



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4856

Introduced 1/15/2010, by Rep. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

See Index

Amends the Nursing Home Administrators Licensing and Disciplinary Act. Adds to the grounds for disciplinary action the failure to report certain specified events involving acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under the Act. Creates separate reporting requirements related to licensees under the Act for the following groups: (1) the chief administrator or executive officer of any health care institution licensed by the Illinois Department of Public Health, including nursing homes; (2) any insurance company that offers policies of professional liability insurance to licensees or any other entity which seeks to indemnify the professional liability of a licensee; (3) the State's Attorney of each county; and (4) any agency, board, commission, department, or other instrumentality of the government of the State of Illinois. Provides that upon the receipt of any report required by the Act, the Department shall notify in writing, by certified mail, the person who is the subject of the report within 30 days after receipt by the Department of the report. Provides that the Department shall, in writing, make a determination as to whether there are sufficient facts to warrant further investigation or action and that failure to make such determination within the time provided shall be deemed to be a determination that there are not sufficient facts to warrant further investigation or action. Provides that any violation of the reporting provisions shall be a Class A misdemeanor. Provides for injunctive relief. Effective on January 1, 2011.

LRB096 16812 ASK 32119 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning professional 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 Administrators Licensing and
5 Disciplinary Act is amended by changing Section 17 and by
6 adding Section 17.1 as follows:

7 (225 ILCS 70/17) (from Ch. 111, par. 3667)

8 (Text of Section before amendment by P.A. 96-339)

9 (Section scheduled to be repealed on January 1, 2018)

10 Sec. 17. Grounds for disciplinary action.

11 (a) The Department may impose fines not to exceed \$10,000
12 or may refuse to issue or to renew, or may revoke, suspend,
13 place on probation, censure, reprimand or take other
14 disciplinary or non-disciplinary action with regard to the
15 license of any person, for any one or combination of the
16 following causes:

17 (1) Intentional material misstatement in furnishing
18 information to the Department.

19 (2) Conviction of or entry of a plea of guilty or nolo
20 contendere to any crime that is a felony under the laws of
21 the United States or any state or territory thereof or a
22 misdemeanor of which an essential element is dishonesty or
23 that is directly related to the practice of the profession

1 of nursing home administration.

2 (3) Making any misrepresentation for the purpose of
3 obtaining a license, or violating any provision of this
4 Act.

5 (4) Immoral conduct in the commission of any act, such
6 as sexual abuse or sexual misconduct, related to the
7 licensee's practice.

8 (5) Failing to respond within 30 days, to a written
9 request made by the Department for information.

10 (6) Engaging in dishonorable, unethical or
11 unprofessional conduct of a character likely to deceive,
12 defraud or harm the public.

13 (7) Habitual use or addiction to alcohol, narcotics,
14 stimulants, or any other chemical agent or drug which
15 results in the inability to practice with reasonable
16 judgment, skill or safety.

17 (8) Discipline by another U.S. jurisdiction if at least
18 one of the grounds for the discipline is the same or
19 substantially equivalent to those set forth herein.

20 (9) A finding by the Department that the licensee,
21 after having his or her license placed on probationary
22 status has violated the terms of probation.

23 (10) Willfully making or filing false records or
24 reports in his or her practice, including but not limited
25 to false records filed with State agencies or departments.

26 (11) Physical illness, mental illness, or other

1 impairment or disability, including, but not limited to,
2 deterioration through the aging process, or loss of motor
3 skill that results in the inability to practice the
4 profession with reasonable judgment, skill or safety.

5 (12) Disregard or violation of this Act or of any rule
6 issued pursuant to this Act.

7 (13) Aiding or abetting another in the violation of
8 this Act or any rule or regulation issued pursuant to this
9 Act.

10 (14) Allowing one's license to be used by an unlicensed
11 person.

12 (15) (Blank).

13 (16) Professional incompetence in the practice of
14 nursing home administration.

15 (17) Conviction of a violation of Section 12-19 of the
16 Criminal Code of 1961 for the abuse and gross neglect of a
17 long term care facility resident.

18 (18) Violation of the Nursing Home Care Act or of any
19 rule issued under the Nursing Home Care Act.

20 (19) Failure to report to the Department any adverse
21 final action taken against the licensee by a licensing
22 authority of another state, territory of the United States,
23 or foreign country; or by any governmental or law
24 enforcement agency; or by any court for acts or conduct
25 similar to acts or conduct that would constitute grounds
26 for disciplinary action under this Section.

1 (20) Failure to report to the Department the surrender
2 of a license or authorization to practice as a nursing home
3 administrator in another state or jurisdiction for acts or
4 conduct similar to acts or conduct that would constitute
5 grounds for disciplinary action under this Section.

6 (21) Failure to report to the Department any adverse
7 judgment, settlement, or award arising from a liability
8 claim related to acts or conduct similar to acts or conduct
9 which would constitute grounds for disciplinary action
10 under this Section.

11 All proceedings to suspend, revoke, place on probationary
12 status, or take any other disciplinary action as the Department
13 may deem proper, with regard to a license on any of the
14 foregoing grounds, must be commenced within 5 years next after
15 receipt by the Department of (i) a complaint alleging the
16 commission of or notice of the conviction order for any of the
17 acts described herein or (ii) a referral for investigation
18 under Section 3-108 of the Nursing Home Care Act.

19 The entry of an order or judgment by any circuit court
20 establishing that any person holding a license under this Act
21 is a person in need of mental treatment operates as a
22 suspension of that license. That person may resume their
23 practice only upon the entry of a Department order based upon a
24 finding by the Board that they have been determined to be
25 recovered from mental illness by the court and upon the Board's
26 recommendation that they be permitted to resume their practice.

1 The Department, upon the recommendation of the Board, may
2 adopt rules which set forth standards to be used in determining
3 what constitutes:

4 (i) when a person will be deemed sufficiently
5 rehabilitated to warrant the public trust;

6 (ii) dishonorable, unethical or unprofessional conduct
7 of a character likely to deceive, defraud, or harm the
8 public;

9 (iii) immoral conduct in the commission of any act
10 related to the licensee's practice; and

11 (iv) professional incompetence in the practice of
12 nursing home administration.

13 However, no such rule shall be admissible into evidence in
14 any civil action except for review of a licensing or other
15 disciplinary action under this Act.

16 In enforcing this Section, the Department or Board, upon a
17 showing of a possible violation, may compel any individual
18 licensed to practice under this Act, or who has applied for
19 licensure pursuant to this Act, to submit to a mental or
20 physical examination, or both, as required by and at the
21 expense of the Department. The examining physician or
22 physicians shall be those specifically designated by the
23 Department or Board. The Department or Board may order the
24 examining physician to present testimony concerning this
25 mental or physical examination of the licensee or applicant. No
26 information shall be excluded by reason of any common law or

1 statutory privilege relating to communications between the
2 licensee or applicant and the examining physician. The
3 individual to be examined may have, at his or her own expense,
4 another physician of his or her choice present during all
5 aspects of the examination. Failure of any individual to submit
6 to mental or physical examination, when directed, shall be
7 grounds for suspension of his or her license until such time as
8 the individual submits to the examination if the Department
9 finds, after notice and hearing, that the refusal to submit to
10 the examination was without reasonable cause.

11 If the Department or Board finds an individual unable to
12 practice because of the reasons set forth in this Section, the
13 Department or Board shall require such individual to submit to
14 care, counseling, or treatment by physicians approved or
15 designated by the Department or Board, as a condition, term, or
16 restriction for continued, reinstated, or renewed licensure to
17 practice; or in lieu of care, counseling, or treatment, the
18 Department may file, or the Board may recommend to the
19 Department to file, a complaint to immediately suspend, revoke,
20 or otherwise discipline the license of the individual. Any
21 individual whose license was granted pursuant to this Act or
22 continued, reinstated, renewed, disciplined or supervised,
23 subject to such terms, conditions or restrictions who shall
24 fail to comply with such terms, conditions or restrictions
25 shall be referred to the Secretary for a determination as to
26 whether the licensee shall have his or her license suspended

1 immediately, pending a hearing by the Department. In instances
2 in which the Secretary immediately suspends a license under
3 this Section, a hearing upon such person's license must be
4 convened by the Board within 30 days after such suspension and
5 completed without appreciable delay. The Department and Board
6 shall have the authority to review the subject administrator's
7 record of treatment and counseling regarding the impairment, to
8 the extent permitted by applicable federal statutes and
9 regulations safeguarding the confidentiality of medical
10 records.

11 An individual licensed under this Act, affected under this
12 Section, shall be afforded an opportunity to demonstrate to the
13 Department or Board that he or she can resume practice in
14 compliance with acceptable and prevailing standards under the
15 provisions of his or her license.

16 (b) Any individual or organization acting in good faith,
17 and not in a wilful and wanton manner, in complying with this
18 Act by providing any report or other information to the
19 Department, or assisting in the investigation or preparation of
20 such information, or by participating in proceedings of the
21 Department, or by serving as a member of the Board, shall not,
22 as a result of such actions, be subject to criminal prosecution
23 or civil damages.

24 (c) Members of the Board, and persons retained under
25 contract to assist and advise in an investigation, shall be
26 indemnified by the State for any actions occurring within the

1 scope of services on or for the Board, done in good faith and
2 not wilful and wanton in nature. The Attorney General shall
3 defend all such actions unless he or she determines either that
4 there would be a conflict of interest in such representation or
5 that the actions complained of were not in good faith or were
6 wilful and wanton.

7 Should the Attorney General decline representation, a
8 person entitled to indemnification under this Section shall
9 have the right to employ counsel of his or her choice, whose
10 fees shall be provided by the State, after approval by the
11 Attorney General, unless there is a determination by a court
12 that the member's actions were not in good faith or were wilful
13 and wanton.

14 A person entitled to indemnification under this Section
15 must notify the Attorney General within 7 days of receipt of
16 notice of the initiation of any action involving services of
17 the Board. Failure to so notify the Attorney General shall
18 constitute an absolute waiver of the right to a defense and
19 indemnification.

20 The Attorney General shall determine within 7 days after
21 receiving such notice, whether he or she will undertake to
22 represent a person entitled to indemnification under this
23 Section.

24 (d) The determination by a circuit court that a licensee is
25 subject to involuntary admission or judicial admission as
26 provided in the Mental Health and Developmental Disabilities

1 Code, as amended, operates as an automatic suspension. Such
2 suspension will end only upon a finding by a court that the
3 patient is no longer subject to involuntary admission or
4 judicial admission and issues an order so finding and
5 discharging the patient; and upon the recommendation of the
6 Board to the Secretary that the licensee be allowed to resume
7 his or her practice.

8 (e) The Department may refuse to issue or may suspend the
9 license of any person who fails to file a return, or to pay the
10 tax, penalty or interest shown in a filed return, or to pay any
11 final assessment of tax, penalty or interest, as required by
12 any tax Act administered by the Department of Revenue, until
13 such time as the requirements of any such tax Act are
14 satisfied.

15 (f) The Department of Public Health shall transmit to the
16 Department a list of those facilities which receive an "A"
17 violation as defined in Section 1-129 of the Nursing Home Care
18 Act.

19 (Source: P.A. 95-703, eff. 12-31-07.)

20 (Text of Section after amendment by P.A. 96-339)

21 (Section scheduled to be repealed on January 1, 2018)

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3 following causes:

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5 information to the Department.

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8 the United States or any state or territory thereof or a
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15 another physician of his or her choice present during all
16 aspects of the examination. Failure of any individual to submit
17 to mental or physical examination, when directed, shall be
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20 finds, after notice and hearing, that the refusal to submit to
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22 If the Department or Board finds an individual unable to
23 practice because of the reasons set forth in this Section, the
24 Department or Board shall require such individual to submit to
25 care, counseling, or treatment by physicians approved or
26 designated by the Department or Board, as a condition, term, or

1 restriction for continued, reinstated, or renewed licensure to
2 practice; or in lieu of care, counseling, or treatment, the
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4 Department to file, a complaint to immediately suspend, revoke,
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8 subject to such terms, conditions or restrictions who shall
9 fail to comply with such terms, conditions or restrictions
10 shall be referred to the Secretary for a determination as to
11 whether the licensee shall have his or her license suspended
12 immediately, pending a hearing by the Department. In instances
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14 this Section, a hearing upon such person's license must be
15 convened by the Board within 30 days after such suspension and
16 completed without appreciable delay. The Department and Board
17 shall have the authority to review the subject administrator's
18 record of treatment and counseling regarding the impairment, to
19 the extent permitted by applicable federal statutes and
20 regulations safeguarding the confidentiality of medical
21 records.

22 An individual licensed under this Act, affected under this
23 Section, shall be afforded an opportunity to demonstrate to the
24 Department or Board that he or she can resume practice in
25 compliance with acceptable and prevailing standards under the
26 provisions of his or her license.

1 (b) Any individual or organization acting in good faith,
2 and not in a wilful and wanton manner, in complying with this
3 Act by providing any report or other information to the
4 Department, or assisting in the investigation or preparation of
5 such information, or by participating in proceedings of the
6 Department, or by serving as a member of the Board, shall not,
7 as a result of such actions, be subject to criminal prosecution
8 or civil damages.

9 (c) Members of the Board, and persons retained under
10 contract to assist and advise in an investigation, shall be
11 indemnified by the State for any actions occurring within the
12 scope of services on or for the Board, done in good faith and
13 not wilful and wanton in nature. The Attorney General shall
14 defend all such actions unless he or she determines either that
15 there would be a conflict of interest in such representation or
16 that the actions complained of were not in good faith or were
17 wilful and wanton.

18 Should the Attorney General decline representation, a
19 person entitled to indemnification under this Section shall
20 have the right to employ counsel of his or her choice, whose
21 fees shall be provided by the State, after approval by the
22 Attorney General, unless there is a determination by a court
23 that the member's actions were not in good faith or were wilful
24 and wanton.

25 A person entitled to indemnification under this Section
26 must notify the Attorney General within 7 days of receipt of

1 notice of the initiation of any action involving services of
2 the Board. Failure to so notify the Attorney General shall
3 constitute an absolute waiver of the right to a defense and
4 indemnification.

5 The Attorney General shall determine within 7 days after
6 receiving such notice, whether he or she will undertake to
7 represent a person entitled to indemnification under this
8 Section.

9 (d) The determination by a circuit court that a licensee is
10 subject to involuntary admission or judicial admission as
11 provided in the Mental Health and Developmental Disabilities
12 Code, as amended, operates as an automatic suspension. Such
13 suspension will end only upon a finding by a court that the
14 patient is no longer subject to involuntary admission or
15 judicial admission and issues an order so finding and
16 discharging the patient; and upon the recommendation of the
17 Board to the Secretary that the licensee be allowed to resume
18 his or her practice.

19 (e) The Department may refuse to issue or may suspend the
20 license of any person who fails to file a return, or to pay the
21 tax, penalty or interest shown in a filed return, or to pay any
22 final assessment of tax, penalty or interest, as required by
23 any tax Act administered by the Department of Revenue, until
24 such time as the requirements of any such tax Act are
25 satisfied.

26 (f) The Department of Public Health shall transmit to the

1 Department a list of those facilities which receive an "A"
2 violation as defined in Section 1-129 of the Nursing Home Care
3 Act.

4 (Source: P.A. 95-703, eff. 12-31-07; 96-339, eff. 7-1-10.)

5 (225 ILCS 70/17.1 new)

6 Sec. 17.1. Reports relating to professional conduct and
7 capacity.

8 (a) The chief administrator or executive officer of any
9 health care institution licensed by the Illinois Department of
10 Public Health, including nursing homes, shall report to the
11 Department any instance arising in connection with operations
12 of the health care institution, including the administration of
13 any law by the institution, in which a licensee under this Act
14 has either committed an act or acts which may constitute a
15 violation of this Act or unprofessional conduct related
16 directly to patient care, or which may indicate that the
17 licensee may be mentally or physically disabled in such a
18 manner as to endanger patients under that licensee's care.
19 Additionally, every nursing home shall report to the Department
20 any instance when a licensee is terminated for cause.

21 (b) Any insurance company that offers policies of
22 professional liability insurance to licensees, or any other
23 entity that seeks to indemnify the professional liability of a
24 licensee, shall report the settlement of any claim or adverse
25 final judgment rendered in any cause of action that alleged

1 negligence in planning, organizing, directing, or supervising
2 the operation of a nursing home by the licensee.

3 (c) The State's Attorney of each county shall report to the
4 Department each instance in which a licensee is convicted of or
5 enters a plea of guilty or nolo contendere to any crime that is
6 a felony or of which an essential element is dishonesty or that
7 is directly related to the practice of the profession of
8 nursing home administration.

9 (d) Any agency, board, commission, department, or other
10 instrumentality of the government of the State of Illinois
11 shall report to the Department any instance arising in
12 connection with the operations of the agency, including the
13 administration of any law by the agency, in which a licensee
14 under this Act has either committed an act or acts which may
15 constitute a violation of this Act or unprofessional conduct
16 related directly to planning, organizing, directing or
17 supervising the operation of a nursing home, or which may
18 indicate that a licensee may be mentally or physically disabled
19 in such a manner as to endanger others.

20 (e) All reports required by items (19), (20), and (21) of
21 subsection (a) of Section 17 and by this Section 17.1 shall be
22 submitted to the Department in a timely fashion. The reports
23 shall be filed in writing within 60 days after a determination
24 that a report is required under this Act. All reports shall
25 contain the following information:

26 (1) The name, address, and telephone number of the

1 person making the report.

2 (2) The name, address, and telephone number of the
3 person that is the subject of the report.

4 (3) The name and date of birth of any person or persons
5 whose treatment is a subject of the report, or other means
6 of identification if such information is not available, and
7 identification of the nursing home facility where the care
8 at issue in the report was rendered.

9 (4) A brief description of the facts which gave rise to
10 the issuance of the report, including the dates of any
11 occurrences deemed to necessitate the filing of the report.

12 (5) If court action is involved, then the identity of
13 the court in which the action is filed, along with the
14 docket number and date of filing of the action.

15 (6) Any further pertinent information which the
16 reporting party deems to be an aid in the evaluation of the
17 report.

18 If the Department receives a written report concerning an
19 incident required to be reported in either items (19), (20),
20 and (21) of subsection (a) of Section 17 or this Section 17.1,
21 then the licensee's failure to report the incident to the
22 Department within 60 days may not be the sole grounds for any
23 disciplinary action against the licensee.

24 (f) Any individual or organization acting in good faith,
25 and not in a wilful and wanton manner, in complying with this
26 Act by providing any report or other information to the

1 Department, or assisting in the investigation or preparation of
2 such information, or by voluntarily reporting to the Department
3 information regarding alleged errors or negligence by a
4 licensee, or by participating in proceedings of the Department,
5 shall not, as a result of such actions, be subject to criminal
6 prosecution or civil damages.

7 (g) Upon the receipt of any report required by this Act,
8 the Department shall notify in writing, by certified mail, the
9 person who is the subject of the report. Such notification
10 shall be made within 30 days after receipt by the Department of
11 the report.

12 The notification shall include a written notice setting
13 forth the person's right to examine the report. The
14 notification shall also include the address at which the file
15 is maintained, the name of the custodian of the file, and the
16 telephone number at which the custodian may be reached. The
17 person who is the subject of the report shall submit a written
18 statement responding, clarifying, adding to, or proposing the
19 amending of the report previously filed. The statement shall
20 become a permanent part of the file and must be received by the
21 Department no more than 30 days after the date on which the
22 person was notified by the Department of the existence of the
23 original report.

24 The Department shall review a report received by it,
25 together with any supporting information and responding
26 statements submitted by the person who is the subject of the

1 report. The review by the Department shall be in a timely
2 manner, but in no event shall the Department's initial review
3 of the material contained in each disciplinary file last less
4 than 61 days nor more than 180 days after the receipt of the
5 initial report by the Department.

6 When the Department makes its initial review of the
7 materials contained within its disciplinary files, the
8 Department shall, in writing, make a determination as to
9 whether there are sufficient facts to warrant further
10 investigation or action. Failure to make such determination
11 within the time provided shall be deemed to be a determination
12 that there are not sufficient facts to warrant further
13 investigation or action.

14 (h) Any violation of this Section shall be a Class A
15 misdemeanor.

16 (i) If any person or entity violates the provisions of this
17 Section, then an action may be brought in the name of the
18 People of the State of Illinois, through the Attorney General
19 of the State of Illinois, for an order enjoining such violation
20 or for an order enforcing compliance with this Section. Upon
21 filing of a verified petition in such court, the court may
22 issue a temporary restraining order without notice or bond and
23 may preliminarily or permanently enjoin such violation, and if
24 it is established that such person or entity has violated or is
25 violating the injunction, the court may punish the offender for
26 contempt of court. Proceedings under this paragraph shall be in

1 addition to, and not in lieu of, all other remedies and
2 penalties provided for by this Section.

3 Section 99. Effective date. This Act takes effect January
4 1, 2011.

1 INDEX

2 Statutes amended in order of appearance

3 225 ILCS 70/17 from Ch. 111, par. 3667

4 225 ILCS 70/17.1 new