INTRODUCED BY LEACH, SABATINA AND SCHWANK, NOVEMBER 13, 2015

REFERRED TO PUBLIC HEALTH AND WELFARE, NOVEMBER 13, 2015

AN ACT

PROVIDING FOR LIVING WAGE CERTIFICATION FOR NURSING FACILITIES AND FOR EMPLOYER RESPONSIBILITY PENALTIES FOR NURSING FACILITIES; ESTABLISHING THE EMPLOYER RESPONSIBILITY FOR PUBLIC ASSISTANCE FUND; AND IMPOSING PENALTIES.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1
Preliminary Provisions

Section 101. Short title.

This act shall be known and may be cited as the Nursing Facility Accountability Act.

Section 102. Findings and declarations.

The General Assembly finds and declares as follows:

(1) This Commonwealth has a large and growing population of senior and disabled persons who require nursing facility care.

(2) Nursing facilities are predominately taxpayer-funded through reimbursements from the medical assistance program and Medicare program. The Commonwealth reimburses nursing facilities that participate in the medical assistance program.
at a level that is sufficient to pay their employees a living wage so that their employees should not have to rely on public assistance.

(3) Taxpayers should not subsidize nursing facilities to reap profits while many of their employees are living in poverty.

(4) Nursing facilities that receive public money have a responsibility to report to their residents, the families of their residents and the taxpayers of this Commonwealth about the minimum hourly wage rates paid to their employees and the number of their employees receiving public assistance, so that the public may make informed decisions about the quality and administration of nursing facilities.

(5) In 2011, the Department of Public Welfare, now the Department of Human Services, found that one nursing facility company and its subsidiaries employed 137 full-time workers who received medical assistance.

(6) According to the Department of Labor and Industry, the average wage for nurse assistants is $13.39 and the average wage for dietary and housekeeping employees is $9.81. According to PathWays PA, a wage of $15 per hour would meet the sufficiency standard for many, but not all, counties of this Commonwealth for an employee with one child to provide for the employee and child without the need for public assistance.

(7) Nursing facilities that are paying a living wage of $15 per hour should be recognized with a certification from this Commonwealth that can be prominently displayed onsite and on their publicly accessible Internet website.

(8) The high rate of staff turnover is a chronic problem.
in nursing facilities. Turnover of certified nurse aides is particularly high. Studies have addressed the importance of continuity of care and the need to stabilize the work force in nursing facilities to improve quality care. Higher wages may actually help nursing facilities reduce turnover and fill vacancies and can also lead to greater worker productivity by improving morale and overall job satisfaction.

(9) Nursing facility employees should have affordable, comprehensive health insurance coverage. Most nursing facility employees obtain their health insurance coverage through their employment, but some working Pennsylvanians are covered by medical assistance and, commencing in 2015, some will be covered through the Healthy PA private coverage option.

(10) The Patient Protection and Affordable Care Act (Public Law 111-148, 124 Stat. 119) sets a standard for what constitutes affordable, employment-based coverage and imposes penalties on any large employer whose full-time, nonseasonal employees receive coverage through the exchange. Federal law imposes no penalty on employers whose employees receive coverage through the taxpayer-funded medical assistance program or the Healthy PA program.

(11) An employer who fails to provide affordable coverage to a low-wage worker who is covered by medical assistance shifts the cost of health care coverage from the employer to the taxpayer. An employer can avoid the employer responsibility penalty of the Patient Protection and Affordable Care Act by reducing wages or hours worked, or both, so that a worker is no longer a full-time, full-year employee within the meaning of the Federal act. A worker who
faces low wages or part-time work, or both, is too often eligible for taxpayer-funded medical assistance instead of affordable, employer-based coverage. Controlling health care costs can be more readily achieved if a greater share of working people and their families have health benefits so that cost shifting is minimized.

Section 103. Purposes.

The purposes of this act are to:

(1) Create a living wage certification program for each nursing facility that provides a base hourly wage of $15 per hour for each directly employed or subcontracted employee of the nursing facility.

(2) Encourage the provision of a living wage to each nursing facility employee by providing information to each nursing facility resident and the public on the wage rates being paid to the employees of the nursing facility.

(3) Ensure that each nursing facility pay a nursing facility employer responsibility penalty for health coverage received by each employee of the nursing facility through the medical assistance program and another public assistance program that is fully or partially funded with funds from the Commonwealth, with that penalty based on the costs incurred by the Commonwealth for providing these benefits to the employee of the nursing facility.

(4) Ensure that each nursing facility employee who receives public assistance is protected from possible retaliation by the nursing facility for seeking or obtaining that assistance.

Section 104. Definitions.

The following words and phrases when used in this act shall
have the meanings given to them in this section unless the context clearly indicates otherwise:

"Base hourly wage." The hourly wage of an employee that is exclusive of:

(1) Deductions for payroll taxes, benefits or other employment charges.

(2) Adjustments for overtime compensation.

"Covered employee."

(1) An employee who:

   (i) Is a recipient of public assistance.

   (ii) Works an average of 20 hours or more per week for the nursing facility.

   (iii) Works more than 45 days during the calendar year for the nursing facility.

(2) The term includes an individual who is a leased employee or otherwise under the direction and control of the nursing facility.

"Employee." An individual who is employed directly or subcontracted by the nursing facility on a full-time, part-time, temporary or seasonal basis.

"Fund." The Employer Responsibility for Public Assistance Fund established under section 308.

"Living wage certification standard." The base hourly wage of $15, which shall be adjusted annually by the Department of Human Services in consultation with the Department of Labor and Industry to reflect:

(1) any increase in the appropriate regional Consumer Price Index; or

(2) the adequate living wage standard set by the Department of Labor and Industry.
"Medical assistance program." The program established under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

"Nursing facility."

(1) A long-term care nursing facility, as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

(2) The term includes each member of a controlled group of corporations, as defined in § 1563(a) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1563(a)), regarding the nursing facility.

"Public assistance."

(1) Includes, but is not limited to, assistance under the medical assistance program, cash assistance or another benefit under a program that is wholly or partially funded with funds of the Commonwealth.

(2) The term does not include the assistance provided under the Children's Health Insurance Program (CHIP), Supplemental Nutrition Assistance Program (SNAP) or Low-Income Home Energy Assistance Program (LIHEAP).

CHAPTER 2
NURSING FACILITY LIVING WAGE CERTIFICATION

Section 201. Reporting requirements.

(a) Required information.--Beginning 90 days after the effective date of this section, each nursing facility that is certified to participate in the medical assistance program shall provide the following information on an annual basis as part of its cost report under 55 Pa. Code § 1187.71 (relating to cost reporting):
(1) The minimum base hourly wage paid for each job classification at the nursing facility, categorized by full-time, part-time, temporary and seasonal employee, and including total numbers for each category.

(2) The number of employees for each job classification at the nursing facility, categorized by full-time, part-time, temporary and seasonal employee, and including the total number of employees.

(3) The total number of employees who receive a base hourly wage at, above and below the living wage certification standard at the nursing facility, categorized by full-time, part-time, temporary and seasonal employee and including the total number of employees.

(b) Verification.--Information provided under subsection (a) shall be based on payroll records and other data in a uniform format that is verifiable and able to be audited.

(c) Time for submission of information.--A nursing facility shall provide the information under this section within 90 days of the end of the fiscal year for the nursing facility.

Section 202. Determination and certification.

(a) Analysis of submitted information.--The Department of Health shall determine whether a nursing facility qualifies for a living wage certification by comparing the information provided under section 201 to the living wage certification standard for the corresponding period.

(b) Issuance of certification document.--The Department of Health shall issue a certification document to each nursing facility whose employees all earn the living wage certification standard. The document shall detail the nursing facility's certification as an employer that provides wages to its
employees that meet the living wage certification standard.

(c) Annual analysis and issuance.--The analysis of
information provided and the issuance of a certification
document under this section shall occur annually.

Section 203. Posting of information.

(a) Posting by Department of Health.--The Department of
Health shall post the following on its publicly accessible
Internet website, including the page dedicated to the nursing
facility locator, or other appropriate websites of the
Commonwealth:

(1) The information provided under section 201.

(2) The list of nursing facilities that have received a
certification document under section 202 for the current
year.

(b) Posting by nursing facility.--Each nursing facility
shall post the following in a publicly accessible area of the
nursing facility:

(1) The information provided under section 201.

(2) The certification document under section 202 that
the nursing facility received for the current year.

Section 204. Effect of certification.

Nothing in this chapter shall require a nursing facility to
provide wages to some or all of its employees in an amount equal
to or exceeding the living wage certification standard.

Section 205. Inspection of records and data.

The Department of Health shall inspect payroll records and
other data under section 201 during the annual inspection of the
nursing facility to verify that the information provided under
section 201 is complete and accurate.

Section 206. Administration by Department of Health.
The Department of Health shall promulgate regulations, rules or orders necessary to administer the provisions of this chapter.

Section 207. Civil penalties.

(a) Imposition of penalty.--The Department of Health shall impose a civil penalty upon a nursing facility that fails to:

(1) provide complete, accurate, timely or properly formatted information that is required under section 201; or

(2) submit the information under section 201 for inspection as required by section 205.

(b) Amount.--The Department of Health shall determine the appropriate amount of the penalty imposed under subsection (a).

CHAPTER 3
NURSING FACILITY EMPLOYER RESPONSIBILITY
PENALTY

Section 301. Reporting requirements.
Each nursing facility shall annually provide information required by the Department of Human Services to administer and enforce the provisions of this chapter, including, but not limited to, the following:

(1) The Social Security number of each employee of the nursing facility.

(2) The number of hours that the employee worked at the nursing facility during the fiscal year.

(3) The number of days that the employee was employed at the nursing facility during the fiscal year.

Section 302. Determination.
The Department of Human Services shall match Social Security numbers of recipients of public assistance with the information provided under section 301, to determine if the nursing facility
Section 303. Employer responsibility penalty.

(a) When penalty applicable.--A nursing facility shall be subject to an employer responsibility penalty if it employs a covered employee.

(b) Amount of penalty.--

(1) The amount of the employer responsibility penalty shall be based on the actual cost of providing public assistance to each covered employee for the most recent fiscal year.

(2) The employer responsibility penalty for each covered employee shall be determined by multiplying the actual cost of providing public assistance to the covered employee by a fraction, the numerator of which is the amount of annualized hours worked by the covered employee per year and the denominator of which is 1,820 hours per year.

(3) An employer responsibility penalty may not exceed 100% of the actual cost of providing public assistance to the covered employee.

(c) Notice of penalty.--The Department of Human Services shall annually send a notice of the following to each nursing facility that is subject to an employer responsibility penalty under this chapter:

(1) The amount of the employer responsibility penalty imposed.

(2) The date on which payment is due.

(d) Payment.--A nursing facility shall pay any employer responsibility penalty imposed under this chapter to the Department of Human Services for deposit into the fund.
established under section 308.

(e) Interest.--

(1) Interest shall be assessed at 10% per annum on an employer responsibility penalty that is not paid on or before the due date of the payment.

(2) Interest under this subsection shall begin to accrue the day after the due date of the employer responsibility penalty.

(3) Interest under this subsection shall be deposited into the fund established under section 308.

(f) Additional interest penalty.--

(1) If an employer responsibility penalty is not paid within 60 days after the due date of the payment, an interest penalty equal to the interest charged under subsection (e) shall be assessed and due for each month, or part thereof, that the employer responsibility penalty payment is not received.

(2) The additional interest penalty under this subsection shall be deposited in the fund under section 308.

(g) Deduction from medical assistance program payment.--

(1) If a nursing facility is a medical assistance provider or is related through common ownership or control, as defined in 42 CFR 413.17(b) (relating to cost to related organizations), to a medical assistance provider and the nursing facility fails to pay all or part of an employer responsibility penalty within 60 days after the due date of the payment, the Department of Human Services may deduct the unpaid penalty and any interest owed on the penalty from any medical assistance program payment due to the nursing facility until the full amount due under this section is
recovered.

(2) A deduction under paragraph (1) may be made:

(i) Only after written notice to the nursing facility under paragraph (1).

(ii) In amounts over a period of time, taking into account the financial condition of the nursing facility.

(h) Effect on licensing.--

(1) Within 60 days after the end of each calendar quarter, the Department of Human Services shall notify the Department of Health of each nursing facility with penalty or interest amounts that have remained unpaid for 90 days or more.

(2) The Department of Health may not renew the license of a nursing facility unless:

(i) the Department of Human Services notifies the Department of Health that the nursing facility has paid any outstanding amount due under this section in its entirety; or

(ii) the Department of Human Services agrees to permit the nursing facility to repay the outstanding amount due under this section in installments and that, to date, the nursing facility has paid the installments in the amount and by the date required by the Department of Human Services.

(i) Change of ownership or control.--After a nursing facility changes ownership or control, the successor of the nursing facility shall be liable for the outstanding amount due under this section from the nursing facility before the change of ownership or control.

Section 304. Information regarding medical assistance.
(a) Duty to share information.--Each nursing facility shall provide information to each newly hired and existing employee regarding the availability of medical assistance coverage for a low-income employee.

(b) Written notice.--The Department of Human Services shall develop a simple, uniform written notice containing the information required under this section.

Section 305. Prohibited practices.

A nursing facility may not:

(1) Designate an employee as an independent contractor, reduce an employee's hours of work or terminate an employee if the purpose of the action is to avoid the obligations under this chapter.

(2) Request or otherwise seek to obtain information on the income, family income or other eligibility requirements for public assistance regarding an employee, other than the information about the employee's employment status otherwise known to the nursing facility and consistent with Federal and State law.

(3) Require as a condition of employment that an employee not enroll or withdraw from enrollment in public assistance.

(4) Encourage or discourage an employee to enroll in public assistance for which the employee is eligible, but the nursing facility may provide information on public assistance as otherwise provided by Federal or State law.

(5) Discharge or in any manner discriminate or retaliate against an employee who enrolls in public assistance.

Section 306. Employee remedies.

An employee of a nursing facility who is discharged,
threatened with discharge, demoted, suspended or in any other manner discriminated or retaliated against in the terms and conditions of employment by the nursing facility because the employee has enrolled in public assistance shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the nursing facility.

Section 307. Administrative appeal.

(a) Request for review.--Except as otherwise provided in subsection (b), a nursing facility that is aggrieved by a determination of the Department of Human Services under this chapter may file a request for review of the decision of the Department of Human Services by the Bureau of Hearings and Appeals, which shall have exclusive jurisdiction in the matters.

(b) Procedures.--The procedures and requirements of 67 Pa.C.S. Ch. 11 (relating to medical assistance hearings and appeals) shall apply to requests for review filed under this section, except that in the request for review, the nursing facility may not challenge the penalty rate determined by the Department of Human Services but only whether the Department of Human Services correctly determined the number of covered employees that are the subject of the penalty.

Section 308. Employer Responsibility for Public Assistance Fund.

(a) Establishment.--The Employer Responsibility for Public Assistance Fund is established in the State Treasury.

(b) Receipt of money.--The fund under this section shall receive money regarding the employer responsibility penalty, interest and other penalties under section 303.

(c) Use of money in fund.--The Department of Human Services may use money in the fund under this section to pay:
(1) The Commonwealth's share of public assistance costs for covered employees.

(2) The costs to implement and administer this chapter.

Section 309. Confidentiality.

Each document and record that contains personal or identifying information and results from the operation of sections 301 and 302 shall be subject to the confidentiality requirements and privacy standards under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936).

Section 310. Administration by Department of Human Services.

The Department of Human Services shall promulgate regulations, rules or orders necessary to administer the provisions of this chapter.

CHAPTER 4

MISCELLANEOUS PROVISIONS

Section 401. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application.

Section 402. Effective date.

This act shall take effect in 90 days.