

2020 -- H 8146

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO HEALTH AND SAFETY -- NURSING HOME STAFFING AND QUALITY
CARE ACT

Introduced By: Representative David J. Place

Date Introduced: November 24, 2020

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 23-17.5 of the General Laws entitled "Rights of Nursing Home
2 Patients" is hereby amended by adding thereto the following sections:

3 **23-17.5-32. Minimum staffing levels at state facilities.**

4 (a) Each state facility shall have the necessary nursing service personnel (licensed and non-
5 licensed) in sufficient numbers on a twenty-four (24) hour basis, to assess the needs of residents,
6 to develop and implement resident care plans, to provide direct resident care services, and to
7 perform other related activities to maintain the health, safety and welfare of residents. The state
8 facility shall have a registered nurse on the premises twenty-four (24) hours a day.

9 (b) For purposes of §§ 23-17.5-32 through 23-17.5-35, the following definitions shall
10 apply:

11 (1) "Direct caregiver" means a registered nurse, a licensed practical nurse, a medication
12 technician, and a certified nurse assistant.

13 (2) "Hours of direct nursing care" means the actual hours of work performed per patient
14 per day by a direct caregiver.

15 (3) "State facility" means any facility operated through the state of Rhode Island
16 department of behavioral healthcare, development disabilities and hospitals (BHDDH) providing
17 long-term nursing home or hospital level care, or established and operated pursuant to the
18 provisions of chapter 24 of title 30.

1 (c) Commencing on October 1, 2021, state facilities providing nursing services shall
2 provide a minimum daily average of four and one-tenth (4.1) hours of direct nursing care per
3 resident, per day, of which at least two and eight-tenths (2.8) hours shall be provided by certified
4 nurse assistants.

5 (d) Director of nursing hours and nursing staff hours spent on administrative duties or non-
6 direct caregiving tasks are excluded and may not be counted toward compliance with the minimum
7 staffing hours requirement in subsections (a) and (c) of this section.

8 (e) The minimum hours of direct nursing care requirements shall be minimum standards
9 only. State facilities providing nursing services shall employ and schedule additional staff as
10 needed to ensure quality resident care based on the needs of individual residents and to ensure
11 compliance with all relevant state and federal staffing requirements.

12 (f) The department shall promulgate rules and regulations to amend the Rhode Island code
13 of regulations to implement these minimum staffing requirements on or before October 1, 2021.

14 (g) On or before January 1, 2023, and every five (5) years thereafter, the department shall
15 consult with resident or patient advocates and recognized collective bargaining agents to determine
16 the sufficiency of the staffing standards provided in this section and may promulgate rules and
17 regulations to increase the minimum staffing ratios to adequate levels.

18 **23-17.5-33. Minimum staffing level compliance and enforcement program.**

19 (a) Compliance determination.

20 (1) The department shall submit proposed rules and regulations for adoption by January 1,
21 2022, establishing a system for determining compliance with minimum staffing requirements set
22 forth in § 23-17.5-32.

23 (2) Compliance shall be determined quarterly by comparing the number of hours provided
24 per resident, per day using the Centers for Medicare and Medicaid Services' payroll-based journal
25 and the state facility's daily census, as self-reported by the state facility to the department on a
26 quarterly basis.

27 (3) The department shall use the quarterly payroll-based journal and the self-reported
28 census to calculate the number of hours provided per resident, per day and compare this ratio to the
29 minimum staffing standards required under § 23-17.5-32. Discrepancies between job titles
30 contained in § 23-17.5-32 and the payroll-based journal shall be addressed by rules and regulations.

31 (b) Monetary penalties.

32 (1) The department shall submit proposed rules and regulations for adoption on or before
33 January 1, 2022, establishing monetary penalties for state facilities not in compliance with
34 minimum staffing requirements set forth in § 23-17.5-32.

1 (2) No monetary penalty may be issued for noncompliance during the implementation
2 period, which shall extend from October 1, 2021, through December 31, 2021. If a state facility is
3 found to be noncompliant during the implementation period, the department shall provide a written
4 notice identifying the staffing deficiencies and require the state facility to provide a sufficiently
5 detailed correction plan to meet the statutory minimum staffing levels.

6 (3) Monetary penalties shall be imposed beginning on January 1, 2022, and quarterly
7 thereafter and shall be based on the latest quarter for which the department has data.

8 (4) Monetary penalties shall be established based on a formula that calculates on a daily
9 basis the cost of wages and benefits for the missing staffing hours.

10 (5) All notices of noncompliance shall include the computations used to determine
11 noncompliance and establishing the variance between minimum staffing ratios and the department's
12 computations.

13 (6) The penalty for the first offense shall be two hundred percent (200%) of the cost of
14 wages and benefits for the missing staffing hours. The penalty shall increase to two hundred fifty
15 percent (250%) of the cost of wages and benefits for the missing staffing hours for the second
16 offense and three hundred percent (300%) the cost of wages and benefits for the missing staffing
17 hours for the third and all subsequent offenses.

18 (7) For state facilities that have an offense in three (3) consecutive quarters, EOHHS shall
19 deny any further Medicaid Assistance payments with respect to all individuals entitled to benefits
20 who are admitted to the state facility on or after January 1, 2022.

21 (c)(1) The penalty shall be imposed regardless of whether the state facility has committed
22 other violations of this chapter during the same period that the staffing offense occurred.

23 (2) The penalty may not be waived except as provided in subsection (c)(3) of this section,
24 but the department shall have the discretion to determine the gravity of the violation in situations
25 where there is no more than a ten percent (10%) deviation from the staffing requirements and make
26 appropriate adjustments to the penalty.

27 (3) The department is granted discretion to waive the penalty when unforeseen
28 circumstances have occurred that resulted in call-offs of scheduled staff. This provision shall be
29 applied no more than six (6) times per quarter.

30 (4) Nothing in this section diminishes a state facility's right to appeal to the department of
31 administration for an administrative hearing.

32 (d)(1) Beginning January 1, 2022, pursuant to rules and regulations established by the
33 department, funds that are received from financial penalties shall be used for technical assistance
34 or specialized direct care staff training.

1 (2) The assessment of a penalty does not supplant the state's investigation process or
2 issuance of deficiencies or citations under title 23.

3 (3) A notice of penalty assessment shall be prominently posted in the state facility and
4 included on the department's website.

5 **23-17.5-34. Nursing staff posting requirements at state facilities.**

6 (a) Each state facility providing nursing services shall post its daily direct care nurse staff
7 levels by shift in a public place within the state facility that is readily accessible to and visible by
8 residents, employees and visitors. The posting shall be accurate to the actual number of direct care
9 nursing staff on duty for each shift per day. The posting shall be in a format prescribed by the
10 director, to include:

11 (1) The number of registered nurses, licensed practical nurses, certified nursing assistants,
12 and medication technicians;

13 (2) The number of temporary, outside agency nursing staff;

14 (3) The resident census as of twelve o'clock (12:00) a.m.; and

15 (4) Documentation of the use of unpaid eating assistants (if utilized by the state facility on
16 that date).

17 (b) The posting information shall be maintained on file by the state facility for no less than
18 three (3) years and shall be made available to the public upon request.

19 (c) Each state facility providing nursing services shall report the information compiled
20 pursuant to section (a) of this section and in accordance with department of health regulations to
21 the department of health on a monthly basis in an electronic format prescribed by the director. The
22 director shall make this information available to the public on a quarterly basis on the department
23 of health website, accompanied by a written explanation to assist members of the public in
24 interpreting the information reported pursuant to this section.

25 (d) In addition to the daily direct nurse staffing level reports, each state facility providing
26 nursing services shall post the following information in a legible format and in a conspicuous place
27 readily accessible to and visible by residents, employees and visitors of the state facility:

28 (1) The minimum number of state facility direct care staff per shift that is required to
29 comply with the minimum staffing level requirements in § 23-17.5-32; and

30 (2) The telephone number or Internet website that a resident, employee or visitor of the
31 state facility may use to report a suspected violation by the state facility of a regulatory requirement
32 concerning staffing levels and direct patient care.

33 (e) No state facility shall discharge or in any manner discriminate or retaliate against any
34 resident of any state facility, or any relative, guardian, conservator or sponsoring agency thereof or

1 against any employee of any state facility or against any other person because the resident, relative,
2 guardian, conservator, sponsoring agency, employee or other person has filed any complaint or
3 instituted or caused to be instituted any proceeding under this chapter, or has testified or is about
4 to testify in any such proceeding or because of the exercise by the resident, relative, guardian,
5 conservator, sponsoring agency, employee or other person on behalf of himself, herself or others
6 of any right afforded by §§ 23-17.5-32, 23-17.5-33 and 23-17.5-34. Notwithstanding any other
7 provision of law to the contrary, any state facility that violates any provision of this section shall:

8 (1) Be liable to the injured party for treble damages; and

9 (2)(i) Reinstate the employee, if the employee was terminated from employment in
10 violation of any provision of this section, or

11 (ii) Restore the resident to his or her living situation prior to such discrimination or
12 retaliation, including his or her housing arrangement or other living conditions within the state
13 facility, as appropriate, if the resident's living situation was changed in violation of any provision
14 of this section. For purposes of this section, "discriminate or retaliate" includes, but is not limited
15 to, the discharge, demotion, suspension or any other detrimental change in terms or conditions of
16 employment or residency, or the threat of any such action.

17 (f)(1) The state facility shall prepare an annual report showing the average daily direct care
18 nurse staffing level for the state facility by shift and by category of nurse to include:

19 (i) Registered nurses;

20 (ii) Licensed practical nurses;

21 (iii) Certified nursing assistants and medication technicians;

22 (iv) The use of registered and licensed practical nurses and certified nursing assistant staff
23 from temporary placement agencies; and

24 (v) The nurses and certified nurse assistant turnover rates.

25 (2) The annual report shall be submitted on or after September 30, annually. Annual reports
26 shall be submitted in a format prescribed by the director.

27 (g) The information on nurse staffing shall be available to the public, both in printed form
28 and on the department's website.

29 (h) The director of nurses may act as a charge nurse only when the state facility provides
30 thirty (30) beds or less.

31 (i) Whenever the department determines, in the course of inspecting a state facility, that
32 additional staffing is necessary on any residential area to provide adequate nursing care and
33 treatment or to ensure the safety of residents, the department shall require the state facility to
34 provide such additional staffing and any or all of the following actions shall be taken to enforce

1 compliance with the determination of the department:

2 (1) The state facility shall be cited for a deficiency and shall be required to augment its
3 staff within ten (10) days in accordance with the determination of the department:

4 (2) If failure to augment staffing is cited, the state facility shall be required to curtail
5 admission to the state facility:

6 (3) If a continued failure to augment staffing is cited, the state facility shall be subjected to
7 an immediate compliance order to increase the staffing, in accordance with § 23-1- 21; or

8 (4) The sequence and inclusion or non-inclusion of the specific sanctions may be modified
9 in accordance with the severity of the deficiency in terms of its impact on the quality of resident
10 care.

11 (j) No nursing staff of any state facility shall be regularly scheduled for double shifts.

12 (k) A state facility that fails to comply with the provisions of this chapter, or any rules or
13 regulations adopted pursuant thereto, shall be subject to a penalty as determined by the department.

14 **23-17.5-35. Staffing plan at state facilities.**

15 (a) At each state facility there shall be a master plan of the staffing pattern for providing
16 twenty-four (24) hour direct care nursing service; for the distribution of direct care nursing
17 personnel for each floor and/or residential area; for the replacement of direct care nursing
18 personnel; and for forecasting future needs.

19 (1) The staffing pattern shall include provisions for registered nurses, licensed practical
20 nurses, certified nursing assistants, and medication technicians and other personnel as required.

21 (2) The number and type of nursing personnel shall be based on resident care needs and
22 classifications as determined for each residential area. Each state facility shall be responsible to
23 have sufficient qualified staff to meet the needs of the residents.

24 (3) At least one individual who is certified in basic life support shall be available twenty-
25 four (24) hours a day within the state facility.

26 (4) Each state facility shall include direct caregivers, including at least one certified nursing
27 assistant, in the process to create the master plan of the staffing pattern and the federally mandated
28 facility assessment. If the certified nursing assistants in the state facility are represented under a
29 collective bargaining agreement, the bargaining unit shall coordinate voting to allow the certified
30 nursing assistants to select their representative.

31 SECTION 2. Section 40-8-19 of the General Laws in Chapter 40-8 entitled "Medical
32 Assistance" is hereby amended to read as follows:

33 **40-8-19. Rates of payment to nursing facilities.**

34 (a) Rate reform.

1 (1) The rates to be paid by the state to nursing facilities licensed pursuant to chapter 17 of
2 title 23, and certified to participate in Title XIX of the Social Security Act for services rendered to
3 Medicaid-eligible residents, shall be reasonable and adequate to meet the costs that must be
4 incurred by efficiently and economically operated facilities in accordance with 42 U.S.C. §
5 1396a(a)(13). The executive office of health and human services ("executive office") shall
6 promulgate or modify the principles of reimbursement for nursing facilities in effect as of July 1,
7 2011, to be consistent with the provisions of this section and Title XIX, 42 U.S.C. § 1396 et seq.,
8 of the Social Security Act.

9 (2) The executive office shall review the current methodology for providing Medicaid
10 payments to nursing facilities, including other long-term-care services providers, and is authorized
11 to modify the principles of reimbursement to replace the current cost-based methodology rates with
12 rates based on a price-based methodology to be paid to all facilities with recognition of the acuity
13 of patients and the relative Medicaid occupancy, and to include the following elements to be
14 developed by the executive office:

15 (i) A direct-care rate adjusted for resident acuity;

16 (ii) An indirect-care rate comprised of a base per diem for all facilities;

17 (iii) A rearray of costs for all facilities every three (3) years beginning October, 2015, that
18 may or may not result in automatic per diem revisions;

19 (iv) Application of a fair-rental value system;

20 (v) Application of a pass-through system; and

21 (vi) Adjustment of rates by the change in a recognized national nursing home inflation
22 index to be applied on October 1 of each year, beginning October 1, 2012. This adjustment will not
23 occur on October 1, 2013, October 1, 2014, or October 1, 2015, but will occur on April 1, 2015.
24 The adjustment of rates will also not occur on October 1, 2017, October 1, 2018, and October 1,
25 2019. Effective July 1, 2018, rates paid to nursing facilities from the rates approved by the Centers
26 for Medicare and Medicaid Services and in effect on October 1, 2017, both fee-for-service and
27 managed care, will be increased by one and one-half percent (1.5%) and further increased by one
28 percent (1%) on October 1, 2018, and further increased by one percent (1%) on October 1, 2019.
29 The inflation index shall be applied without regard for the transition factors in subsections (b)(1)
30 and (b)(2). For purposes of October 1, 2016, adjustment only, any rate increase that results from
31 application of the inflation index to subsections (a)(2)(i) and (a)(2)(ii) shall be dedicated to increase
32 compensation for direct-care workers in the following manner: Not less than 85% of this aggregate
33 amount shall be expended to fund an increase in wages, benefits, or related employer costs of direct-
34 care staff of nursing homes. For purposes of this section, direct-care staff shall include registered

1 nurses (RNs), licensed practical nurses (LPNs), certified nursing assistants (CNAs), certified
2 medical technicians, housekeeping staff, laundry staff, dietary staff, or other similar employees
3 providing direct-care services; provided, however, that this definition of direct-care staff shall not
4 include: (i) RNs and LPNs who are classified as "exempt employees" under the Federal Fair Labor
5 Standards Act (29 U.S.C. § 201 et seq.); or (ii) CNAs, certified medical technicians, RNs, or LPNs
6 who are contracted, or subcontracted, through a third-party vendor or staffing agency. By July 31,
7 2017, nursing facilities shall submit to the secretary, or designee, a certification that they have
8 complied with the provisions of this subsection (a)(2)(vi) with respect to the inflation index applied
9 on October 1, 2016. Any facility that does not comply with terms of such certification shall be
10 subjected to a clawback, paid by the nursing facility to the state, in the amount of increased
11 reimbursement subject to this provision that was not expended in compliance with that certification.

12 (3) Commencing on October 1, 2021, any rate increase that results from application of the
13 inflation index to subsections (a)(2)(i) and (a)(2)(ii) of this section or any other rate increase shall
14 be dedicated to increase compensation for all eligible direct-care workers in the following manner
15 on October 1, of each year. For purposes of this subsection, compensation increases are limited to
16 base salary or hourly wage increases and associated payroll tax increases for eligible direct-care
17 workers. This application of the inflation index shall apply for Medicaid reimbursement in nursing
18 facilities for both managed care and fee-for-service. For purposes of this subsection, direct-care
19 staff shall include registered nurses (RNs), licensed practical nurses (LPNs), certified nursing
20 assistants (CNAs), certified medication technicians, housekeeping staff, laundry staff, dietary staff
21 or other similar employees providing direct-care services; provided, however that this definition of
22 direct-care staff shall not include:

23 (i) RNs and LPNs who are classified as "exempt employees" under the federal Fair Labor
24 Standards Act (29 U.S.C. § 201 et seq.); or

25 (ii) CNAs, certified medication technicians, RNs or LPNs who are contracted or
26 subcontracted through a third-party vendor or staffing agency.

27 (4)(i) By July 31, 2021, and July 31 of each year thereafter, nursing facilities shall submit
28 to the secretary or designee a certification that they have complied with the provisions of subsection
29 (a)(2)(vii) of this section with respect to the inflation index applied on October 1. The executive
30 office of health and human services (EOHHS) shall create the certification form which nursing
31 facilities must complete with information on how each individual eligible employee's compensation
32 increased, including information regarding hourly wages prior to the increase and after the
33 compensation increase, hours paid after the compensation increase and associated increased payroll
34 taxes. A collective bargaining agreement can be used in lieu of the certification form for represented

1 employees. All data reported on the compliance form is subject to review and audit by EOHHS.
2 The audits may include field or desk audits, and facilities may be required to provide additional
3 supporting documents including, but not limited to, payroll records.

4 (ii) Any facility that does not comply with the terms of certification shall be subjected to a
5 clawback and twenty-five percent (25%) penalty of the unspent or impermissibly spent funds, paid
6 by the nursing facility to the state, in the amount of increased reimbursement subject to this
7 provision that was not expended in compliance with that certification.

8 (b) Transition to full implementation of rate reform. For no less than four (4) years after
9 the initial application of the price-based methodology described in subsection (a)(2) to payment
10 rates, the executive office of health and human services shall implement a transition plan to
11 moderate the impact of the rate reform on individual nursing facilities. Said transition shall include
12 the following components:

13 (1) No nursing facility shall receive reimbursement for direct-care costs that is less than
14 the rate of reimbursement for direct-care costs received under the methodology in effect at the time
15 of passage of this act; for the year beginning October 1, 2017, the reimbursement for direct-care
16 costs under this provision will be phased out in twenty-five-percent (25%) increments each year
17 until October 1, 2021, when the reimbursement will no longer be in effect; and

18 (2) No facility shall lose or gain more than five dollars (\$5.00) in its total, per diem rate the
19 first year of the transition. An adjustment to the per diem loss or gain may be phased out by twenty-
20 five percent (25%) each year; except, however, for the years beginning October 1, 2015, there shall
21 be no adjustment to the per diem gain or loss, but the phase out shall resume thereafter; and

22 (3) The transition plan and/or period may be modified upon full implementation of facility
23 per diem rate increases for quality of care-related measures. Said modifications shall be submitted
24 in a report to the general assembly at least six (6) months prior to implementation.

25 (4) Notwithstanding any law to the contrary, for the twelve-month (12) period beginning
26 July 1, 2015, Medicaid payment rates for nursing facilities established pursuant to this section shall
27 not exceed ninety-eight percent (98%) of the rates in effect on April 1, 2015. Consistent with the
28 other provisions of this chapter, nothing in this provision shall require the executive office to restore
29 the rates to those in effect on April 1, 2015, at the end of this twelve-month (12) period.

30 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- NURSING HOME STAFFING AND QUALITY
CARE ACT

1 This act would mandate minimum staffing levels and standards for quality care for state
2 facilities and their residents with violations subject to monetary penalties, and provide wage
3 increases for all nursing homes subject to the rate of inflation.

4 This act would take effect upon passage.

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