

Recent Amendments to the Illinois Nursing Home Care Act

AUTHOR: DANIEL RENNER

The Illinois Nursing Home Care Act was recently amended by the Illinois General Assembly (IGA) after the passage of what both nursing home and patient advocates consider a mutually agreeable bill.

One area the law is designed to address is the conflict between appropriate levels of direct nursing care and the well-known shortages in this workforce. The law includes \$70 million to aid facilities in meeting these staffing challenges. While this is an improvement over past attempts to address health care staffing, some critics believe that this funding is not enough to address the labor pool shortages. Regardless, the nursing home industry must now meet the 2.5 hour daily direct-care level staffing requirement or face monetary penalties or potentially other punishment at the discretion of the Illinois Department of Health and Senior Services (IDHS).

The state legislature is not finished, however, as the law provides that the IDHS will provide a protocol by 2021 specifying how informed consent for psychotropic medication may be obtained or refused. For now, it appears the facilities are required to inform the resident or surrogate decision maker, or both, of the existence of a copy of the resident's care plan and the facility's policies and procedures. As an additional practical hurdle, the informed consent is only good until (1) a change in the prescription occurs, either as to type of psychotropic medication or dosage; or (2) a resident's care plan changes. The law indicates "a facility shall incur no liability for information provided on a consent form so long as the consent form is substantially accurate based upon generally accepted medical principles." 210 ILCS 45/2-106.1(b). Of course, those familiar with health care litigation may notice this "immunity" from liability offers little protection and may invoke a higher standard of care than recited in common medical negligence cases.

Additionally, the law provides that "[A]ll facilities must provide training and education . . . to effectively implement the facility's policies . . . [which] must be documented in each [employee's] personnel file." 210 ILCS 45/2-106.1(b-15)(emphasis added).

The topics covered in this blog are meant to give a surface level look at the new law passed by the Illinois General Assembly as a continued commitment to keep health care providers aware of the practical issues presented by state and federal legal developments.