
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 236 Session of
2017

INTRODUCED BY LEACH, COSTA AND SCHWANK, JANUARY 26, 2017

REFERRED TO HEALTH AND HUMAN SERVICES, JANUARY 26, 2017

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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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 an accreditation 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 may be covered through the
13 Healthy PA private coverage option.

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

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

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

6 Section 103. Purposes.

7 The purposes of this act are to:

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

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

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

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

28 Section 104. Definitions.

29 The following words and phrases when used in this act shall
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

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

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

6 (2) Adjustments for overtime compensation.

7 "Covered employee."

8 (1) An employee who:

9 (i) Is a recipient of public assistance.

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

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

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

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

20 "Fund." The Employer Responsibility for Public Assistance
21 Fund established under section 508.

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

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

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

30 "Medical assistance program." The program established under

1 the act of June 13, 1967 (P.L.31, No.21), known as the Human
2 Services Code.

3 "Nursing facility."

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

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

11 "Public assistance."

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

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

20 CHAPTER 3

21 NURSING FACILITY LIVING WAGE

22 ACCREDITATION

23 Section 301. Reporting requirements.

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

30 (1) The minimum base hourly wage paid for each job

1 classification at the nursing facility, categorized by full-
2 time, part-time, temporary and seasonal employee, and
3 including total numbers for each category.

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

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

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

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

19 Section 302. Determination and accreditation.

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

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

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

4 Section 303. Posting of information.

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

10 (1) The information provided under section 301.

11 (2) The list of nursing facilities that have received an
12 accreditation document under section 302 for the current
13 year.

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

17 (1) The information provided under section 301.

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

20 Section 304. Effect of accreditation.

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

24 Section 305. Inspection of records and data.

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

29 Section 306. Administration by Department of Health.

30 The Department of Health shall promulgate regulations, rules

1 or orders necessary to administer the provisions of this
2 chapter.

3 Section 307. Civil penalties.

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

6 (1) provide complete, accurate, timely or properly
7 formatted information that is required under section 301; or

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

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

12 CHAPTER 5

13 NURSING FACILITY EMPLOYER RESPONSIBILITY

14 PENALTY

15 Section 501. Reporting requirements.

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

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

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

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

26 Section 502. Determination.

27 The Department of Human Services shall match Social Security
28 numbers of recipients of public assistance with the information
29 provided under section 501, to determine if the nursing facility
30 is subject to an employer responsibility penalty under this

1 chapter.

2 Section 503. Employer responsibility penalty.

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

6 (b) Amount of penalty.--

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

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

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

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

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

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

27 (d) Payment.--A nursing facility shall pay any employer
28 responsibility penalty imposed under this chapter to the
29 Department of Human Services for deposit into the fund
30 established under section 508.

1 (e) Interest.--

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

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

8 (3) Interest under this subsection shall be deposited
9 into the fund established under section 508.

10 (f) Additional interest penalty.--

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

17 (2) The additional interest penalty under this
18 subsection shall be deposited in the fund under section 508.

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

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

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

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

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

6 (h) Effect on licensing.--

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

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

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

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

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

29 Section 504. Information regarding medical assistance.

30 (a) Duty to share information.--Each nursing facility shall

1 provide information to each newly hired and existing employee
2 regarding the availability of medical assistance coverage for a
3 low-income employee.

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

7 Section 505. Prohibited practices.

8 A nursing facility may not:

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

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

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

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

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

28 Section 506. Employee remedies.

29 An employee of a nursing facility who is discharged,
30 threatened with discharge, demoted, suspended or in any other

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

6 Section 507. Administrative appeal.

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

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

21 Section 508. Employer Responsibility for Public Assistance
22 Fund.

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

25 (b) Receipt of money.--The fund under this section shall
26 receive money regarding the employer responsibility penalty,
27 interest and other penalties under section 503.

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

30 (1) The Commonwealth's share of public assistance costs

1 for covered employees.

2 (2) The costs to implement and administer this chapter.
3 Section 509. Confidentiality.

4 Each document and record that contains personal or
5 identifying information and results from the operation of
6 sections 501 and 502 shall be subject to the confidentiality
7 requirements and privacy standards under the Health Insurance
8 Portability and Accountability Act of 1996 (Public Law 104-191,
9 110 Stat. 1936).

10 Section 510. Administration by Department of Human Services.

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

14 CHAPTER 7

15 MISCELLANEOUS PROVISIONS

16 Section 701. Severability.

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

22 Section 702. Effective date.

23 This act shall take effect in 90 days.