

# HB1367



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB1367

by Rep. Elizabeth Hernandez

### SYNOPSIS AS INTRODUCED:

305 ILCS 5/5-5.4

from Ch. 23, par. 5-5.4

Amends the Illinois Public Aid Code. Makes a technical change in a Section concerning standards of payment of skilled nursing and intermediate care services.

LRB098 03885 KTG 33902 b

A BILL FOR

1 AN ACT concerning public aid.

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

4 Section 5. The Illinois Public Aid Code is amended by  
5 changing Section 5-5.4 as follows:

6 (305 ILCS 5/5-5.4) (from Ch. 23, par. 5-5.4)

7 Sec. 5-5.4. Standards of Payment - Department of Healthcare  
8 and Family Services. The ~~The~~ Department of Healthcare and  
9 Family Services shall develop standards of payment of nursing  
10 facility and ICF/DD services in facilities providing such  
11 services under this Article which:

12 (1) Provide for the determination of a facility's payment  
13 for nursing facility or ICF/DD services on a prospective basis.  
14 The amount of the payment rate for all nursing facilities  
15 certified by the Department of Public Health under the ID/DD  
16 Community Care Act or the Nursing Home Care Act as Intermediate  
17 Care for the Developmentally Disabled facilities, Long Term  
18 Care for Under Age 22 facilities, Skilled Nursing facilities,  
19 or Intermediate Care facilities under the medical assistance  
20 program shall be prospectively established annually on the  
21 basis of historical, financial, and statistical data  
22 reflecting actual costs from prior years, which shall be  
23 applied to the current rate year and updated for inflation,

1 except that the capital cost element for newly constructed  
2 facilities shall be based upon projected budgets. The annually  
3 established payment rate shall take effect on July 1 in 1984  
4 and subsequent years. No rate increase and no update for  
5 inflation shall be provided on or after July 1, 1994 and before  
6 January 1, 2014, unless specifically provided for in this  
7 Section. The changes made by Public Act 93-841 extending the  
8 duration of the prohibition against a rate increase or update  
9 for inflation are effective retroactive to July 1, 2004.

10 For facilities licensed by the Department of Public Health  
11 under the Nursing Home Care Act as Intermediate Care for the  
12 Developmentally Disabled facilities or Long Term Care for Under  
13 Age 22 facilities, the rates taking effect on July 1, 1998  
14 shall include an increase of 3%. For facilities licensed by the  
15 Department of Public Health under the Nursing Home Care Act as  
16 Skilled Nursing facilities or Intermediate Care facilities,  
17 the rates taking effect on July 1, 1998 shall include an  
18 increase of 3% plus \$1.10 per resident-day, as defined by the  
19 Department. For facilities licensed by the Department of Public  
20 Health under the Nursing Home Care Act as Intermediate Care  
21 Facilities for the Developmentally Disabled or Long Term Care  
22 for Under Age 22 facilities, the rates taking effect on January  
23 1, 2006 shall include an increase of 3%. For facilities  
24 licensed by the Department of Public Health under the Nursing  
25 Home Care Act as Intermediate Care Facilities for the  
26 Developmentally Disabled or Long Term Care for Under Age 22

1 facilities, the rates taking effect on January 1, 2009 shall  
2 include an increase sufficient to provide a \$0.50 per hour wage  
3 increase for non-executive staff.

4 For facilities licensed by the Department of Public Health  
5 under the Nursing Home Care Act as Intermediate Care for the  
6 Developmentally Disabled facilities or Long Term Care for Under  
7 Age 22 facilities, the rates taking effect on July 1, 1999  
8 shall include an increase of 1.6% plus \$3.00 per resident-day,  
9 as defined by the Department. For facilities licensed by the  
10 Department of Public Health under the Nursing Home Care Act as  
11 Skilled Nursing facilities or Intermediate Care facilities,  
12 the rates taking effect on July 1, 1999 shall include an  
13 increase of 1.6% and, for services provided on or after October  
14 1, 1999, shall be increased by \$4.00 per resident-day, as  
15 defined by the Department.

16 For facilities licensed by the Department of Public Health  
17 under the Nursing Home Care Act as Intermediate Care for the  
18 Developmentally Disabled facilities or Long Term Care for Under  
19 Age 22 facilities, the rates taking effect on July 1, 2000  
20 shall include an increase of 2.5% per resident-day, as defined  
21 by the Department. For facilities licensed by the Department of  
22 Public Health under the Nursing Home Care Act as Skilled  
23 Nursing facilities or Intermediate Care facilities, the rates  
24 taking effect on July 1, 2000 shall include an increase of 2.5%  
25 per resident-day, as defined by the Department.

26 For facilities licensed by the Department of Public Health

1 under the Nursing Home Care Act as skilled nursing facilities  
2 or intermediate care facilities, a new payment methodology must  
3 be implemented for the nursing component of the rate effective  
4 July 1, 2003. The Department of Public Aid (now Healthcare and  
5 Family Services) shall develop the new payment methodology  
6 using the Minimum Data Set (MDS) as the instrument to collect  
7 information concerning nursing home resident condition  
8 necessary to compute the rate. The Department shall develop the  
9 new payment methodology to meet the unique needs of Illinois  
10 nursing home residents while remaining subject to the  
11 appropriations provided by the General Assembly. A transition  
12 period from the payment methodology in effect on June 30, 2003  
13 to the payment methodology in effect on July 1, 2003 shall be  
14 provided for a period not exceeding 3 years and 184 days after  
15 implementation of the new payment methodology as follows:

16 (A) For a facility that would receive a lower nursing  
17 component rate per patient day under the new system than  
18 the facility received effective on the date immediately  
19 preceding the date that the Department implements the new  
20 payment methodology, the nursing component rate per  
21 patient day for the facility shall be held at the level in  
22 effect on the date immediately preceding the date that the  
23 Department implements the new payment methodology until a  
24 higher nursing component rate of reimbursement is achieved  
25 by that facility.

26 (B) For a facility that would receive a higher nursing

1 component rate per patient day under the payment  
2 methodology in effect on July 1, 2003 than the facility  
3 received effective on the date immediately preceding the  
4 date that the Department implements the new payment  
5 methodology, the nursing component rate per patient day for  
6 the facility shall be adjusted.

7 (C) Notwithstanding paragraphs (A) and (B), the  
8 nursing component rate per patient day for the facility  
9 shall be adjusted subject to appropriations provided by the  
10 General Assembly.

11 For facilities licensed by the Department of Public Health  
12 under the Nursing Home Care Act as Intermediate Care for the  
13 Developmentally Disabled facilities or Long Term Care for Under  
14 Age 22 facilities, the rates taking effect on March 1, 2001  
15 shall include a statewide increase of 7.85%, as defined by the  
16 Department.

17 Notwithstanding any other provision of this Section, for  
18 facilities licensed by the Department of Public Health under  
19 the Nursing Home Care Act as skilled nursing facilities or  
20 intermediate care facilities, except facilities participating  
21 in the Department's demonstration program pursuant to the  
22 provisions of Title 77, Part 300, Subpart T of the Illinois  
23 Administrative Code, the numerator of the ratio used by the  
24 Department of Healthcare and Family Services to compute the  
25 rate payable under this Section using the Minimum Data Set  
26 (MDS) methodology shall incorporate the following annual

1 amounts as the additional funds appropriated to the Department  
2 specifically to pay for rates based on the MDS nursing  
3 component methodology in excess of the funding in effect on  
4 December 31, 2006:

5 (i) For rates taking effect January 1, 2007,  
6 \$60,000,000.

7 (ii) For rates taking effect January 1, 2008,  
8 \$110,000,000.

9 (iii) For rates taking effect January 1, 2009,  
10 \$194,000,000.

11 (iv) For rates taking effect April 1, 2011, or the  
12 first day of the month that begins at least 45 days after  
13 the effective date of this amendatory Act of the 96th  
14 General Assembly, \$416,500,000 or an amount as may be  
15 necessary to complete the transition to the MDS methodology  
16 for the nursing component of the rate. Increased payments  
17 under this item (iv) are not due and payable, however,  
18 until (i) the methodologies described in this paragraph are  
19 approved by the federal government in an appropriate State  
20 Plan amendment and (ii) the assessment imposed by Section  
21 5B-2 of this Code is determined to be a permissible tax  
22 under Title XIX of the Social Security Act.

23 Notwithstanding any other provision of this Section, for  
24 facilities licensed by the Department of Public Health under  
25 the Nursing Home Care Act as skilled nursing facilities or  
26 intermediate care facilities, the support component of the

1 rates taking effect on January 1, 2008 shall be computed using  
2 the most recent cost reports on file with the Department of  
3 Healthcare and Family Services no later than April 1, 2005,  
4 updated for inflation to January 1, 2006.

5 For facilities licensed by the Department of Public Health  
6 under the Nursing Home Care Act as Intermediate Care for the  
7 Developmentally Disabled facilities or Long Term Care for Under  
8 Age 22 facilities, the rates taking effect on April 1, 2002  
9 shall include a statewide increase of 2.0%, as defined by the  
10 Department. This increase terminates on July 1, 2002; beginning  
11 July 1, 2002 these rates are reduced to the level of the rates  
12 in effect on March 31, 2002, as defined by the Department.

13 For facilities licensed by the Department of Public Health  
14 under the Nursing Home Care Act as skilled nursing facilities  
15 or intermediate care facilities, the rates taking effect on  
16 July 1, 2001 shall be computed using the most recent cost  
17 reports on file with the Department of Public Aid no later than  
18 April 1, 2000, updated for inflation to January 1, 2001. For  
19 rates effective July 1, 2001 only, rates shall be the greater  
20 of the rate computed for July 1, 2001 or the rate effective on  
21 June 30, 2001.

22 Notwithstanding any other provision of this Section, for  
23 facilities licensed by the Department of Public Health under  
24 the Nursing Home Care Act as skilled nursing facilities or  
25 intermediate care facilities, the Illinois Department shall  
26 determine by rule the rates taking effect on July 1, 2002,



1 which shall be 5.9% less than the rates in effect on June 30,  
2 2002.

3 Notwithstanding any other provision of this Section, for  
4 facilities licensed by the Department of Public Health under  
5 the Nursing Home Care Act as skilled nursing facilities or  
6 intermediate care facilities, if the payment methodologies  
7 required under Section 5A-12 and the waiver granted under 42  
8 CFR 433.68 are approved by the United States Centers for  
9 Medicare and Medicaid Services, the rates taking effect on July  
10 1, 2004 shall be 3.0% greater than the rates in effect on June  
11 30, 2004. These rates shall take effect only upon approval and  
12 implementation of the payment methodologies required under  
13 Section 5A-12.

14 Notwithstanding any other provisions of this Section, for  
15 facilities licensed by the Department of Public Health under  
16 the Nursing Home Care Act as skilled nursing facilities or  
17 intermediate care facilities, the rates taking effect on  
18 January 1, 2005 shall be 3% more than the rates in effect on  
19 December 31, 2004.

20 Notwithstanding any other provision of this Section, for  
21 facilities licensed by the Department of Public Health under  
22 the Nursing Home Care Act as skilled nursing facilities or  
23 intermediate care facilities, effective January 1, 2009, the  
24 per diem support component of the rates effective on January 1,  
25 2008, computed using the most recent cost reports on file with  
26 the Department of Healthcare and Family Services no later than

1 April 1, 2005, updated for inflation to January 1, 2006, shall  
2 be increased to the amount that would have been derived using  
3 standard Department of Healthcare and Family Services methods,  
4 procedures, and inflators.

5 Notwithstanding any other provisions of this Section, for  
6 facilities licensed by the Department of Public Health under  
7 the Nursing Home Care Act as intermediate care facilities that  
8 are federally defined as Institutions for Mental Disease, or  
9 facilities licensed by the Department of Public Health under  
10 the Specialized Mental Health Rehabilitation Act, a  
11 socio-development component rate equal to 6.6% of the  
12 facility's nursing component rate as of January 1, 2006 shall  
13 be established and paid effective July 1, 2006. The  
14 socio-development component of the rate shall be increased by a  
15 factor of 2.53 on the first day of the month that begins at  
16 least 45 days after January 11, 2008 (the effective date of  
17 Public Act 95-707). As of August 1, 2008, the socio-development  
18 component rate shall be equal to 6.6% of the facility's nursing  
19 component rate as of January 1, 2006, multiplied by a factor of  
20 3.53. For services provided on or after April 1, 2011, or the  
21 first day of the month that begins at least 45 days after the  
22 effective date of this amendatory Act of the 96th General  
23 Assembly, whichever is later, the Illinois Department may by  
24 rule adjust these socio-development component rates, and may  
25 use different adjustment methodologies for those facilities  
26 participating, and those not participating, in the Illinois

1 Department's demonstration program pursuant to the provisions  
2 of Title 77, Part 300, Subpart T of the Illinois Administrative  
3 Code, but in no case may such rates be diminished below those  
4 in effect on August 1, 2008.

5 For facilities licensed by the Department of Public Health  
6 under the Nursing Home Care Act as Intermediate Care for the  
7 Developmentally Disabled facilities or as long-term care  
8 facilities for residents under 22 years of age, the rates  
9 taking effect on July 1, 2003 shall include a statewide  
10 increase of 4%, as defined by the Department.

11 For facilities licensed by the Department of Public Health  
12 under the Nursing Home Care Act as Intermediate Care for the  
13 Developmentally Disabled facilities or Long Term Care for Under  
14 Age 22 facilities, the rates taking effect on the first day of  
15 the month that begins at least 45 days after the effective date  
16 of this amendatory Act of the 95th General Assembly shall  
17 include a statewide increase of 2.5%, as defined by the  
18 Department.

19 Notwithstanding any other provision of this Section, for  
20 facilities licensed by the Department of Public Health under  
21 the Nursing Home Care Act as skilled nursing facilities or  
22 intermediate care facilities, effective January 1, 2005,  
23 facility rates shall be increased by the difference between (i)  
24 a facility's per diem property, liability, and malpractice  
25 insurance costs as reported in the cost report filed with the  
26 Department of Public Aid and used to establish rates effective

1 July 1, 2001 and (ii) those same costs as reported in the  
2 facility's 2002 cost report. These costs shall be passed  
3 through to the facility without caps or limitations, except for  
4 adjustments required under normal auditing procedures.

5 Rates established effective each July 1 shall govern  
6 payment for services rendered throughout that fiscal year,  
7 except that rates established on July 1, 1996 shall be  
8 increased by 6.8% for services provided on or after January 1,  
9 1997. Such rates will be based upon the rates calculated for  
10 the year beginning July 1, 1990, and for subsequent years  
11 thereafter until June 30, 2001 shall be based on the facility  
12 cost reports for the facility fiscal year ending at any point  
13 in time during the previous calendar year, updated to the  
14 midpoint of the rate year. The cost report shall be on file  
15 with the Department no later than April 1 of the current rate  
16 year. Should the cost report not be on file by April 1, the  
17 Department shall base the rate on the latest cost report filed  
18 by each skilled care facility and intermediate care facility,  
19 updated to the midpoint of the current rate year. In  
20 determining rates for services rendered on and after July 1,  
21 1985, fixed time shall not be computed at less than zero. The  
22 Department shall not make any alterations of regulations which  
23 would reduce any component of the Medicaid rate to a level  
24 below what that component would have been utilizing in the rate  
25 effective on July 1, 1984.

26 (2) Shall take into account the actual costs incurred by

1 facilities in providing services for recipients of skilled  
2 nursing and intermediate care services under the medical  
3 assistance program.

4 (3) Shall take into account the medical and psycho-social  
5 characteristics and needs of the patients.

6 (4) Shall take into account the actual costs incurred by  
7 facilities in meeting licensing and certification standards  
8 imposed and prescribed by the State of Illinois, any of its  
9 political subdivisions or municipalities and by the U.S.  
10 Department of Health and Human Services pursuant to Title XIX  
11 of the Social Security Act.

12 The Department of Healthcare and Family Services shall  
13 develop precise standards for payments to reimburse nursing  
14 facilities for any utilization of appropriate rehabilitative  
15 personnel for the provision of rehabilitative services which is  
16 authorized by federal regulations, including reimbursement for  
17 services provided by qualified therapists or qualified  
18 assistants, and which is in accordance with accepted  
19 professional practices. Reimbursement also may be made for  
20 utilization of other supportive personnel under appropriate  
21 supervision.

22 The Department shall develop enhanced payments to offset  
23 the additional costs incurred by a facility serving exceptional  
24 need residents and shall allocate at least \$8,000,000 of the  
25 funds collected from the assessment established by Section 5B-2  
26 of this Code for such payments. For the purpose of this

1 Section, "exceptional needs" means, but need not be limited to,  
2 ventilator care, tracheotomy care, bariatric care, complex  
3 wound care, and traumatic brain injury care. The enhanced  
4 payments for exceptional need residents under this paragraph  
5 are not due and payable, however, until (i) the methodologies  
6 described in this paragraph are approved by the federal  
7 government in an appropriate State Plan amendment and (ii) the  
8 assessment imposed by Section 5B-2 of this Code is determined  
9 to be a permissible tax under Title XIX of the Social Security  
10 Act.

11 Beginning January 1, 2014 the methodologies for  
12 reimbursement of nursing facility services as provided under  
13 this Section 5-5.4 shall no longer be applicable for services  
14 provided on or after January 1, 2014.

15 No payment increase under this Section for the MDS  
16 methodology, exceptional care residents, or the  
17 socio-development component rate established by Public Act  
18 96-1530 of the 96th General Assembly and funded by the  
19 assessment imposed under Section 5B-2 of this Code shall be due  
20 and payable until after the Department notifies the long-term  
21 care providers, in writing, that the payment methodologies to  
22 long-term care providers required under this Section have been  
23 approved by the Centers for Medicare and Medicaid Services of  
24 the U.S. Department of Health and Human Services and the  
25 waivers under 42 CFR 433.68 for the assessment imposed by this  
26 Section, if necessary, have been granted by the Centers for

1 Medicare and Medicaid Services of the U.S. Department of Health  
2 and Human Services. Upon notification to the Department of  
3 approval of the payment methodologies required under this  
4 Section and the waivers granted under 42 CFR 433.68, all  
5 increased payments otherwise due under this Section prior to  
6 the date of notification shall be due and payable within 90  
7 days of the date federal approval is received.

8 On and after July 1, 2012, the Department shall reduce any  
9 rate of reimbursement for services or other payments or alter  
10 any methodologies authorized by this Code to reduce any rate of  
11 reimbursement for services or other payments in accordance with  
12 Section 5-5e.

13 (Source: P.A. 96-45, eff. 7-15-09; 96-339, eff. 7-1-10; 96-959,  
14 eff. 7-1-10; 96-1000, eff. 7-2-10; 96-1530, eff. 2-16-11;  
15 97-10, eff. 6-14-11; 97-38, eff. 6-28-11; 97-227, eff. 1-1-12;  
16 97-584, eff. 8-26-11; 97-689, eff. 6-14-12; 97-813, eff.  
17 7-13-12.)