shall be provided in aggregate and broken
10 down by Office of Health Care Regulation region. In addition,
11 the Department shall provide Manatt health vaccine and health
12 equity report findings, information about continued progress
13 toward correcting identified deficiencies, and annual Centers
14 for Medicare and Medicaid Services' State Performance
15 Standards System results for the State of Illinois. This
16 report shall be provided to the Long-Term Care Facility
17 Advisory Board, the Illinois Long-Term Care Council, and the
18 General Assembly. The Long-Term Care Facility Advisory Board
19 and the Illinois Long-Term Care Council shall review the
20 report and suggest any changes deemed necessary to the
21 Department for review and action, including how to investigate
22 and substantiate anonymous complaints.

23 (h) Any person who knowingly transmits a false report to
24 the Department commits the offense of disorderly conduct under
25 subsection (a)(8) of Section 26-1 of the Criminal Code of
26 2012.

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1 (Source: P.A. 102-432, eff. 8-20-21.)