
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1057 Session of
2015

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

REFERRED TO PUBLIC HEALTH AND WELFARE, NOVEMBER 13, 2015

AN ACT

1 Providing for living wage certification for nursing facilities
2 and for employer responsibility penalties for nursing
3 facilities; establishing the Employer Responsibility for
4 Public Assistance Fund; and imposing penalties.

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

17 CHAPTER 1

18 PRELIMINARY PROVISIONS

19 Section 101. Short title.

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

22 Section 102. Findings and declarations.

23 The General Assembly finds and declares as follows:

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

27 (2) Nursing facilities are predominately taxpayer-funded
28 through reimbursements from the medical assistance program
29 and Medicare program. The Commonwealth reimburses nursing
30 facilities that participate in the medical assistance program

1 at a level that is sufficient to pay their employees a living
2 wage so that their employees should not have to rely on
3 public assistance.

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

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

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

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

26 (7) Nursing facilities that are paying a living wage of
27 \$15 per hour should be recognized with a certification from
28 this Commonwealth that can be prominently displayed onsite
29 and on their publicly accessible Internet website.

30 (8) The high rate of staff turnover is a chronic problem

1 in nursing facilities. Turnover of certified nurse aides is
2 particularly high. Studies have addressed the importance of
3 continuity of care and the need to stabilize the work force
4 in nursing facilities to improve quality care. Higher wages
5 may actually help nursing facilities reduce turnover and fill
6 vacancies and can also lead to greater worker productivity by
7 improving morale and overall job satisfaction.

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

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

23 (11) An employer who fails to provide affordable
24 coverage to a low-wage worker who is covered by medical
25 assistance shifts the cost of health care coverage from the
26 employer to the taxpayer. An employer can avoid the employer
27 responsibility penalty of the Patient Protection and
28 Affordable Care Act by reducing wages or hours worked, or
29 both, so that a worker is no longer a full-time, full-year
30 employee within the meaning of the Federal act. A worker who

1 faces low wages or part-time work, or both, is too often
2 eligible for taxpayer-funded medical assistance instead of
3 affordable, employer-based coverage. Controlling health care
4 costs can be more readily achieved if a greater share of
5 working people and their families have health benefits so
6 that cost shifting is minimized.

7 Section 103. Purposes.

8 The purposes of this act are to:

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

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

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

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

29 Section 104. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

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

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

7 (2) Adjustments for overtime compensation.

8 "Covered employee."

9 (1) An employee who:

10 (i) Is a recipient of public assistance.

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

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

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

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

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

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

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

29 (2) the adequate living wage standard set by the
30 Department of Labor and Industry.

1 "Medical assistance program." The program established under
2 the act of June 13, 1967 (P.L.31, No.21), known as the Public
3 Welfare Code.

4 "Nursing facility."

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

8 (2) The term includes each member of a controlled group
9 of corporations, as defined in § 1563(a) of the Internal
10 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
11 1563(a)), regarding the nursing facility.

12 "Public assistance."

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

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

21 CHAPTER 2

22 NURSING FACILITY LIVING WAGE

23 CERTIFICATION

24 Section 201. Reporting requirements.

25 (a) Required information.--Beginning 90 days after the
26 effective date of this section, each nursing facility that is
27 certified to participate in the medical assistance program shall
28 provide the following information on an annual basis as part of
29 its cost report under 55 Pa. Code § 1187.71 (relating to cost
30 reporting):

1 (1) The minimum base hourly wage paid for each job
2 classification at the nursing facility, categorized by full-
3 time, part-time, temporary and seasonal employee, and
4 including total numbers for each category.

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

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

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

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

20 Section 202. Determination and certification.

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

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

1 employees that meet the living wage certification standard.

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

5 Section 203. Posting of information.

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

11 (1) The information provided under section 201.

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

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

18 (1) The information provided under section 201.

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

21 Section 204. Effect of certification.

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

25 Section 205. Inspection of records and data.

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

30 Section 206. Administration by Department of Health.

1 The Department of Health shall promulgate regulations, rules
2 or orders necessary to administer the provisions of this
3 chapter.

4 Section 207. Civil penalties.

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

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

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

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

13 CHAPTER 3

14 NURSING FACILITY EMPLOYER RESPONSIBILITY

15 PENALTY

16 Section 301. Reporting requirements.

17 Each nursing facility shall annually provide information
18 required by the Department of Human Services to administer and
19 enforce the provisions of this chapter, including, but not
20 limited to, the following:

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

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

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

27 Section 302. Determination.

28 The Department of Human Services shall match Social Security
29 numbers of recipients of public assistance with the information
30 provided under section 301, to determine if the nursing facility

1 is subject to an employer responsibility penalty under this
2 chapter.

3 Section 303. Employer responsibility penalty.

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

7 (b) Amount of penalty.--

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

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

18 (3) An employer responsibility penalty may not exceed
19 100% of the actual cost of providing public assistance to the
20 covered employee.

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

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

27 (2) The date on which payment is due.

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

1 established under section 308.

2 (e) Interest.--

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

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

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

11 (f) Additional interest penalty.--

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

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

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

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

1 recovered.

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

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

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

7 (h) Effect on licensing.--

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

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

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

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

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

30 Section 304. Information regarding medical assistance.

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

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

8 Section 305. Prohibited practices.

9 A nursing facility may not:

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

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

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

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

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

29 Section 306. Employee remedies.

30 An employee of a nursing facility who is discharged,

1 threatened with discharge, demoted, suspended or in any other
2 manner discriminated or retaliated against in the terms and
3 conditions of employment by the nursing facility because the
4 employee has enrolled in public assistance shall be entitled to
5 reinstatement and reimbursement for lost wages and work benefits
6 caused by the acts of the nursing facility.

7 Section 307. Administrative appeal.

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

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

22 Section 308. Employer Responsibility for Public Assistance
23 Fund.

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

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

29 (c) Use of money in fund.--The Department of Human Services
30 may use money in the fund under this section to pay:

1 (1) The Commonwealth's share of public assistance costs
2 for covered employees.

3 (2) The costs to implement and administer this chapter.
4 Section 309. Confidentiality.

5 Each document and record that contains personal or
6 identifying information and results from the operation of
7 sections 301 and 302 shall be subject to the confidentiality
8 requirements and privacy standards under the Health Insurance
9 Portability and Accountability Act of 1996 (Public Law 104-191,
10 110 Stat. 1936).

11 Section 310. Administration by Department of Human Services.

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

15 CHAPTER 4

16 MISCELLANEOUS PROVISIONS

17 Section 401. Severability.

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

23 Section 402. Effective date.

24 This act shall take effect in 90 days.