

2022 -- H 8003

=====
LC005261
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

—————
A N A C T

RELATING TO HEALTH AND SAFETY -- RIGHTS OF NURSING HOME PATIENTS--
STAFFING

Introduced By: Representatives C Lima, Cardillo, and Serpa

Date Introduced: March 18, 2022

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-17.5-32, 23-17.5-33 and 23-17.5-34 of the General Laws in
2 Chapter 23-17.5 entitled "Rights of Nursing Home Patients" are hereby amended to read as follows:

3 **23-17.5-32. Minimum staffing levels.**

4 (a) Each 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 facility
8 shall have a registered nurse on the premises twenty-four (24) hours a day.

9 (b) To the extent that a facility is unable to meet the requirements of a registered nurse on
10 the premise for twenty-four (24) hours a day as stated in subsection (a) of this section, the licensing
11 agency may waive such requirements with respect to the facility and cede to the federal requirement
12 if:

13 (1) The facility demonstrates, to the satisfaction of the licensing agency, that the facility
14 has been unable, despite diligent efforts (including offering wages at the community prevailing rate
15 for nursing facilities), to recruit appropriate personnel;

16 (2) The licensing agency determines that a waiver of the requirement will not endanger the
17 health or safety of individuals staying in the facility;

18 (3) The licensing agency finds that, for any periods in which licensed nursing services are

1 [not available, a registered nurse or a physician, is obligated to respond immediately to telephone](#)
2 [calls from the facility;](#)

3 ~~(b)~~(c) For purposes of this section, the following definitions shall apply:

4 (1) "Direct caregiver" means a person who receives monetary compensation as an
5 employee of the nursing facility or a subcontractor as a registered nurse, [a registered nurse with](#)
6 [administrative duties](#), a licensed practical nurse, [a licensed practical nurses with administrative](#)
7 [duties](#), a medication technician, [who is also a certified nurse assistant, a nurse aide in training](#), a
8 certified nurse assistant, a licensed physical therapist, a licensed occupational therapist, a licensed
9 speech-language pathologist, a mental health worker who is also a certified nurse assistant, ~~or~~ a
10 physical therapist assistant, [or an occupational therapy assistant](#).

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

13 (c)(i) Commencing on January 1, ~~2022~~ [2023](#), nursing facilities shall provide a quarterly
14 minimum average of three and fifty-eight hundredths (3.58) hours of direct nursing care per
15 resident, per day, of which at least two and forty-four hundredths (2.44) hours shall be provided by
16 certified nurse assistants [and medication technicians who are also a certified nurse assistant](#).

17 (ii) Commencing on January 1, ~~2023~~ [2024](#), nursing facilities shall provide a quarterly
18 minimum of three and eighty-one hundredths (3.81) hours of direct nursing care per resident, per
19 day, of which at least two and six-tenths (2.6) hours shall be provided by certified nurse assistants
20 [and medication technicians who are also a certified nurse assistant](#).

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

24 (e) The minimum hours of direct nursing care requirements shall be minimum standards
25 only. Nursing facilities shall employ and schedule additional staff as needed to ensure quality
26 resident care based on the needs of individual residents and to ensure compliance with all relevant
27 state and federal staffing requirements.

28 (f) The department shall promulgate rules and regulations to amend the Rhode Island code
29 of regulations in consultation with stakeholders to implement these minimum staffing requirements
30 on or before October 15, ~~2021~~ [2022](#).

31 (g) On or before January 1, ~~2024~~ [2025](#), and every five (5) years thereafter, the department
32 shall consult with consumers, consumer advocates, recognized collective bargaining agents, and
33 providers to determine the sufficiency of the staffing standards provided in this section and may
34 promulgate rules and regulations to increase the minimum staffing ratios to adequate levels.

1 **23-17.5-33. Minimum staffing level compliance and enforcement program.**

2 (a) Compliance determination.

3 (1) The department shall submit proposed rules and regulations for adoption by ~~October~~
4 ~~15, 2021~~ October 1, 2022, establishing a system for determining compliance with minimum staffing
5 requirements set forth in § 23-17.5-32.

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

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

15 (b) Monetary penalties.

16 (1) The department shall submit proposed rules and regulations for adoption on or before
17 ~~October 15, 2021~~ October 1, 2022, implementing monetary penalty provisions for facilities not in
18 compliance with minimum staffing requirements set forth in § 23-17.5-32.

19 (2) Monetary penalties shall be imposed quarterly and shall be based on the latest quarter
20 for which the department has data.

21 (3) No monetary penalty may be issued for noncompliance with the increase in the standard
22 set forth in § 23-17.5-32(c)(ii) from January 1, ~~2023~~ 2024, to March 31, ~~2023~~ 2024. If a facility is
23 found to be noncompliant with the increase in the standard during the period that extends from
24 January 1, ~~2023~~ 2024, to March 31, ~~2023~~ 2024, the department shall provide a written notice
25 identifying the staffing deficiencies and require the facility to provide a sufficiently detailed
26 correction plan to meet the statutory minimum staffing levels.

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

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

32 (6) The penalty for the first offense shall be two hundred percent (200%) of the cost of
33 wages and benefits for the missing staffing hours. The penalty shall increase to two hundred fifty
34 percent (250%) of the cost of wages and benefits for the missing staffing hours for the second

1 offense and three hundred percent (300%) of the cost of wages and benefits for the missing staffing
2 hours for the third and all subsequent offenses.

3 (7) For facilities that have an offense in three (3) consecutive quarters, EOHHS ~~shall~~ may
4 deny any further Medicaid Assistance payments with respect to all individuals entitled to benefits
5 who are admitted to the facility on or after January 1, ~~2022~~ 2023, or ~~shall~~ may freeze admissions
6 of new residents.

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

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

13 (3) The department is granted discretion to waive the penalty when unforeseen
14 circumstances have occurred that resulted in call-offs of scheduled staff. ~~This provision shall be~~
15 ~~applied no more than two (2) times per calendar year.~~

16 (4) Nothing in this section diminishes a facility's right to appeal pursuant to the provisions
17 of chapter 35 of title 42 ("administrative procedures").

18 (d)(1) Pursuant to rules and regulations established by the department, funds that are
19 received from financial penalties shall be used for technical assistance or specialized direct care
20 staff training.

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

23 (3) Waiver. A nursing facility may seek from the department of health a waiver of the
24 minimum direct care staffing requirements required hereunder. In making a determination on the
25 waiver request, the director's determination must include that the waiver will not endanger the
26 health or safety of residents of the facility, and shall be based on one or more of the following:

27 (i) The acuity levels of residents and how stable those levels are based on the case mix of
28 residents;

29 (ii) Documented evidence of the facility's inability to meet minimum staffing
30 requirements, despite best efforts, such as offering wages at competitive rates for nursing facility
31 staff in the community;

32 (iii) The quality performance of the nursing facility, as evidenced by a four (4) or five (5)
33 star overall rating from the Centers for Medicare or Medicaid Services ("CMS"), or a four (4) or
34 five (5) star overall rating in the areas of quality or staffing, or consistent survey performance with

1 [no deficiencies above F level.](#)

2 [\(4\) Waivers shall not be unreasonably withheld, and may be granted for periods up to one](#)
3 [year, after which a renewal must be requested by the facility. The department of health may seek](#)
4 [input from the department of labor and training in terms of issues of labor availability in connection](#)
5 [with any waiver request under this section.](#)

6 ~~(5)~~(5) A notice of noncompliance, whether or not the penalty is waived, and the penalty
7 assessment shall be prominently posted in the nursing facility and included on the department's
8 website.

9 **23-17.5-34. Nursing staff posting requirements.**

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

14 (1) The number of registered nurses, licensed practical nurses, certified nursing assistants,
15 medication technicians, licensed physical therapists, licensed occupational therapists, licensed
16 speech-language pathologists, mental health workers who are also certified nurse assistants, and
17 physical therapist assistants;

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

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

20 (4) Documentation of the use of unpaid eating assistants (if utilized by the nursing facility
21 on that date).

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

24 (c) Each nursing facility shall report the information compiled pursuant to section (a) of
25 this section and in accordance with department of health regulations to the department of health on
26 a quarterly basis in an electronic format prescribed by the director. The director shall make this
27 information available to the public on a quarterly basis on the department of health website,
28 accompanied by a written explanation to assist members of the public in interpreting the
29 information reported pursuant to this section.

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

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

1 (2) The telephone number or internet website that a resident, employee, or visitor of the
2 nursing facility may use to report a suspected violation by the nursing facility of a regulatory
3 requirement concerning staffing levels and direct patient care.

4 (e) No nursing facility shall discharge or in any manner discriminate or retaliate against
5 any resident of any nursing facility, or any relative, guardian, conservator, or sponsoring agency
6 thereof or against any employee of any nursing facility or against any other person because the
7 resident, relative, guardian, conservator, sponsoring agency, employee, or other person has filed
8 any complaint or instituted or caused to be instituted any proceeding under this chapter, or has
9 testified or is about to testify in any such proceeding or because of the exercise by the resident,
10 relative, guardian, conservator, sponsoring agency, employee, or other person on behalf of himself,
11 herself, or others of any right afforded by §§ 23-17.5-32, 23-17.5-33, and 23-17.5-34.
12 Notwithstanding any other provision of law to the contrary, any nursing facility that violates any
13 provision of this section shall:

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

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

17 (ii) Restore the resident to the resident's living situation prior to such discrimination or
18 retaliation, including the resident's housing arrangement or other living conditions within the
19 nursing facility, as appropriate, if the resident's living situation was changed in violation of any
20 provision of this section. For purposes of this section, "discriminate or retaliate" includes, but is
21 not limited to, the discharge, demotion, suspension, or any other detrimental change in terms or
22 conditions of employment or residency, or the threat of any such action.

23 (f)(1) ~~The~~ Any nursing facility that does not submit Payroll Based Journals (PBJ) to the
24 Centers for Medicare and Medicaid Services shall prepare an annual report showing the average
25 daily direct care nurse staffing level for the nursing facility by shift and by category of nurse to
26 include:

27 (i) Registered nurses;

28 (ii) Licensed practical nurses;

29 (iii) Certified nursing assistants;

30 (iv) Medication technicians;

31 (v) Licensed physical therapists;

32 (vi) Licensed occupational therapists;

33 (vii) Licensed speech-language pathologists;

34 (viii) Mental health workers who are also certified nurse assistants;

1 (ix) Physical therapist assistants;

2 (x) The use of registered and licensed practical nurses and certified nursing assistant staff
3 from temporary placement agencies; and

4 (xi) The nurse and certified nurse assistant turnover rates.

5 (2) The annual report shall be submitted with the nursing facility's renewal application and
6 provide data for the previous twelve (12) months and ending on or after September 30, for the year
7 preceding the license renewal year. Annual reports shall be submitted in a format prescribed by the
8 director.

9 (g) The information on nurse staffing shall be reviewed as part of the nursing facility's
10 annual licensing survey and shall be available to the public, both in printed form and on the
11 department's website, by nursing facility.

12 (h) The director of nurses may act as a charge nurse only when the nursing facility is
13 licensed for thirty (30) beds or less.

14 (i) Whenever the licensing agency determines, in the course of inspecting a nursing facility,
15 that additional staffing is necessary on any residential area to provide adequate nursing care and
16 treatment or to ensure the safety of residents, the licensing agency may require the nursing facility
17 to provide such additional staffing and any or all of the following actions shall be taken to enforce
18 compliance with the determination of the licensing agency:

19 (1) The nursing facility shall be cited for a deficiency and shall be required to augment its
20 staff within ten (10) days in accordance with the determination of the licensing agency;

21 (2) If failure to augment staffing is cited, the nursing facility shall be required to curtail
22 admission to the nursing facility;

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

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

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

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

32 SECTION 2. This act shall take effect upon passage.

=====
LC005261
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- RIGHTS OF NURSING HOME PATIENTS--
STAFFING

- 1 This act would exempt certain nursing home facilities from the state minimum level
- 2 staffing requirement under certain circumstances.
- 3 This act would take effect upon passage.

=====
LC005261
=====