



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5134

Introduced 2/8/2012, by Rep. David R. Leitch

SYNOPSIS AS INTRODUCED:

210 ILCS 45/3-212

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

Amends the Nursing Home Care Act. Requires the Department of Public Health to adopt rules to establish a process for independent third party investigation of a long-term care facility's complaint about Department employees or individuals acting on behalf of the Department in making an inspection, survey, or evaluation under the Act. Requires the rules to include necessary and appropriate protections to ensure that a person filing a complaint in good faith does not suffer any adverse effect on account of having done so. Effective January 1, 2013.

LRB097 17888 DRJ 63111 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 changing
5 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 to
15 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 whether

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

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

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

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

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

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

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

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

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

17 (c) Upon completion of each inspection, survey and
18 evaluation, the appropriate Department personnel who conducted
19 the inspection, survey or evaluation shall submit a copy of
20 their report to the licensee upon exiting the facility, and
21 shall submit the actual report to the appropriate regional
22 office of the Department. Such report and any recommendations
23 for action by the Department under this Act shall be
24 transmitted to the appropriate offices of the associate
25 director of the Department, together with related comments or
26 documentation provided by the licensee which may refute

1 findings in the report, which explain extenuating
2 circumstances that the facility could not reasonably have
3 prevented, or which indicate methods and timetables for
4 correction of deficiencies described in the report. Without
5 affecting the application of subsection (a) of Section 3-303,
6 any documentation or comments of the licensee shall be provided
7 within 10 days of receipt of the copy of the report. Such
8 report shall recommend to the Director appropriate action under
9 this Act with respect to findings against a facility. The
10 Director shall then determine whether the report's findings
11 constitute a violation or violations of which the facility must
12 be given notice. Such determination shall be based upon the
13 severity of the finding, the danger posed to resident health
14 and safety, the comments and documentation provided by the
15 facility, the diligence and efforts to correct deficiencies,
16 correction of the reported deficiencies, the frequency and
17 duration of similar findings in previous reports and the
18 facility's general inspection history. Violations shall be
19 determined under this subsection no later than 90 days after
20 completion of each inspection, survey and evaluation.

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

24 (e) Revisit surveys. The Department shall conduct a revisit
25 to its licensure and certification surveys, consistent with
26 federal regulations and guidelines.

1 (f) The Department shall adopt rules to establish a process
2 for independent third party investigation of a facility's
3 complaint about the conduct of Department employees or
4 individuals acting on behalf of the Department in making an
5 inspection, survey, or evaluation under this Act. The rules
6 shall include at least the following:

7 (1) The process for selecting and contracting with the
8 independent third party.

9 (2) The process by which a facility may file a
10 complaint with the independent third party.

11 (3) The process by which the independent third party
12 shall receive and investigate complaints.

13 (4) The extent of the independent third party's
14 authority to resolve complaints.

15 (5) Necessary and appropriate protections to ensure
16 that a person filing a complaint in good faith does not
17 suffer any adverse effect on account of having done so.

18 (Source: P.A. 95-823, eff. 1-1-09; 96-1372, eff. 7-29-10.)

19 Section 99. Effective date. This Act takes effect January
20 1, 2013.