



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3207

Introduced 2/24/2011, by Rep. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

305 ILCS 5/5-5.4	from Ch. 23, par. 5-5.4
305 ILCS 5/5B-2	from Ch. 23, par. 5B-2
305 ILCS 5/5B-4	from Ch. 23, par. 5B-4

Amends the Medical Assistance Article of the Illinois Public Aid Code. Provides that specified increased payments and assessments for long-term care providers are not due and payable until after the Department of Healthcare and Family Services notifies the long-term care providers, in writing, that the payment methodologies to long-term care providers required under specified provisions of the Code have been approved by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services and that federal waivers for the assessment imposed under specified provisions of the Code have been granted by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services. Effective immediately.

LRB097 10291 KTG 50497 b

FISCAL NOTE ACT
MAY APPLY

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 Sections 5-5.4, 5B-2, and 5B-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 Department of Healthcare and Family
9 Services shall develop standards of payment of nursing facility
10 and ICF/DD services in facilities providing such services under
11 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 MR/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 July 1, 2012, unless specifically provided for in this Section.
7 The changes made by Public Act 93-841 extending the duration of
8 the prohibition against a rate increase or update for inflation
9 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, a
9 socio-development component rate equal to 6.6% of the
10 facility's nursing component rate as of January 1, 2006 shall
11 be established and paid effective July 1, 2006. The
12 socio-development component of the rate shall be increased by a
13 factor of 2.53 on the first day of the month that begins at
14 least 45 days after January 11, 2008 (the effective date of
15 Public Act 95-707). As of August 1, 2008, the socio-development
16 component rate shall be equal to 6.6% of the facility's nursing
17 component rate as of January 1, 2006, multiplied by a factor of
18 3.53. For services provided on or after April 1, 2011, or the
19 first day of the month that begins at least 45 days after the
20 effective date of this amendatory Act of the 96th General
21 Assembly, whichever is later, the Illinois Department may by
22 rule adjust these socio-development component rates, and may
23 use different adjustment methodologies for those facilities
24 participating, and those not participating, in the Illinois
25 Department's demonstration program pursuant to the provisions
26 of Title 77, Part 300, Subpart T of the Illinois Administrative

1 Code, but in no case may such rates be diminished below those
2 in effect on August 1, 2008.

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

9 For facilities licensed by the Department of Public Health
10 under the Nursing Home Care Act as Intermediate Care for the
11 Developmentally Disabled facilities or Long Term Care for Under
12 Age 22 facilities, the rates taking effect on the first day of
13 the month that begins at least 45 days after the effective date
14 of this amendatory Act of the 95th General Assembly shall
15 include a statewide increase of 2.5%, 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, effective January 1, 2005,
21 facility rates shall be increased by the difference between (i)
22 a facility's per diem property, liability, and malpractice
23 insurance costs as reported in the cost report filed with the
24 Department of Public Aid and used to establish rates effective
25 July 1, 2001 and (ii) those same costs as reported in the
26 facility's 2002 cost report. These costs shall be passed

1 through to the facility without caps or limitations, except for
2 adjustments required under normal auditing procedures.

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

24 (2) Shall take into account the actual costs incurred by
25 facilities in providing services for recipients of skilled
26 nursing and intermediate care services under the medical

1 assistance program.

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

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

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

20 The Department shall develop enhanced payments to offset
21 the additional costs incurred by a facility serving exceptional
22 need residents and shall allocate at least \$8,000,000 of the
23 funds collected from the assessment established by Section 5B-2
24 of this Code for such payments. For the purpose of this
25 Section, "exceptional needs" means, but need not be limited to,
26 ventilator care, tracheotomy care, bariatric care, complex

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

9 (5) Beginning July 1, 2012 the methodologies for
10 reimbursement of nursing facility services as provided under
11 this Section 5-5.4 shall no longer be applicable for bills
12 payable for State fiscal years 2012 and thereafter.

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

1 approval of the payment methodologies required under this
2 Section and the waivers granted under 42 CFR 433.68, all
3 increased payments otherwise due under this Section prior to
4 the date of notification shall be due and payable within 90
5 days of the date federal approval is received.

6 (Source: P.A. 95-12, eff. 7-2-07; 95-331, eff. 8-21-07; 95-707,
7 eff. 1-11-08; 95-744, eff. 7-18-08; 96-45, eff. 7-15-09;
8 96-339, eff. 7-1-10; 96-959, eff. 7-1-10; 96-1000, eff. 7-2-10;
9 96-1530, eff. 2-16-11.)

10 (305 ILCS 5/5B-2) (from Ch. 23, par. 5B-2)

11 Sec. 5B-2. Assessment; no local authorization to tax.

12 (a) For the privilege of engaging in the occupation of
13 long-term care provider, beginning July 1, 2011 an assessment
14 is imposed upon each long-term care provider in an amount equal
15 to \$6.07 times the number of occupied bed days due and payable
16 each month. Notwithstanding any provision of any other Act to
17 the contrary, this assessment shall be construed as a tax, but
18 may not be added to the charges of an individual's nursing home
19 care that is paid for in whole, or in part, by a federal,
20 State, or combined federal-state medical care program.

21 (b) Nothing in this amendatory Act of 1992 shall be
22 construed to authorize any home rule unit or other unit of
23 local government to license for revenue or impose a tax or
24 assessment upon long-term care providers or the occupation of
25 long-term care provider, or a tax or assessment measured by the

1 income or earnings or occupied bed days of a long-term care
2 provider.

3 (c) The assessment imposed by this Section shall not be due
4 and payable, however, until after the Department notifies the
5 long-term care providers, in writing, that the payment
6 methodologies to long-term care providers required under
7 Section 5-5.4 of this Code have been approved by the Centers
8 for Medicare and Medicaid Services of the U.S. Department of
9 Health and Human Services and the waivers under 42 CFR 433.68
10 for the assessment imposed by this Section, if necessary, have
11 been granted by the Centers for Medicare and Medicaid Services
12 of the U.S. Department of Health and Human Services.

13 (Source: P.A. 96-1530, eff. 2-16-11.)

14 (305 ILCS 5/5B-4) (from Ch. 23, par. 5B-4)

15 Sec. 5B-4. Payment of assessment; penalty.

16 (a) The assessment imposed by Section 5B-2 shall be due and
17 payable monthly, on the last State business day of the month
18 for occupied bed days reported for the preceding third month
19 prior to the month in which the tax is payable and due. A
20 facility that has delayed payment due to the State's failure to
21 reimburse for services rendered may request an extension on the
22 due date for payment pursuant to subsection (b) and shall pay
23 the assessment within 30 days of reimbursement by the
24 Department. The Illinois Department may provide that county
25 nursing homes directed and maintained pursuant to Section

1 5-1005 of the Counties Code may meet their assessment
2 obligation by certifying to the Illinois Department that county
3 expenditures have been obligated for the operation of the
4 county nursing home in an amount at least equal to the amount
5 of the assessment.

6 (a-5) Each assessment payment shall be accompanied by an
7 assessment report to be completed by the long-term care
8 provider. A separate report shall be completed for each
9 long-term care facility in this State operated by a long-term
10 care provider. The report shall be in a form and manner
11 prescribed by the Illinois Department and shall at a minimum
12 provide for the reporting of the number of occupied bed days of
13 the long-term care facility for the reporting period and other
14 reasonable information the Illinois Department requires for
15 the administration of its responsibilities under this Code. To
16 the extent practicable, the Department shall coordinate the
17 assessment reporting requirements with other reporting
18 required of long-term care facilities.

19 (b) The Illinois Department is authorized to establish
20 delayed payment schedules for long-term care providers that are
21 unable to make assessment payments when due under this Section
22 due to financial difficulties, as determined by the Illinois
23 Department. The Illinois Department may not deny a request for
24 delay of payment of the assessment imposed under this Article
25 if the long-term care provider has not been paid for services
26 provided during the month on which the assessment is levied.

1 (c) If a long-term care provider fails to pay the full
2 amount of an assessment payment when due (including any
3 extensions granted under subsection (b)), there shall, unless
4 waived by the Illinois Department for reasonable cause, be
5 added to the assessment imposed by Section 5B-2 a penalty
6 assessment equal to the lesser of (i) 5% of the amount of the
7 assessment payment not paid on or before the due date plus 5%
8 of the portion thereof remaining unpaid on the last day of each
9 month thereafter or (ii) 100% of the assessment payment amount
10 not paid on or before the due date. For purposes of this
11 subsection, payments will be credited first to unpaid
12 assessment payment amounts (rather than to penalty or
13 interest), beginning with the most delinquent assessment
14 payments. Payment cycles of longer than 60 days shall be one
15 factor the Director takes into account in granting a waiver
16 under this Section.

17 (c-5) If a long-term care provider fails to file its report
18 with payment, there shall, unless waived by the Illinois
19 Department for reasonable cause, be added to the assessment due
20 a penalty assessment equal to 25% of the assessment due.

21 (d) Nothing in this amendatory Act of 1993 shall be
22 construed to prevent the Illinois Department from collecting
23 all amounts due under this Article pursuant to an assessment
24 imposed before the effective date of this amendatory Act of
25 1993.

26 (e) Nothing in this amendatory Act of the 96th General

1 Assembly shall be construed to prevent the Illinois Department
2 from collecting all amounts due under this Code pursuant to an
3 assessment, tax, fee, or penalty imposed before the effective
4 date of this amendatory Act of the 96th General Assembly.

5 (f) No installment of the assessment imposed by Section
6 5B-2 shall be due and payable until after the Department
7 notifies the long-term care providers, in writing, that the
8 payment methodologies to long-term care providers required
9 under Section 5-5.4 of this Code have been approved by the
10 Centers for Medicare and Medicaid Services of the U.S.
11 Department of Health and Human Services and the waivers under
12 42 CFR 433.68 for the assessment imposed by this Section, if
13 necessary, have been granted by the Centers for Medicare and
14 Medicaid Services of the U.S. Department of Health and Human
15 Services. Upon notification to the Department of approval of
16 the payment methodologies required under Section 5-5.4 of this
17 Code and the waivers granted under 42 CFR 433.68, all
18 installments otherwise due under Section 5B-4 prior to the date
19 of notification shall be due and payable to the Department upon
20 written direction from the Department within 90 days after
21 issuance by the Comptroller of the payments required under
22 Section 5-5.4 of this Code.

23 (Source: P.A. 96-444, eff. 8-14-09; 96-1530, eff. 2-16-11.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.