



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB3445

Introduced 2/27/2007, by Rep. John E. Bradley

SYNOPSIS AS INTRODUCED:

See Index

Amends the Nursing Home Care Act and the State Mandates Act. Provides that no person may establish or operate a nursing home in Illinois unless and until he or she provides to the Department of Public Health proof of liability insurance coverage in an amount not less than \$1,000,000 per occurrence. Requires the Department to deny, suspend, revoke, or refuse to renew a license for failure to maintain liability insurance coverage. Provides that failure to maintain such liability insurance coverage during the term of a facility's license is a Type "A" violation under the Act. Provides that the Director of Public Health may not grant a waiver of a facility's compliance with the requirement to maintain liability insurance coverage. Provides that information concerning a facility's liability insurance coverage is subject to disclosure to the public. Makes other changes with respect to liability insurance coverage. Provides that a licensee shall pay 3 times the actual damages, or \$500, whichever is greater (instead of only the actual damages) and costs and attorney's fees to a resident whose rights are violated. Provides that any mandate created by these provisions is exempt from reimbursement by the State.

LRB095 09382 DRJ 31772 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

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 Sections 2-205, 3-103, 3-109, 3-117, 3-119, 3-303.1, 3-304.1,
6 3-311, and 3-602 and by adding Sections 1-114.7 and 3-202.6 as
7 follows:

8 (210 ILCS 45/1-114.7 new)

9 Sec. 1-114.7. Liability insurance. "Liability insurance"
10 means insurance on risks based upon neglect of a resident for
11 which a licensee is or may be responsible.

12 (210 ILCS 45/2-205) (from Ch. 111 1/2, par. 4152-205)

13 Sec. 2-205. The following information is subject to
14 disclosure to the public from the Department or the Department
15 of Healthcare and Family Services ~~Public Aid~~:

16 (1) Information submitted under Sections 3-103 (including
17 a facility's proof of liability insurance coverage) and 3-207
18 except information concerning the remuneration of personnel
19 licensed, registered, or certified by the Department of
20 Professional Regulation and monthly charges for an individual
21 private resident;

22 (2) Records of license and certification inspections,

1 surveys, and evaluations of facilities, other reports of
2 inspections, surveys, and evaluations of resident care, and
3 reports concerning a facility prepared pursuant to Titles XVIII
4 and XIX of the Social Security Act, subject to the provisions
5 of the Social Security Act;

6 (3) Cost and reimbursement reports submitted by a facility
7 under Section 3-208, reports of audits of facilities, and other
8 public records concerning costs incurred by, revenues received
9 by, and reimbursement of facilities; and

10 (4) Complaints filed against a facility and complaint
11 investigation reports, except that a complaint or complaint
12 investigation report shall not be disclosed to a person other
13 than the complainant or complainant's representative before it
14 is disclosed to a facility under Section 3-702, and, further,
15 except that a complainant or resident's name shall not be
16 disclosed except under Section 3-702.

17 The Department shall disclose information under this
18 Section in accordance with provisions for inspection and
19 copying of public records required by The Freedom of
20 Information Act.

21 However, the disclosure of information described in
22 subsection (1) shall not be restricted by any provision of The
23 Freedom of Information Act.

24 (Source: P.A. 85-1209; 85-1378; revised 12-15-05.)

25 (210 ILCS 45/3-103) (from Ch. 111 1/2, par. 4153-103)

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

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

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

25 (a) The name and address of the applicant if an
26 individual, and if a firm, partnership, or

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

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

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

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

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

20 (3) Each initial application shall be accompanied by a
21 financial statement setting forth the financial condition
22 of the applicant, including proof of liability insurance
23 coverage as required by this Act, and by a statement from
24 the unit of local government having zoning jurisdiction
25 over the facility's location stating that the location of
26 the facility is not in violation of a zoning ordinance. An

1 initial application for a new facility shall be accompanied
2 by a permit as required by the "Illinois Health Facilities
3 Planning Act". After the application is approved, the
4 applicant shall advise the Department every 6 months of any
5 changes in the information originally provided in the
6 application.

7 (4) Other information necessary to determine the
8 identity and qualifications of an applicant to operate a
9 facility in accordance with this Act shall be included in
10 the application as required by the Department in
11 regulations.

12 (Source: P.A. 93-32, eff. 7-1-03; 93-841, eff. 7-30-04; 94-931,
13 eff. 6-26-06.)

14 (210 ILCS 45/3-109) (from Ch. 111 1/2, par. 4153-109)

15 Sec. 3-109. Upon receipt and review of an application for a
16 license made under this Article and inspection of the applicant
17 facility under this Article, the Director shall issue a license
18 if he finds:

19 (1) that the individual applicant, or the corporation,
20 partnership or other entity if the applicant is not an
21 individual, is a person responsible and suitable to operate or
22 to direct or participate in the operation of a facility by
23 virtue of financial capacity, appropriate business or
24 professional experience, a record of compliance with lawful
25 orders of the Department and lack of revocation of a license

1 during the previous 5 years;

2 (2) that the facility is under the supervision of an
3 administrator who is licensed, if required, under the "Nursing
4 Home Administrators Licensing and Disciplinary Act", as now or
5 hereafter amended;

6 (3) that the facility is covered by liability insurance as
7 required by this Act; and

8 (4) ~~(3)~~ that the facility is in substantial compliance with
9 this Act, and such other requirements for a license as the
10 Department by rule may establish under this Act.

11 (Source: P.A. 81-1349; revised 9-15-06.)

12 (210 ILCS 45/3-117) (from Ch. 111 1/2, par. 4153-117)

13 Sec. 3-117.

14 (a) An application for a license may be denied for any of
15 the following reasons:

16 (1) Failure to meet any of the minimum standards set forth
17 by this Act or by rules and regulations promulgated by the
18 Department under this Act. ~~†~~

19 (2) Conviction of the applicant, or if the applicant is a
20 firm, partnership or association, of any of its members, or if
21 a corporation, the conviction of the corporation or any of its
22 officers or stockholders, or of the person designated to manage
23 or supervise the facility, of a felony, or of 2 or more
24 misdemeanors involving moral turpitude, during the previous 5
25 years as shown by a certified copy of the record of the court

1 of conviction.~~†~~

2 (3) Personnel insufficient in number or unqualified by
3 training or experience to properly care for the proposed number
4 and type of residents.~~†~~

5 (4) Insufficient financial or other resources to operate
6 and conduct the facility in accordance with standards
7 promulgated by the Department under this Act.~~†~~

8 (5) Revocation of a facility license during the previous 5
9 years, if such prior license was issued to the individual
10 applicant, a controlling owner or controlling combination of
11 owners of the applicant; or any affiliate of the individual
12 applicant or controlling owner of the applicant and such
13 individual applicant, controlling owner of the applicant or
14 affiliate of the applicant was a controlling owner of the prior
15 license; provided, however, that the denial of an application
16 for a license pursuant to this subsection must be supported by
17 evidence that such prior revocation renders the applicant
18 unqualified or incapable of meeting or maintaining a facility
19 in accordance with the standards and rules promulgated by the
20 Department under this Act.~~† or~~

21 (6) That the facility is not under the direct supervision
22 of a full-time administrator, as defined by regulation, who is
23 licensed, if required, under the Nursing Home Administrators
24 Licensing and Disciplinary Act.

25 (b) An application for a license shall be denied for
26 failure to maintain liability insurance as required by this

1 Act.

2 (Source: P.A. 85-1337; revised 9-15-06.)

3 (210 ILCS 45/3-119) (from Ch. 111 1/2, par. 4153-119)

4 Sec. 3-119. (a) The Department, after notice to the
5 applicant or licensee, may suspend, revoke or refuse to renew a
6 license in any case in which the Department finds any of the
7 following:

8 (1) There has been a substantial failure to comply with
9 this Act or the rules and regulations promulgated by the
10 Department under this Act.~~†~~

11 (2) Conviction of the licensee, or of the person
12 designated to manage or supervise the facility, of a
13 felony, or of 2 or more misdemeanors involving moral
14 turpitude, during the previous 5 years as shown by a
15 certified copy of the record of the court of conviction.~~†~~

16 (3) Personnel is insufficient in number or unqualified
17 by training or experience to properly care for the number
18 and type of residents served by the facility.~~†~~

19 (4) Financial or other resources are insufficient to
20 conduct and operate the facility in accordance with
21 standards promulgated by the Department under this Act.~~†~~

22 ~~and~~

23 (5) The facility is not under the direct supervision of
24 a full-time administrator, as defined by regulation, who is
25 licensed, if required, under the Nursing Home

1 Administrators Licensing and Disciplinary Act.

2 (a-5) The Department, after notice to the applicant or
3 licensee, shall suspend, revoke, or refuse to renew a license
4 in any case in which the Department finds that a facility has
5 failed to maintain liability insurance coverage as required by
6 this Act at any time during the term of its license.

7 (b) Notice under this Section shall include a clear and
8 concise statement of the violations on which the nonrenewal or
9 revocation is based, the statute or rule violated and notice of
10 the opportunity for a hearing under Section 3-703.

11 (c) If a facility desires to contest the nonrenewal or
12 revocation of a license, the facility shall, within 10 days
13 after receipt of notice under subsection (b) of this Section,
14 notify the Department in writing of its request for a hearing
15 under Section 3-703. Upon receipt of the request the Department
16 shall send notice to the facility and hold a hearing as
17 provided under Section 3-703.

18 (d) The effective date of nonrenewal or revocation of a
19 license by the Department shall be any of the following:

20 (1) Until otherwise ordered by the circuit court,
21 revocation is effective on the date set by the Department
22 in the notice of revocation, or upon final action after
23 hearing under Section 3-703, whichever is later. ~~+~~

24 (2) Until otherwise ordered by the circuit court,
25 nonrenewal is effective on the date of expiration of any
26 existing license, or upon final action after hearing under

1 Section 3-703, whichever is later; however, a license shall
2 not be deemed to have expired if the Department fails to
3 timely respond to a timely request for renewal under this
4 Act or for a hearing to contest nonrenewal under paragraph
5 (c) ~~.7-01~~

6 (3) The Department may extend the effective date of
7 license revocation or expiration in any case in order to
8 permit orderly removal and relocation of residents.

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

16 (Source: P.A. 85-1337; revised 9-15-06.)

17 (210 ILCS 45/3-202.6 new)

18 Sec. 3-202.6. Liability insurance coverage required. No
19 person may establish, operate, maintain, offer, or advertise a
20 facility within this State unless and until he or she provides
21 to the Department of Public Health proof of liability insurance
22 coverage in an amount not less than \$1,000,000 per occurrence.
23 Failure to maintain such liability insurance coverage during
24 the term of a facility's license is a Type "A" violation under
25 this Act.

1 (210 ILCS 45/3-303.1) (from Ch. 111 1/2, par. 4153-303.1)

2 Sec. 3-303.1. Upon application by a facility, except as
3 otherwise provided in this Section, the Director may grant or
4 renew the waiver of the facility's compliance with a rule or
5 standard for a period not to exceed the duration of the current
6 license or, in the case of an application for license renewal,
7 the duration of the renewal period. The waiver may be
8 conditioned upon the facility taking action prescribed by the
9 Director as a measure equivalent to compliance. In determining
10 whether to grant or renew a waiver, the Director shall consider
11 the duration and basis for any current waiver with respect to
12 the same rule or standard and the validity and effect upon
13 patient health and safety of extending it on the same basis,
14 the effect upon the health and safety of residents, the quality
15 of resident care, the facility's history of compliance with the
16 rules and standards of this Act and the facility's attempts to
17 comply with the particular rule or standard in question. The
18 Department may provide, by rule, for the automatic renewal of
19 waivers concerning physical plant requirements upon the
20 renewal of a license. The Department shall renew waivers
21 relating to physical plant standards issued pursuant to this
22 Section at the time of the indicated reviews, unless it can
23 show why such waivers should not be extended for the following
24 reasons:

25 (a) the condition of the physical plant has deteriorated or

1 its use substantially changed so that the basis upon which the
2 waiver was issued is materially different; or

3 (b) the facility is renovated or substantially remodeled in
4 such a way as to permit compliance with the applicable rules
5 and standards without substantial increase in cost.

6 A copy of each waiver application and each waiver granted
7 or renewed shall be on file with the Department and available
8 for public inspection. The Director shall annually review such
9 file and recommend to the Long Term Care Facility Advisory
10 Board any modification in rules or standards suggested by the
11 number and nature of waivers requested and granted and the
12 difficulties faced in compliance by similarly situated
13 facilities.

14 Under no circumstances may the Director grant a waiver of a
15 facility's compliance with the requirement to maintain
16 liability insurance coverage as provided by this Act.

17 (Source: P.A. 85-1216.)

18 (210 ILCS 45/3-304.1)

19 Sec. 3-304.1. Public computer access to information.

20 (a) The Department must make information regarding nursing
21 homes in the State available to the public in electronic form
22 on the World Wide Web, including all of the following
23 information:

24 (1) who regulates nursing homes;

25 (2) information in the possession of the Department

1 that is listed in Sections 3-210 and 3-304;

2 (2.5) information concerning proof of liability
3 insurance coverage, including the name of the insurance
4 carrier and applicable limitations of liability;

5 (3) deficiencies and plans of correction;

6 (4) enforcement remedies;

7 (5) penalty letters;

8 (6) designation of penalty monies;

9 (7) the U.S. Department of Health and Human Services'
10 Health Care Financing Administration special projects or
11 federally required inspections;

12 (8) advisory standards;

13 (9) deficiency-free surveys; and

14 (10) enforcement actions and enforcement summaries.

15 (b) No fee or other charge may be imposed by the Department
16 as a condition of accessing the information.

17 (c) The electronic public access provided through the World
18 Wide Web shall be in addition to any other electronic or print
19 distribution of the information.

20 (d) The information shall be made available as provided in
21 this Section in the shortest practicable time after it is
22 publicly available in any other form.

23 (Source: P.A. 91-290, eff. 1-1-00.)

24 (210 ILCS 45/3-311) (from Ch. 111 1/2, par. 4153-311)

25 Sec. 3-311. In addition to the right to assess penalties

1 under this Act, the Director may issue a conditional license
2 under Section 3-305 to any facility if the Director finds that
3 either a Type "A" or Type "B" violation exists in such
4 facility, except that the Director may not issue such a
5 conditional license unless and until the facility is covered by
6 liability insurance as required by this Act. The issuance of a
7 conditional license shall revoke any license held by the
8 facility.

9 (Source: P.A. 85-1378.)

10 (210 ILCS 45/3-602) (from Ch. 111 1/2, par. 4153-602)

11 Sec. 3-602. The licensee shall pay 3 times the actual
12 damages, or \$500, whichever is greater, and costs and
13 attorney's fees to a facility resident whose rights, as
14 specified in Part 1 of Article II of this Act, are violated.

15 (Source: P.A. 89-197, eff. 7-21-95.)

16 Section 90. The State Mandates Act is amended by adding
17 Section 8.31 as follows:

18 (30 ILCS 805/8.31 new)

19 Sec. 8.31. Exempt mandate. Notwithstanding Sections 6 and 8
20 of this Act, no reimbursement by the State is required for the
21 implementation of any mandate created by this amendatory Act of
22 the 95th General Assembly.

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2

Statutes amended in order of appearance

3

210 ILCS 45/1-114.7 new

4

210 ILCS 45/2-205

from Ch. 111 1/2, par. 4152-205

5

210 ILCS 45/3-103

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

6

210 ILCS 45/3-109

from Ch. 111 1/2, par. 4153-109

7

210 ILCS 45/3-117

from Ch. 111 1/2, par. 4153-117

8

210 ILCS 45/3-119

from Ch. 111 1/2, par. 4153-119

9

210 ILCS 45/3-202.6 new

10

210 ILCS 45/3-303.1

from Ch. 111 1/2, par. 4153-303.1

11

210 ILCS 45/3-304.1

12

210 ILCS 45/3-311

from Ch. 111 1/2, par. 4153-311

13

210 ILCS 45/3-602

from Ch. 111 1/2, par. 4153-602

14

30 ILCS 805/8.31 new