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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

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INTRODUCED BY GAINNEY, McNEILL, ROZZI, KINSEY, SIMS, McCARTER,  
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FEBRUARY 1, 2017

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REFERRED TO COMMITTEE ON HEALTH, FEBRUARY 1, 2017

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AN ACT

1 Providing for living wage accreditation 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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16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

18 CHAPTER 1

19 PRELIMINARY PROVISIONS

20 Section 101. Short title.

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

23 Section 102. Findings and declarations.

24 The General Assembly finds and declares as follows:

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

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

1 facilities that participate in the medical assistance program  
2 at a level that is sufficient to pay their employees a living  
3 wage so that their employees should not have to rely on  
4 public assistance.

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

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

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

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

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

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

9           (9) Nursing facility employees should have affordable,  
10 comprehensive health insurance coverage. Most nursing  
11 facility employees obtain their health insurance coverage  
12 through their employment, but some working Pennsylvanians are  
13 covered by medical assistance and may be covered through the  
14 Healthy PA private coverage 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 accreditation 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 508.

23 "Living wage accreditation 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 Human  
3 Services 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 section 1563(a) of the  
10 Internal 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 3

22 NURSING FACILITY LIVING WAGE

23 ACCREDITATION

24 Section 301. 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 accreditation  
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 302. Determination and accreditation.

21 (a) Analysis of submitted information.--The Department of  
22 Health shall determine whether a nursing facility qualifies for  
23 a living wage accreditation by comparing the information  
24 provided under section 301 to the living wage accreditation  
25 standard for the corresponding period.

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



1 employees that meet the living wage accreditation standard.

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

5 Section 303. 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 301.

12 (2) The list of nursing facilities that have received an  
13 accreditation document under section 302 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 301.

19 (2) The accreditation document under section 302 that  
20 the nursing facility received for the current year.

21 Section 304. Effect of accreditation.

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 accreditation standard.

25 Section 305. Inspection of records and data.

26 The Department of Health shall inspect payroll records and  
27 other data under section 301 during the annual inspection of the  
28 nursing facility to verify that the information provided under  
29 section 301 is complete and accurate.

30 Section 306. 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 307. 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 301; or

9 (2) submit the information under section 301 for  
10 inspection as required by section 305.

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

13 CHAPTER 5

14 NURSING FACILITY EMPLOYER RESPONSIBILITY

15 PENALTY

16 Section 501. 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 502. 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 501, to determine if the nursing facility

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

3 Section 503. 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 508.

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 508.

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 508.

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 504. 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 505. 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 506. 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 507. 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 508. 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 503.

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

