
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1449 Session of
2015

INTRODUCED BY GAINNEY, ROZZI, COHEN, BISHOP, D. COSTA, MAHONEY,
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JULY 16, 2015

REFERRED TO COMMITTEE ON HEALTH, JULY 16, 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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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 a certification 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, commencing in 2015, some
14 will be covered through the Healthy PA private coverage
15 option.

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

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

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

8 Section 103. Purposes.

9 The purposes of this act are to:

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

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

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

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

30 Section 104. Definitions.

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

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

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

8 (2) Adjustments for overtime compensation.

9 "Covered employee."

10 (1) An employee who:

11 (i) Is a recipient of public assistance.

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

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

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

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

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

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

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

30 (2) the adequate living wage standard set by the

1 Department of Labor and Industry.

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

5 "Nursing facility."

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

9 (2) The term includes each member of a controlled group
10 of corporations, as defined in § 1563(a) of the Internal
11 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
12 1563(a)), regarding the nursing facility.

13 "Public assistance."

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

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

22 CHAPTER 2

23 NURSING FACILITY LIVING WAGE

24 CERTIFICATION

25 Section 201. Reporting requirements.

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

1 reporting):

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

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

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

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

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

21 Section 202. Determination and certification.

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

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

1 certification as an employer that provides wages to its
2 employees that meet the living wage certification standard.

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

6 Section 203. Posting of information.

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

12 (1) The information provided under section 201.

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

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

19 (1) The information provided under section 201.

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

22 Section 204. Effect of certification.

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

26 Section 205. Inspection of records and data.

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

1 Section 206. Administration by Department of Health.

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

5 Section 207. Civil penalties.

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

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

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

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

14 CHAPTER 3

15 NURSING FACILITY EMPLOYER RESPONSIBILITY

16 PENALTY

17 Section 301. Reporting requirements.

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

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

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

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

28 Section 302. Determination.

29 The Department of Human Services shall match Social Security
30 numbers of recipients of public assistance with the information

1 provided under section 301, to determine if the nursing facility
2 is subject to an employer responsibility penalty under this
3 chapter.

4 Section 303. Employer responsibility penalty.

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

8 (b) Amount of penalty.--

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

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

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

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

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

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

29 (d) Payment.--A nursing facility shall pay any employer
30 responsibility penalty imposed under this chapter to the

1 Department of Human Services for deposit into the fund
2 established under section 308.

3 (e) Interest.--

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

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

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

12 (f) Additional interest penalty.--

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

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

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

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

1 facility until the full amount due under this section is
2 recovered.

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

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

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

8 (h) Effect on licensing.--

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

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

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

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

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

1 Section 304. Information regarding medical assistance.

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

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

9 Section 305. Prohibited practices.

10 A nursing facility may not:

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

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

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

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

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

30 Section 306. Employee remedies.

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

8 Section 307. Administrative appeal.

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

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

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

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

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

30 (c) Use of money in fund.--The Department of Human Services

1 may use money in the fund under this section to pay:

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

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

6 Each document and record that contains personal or
7 identifying information and results from the operation of
8 sections 301 and 302 shall be subject to the confidentiality
9 requirements and privacy standards under the Health Insurance
10 Portability and Accountability Act of 1996 (Public Law 104-191,
11 110 Stat. 1936).

12 Section 310. Administration by Department of Human Services.

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

16 CHAPTER 4

17 MISCELLANEOUS PROVISIONS

18 Section 401. Severability.

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

24 Section 402. Effective date.

25 This act shall take effect in 90 days.