



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5359

Introduced 01/26/06, by Rep. Elizabeth Coulson

SYNOPSIS AS INTRODUCED:

210 ILCS 45/3-103

from Ch. 111 1/2, par. 4153-103

210 ILCS 45/3-202.6 new

210 ILCS 45/3-202.7 new

Amends the Nursing Home Care Act. Provides that every application to operate a nursing home made on or after July 1, 2008, must include a plan to reasonably prevent and protect employees of the nursing home from violence or violent acts. Provides that no nurse may be required to work mandated overtime except in the case of an unforeseen emergent circumstance when such overtime is required only as a last resort, and limits the time of such overtime. Provides that when a nurse is mandated to work up to 12 consecutive hours, the nurse must be allowed at least 8 consecutive hours of off-duty time. Provides for penalties for violations. Provides that no later than July 1, 2008, every facility licensed under the Act must adopt and implement a plan to reasonably prevent and protect employees of the facility from violence or violent acts; sets forth features that must be included in the plan. Provides that no later than July 1, 2009, a nursing home must provide violence prevention training to all its affected employees as determined by the plan. Provides that every nursing home must keep a record of any violent act against a nursing home employee, patient, or visitor that occurred at the nursing home on or after July 1, 2008. Requires the Department of Public Health to collaborate with nursing home representatives to develop technical assistance and training seminars on developing and implementing a workplace violence prevention plan. Effective immediately.

LRB094 15289 DRJ 50480 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 changing
5 Section 3-103 and by adding Sections 3-202.6 and 3-202.7 as
6 follows:

7 (210 ILCS 45/3-103) (from Ch. 111 1/2, par. 4153-103)

8 Sec. 3-103. The procedure for obtaining a valid license
9 shall be as follows:

10 (1) Application to operate a facility shall be made to the
11 Department on forms furnished by the Department.

12 (2) All license applications shall be accompanied with an
13 application fee. The fee for an annual license shall be \$995.
14 Facilities that pay a fee or assessment pursuant to Article V-C
15 of the Illinois Public Aid Code shall be exempt from the
16 license fee imposed under this item (2). The fee for a 2-year
17 license shall be double the fee for the annual license set
18 forth in the preceding sentence. The fees collected shall be
19 deposited with the State Treasurer into the Long Term Care
20 Monitor/Receiver Fund, which has been created as a special fund
21 in the State treasury. This special fund is to be used by the
22 Department for expenses related to the appointment of monitors
23 and receivers as contained in Sections 3-501 through 3-517. At
24 the end of each fiscal year, any funds in excess of \$1,000,000
25 held in the Long Term Care Monitor/Receiver Fund shall be
26 deposited in the State's General Revenue Fund. The application
27 shall be under oath and the submission of false or misleading
28 information shall be a Class A misdemeanor. The application
29 shall contain the following information:

30 (a) The name and address of the applicant if an
31 individual, and if a firm, partnership, or association, of
32 every member thereof, and in the case of a corporation, the

1 name and address thereof and of its officers and its
2 registered agent, and in the case of a unit of local
3 government, the name and address of its chief executive
4 officer;

5 (b) The name and location of the facility for which a
6 license is sought;

7 (c) The name of the person or persons under whose
8 management or supervision the facility will be conducted;

9 (d) The number and type of residents for which
10 maintenance, personal care, or nursing is to be provided;
11 and

12 (e) Such information relating to the number,
13 experience, and training of the employees of the facility,
14 any management agreements for the operation of the
15 facility, and of the moral character of the applicant and
16 employees as the Department may deem necessary.

17 (3) Each initial application shall be accompanied by a
18 financial statement setting forth the financial condition of
19 the applicant and by a statement from the unit of local
20 government having zoning jurisdiction over the facility's
21 location stating that the location of the facility is not in
22 violation of a zoning ordinance. An initial application for a
23 new facility shall be accompanied by a permit as required by
24 the "Illinois Health Facilities Planning Act". Every
25 application to operate a facility made on or after July 1, 2008
26 must include a plan to reasonably prevent and protect employees
27 of the facility from violence or violent acts adopted in
28 accordance with Section 3-202.7. After the application is
29 approved, the applicant shall advise the Department every 6
30 months of any changes in the information originally provided in
31 the application.

32 (4) Other information necessary to determine the identity
33 and qualifications of an applicant to operate a facility in
34 accordance with this Act shall be included in the application
35 as required by the Department in regulations.

36 (Source: P.A. 93-32, eff. 7-1-03; 93-841, eff. 7-30-04.)

1 (210 ILCS 45/3-202.6 new)

2 Sec. 3-202.6. Nurse mandated overtime prohibited.

3 (a) Definitions. As used in this Section:

4 "Mandated overtime" means work that is required by a
5 long-term care facility in excess of an agreed-to,
6 predetermined work shift. Time spent by nurses required to be
7 available as a condition of employment in specialized units
8 shall not be counted or considered in calculating the amount of
9 time worked for the purpose of applying the prohibition against
10 mandated overtime under subsection (b).

11 "Nurse" means any advanced practice nurse, registered
12 professional nurse, or licensed practical nurse, as defined in
13 the Nursing and Advanced Practice Nursing Act, who receives an
14 hourly wage and has direct responsibility to oversee or carry
15 out nursing care.

16 "Unforeseen emergent circumstance" means (i) any declared
17 national, State, or municipal disaster or other catastrophic
18 event, or any implementation of a facility's disaster plan,
19 that will substantially affect or increase the need for health
20 care services or (ii) any circumstance in which patient care
21 needs require specialized nursing skills through the
22 completion of a procedure. An "unforeseen emergent
23 circumstance" does not include situations in which a long-term
24 care facility fails to have enough nursing staff to meet the
25 usual and reasonably predictable nursing needs of its patients.

26 (b) Mandated overtime prohibited. No nurse may be required
27 to work mandated overtime except in the case of an unforeseen
28 emergent circumstance when such overtime is required only as a
29 last resort. Such mandated overtime shall not exceed 4 hours
30 beyond an agreed-to, predetermined work shift.

31 (c) Off-duty period. When a nurse is mandated to work up to
32 12 consecutive hours, the nurse must be allowed at least 8
33 consecutive hours of off-duty time immediately following the
34 completion of a shift.

35 (d) Retaliation prohibited. No long term care facility may

1 discipline, discharge, or take any other adverse employment
2 action against a nurse solely because the nurse refused to work
3 mandated overtime as prohibited under subsection (b).

4 (e) Violations. Any employee of a long-term care facility
5 that is subject to this Act may file a complaint with the
6 Department of Public Health regarding an alleged violation of
7 this Section. The complaint must be filed within 45 days
8 following the occurrence of the incident giving rise to the
9 alleged violation. The Department must forward notification of
10 the alleged violation to the facility in question within 3
11 business days after the complaint is filed. Upon receiving a
12 complaint of a violation of this Section, the Department may
13 take any action authorized under Part 3 of this Article III.

14 (f) Proof of violation. Any violation of this Section must
15 be proved by clear and convincing evidence that a nurse was
16 required to work overtime against his or her will. The
17 long-term care facility may defeat the claim of a violation by
18 presenting clear and convincing evidence that an unforeseen
19 emergent circumstance, which required overtime work, existed
20 at the time the employee was required or compelled to work.

21 (210 ILCS 45/3-202.7 new)

22 Sec. 3-202.7. Workplace violence.

23 (a) Workplace violence prevention plan. No later than July
24 1, 2008, every facility licensed under this Act must adopt and
25 implement a plan to reasonably prevent and protect employees of
26 the facility from violence or violent acts. As used in this
27 Section, "violence" or "violent act" means any act by a patient
28 that causes or threatens to cause an injury to another person.
29 The plan must address security considerations related to the
30 following items, as appropriate to the particular facility
31 workplace, based on the hazards identified in the assessment
32 conducted under this subsection:

33 (1) The physical attributes of the facility.

34 (2) Staffing, including security staffing.

35 (3) Personnel policies.

1 (4) First aid and emergency procedures.

2 (5) The reporting of violent acts.

3 (6) Employee education and training.

4 Before adopting the plan required under this subsection
5 (a), a facility must conduct a security and safety assessment
6 to identify existing or potential hazards for violence and
7 determine the appropriate preventive action to be taken. The
8 assessment must include, but need not be limited to, a measure
9 of the frequency of, and an identification of the causes for
10 and consequences of, violent acts at the facility workplace
11 during at least the preceding 5 years or for the years for
12 which records are available.

13 In adopting the plan required under this subsection (a), a
14 facility may consider any guidelines on violence in the
15 workplace or in a health care workplace issued by the
16 Department of Public Health, the Department of Human Services,
17 the federal Occupational Safety and Health Administration, or
18 health care workplace accrediting organizations or issued by
19 the federal Department of Health and Human Services in
20 connection with the Medicare program.

21 Promptly after adopting the plan required under this
22 subsection (a), a hospital must file a copy of its plan with
23 the Department.

24 A facility must review its workplace violence prevention
25 plan at least once every 3 years and must report each such
26 review to the Department, together with any changes to the plan
27 adopted by the facility. If a facility does not adopt any
28 changes to its plan in response to such a review, it must
29 report that fact to the Department. A facility must promptly
30 report to the Department all changes to the facility's plan,
31 regardless of whether those changes were adopted in response to
32 a periodic review required under this paragraph.

33 A facility that is required to submit written documentation
34 of active safety and violence prevention plans to comply with
35 national accreditation standards shall be deemed to be in
36 compliance with this subsection (a) when the facility forwards

1 a copy of that documentation to the Department.

2 (b) Violence prevention training. No later than July 1,
3 2009, every facility licensed under this Act must provide
4 violence prevention training to all its affected employees as
5 determined by the plan adopted under subsection (a). For
6 temporary employees, the training must take into account unique
7 circumstances. A facility also must provide periodic follow-up
8 training for its employees as appropriate. The training may
9 vary according to the plan and may include, but need not be
10 limited to, classes, videotapes, brochures, verbal training,
11 or other verbal or written training that is determined to be
12 appropriate under the plan.

13 The training must address the following topics, as
14 appropriate to the particular facility and to the duties and
15 responsibilities of the particular employee being trained,
16 based on the hazards identified in the security and safety
17 assessment conducted by the facility under subsection (a):

18 (1) General safety procedures.

19 (2) Personal safety procedures.

20 (3) The violence escalation cycle.

21 (4) Violence-predicting factors.

22 (5) Obtaining patient history from a patient with a
23 history of violent behavior.

24 (6) Verbal and physical techniques to de-escalate and
25 minimize violent behavior.

26 (7) Strategies to avoid physical harm.

27 (8) Restraining techniques, as permitted and governed
28 by law.

29 (9) Appropriate use of medications to reduce violent
30 behavior.

31 (10) Documenting and reporting incidents of violence.

32 (11) The process whereby employees affected by a
33 violent act may debrief or be calmed down and the tension
34 of the situation may be reduced.

35 (12) Any resources available to employees for coping
36 with violence.

1 (13) The workplace violence prevention plan adopted by
2 the facility under subsection (a).

3 (14) The protection of confidentiality in accordance
4 with the Health Insurance Portability and Accountability
5 Act of 1996 and other related provisions of law.

6 (c) Record of violent acts. Every facility licensed under
7 this Act must keep a record of any violent act against a
8 facility employee, patient, or visitor occurring at the
9 facility on or after July 1, 2008. At a minimum, the record of
10 each such act must include the following:

11 (1) The facility's name and address.

12 (2) The date, time, and specific location at the
13 facility where the violent act occurred.

14 (3) The name, job title, department or ward assignment,
15 and staff identification or other identifier of the victim,
16 if the victim was a facility employee.

17 (4) A description of the person against whom the
18 violent act was committed as one of the following:

19 (A) A patient at the facility.

20 (B) A visitor to the facility.

21 (C) An employee of the facility.

22 (D) Other.

23 (5) A description of the person committing the violent
24 act as one of the following:

25 (A) A patient at the facility.

26 (B) A visitor to the facility.

27 (C) An employee of the facility.

28 (D) Other.

29 (6) A description of the type of violent act as one of
30 the following:

31 (A) A verbal or physical threat that presents
32 imminent danger. For purposes of this paragraph,
33 "imminent danger" means a preliminary determination of
34 immediate, threatened, or impending risk of physical
35 injury as determined by the facility employee.

36 (B) A physical assault that results in major

1 soreness, cuts, or large bruises.

2 (C) A physical assault that results in severe
3 lacerations, a bone fracture, or a head injury.

4 (D) A physical assault that results in loss of limb
5 or death.

6 (E) A violent act requiring employee response, in
7 the course of which an employee is injured.

8 (7) An identification of any body part injured.

9 (8) A description of any weapon used.

10 (9) The number of employees in the vicinity of the
11 violent act when it occurred.

12 (10) A description of actions taken by employees and
13 the facility in response to the violent act.

14 (d) Assistance in complying with Section. If a facility
15 needs assistance in complying with this Section, the facility
16 may contact the Department of Public Health or the federal
17 Department of Labor for assistance. The Department of Public
18 Health shall collaborate with representatives of long-term
19 care facilities to develop technical assistance and training
20 seminars on developing and implementing a workplace violence
21 prevention plan.

22 (e) Penalty for violation. A facility's failure to submit a
23 workplace violence prevention plan as required under this
24 Section is a violation of this Act and may result in action by
25 the Department in accordance with Part 3 of this Article III.

26 (f) Rules. The Department shall adopt rules to implement
27 this Section.

28 Section 99. Effective date. This Act takes effect upon
29 becoming law.