



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4928

by Rep. Greg Harris

SYNOPSIS AS INTRODUCED:

See Index

Amends the Nursing Home Care Act. Provides that the owner of the building in which a long-term care facility is located must be the licensee with respect to that facility. Provides that the owner of the building in which a facility is located may enter into an agreement with another individual or entity to operate the facility; requires approval of any such agreement by the Department of Public Health. Requires the Department to establish standards constituting appropriate business, professional, or management experience for operating a facility and to consider the record of a license applicant or other individual or entity in operating facilities in other states. Requires the Department to adopt rules specifying the minimum amount of assets that a licensee or other individual or entity must have in order to qualify for a license under the Act and requires a licensee or other individual or entity to post a bond. Requires that certain key personnel be employees of the licensee. Adds provisions concerning the transfer of a beneficial interest in a facility. Adds provisions that must be included in a facility's statement of ownership. Provides for facility financial statements more frequently than annually. Makes other changes. Effective immediately.

LRB095 15210 DRJ 41190 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 Sections 3-103, 3-108, 3-109, 3-112, 3-207, 3-208, 3-209,
6 3-210, and 3-213 and by adding Sections 3-103.5, 3-103.10,
7 3-103.15, and 3-103.20 as follows:

8 (210 ILCS 45/3-103) (from Ch. 111 1/2, par. 4153-103)

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

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

13 (2) All license applications shall be accompanied with
14 an application fee. The fee for an annual license shall be
15 \$995. Facilities that pay a fee or assessment pursuant to
16 Article V-C of the Illinois Public Aid Code shall be exempt
17 from the license fee imposed under this item (2). The fee
18 for a 2-year license shall be double the fee for the annual
19 license set forth in the preceding sentence. The fees
20 collected shall be deposited with the State Treasurer into
21 the Long Term Care Monitor/Receiver Fund, which has been
22 created as a special fund in the State treasury. This
23 special fund is to be used by the Department for expenses

1 related to the appointment of monitors and receivers as
2 contained in Sections 3-501 through 3-517 of this Act and
3 for implementation of the Abuse Prevention Review Team Act.
4 At the end of each fiscal year, any funds in excess of
5 \$1,000,000 held in the Long Term Care Monitor/Receiver Fund
6 shall be deposited in the State's General Revenue Fund. The
7 application shall be under oath and the submission of false
8 or misleading information shall be a Class A misdemeanor.
9 The application shall contain the following information:

10 (a) The name and address of the applicant if an
11 individual, and if a firm, partnership, or
12 association, of every member thereof, and in the case
13 of a corporation, the name and address thereof and of
14 its officers and its registered agent, and in the case
15 of a unit of local government, the name and address of
16 its chief executive officer;

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

19 (c) The name of the person or persons under whose
20 management or supervision the facility will be
21 conducted;

22 (d) The number and type of residents for which
23 maintenance, personal care, or nursing is to be
24 provided; and

25 (e) Such information relating to the number,
26 experience, and training of the employees of the

1 facility, any management agreements for the operation
2 of the facility, and of the moral character of the
3 applicant and employees as the Department may deem
4 necessary.

5 (3) Each initial application shall be accompanied by a
6 financial statement setting forth the financial condition
7 of the applicant and by a statement from the unit of local
8 government having zoning jurisdiction over the facility's
9 location stating that the location of the facility is not
10 in violation of a zoning ordinance. The statement setting
11 forth the applicant's financial condition must include
12 specific information concerning the applicant's assets and
13 bond as required under Section 3-103.15. An initial
14 application for a new facility shall be accompanied by a
15 permit as required by the "Illinois Health Facilities
16 Planning Act". After the application is approved, the
17 applicant shall advise the Department every 6 months of any
18 changes in the information originally provided in the
19 application.

20 (4) Other information necessary to determine the
21 identity and qualifications of an applicant to operate a
22 facility in accordance with this Act shall be included in
23 the application as required by the Department in
24 regulations.

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

1 (210 ILCS 45/3-103.5 new)

2 Sec. 3-103.5. Facility ownership.

3 (a) The owner of the building in which a facility is
4 located must be the licensee under this Act with respect to
5 that facility.

6 (b) The owner of the building in which a facility is
7 located may enter into an agreement with another individual or
8 entity to operate the facility.

9 (c) The Department shall publish or otherwise make
10 available, including by means of the Department's official web
11 site, information concerning (i) the ownership of a facility
12 and the building and real estate in which and on which a
13 facility is located and (ii) an individual's or entity's
14 ownership of other facilities, or buildings or real estate in
15 which or on which other facilities are located, in this or any
16 other state. The Department shall ensure that the information
17 is updated in a timely fashion so that it is as up-to-date as
18 possible.

19 (210 ILCS 45/3-103.10 new)

20 Sec. 3-103.10. Facility operation.

21 (a) The Department shall adopt rules that establish
22 standards constituting appropriate business, professional, or
23 management experience for operating a facility. The Department
24 shall establish standards for individuals as well as for

1 entities and shall use those standards in determining whether
2 to grant or renew a license under this Act.

3 (b) In determining whether to grant or renew a license
4 under this Act, the Department shall consider the record of the
5 applicant in operating facilities in other states. If the
6 applicant has not operated a facility in another state but has
7 contracted with another individual or entity to manage a
8 facility owned by the applicant and located in another state,
9 the Department shall consider the record of that individual or
10 entity in operating facilities in other states. Before granting
11 or renewing a license, the Department must determine that the
12 applicant or the individual or entity, as the case may be, has
13 appropriate experience in managing a facility of the type for
14 which a license is sought.

15 (c) If a licensee enters into an agreement with another
16 individual or entity for the operation of the facility for
17 which the licensee holds a license under this Act, as
18 authorized under subsection (b) of Section 3-103.5, the
19 Department must approve that agreement as a condition of
20 granting or renewing a license under this Act. The licensee
21 must submit the agreement to the Department in accordance with
22 rules adopted by the Department. The Department shall adopt
23 rules that establish standards for approving such agreements.

24 (d) If a licensee enters into an agreement with another
25 individual or entity for the operation of the facility for
26 which the licensee holds a license under this Act, that

1 individual or entity shall be deemed to be the licensee's agent
2 for purposes of liability for the quality of care provided in
3 the facility.

4 (e) The Department shall publish or otherwise make
5 available, including by means of the Department's official web
6 site, information concerning (i) the operation of a facility
7 and (ii) an individual's or entity's operation of other
8 facilities in this or any other state. The Department shall
9 ensure that the information is updated in a timely fashion so
10 that it is as up-to-date as possible.

11 (210 ILCS 45/3-103.15 new)

12 Sec. 3-103.15. Minimum amount of assets; bond.

13 (a) The Department shall adopt rules specifying (i) the
14 minimum amount of assets that a licensee must have in order to
15 qualify for a license under this Act and (ii) the minimum
16 amount of assets that any other individual or entity with any
17 financial interest in the ownership or operation of the
18 facility in question must have in order for the licensee to
19 qualify for a license under this Act. The rules shall provide
20 that the Department may not consider a line of credit available
21 to a licensee or any other individual or entity in determining
22 whether the licensee meets the minimum asset requirement.

23 (b) A licensee, and any other individual or entity with any
24 financial interest in the ownership or operation of the
25 facility in question, must post a bond in an amount and in a

1 manner prescribed by the Department by rule for the purpose of
2 securing payment for damages incurred by a facility resident as
3 a result of the conduct of the licensee or other individual or
4 entity in operating the facility.

5 (210 ILCS 45/3-103.20 new)

6 Sec. 3-103.20. Key personnel. All key personnel in the
7 operation of a facility must be employees of the licensee. The
8 Department shall adopt rules defining "key personnel", but the
9 term shall include at least the facility administrator and the
10 director of nursing.

11 (210 ILCS 45/3-108) (from Ch. 111 1/2, par. 4153-108)

12 Sec. 3-108. Cooperation with State agencies and officers.
13 The Department shall coordinate the functions within State
14 government affecting facilities licensed under this Act and
15 shall cooperate with other State agencies which establish
16 standards or requirements for facilities to assure necessary,
17 equitable, and consistent State supervision of licensees
18 without unnecessary duplication of survey, evaluation, and
19 consultation services or complaint investigations. The
20 Department shall cooperate with the Department of Human
21 Services in regard to facilities containing more than 20% of
22 residents for whom the Department of Human Services has
23 mandated follow-up responsibilities under the Mental Health
24 and Developmental Disabilities Administrative Act. The

1 Department shall cooperate with the Secretary of State to
2 ensure necessary, equitable, and consistent State supervision
3 of licensees and other individuals or entities with a financial
4 interest in the ownership or operation of a facility without
5 unnecessary duplication of survey, evaluation, and
6 consultation services or complaint investigations.

7 The Department shall cooperate with the Department of
8 Healthcare and Family Services in regard to facilities where
9 recipients of public aid are residents.

10 The Department shall immediately refer to the Department of
11 Professional Regulation for investigation any credible
12 evidence of which it has knowledge that an individual licensed
13 by that Department has violated this Act or any rule issued
14 under this Act.

15 The Department shall enter into agreements with other State
16 Departments, agencies or commissions to effectuate the purpose
17 of this Section.

18 (Source: P.A. 95-331, eff. 8-21-07.)

19 (210 ILCS 45/3-109) (from Ch. 111 1/2, par. 4153-109)

20 Sec. 3-109. Upon receipt and review of an application for a
21 license made under this Article and inspection of the applicant
22 facility under this Article, the Director shall issue a license
23 if ~~he finds~~:

24 (1) the Director finds that the individual applicant,
25 or the corporation, partnership or other entity if the

1 applicant is not an individual, is a person responsible and
2 suitable to operate or to direct or participate in the
3 operation of a facility by virtue of financial capacity,
4 appropriate business or professional experience, a record
5 of compliance with lawful orders of the Department and lack
6 of revocation of a license during the previous 5 years;

7 (2) the Director finds that the facility is under the
8 supervision of an administrator who is licensed, if
9 required, under the Nursing Home Administrators Licensing
10 and Disciplinary Act, as now or hereafter amended; ~~and~~

11 (2.5) the Director makes the determination required
12 under subsection (b) of Section 3-103.10 and approves the
13 management agreement, if any, under subsection (c) of that
14 Section; and

15 (3) the Director finds that the facility is in
16 substantial compliance with this Act, and such other
17 requirements for a license as the Department by rule may
18 establish under this Act.

19 (Source: P.A. 95-331, eff. 8-21-07.)

20 (210 ILCS 45/3-112) (from Ch. 111 1/2, par. 4153-112)

21 Sec. 3-112. Transfer of ownership or other interest;
22 license.

23 (a) Whenever ownership of a facility is transferred from
24 the person named in the license to any other person, the
25 transferee must obtain a new probationary license. The

1 transferee shall notify the Department of the transfer and
2 apply for a new license at least 30 days prior to final
3 transfer.

4 (b) The transferor shall notify the Department at least 30
5 days prior to final transfer. The transferor shall remain
6 responsible for the operation of the facility until such time
7 as a license is issued to the transferee.

8 (c) For purposes of subsection (d), "controlling person"
9 means any public body, governmental agency, business entity,
10 officer, nursing home administrator, or director whose
11 responsibilities include the direction of the management or
12 policies of a facility. "Controlling person" also means any
13 person who, directly or indirectly, beneficially owns any
14 interest in: (i) any corporation, partnership, or other
15 business association that is a controlling person; (ii) the
16 real estate on which a facility is located; (iii) the building
17 in which a facility is located; (iv) any mortgage, contract for
18 deed, or other obligation secured in whole or part by the real
19 estate or building on which or in which a facility is located;
20 or (v) any lease or sublease of the real estate, building, or
21 other facilities comprising a facility.

22 "Controlling person" does not include any of the following:
23 (A) a bank, savings bank, trust company, savings association,
24 credit union, investment banking firm, or insurance company,
25 unless the entity directly or through a subsidiary operates a
26 facility; or (B) an individual State official or State

1 employee, or a member or employee of the governing body of a
2 political subdivision of the State that operates one or more
3 facilities, unless the individual is also an officer or
4 director of a facility, receives any remuneration from a
5 facility, or owns any of the beneficial interests not excluded
6 in this definition.

7 (d) Any controlling person who makes any transfer of a
8 beneficial interest in a facility shall notify the Department
9 of the transfer within 14 days after its occurrence. The
10 notification shall identify by name and address the transferor
11 and transferee and shall specify the nature and amount of the
12 transferred interest. On determining that the transferred
13 beneficial interest exceeds 10% of the total beneficial
14 interest in the facility, the building in which the facility is
15 located, or the real estate on which the facility is located,
16 the Department may, and on determining that the transferred
17 beneficial interest exceeds 50% of the total beneficial
18 interest in the facility, the building in which the facility is
19 located, or the real estate on which the facility is located,
20 the Department shall, require that the license of the facility
21 expire 90 days after the date of the transfer. The Department
22 shall notify the facility by certified mail of the expiration
23 of the license at least 60 days before the date of the
24 expiration.

25 The Department by rule shall prescribe procedures for
26 relicensure under this subsection. The Department shall

1 relicense a facility if the facility satisfies the requirements
2 for license renewal otherwise established under this Act. The
3 Department shall not relicense a facility if at the time of
4 transfer there are any uncorrected violations. The Department
5 may temporarily waive correction of one or more violations if
6 the Department determines that all of the following
7 requirements are met:

8 (1) Temporary noncorrection of the violation will not
9 create an imminent risk of harm to a facility resident.

10 (2) A controlling person on behalf of all other
11 controlling persons:

12 (A) has entered into a contract to obtain the
13 materials or labor necessary to correct the violation,
14 but the supplier or other contractor has failed to
15 perform the terms of the contract and the inability of
16 the nursing home to correct the violation is due solely
17 to that failure; or

18 (B) is otherwise making a diligent good faith
19 effort to correct the violation.

20 (Source: P.A. 81-223.)

21 (210 ILCS 45/3-207) (from Ch. 111 1/2, par. 4153-207)

22 Sec. 3-207. Statement of ownership.

23 (a) As a condition of the issuance or renewal of the
24 license of any facility, the applicant shall file a statement
25 of ownership. The applicant shall update the information

1 required in the statement of ownership within 10 days of any
2 change.

3 (b) The statement of ownership shall include the following:

4 (1) The name, address, telephone number, occupation or
5 business activity, business address, and business
6 telephone number of the person who is the owner of the
7 facility that is the subject of the application or license
8 and every person who owns any interest in the building in
9 which the facility is located or any interest in the real
10 estate on which the facility is located, if other than the
11 owner of the facility, ~~which is the subject of the~~
12 ~~application or license~~; and if the owner of the facility or
13 an owner of the building or real estate is a partnership or
14 corporation, the name of every partner and stockholder of
15 each such the owner.†

16 (1.5) The name, address, telephone number, occupation
17 or business activity, business address, and business
18 telephone number of the person who is the operator of the
19 facility that is the subject of the application or license
20 and every individual or entity that has any financial
21 interest in the operation of the facility, if the owner of
22 the facility does not operate the facility.

23 (2) The name and address of any facility, wherever
24 located, any financial interest in which is owned by the
25 applicant or by any other person with a financial interest
26 in the ownership or operation of the facility that is the

1 subject of the application or license, or in the ownership
2 of the building in which the facility that is the subject
3 of the application or license is located, or in the
4 ownership of the real estate on which the facility that is
5 the subject of the application or license is located, if
6 the facility were required to be licensed if it were
7 located in this State.†

8 (3) Other information necessary to determine the
9 identity and qualifications of an applicant or licensee to
10 operate a facility in accordance with this Act as required
11 by the Department in regulations.

12 (c) The information in the statement of ownership shall be
13 public information and shall be available from the Department.

14 (Source: P.A. 85-1183.)

15 (210 ILCS 45/3-208) (from Ch. 111 1/2, par. 4153-208)

16 Sec. 3-208. Financial statement.

17 (a) Each licensee shall file annually, or more often as the
18 Director shall by rule prescribe, an attested financial
19 statement. The rules shall specify the circumstances under
20 which a licensee must file an attested financial statement more
21 frequently than annually as well as the information that must
22 be included in any such statement and the form and manner of
23 filing the statement. The Director may require a licensee to
24 file such a statement as frequently as quarterly. The Director
25 may order an audited financial statement of a particular

1 facility by an auditor of the Director's choice, provided the
2 cost of such audit is paid by the Department.

3 (b) No public funds shall be expended for the maintenance
4 of any resident in a facility which has failed to file the
5 financial statement required under this Section and no public
6 funds shall be paid to or on behalf of a facility which has
7 failed to file a statement.

8 (c) The Director of Public Health and the Director of
9 Healthcare and Family Services shall promulgate under Sections
10 3-801 and 3-802, one set of regulations for the filing of these
11 financial statements, and shall provide in these regulations
12 for forms, required information, intervals and dates of filing
13 and such other provisions as they may deem necessary.

14 (d) The Director of Public Health and the Director of
15 Healthcare and Family Services shall seek the advice and
16 comments of other State and federal agencies which require the
17 submission of financial data from facilities licensed under
18 this Act and shall incorporate the information requirements of
19 these agencies so as to impose the least possible burden on
20 licensees. No other State agency may require submission of
21 financial data except as expressly authorized by law or as
22 necessary to meet requirements of federal statutes or
23 regulations. Information obtained under this Section shall be
24 made available, upon request, by the Department to any other
25 State agency or legislative commission to which such
26 information is necessary for investigations or required for the

1 purposes of State or federal law or regulation.

2 (Source: P.A. 95-331, eff. 8-21-07.)

3 (210 ILCS 45/3-209) (from Ch. 111 1/2, par. 4153-209)

4 Sec. 3-209. Every facility shall conspicuously post for
5 display in an area of its offices accessible to residents,
6 employees, and visitors the following:

7 (1) Its current license;

8 (1.5) The information required under subdivisions (b)(1)
9 and (b)(1.5) of Section 3-207;

10 (2) A description, provided by the Department, of complaint
11 procedures established under this Act and the name, address,
12 and telephone number of a person authorized by the Department
13 to receive complaints;

14 (3) A copy of any order pertaining to the facility issued
15 by the Department or a court; and

16 (4) A list of the material available for public inspection
17 under Section 3-210.

18 (Source: P.A. 81-1349.)

19 (210 ILCS 45/3-210) (from Ch. 111 1/2, par. 4153-210)

20 Sec. 3-210. A facility shall retain the following for
21 public inspection:

22 (1) A complete copy of every inspection report of the
23 facility received from the Department during the past 5 years;

24 (2) A copy of every order pertaining to the facility issued

1 by the Department or a court during the past 5 years;

2 (3) A description of the services provided by the facility
3 and the rates charged for those services and items for which a
4 resident may be separately charged;

5 (4) A copy of the statement of ownership required by
6 Section 3-207;

7 (4.5) A copy of all documents necessary to show that the
8 asset and bond requirements under Section 3-103.15 have been
9 met;

10 (5) A record of personnel employed or retained by the
11 facility who are licensed, certified or registered by the
12 Department of Professional Regulation; and

13 (6) A complete copy of the most recent inspection report of
14 the facility received from the Department.

15 (Source: P.A. 85-1209)

16 (210 ILCS 45/3-213) (from Ch. 111 1/2, par. 4153-213)

17 Sec. 3-213. The Department shall require periodic reports
18 and shall have access to and may reproduce or photocopy at its
19 cost any books, records, and other documents maintained by (i)
20 the facility, (ii) any individual or entity having any
21 financial interest in the ownership of the facility, the
22 building in which the facility is located, or the real estate
23 on which the facility is located, or (iii) any individual or
24 entity having any financial interest in the operation of the
25 facility, to the extent necessary to carry out this Act and the

1 rules promulgated under this Act. The Department shall not
2 divulge or disclose the contents of a record under this Section
3 in violation of Section 2-206 or as otherwise prohibited by
4 this Act.

5 (Source: P.A. 83-1530.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.

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Statutes amended in order of appearance

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

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210 ILCS 45/3-103.5 new

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210 ILCS 45/3-103.10 new

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210 ILCS 45/3-103.15 new

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210 ILCS 45/3-103.20 new

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210 ILCS 45/3-108 from Ch. 111 1/2, par. 4153-108

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

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210 ILCS 45/3-112 from Ch. 111 1/2, par. 4153-112

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210 ILCS 45/3-207 from Ch. 111 1/2, par. 4153-207

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