

2010 -- S 2289

LC00608

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO HEALTH AND SAFETY

Introduced By: Senators C Levesque, Blais, Perry, Miller, and Gallo

Date Introduced: February 11, 2010

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-17-8 and 23-17-44 of the General Laws in Chapter 23-17  
2 entitled "Licensing of Health Care Facilities" are hereby amended to read as follows:  
3 **23-17-8. Denial, suspension, or revocation of license.** -- The licensing agency, after  
4 notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend, or  
5 revoke a license, including the licensure of culture change beds approved pursuant to section 23-  
6 17-44, in any case in which it finds that there has been a failure to comply with the requirements  
7 established under this chapter. The notice shall be effected by registered or certified mail or by  
8 personal service, setting forth the particular reasons for the proposed action, and fixing a date not  
9 less than thirty (30) days from the date of the mailing or service, at which the applicant or  
10 licensee shall be given an opportunity for a prompt and fair hearing. On the basis of the hearing,  
11 or upon default of the applicant or licensee, the licensing agency shall make a determination  
12 specifying its findings of fact and conclusions of law. A copy of the determination shall be sent  
13 by registered or certified mail or served personally upon the applicant or licensee. The decision  
14 denying, suspending, or revoking the license or application shall become final thirty (30) days  
15 after it is so mailed or served, unless the applicant or licensee, within the thirty (30) day period,  
16 appeals the decision pursuant to section 42-35-15. The procedure governing hearings authorized  
17 by this section shall be in accordance with sections 42-35-9 -- 42-35-13 as stipulated in section  
18 42-35-14(a). A full and complete record shall be kept of all proceedings, and all testimony shall  
19 be reported but need not be transcribed unless the decision is appealed pursuant to section 42-35-

1 15. A copy or copies of the transcript may be obtained by any interested party on payment of the  
2 cost of preparing the copy or copies. Witnesses may be subpoenaed by either party.

3 **23-17-44. Moratorium on new initial nursing facility licensed beds and on increases**  
4 **to the licensed capacity of existing nursing facility licenses.** -- (a) The licensing agency shall

5 issue no new initial licenses for nursing facilities prior to July 1, ~~2010~~ 2013; provided, however,  
6 that:

7 (1) Any person holding a previously issued and valid certificate of need as of August 21,  
8 1996 shall be permitted to effect a prior certificate from the licensing agency consistent with any  
9 other statutory and regulatory provisions which may further apply;

10 (2) Any person holding a nursing facility license may undertake activities to construct  
11 and operate a replacement nursing facility with the same or lower bed capacity as is presently  
12 licensed provided that the replacement facility may only be licensed upon the otherwise  
13 unconditional cessation of operation of the previously licensed nursing facility;

14 ~~(3) Any certificate of need application under active review before the state agency as of~~  
15 ~~January 10, 1996, which application seeks approval of a proposal to establish a new nursing~~  
16 ~~facility or seeks to increase the licensed bed capacity of an existing nursing facility shall continue~~  
17 ~~to be reviewed under all the statutory and regulatory requirements in effect at the time the~~  
18 ~~application was accepted for review by the state agency; and~~

19 ~~(4) On July 1, 1999, if the statewide occupancy rate of licensed nursing facility beds~~  
20 ~~exceeds ninety two percent (92%) for the preceding calendar year, as determined by the~~  
21 ~~department of human services, an assisted living residence licensed pursuant to chapter 17.4 of~~  
22 ~~this title may propose to seek nursing facility licensure by conversion of assisted living residence~~  
23 ~~rooms within its existing physical plant; provided however, that:~~

24 ~~(i) The number of nursing facility beds to be licensed does not exceed the lesser of~~  
25 ~~twenty (20) beds or ten percent (10%) of the licensed bed capacity of the assisted living~~  
26 ~~residence;~~

27 ~~(ii) The capital expenditures associated with the implementation of the nursing facility~~  
28 ~~beds does not exceed five hundred thousand dollars (\$500,000);~~

29 ~~(iii) The nursing facility shall be limited in taking residents to those persons who are~~  
30 ~~transferring from residency at the assisted living residence;~~

31 ~~(iv) The application must be submitted to the health services council on or before~~  
32 ~~October 1, 1999;~~

33 ~~(v) The facility must comply with all requirements of the Health Care Certificate of~~  
34 ~~Need Act, chapter 15 of title 23.~~

1 (b) Prior to July 1, ~~2010~~ 2013 and with the exception of the culture initiative pursuant to  
2 subdivision 23-17-44(3), the licensing agency shall not increase the licensed bed capacity of any  
3 existing licensed nursing facility, including any nursing facility approved for change in ownership  
4 pursuant to sections 23-17-14.3 and 23-17-14.4, to greater than the level of the facility's licensed  
5 bed capacity as of August 21, 1996 plus the greater of ten (10) beds or ten percent (10%) of the  
6 licensed bed capacity. Any person holding a previously issued and valid certificate of need as of  
7 the date of passage of this section or who shall subsequently be granted a certificate of need  
8 pursuant to subsection (a) shall be permitted to effect a prior certificate from the licensing agency  
9 consistent with any other statutory and regulatory provisions which may further apply.  
10 ~~Notwithstanding any other provision of the law to the contrary, including any moratorium on~~  
11 ~~increasing bed capacity in nursing facilities that may otherwise apply, the licensing agency shall~~  
12 ~~be permitted to increase the licensed bed capacity of an existing nursing facility by no more than~~  
13 ~~the number of beds previously licensed to one or more other licensed nursing facilities provided~~  
14 ~~that:~~

15 ~~(1) All nursing facilities involved in any such transaction must be located within the~~  
16 ~~same municipality;~~

17 ~~(2) The owner of a licensed nursing care facility seeking to increase its licensed bed~~  
18 ~~capacity must receive approval, following review by the health services council, from the~~  
19 ~~licensing agency for a change in owner of the other nursing facility or facilities;~~

20 ~~(3) That the nursing facility licensed bed capacity may only be increased upon the~~  
21 ~~otherwise unconditional cessation of operation of the previously licensed other nursing facility or~~  
22 ~~facilities and the return of the license of the nursing facility or nursing facilities to the licensing~~  
23 ~~agency; and~~

24 ~~(4) The licensed nursing care facility seeking to increase its licensed bed complement~~  
25 ~~must comply with all requirements of the Health Care Certificate of Need Act, chapter 15 of title~~  
26 ~~23.~~

27 (c) Notwithstanding any other provision of the law to the contrary, including any  
28 moratorium on increasing bed capacity in nursing facilities that may otherwise apply, a nursing  
29 facility may take out of service any or all beds of its licensed capacity without impediment to its  
30 right to place back into service those beds at a future date under the same terms and conditions as  
31 applied at the time of taking them out of service.

32 (d) From July 1 of 2009 through June 30 of 2010, notwithstanding any other provision  
33 herein to the contrary, including any moratorium on increasing bed capacity in nursing facilities  
34 that may otherwise apply, a nursing home member of a multi-facility group may transfer its

1 entitlement to add up to ten (10) beds through the "ten (10) beds or ten percent (10%) of capacity"  
2 exception provided for and in accordance with subsection (b) hereof to another nursing facility in  
3 the same multi-facility group, provided that:

4 (1) The beds thereby added are, in the discretion of the director of the department of  
5 health, designed to provide enhanced quality of life to nursing facility residents through the  
6 adoption of principles and building designs established by the "Eden alternative" or "Green house  
7 " programs or other like means;

8 (2) The nursing facility applying to receive the transferred beds has fewer than fifty (50)  
9 licensed beds and has at least a ninety-four percent (94%) bed occupancy rate at the time of  
10 application to obtain said additional bed licenses;

11 (3) The transferred beds provided for in this subsection (d) shall be limited to a  
12 maximum total of ten (10) beds per multi-facility group;

13 (4) The transfer of beds results in a reduction in the number of nursing facility beds in  
14 the state, including the beds transferred under this authority; and

15 (5) For purposes of this subsection (d), the term "multi-facility group" shall mean two (2)  
16 or more nursing facilities that are affiliated, which for purposes of this subsection shall mean two  
17 (2) or more nursing facilities that are controlled by, in control of, or in common control with, each  
18 other.

19 ~~-(e) Nursing facility culture change joint legislative commission. — There is hereby~~  
20 ~~established a joint legislative commission to make recommendations on nursing facility culture~~  
21 ~~change and its relationship to the nursing facility bed moratorium, the certificate of need program,~~  
22 ~~and nursing facility principles and methods of reimbursement.~~

23 ~~-(1) The commission shall consist of eleven (11) members, as follows:~~

24 ~~-(i) Two (2) members of the senate, one of whom shall be from the minority party,~~  
25 ~~appointed by the senate president;~~

26 ~~-(ii) Two (2) members of the house of representatives, one of whom shall be from the~~  
27 ~~minority party, appointed by the speaker;~~

28 ~~-(iii) Two (2) shall be representatives of the Rhode Island health care association,~~  
29 ~~designated by the president of the association;~~

30 ~~-(iv) Two (2) shall be representatives of the Rhode Island facilities and services for the~~  
31 ~~aging, designated by the president of the association;~~

32 ~~-(v) One shall be the director of health, or designee;~~

33 ~~-(vi) One shall be the director of human services, or designee;~~

34 ~~-(vii) One shall be the secretary of health and human services, or designee.~~

1 ~~-(2) The commission shall be co-chaired by a senator and representative as appointed by~~  
2 ~~the senate president and speaker of the house.~~

3 ~~-(3) The commission shall report its findings and recommendations to the general~~  
4 ~~assembly on or before September 15, 2009, including recommendations for legislative change.~~

5 (e) Culture change initiative. Notwithstanding any other provision of the law to the  
6 contrary, including any moratorium on increasing bed capacity in nursing facilities that may  
7 otherwise apply, the licensing agency may increase the licensed bed capacity of any existing  
8 licensed nursing facility, including any nursing facility approved for change in ownership  
9 pursuant to sections 23-17-14.3 and 23-17-14.4, for the purposes of nursing facility culture  
10 change, in accordance with the following criteria and procedures:

11 (i) Culture change definitions and criteria are established through regulation, to restrict  
12 beds added under this initiative only to beds that are designed to provide enhanced quality of life  
13 to nursing facility residents through the adoption of principles and building designs established by  
14 the “Eden alternative,” “Green house,” or “small house” programs or other like means;

15 (ii) Only beds taken out-of-service due to facility closure after January 1, 2010 shall be  
16 available for facility expansion under this culture change initiative subsection. The total number  
17 of beds that may be licensed to increase capacity under this culture change initiative shall be  
18 limited to ninety percent (90%) of the first fifty (50) beds that are taken out-of-service, to seventy  
19 percent (70%) of the next fifty (50) beds that are take out-of-service, and to fifty percent (50%) of  
20 any additional beds taken out-of-service;

21 (iii) Only nursing facilities licensed in the state are eligible to expand under the culture  
22 change initiative;

23 (iv) The department shall promulgate regulations to govern an open and competitive  
24 process to determine the licensure of expansion beds under this culture change initiative, and  
25 shall consider the impact on the regional distribution of, and access to, nursing facility beds in the  
26 state;

27 (v) Any facility seeking to expand their licensed bed capacity under this initiative, that  
28 will result in an expenditure that meets or exceeds the criteria for determination of need renew  
29 under section 23-15, shall be required to receive approval under section 23-15.

30 (vi) On or before March 15, 2012, the department shall gather information from the  
31 department of human services and shall report to the president of the senate and the speaker of the  
32 house of representatives on the costs and benefits to the state of this culture change initiative,  
33 including recommendations for revision or termination of the initiative.

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1 SECTION 2. This act shall take effect on July 1, 2010.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO HEALTH AND SAFETY

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1           This act would extend the moratorium on new initial nursing facility licensed beds and on  
2 increases to the licensed capacity of existing nursing facility licenses from 2010 to 2013 and  
3 allow for nursing facility culture change.

4           This act would take effect on July 1, 2010.

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