



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3446

Introduced 2/8/2024, by Sen. Javier L. Cervantes

SYNOPSIS AS INTRODUCED:

210 ILCS 45/3-212

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

Amends the Nursing Home Care Act. Provides that the Department of Public Health shall conduct 3 unannounced visits to a facility per quarter to determine bedside care staffing levels. Provides that a facility that does not meet established bedside care staffing levels has committed a type "B" violation and is subject to a fine under the Act. Provides that the Department shall conduct a physical roll call during an inspection. Provides that employee identification cards must belong to the employee with the identification in the employee's possession. The employees present at the facility must match the published shift schedule. Provides that management shall not be considered as part of a shift schedule, unless the manager was added to the schedule no later than the start of the shift or in the case of an emergency and a manager is needed for bedside care. Provides that, for a facility that is not in compliance, the Department may remove the facility operator or assess a fine of no more than \$10,000. Provides that an operator of a facility that is not in compliance must submit a plan of correction to the Department which the Department shall consider upon review of the facility's noncompliance. Provides that the Department shall post a notice about ghost schedules on its public Internet website and in common areas of a facility that is not compliant. Effective immediately.

LRB103 38889 CES 69026 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 Section 3-212 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 agency charged with inspecting,
13 surveying, or evaluating a facility are required to complete
14 at least 10 hours of continuing education annually on topics
15 that support the survey process, including, but not limited
16 to, trauma-informed care, infection control, abuse and
17 neglect, and civil monetary penalties. Qualifying hours of
18 continuing education intended to fulfill the requirements of
19 this subsection shall only be offered by the Department.
20 Content presented during the continuing education shall be
21 consistent throughout the State, regardless of survey region.
22 At least 5 of the 10 hours of continuing education required
23 under this subsection shall be separate and distinct from any
24 continuing education hours required for any license that the
25 employee holds. Any continuing education hours provided by the
26 Department in addition to the 10 hours of continuing education

1 required under this subsection may count towards continuing
2 education hours required for any license that the employee
3 holds.

4 (a-4) The Department shall conduct 3 unannounced visits to
5 a facility per quarter to determine bedside care staffing
6 levels. Any facility that does not meet established bedside
7 care staffing levels has committed a type "B" violation and
8 shall be subject to a fine under Section 3-305 of this Act.

9 (1) The Department shall conduct a physical roll call
10 during an inspection under (a-4) of this Section. For
11 purposes of this Section, employee identification cards
12 must belong to the employee with the identification in the
13 employee's possession. The employees present at the
14 facility must match the published shift schedule.
15 Management shall not be considered as part of a shift
16 schedule, unless the manager was added to the schedule no
17 later than the start of the shift or in the case of an
18 emergency and a manager is needed for bedside care.

19 (2) If the facility is not compliant with subsection
20 (1), the Department may remove the facility operator or
21 assess a fine of no more than \$10,000. The operator must
22 submit a plan of correction to the Department which the
23 Department shall consider upon review of the facility's
24 non-compliance.

25 (3) The Department shall post the following on the
26 Department's public Internet website and in the facility

1 common areas: "Ghost schedules are commonly referred to in
2 the nursing home and independent living center industry.
3 These schedules typically will have management staff act
4 as bedside care staff for the purposes of staffing audits
5 to demonstrate complete staffing levels. These schedules
6 give the impression that the facility is fully staffed
7 when it is not."

8 (b) In determining whether to make more than the required
9 number of unannounced inspections, surveys and evaluations of
10 a facility the Department shall consider one or more of the
11 following: previous inspection reports; the facility's history
12 of compliance with standards, rules and regulations
13 promulgated under this Act and correction of violations,
14 penalties or other enforcement actions; the number and
15 severity of complaints received about the facility; any
16 allegations of resident abuse or neglect; weather conditions;
17 health emergencies; other reasonable belief that deficiencies
18 exist.

19 (b-1) The Department shall not be required to determine
20 whether a facility certified to participate in the Medicare
21 program under Title XVIII of the Social Security Act, or the
22 Medicaid program under Title XIX of the Social Security Act,
23 and which the Department determines by inspection under this
24 Section or under Section 3-702 of this Act to be in compliance
25 with the certification requirements of Title XVIII or XIX, is
26 in compliance with any requirement of this Act that is less

1 stringent than or duplicates a federal certification
2 requirement. In accordance with subsection (a) of this Section
3 or subsection (d) of Section 3-702, the Department shall
4 determine whether a certified facility is in compliance with
5 requirements of this Act that exceed federal certification
6 requirements. If a certified facility is found to be out of
7 compliance with federal certification requirements, the
8 results of an inspection conducted pursuant to Title XVIII or
9 XIX of the Social Security Act may be used as the basis for
10 enforcement remedies authorized and commenced, with the
11 Department's discretion to evaluate whether penalties are
12 warranted, under this Act. Enforcement of this Act against a
13 certified facility shall be commenced pursuant to the
14 requirements of this Act, unless enforcement remedies sought
15 pursuant to Title XVIII or XIX of the Social Security Act
16 exceed those authorized by this Act. As used in this
17 subsection, "enforcement remedy" means a sanction for
18 violating a federal certification requirement or this Act.

19 (c) Upon completion of each inspection, survey and
20 evaluation, the appropriate Department personnel who conducted
21 the inspection, survey or evaluation shall submit a physical
22 or electronic copy of their report to the licensee upon
23 exiting the facility, and shall submit the actual report to
24 the appropriate regional office of the Department. Such report
25 and any recommendations for action by the Department under
26 this Act shall be transmitted to the appropriate offices of

1 the associate director of the Department, together with
2 related comments or documentation provided by the licensee
3 which may refute findings in the report, which explain
4 extenuating circumstances that the facility could not
5 reasonably have prevented, or which indicate methods and
6 timetables for correction of deficiencies described in the
7 report. Without affecting the application of subsection (a) of
8 Section 3-303, any documentation or comments of the licensee
9 shall be provided within 10 days of receipt of the copy of the
10 report. Such report shall recommend to the Director
11 appropriate action under this Act with respect to findings
12 against a facility. The Director shall then determine whether
13 the report's findings constitute a violation or violations of
14 which the facility must be given notice. Such determination
15 shall be based upon the severity of the finding, the danger
16 posed to resident health and safety, the comments and
17 documentation provided by the facility, the diligence and
18 efforts to correct deficiencies, correction of the reported
19 deficiencies, the frequency and duration of similar findings
20 in previous reports and the facility's general inspection
21 history. Violations shall be determined under this subsection
22 no later than 75 days after completion of each inspection,
23 survey and evaluation.

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

1 (e) Revisit surveys. The Department shall conduct a
2 revisit to its licensure and certification surveys, consistent
3 with federal regulations and guidelines.

4 (f) Notwithstanding any other provision of this Act, the
5 Department shall, no later than 180 days after the effective
6 date of this amendatory Act of the 98th General Assembly,
7 implement a single survey process that encompasses federal
8 certification and State licensure requirements, health and
9 life safety requirements, and an enhanced complaint
10 investigation initiative.

11 (1) To meet the requirement of a single survey
12 process, the portions of the health and life safety survey
13 associated with federal certification and State licensure
14 surveys must be started within 7 working days of each
15 other. Nothing in this paragraph (1) of subsection (f) of
16 this Section applies to a complaint investigation.

17 (2) The enhanced complaint and incident report
18 investigation initiative shall permit the facility to
19 challenge the amount of the fine due to the excessive
20 length of the investigation which results in one or more
21 of the following conditions:

22 (A) prohibits the timely development and
23 implementation of a plan of correction;

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

26 (C) delays initiation of corrective training; and

1 (D) negatively impacts quality assurance and
2 patient improvement standards.

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

6 (Source: P.A. 102-947, eff. 1-1-23.)

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