

2021 -- H 5012 SUBSTITUTE A

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LC000599/SUB A/2
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

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

Introduced By: Representatives Slater, and O'Brien

Date Introduced: January 13, 2021

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.**

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) For purposes of this section, the following definitions shall apply:

10 (1) "Direct caregiver" means a person who receives monetary compensation as an
11 employee of the nursing facility or a subcontractor as a registered nurse, a licensed practical nurse,
12 a medication technician, a certified nurse assistant, a licensed physical therapist, a licensed
13 occupational therapist, a licensed speech-language pathologist, a mental health worker who is also
14 a certified nurse assistant or a physical therapist assistant.

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

17 (c)(i) Commencing on January 1, 2022, nursing facilities shall provide a quarterly
18 minimum of three and fifty-eight hundredths (3.58) hours of direct nursing care per resident, per

1 day, of which at least two and six-tenths (2.6) hours shall be provided by certified nurse assistants.

2 (c)(ii) Commencing on January 1, 2023, nursing facilities shall provide a quarterly
3 minimum of three and eighty-one hundredths (3.81) hours of direct nursing care per resident, per
4 day, of which at least two and eight-tenths (2.8) hours shall be provided by certified 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 this section.

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

12 (f) The department shall promulgate rules and regulations to amend the Rhode Island code
13 of regulations in consultation with stakeholders to implement these minimum staffing requirements
14 on or before October 15, 2021.

15 (g) On or before January 1, 2024, and every five (5) years thereafter, the department shall
16 consult with consumers, consumer advocates, recognized collective bargaining agents, and
17 providers to determine the sufficiency of the staffing standards provided in this section and may
18 promulgate rules and regulations to increase the minimum staffing ratios to adequate levels.

19 **23-17.5-33. Minimum staffing level compliance and enforcement program.**

20 (a) Compliance determination.

21 (1) The department shall submit proposed rules and regulations for adoption by October
22 15, 2021, establishing a system for determining compliance with minimum staffing requirements
23 set forth in § 23-17.5-32.

24 (2) Compliance shall be determined quarterly by comparing the number of hours provided
25 per resident, per day using the Centers for Medicare and Medicaid Services' payroll-based journal
26 and the facility's daily census, as self-reported by the facility to the department on a 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 October 15, 2021, implementing monetary penalty provisions for facilities not in compliance with
34 minimum staffing requirements set forth in § 23-17.5-32.

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

3 (3) No monetary penalty may be issued for noncompliance with the increase in the standard
4 set forth in § 23-17.5-32 (c)(ii) from January 1, 2023 to March 31, 2023. If a facility is found to be
5 noncompliant with the increase in the standard during the period which extends from January 1,
6 2023 to March 31, 2023, the department shall provide a written notice identifying the staffing
7 deficiencies and require the facility to provide a sufficiently detailed correction plan to meet the
8 statutory minimum staffing levels.

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

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

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

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

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

24 (2) The penalty may not be waived or reduced except as follows: where there is no more
25 than a ten percent (10%) deviation from the staffing requirements, the department is granted the
26 discretion to waive or reduce the penalty for the first finding of noncompliance and reduce the
27 penalty for subsequent findings of noncompliance. A finding of noncompliance shall count as an
28 offense even if the penalty is waived.

29 (3) Nothing in this section diminishes a facility's right to appeal.

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

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

1 (3) A notice of noncompliance, whether or not the penalty is waived, and the penalty
2 assessment shall be prominently posted in the nursing facility and included on the department's
3 website.

4 **23-17.5-34. Nursing staff posting requirements.**

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

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

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 nursing facility
16 on that date).

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

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

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

28 (1) The minimum number of nursing 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 nursing facility may use to report a suspected violation by the nursing facility of a regulatory
32 requirement concerning staffing levels and direct patient care.

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

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

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

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

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

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

20 (i) Registered nurses;

21 (ii) Licensed

22 practical nurses;

23 (iii) Certified nursing assistants;

24 (iv) Medication technicians;

25 (v) Licensed physical therapists;

26 (vi) Licensed occupational therapists;

27 (vii) Licensed speech-language pathologists;

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

29 (ix) Physical therapist assistants;

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

32 (xi) The nurses and certified nurse assistant turnover rates.

33 (2) The annual report shall be submitted with the nursing facility's renewal application and
34 provide data for the previous twelve (12) months and ending on or after September 30, for the year

1 preceding the license renewal year. Annual reports shall be submitted in a format prescribed by the
2 director.

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

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

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

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

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

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

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

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

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

26 **23-17.5-35. Staffing plan.**

27 (a) There shall be a master plan of the staffing pattern for providing twenty-four (24) hour
28 direct care nursing service; for the distribution of direct care nursing personnel for each floor and/or
29 residential area; for the replacement of direct care nursing personnel; and for forecasting future
30 needs.

31 (1) The staffing pattern shall include provisions for registered nurses, licensed practical
32 nurses, certified nursing assistants, medication technicians, licensed physical therapists, licensed
33 occupational therapists, licensed speech-language pathologists, mental health workers who are also
34 certified nurse assistants, physical therapist assistants and other personnel as required.

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

4 (3) At least one individual who is certified in basic life support must be available twenty-
5 four (24) hours a day within the nursing facility.

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

11 **23-17.5-36. Enhanced training.**

12 The department of labor and training shall provide grants from its workforce development
13 resources to eligible nursing facilities for enhanced training for direct care and support services
14 staff to improve resident quality of care and address the changing health care needs of nursing
15 facility residents due to higher acuity and increased cognitive impairments. The department will
16 work with stakeholders, including labor representatives, to create the eligibility criteria for the
17 grants. In order for facilities to be eligible they must pay their employees at least fifteen dollars
18 (\$15.00) per hour, have staff retention above the statewide median, and comply with the minimum
19 staffing requirements.

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

22 **40-8-19. Rates of payment to nursing facilities.**

23 (a) Rate reform.

24 (1) The rates to be paid by the state to nursing facilities licensed pursuant to chapter 17 of
25 title 23, and certified to participate in Title XIX of the Social Security Act for services rendered to
26 Medicaid-eligible residents, shall be reasonable and adequate to meet the costs that must be
27 incurred by efficiently and economically operated facilities in accordance with 42 U.S.C. §
28 1396a(a)(13). The executive office of health and human services ("executive office") shall
29 promulgate or modify the principles of reimbursement for nursing facilities in effect as of July 1,
30 2011, to be consistent with the provisions of this section and Title XIX, 42 U.S.C. § 1396 et seq.,
31 of the Social Security Act.

32 (2) The executive office shall review the current methodology for providing Medicaid
33 payments to nursing facilities, including other long-term-care services providers, and is authorized
34 to modify the principles of reimbursement to replace the current cost-based methodology rates with

1 rates based on a price-based methodology to be paid to all facilities with recognition of the acuity
2 of patients and the relative Medicaid occupancy, and to include the following elements to be
3 developed by the executive office:

- 4 (i) A direct-care rate adjusted for resident acuity;
- 5 (ii) An indirect-care rate comprised of a base per diem for all facilities;
- 6 (iii) A rearray of costs for all facilities every three (3) years beginning October, 2015, that
7 may or may not result in automatic per diem revisions;
- 8 (iv) Application of a fair-rental value system;
- 9 (v) Application of a pass-through system; and
- 10 (vi) Adjustment of rates by the change in a recognized national nursing home inflation

11 index to be applied on October 1 of each year, beginning October 1, 2012. This adjustment will not
12 occur on October 1, 2013, October 1, 2014, or October 1, 2015, but will occur on April 1, 2015.
13 The adjustment of rates will also not occur on October 1, 2017, October 1, 2018, and October 1,
14 2019. Effective July 1, 2018, rates paid to nursing facilities from the rates approved by the Centers
15 for Medicare and Medicaid Services and in effect on October 1, 2017, both fee-for-service and
16 managed care, will be increased by one and one-half percent (1.5%) and further increased by one
17 percent (1%) on October 1, 2018, and further increased by one percent (1%) on October 1, 2019.

18 In addition to the annual nursing home inflation index adjustment, there shall be a base rate staffing
19 adjustment of one-half percent (0.5%) on October 1, 2021, three-quarters percent (0.75%) on
20 October 1, 2022, and one percent (1%) on October 1, 2023. The inflation index shall be applied

21 without regard for the transition factors in subsections (b)(1) and (b)(2). For purposes of October
22 1, 2016, adjustment only, any rate increase that results from application of the inflation index to
23 subsections (a)(2)(i) and (a)(2)(ii) shall be dedicated to increase compensation for direct-care
24 workers in the following manner: Not less than 85% of this aggregate amount shall be expended to
25 fund an increase in wages, benefits, or related employer costs of direct-care staff of nursing homes.
26 For purposes of this section, direct-care staff shall include registered nurses (RNs), licensed
27 practical nurses (LPNs), certified nursing assistants (CNAs), certified medical technicians,
28 housekeeping staff, laundry staff, dietary staff, or other similar employees providing direct-care
29 services; provided, however, that this definition of direct-care staff shall not include: (i) RNs and
30 LPNs who are classified as "exempt employees" under the Federal Fair Labor Standards Act (29
31 U.S.C. § 201 et seq.); or (ii) CNAs, certified medical technicians, RNs, or LPNs who are contracted,
32 or subcontracted, through a third-party vendor or staffing agency. By July 31, 2017, nursing
33 facilities shall submit to the secretary, or designee, a certification that they have complied with the
34 provisions of this subsection (a)(2)(vi) with respect to the inflation index applied on October 1,

1 2016. Any facility that does not comply with terms of such certification shall be subjected to a
2 clawback, paid by the nursing facility to the state, in the amount of increased reimbursement subject
3 to this provision that was not expended in compliance with that certification.

4 (3) Commencing on October 1, 2021, eighty percent (80%) of any rate increase that results
5 from application of the inflation index to subsections (a)(2)(i) and (a)(2)(ii) of this section shall be
6 dedicated to increase compensation for all eligible direct-care workers in the following manner on
7 October 1, of each year.

8 (i) For purposes of this subsection, compensation increases shall include base salary or
9 hourly wage increases, benefits, other compensation, and associated payroll tax increases for
10 eligible direct-care workers. This application of the inflation index shall apply for Medicaid
11 reimbursement in nursing facilities for both managed care and fee-for-service. For purposes of this
12 subsection, direct-care staff shall include registered nurses (RNs), licensed practical nurses (LPNs),
13 certified nursing assistants (CNAs), certified medication technicians, licensed physical therapists,
14 licensed occupational therapists, licensed speech-language pathologists, mental health workers
15 who are also certified nurse assistants, physical therapist assistants, housekeeping staff, laundry
16 staff, dietary staff or other similar employees providing direct-care services; provided, however
17 that this definition of direct-care staff shall not include:

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

20 (iii) CNAs, certified medication technicians, RNs or LPNs who are contracted or
21 subcontracted through a third-party vendor or staffing agency.

22 (4)(i) By July 31, 2021, and July 31 of each year thereafter, nursing facilities shall submit
23 to the secretary or designee a certification that they have complied with the provisions of subsection
24 (a)(3) of this section with respect to the inflation index applied on October 1. The executive office
25 of health and human services (EOHHS) shall create the certification form which nursing facilities
26 must complete with information on how each individual eligible employee's compensation
27 increased, including information regarding hourly wages prior to the increase and after the
28 compensation increase, hours paid after the compensation increase and associated increased payroll
29 taxes. A collective bargaining agreement can be used in lieu of the certification form for represented
30 employees. All data reported on the compliance form is subject to review and audit by EOHHS.
31 The audits may include field or desk audits, and facilities may be required to provide additional
32 supporting documents including, but not limited to, payroll records.

33 (ii) Any facility that does not comply with the terms of certification shall be subjected to a
34 clawback and twenty-five percent (25%) penalty of the unspent or impermissibly spent funds, paid

1 by the nursing facility to the state, in the amount of increased reimbursement subject to this
2 provision that was not expended in compliance with that certification.

3 (iii) In any calendar year where no inflationary index is applied, eighty percent (80%) of
4 the base rate staffing adjustment in that calendar year pursuant to subsection (a)(2)(vi) of this
5 section shall be dedicated to increase compensation for all eligible direct-care workers in the
6 manner referenced in subsections (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this section.

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

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

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

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

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

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

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LC000599/SUB A/2
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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 nursing
2 homes and their residents with violations subject to monetary penalties, provide for enhanced
3 training to provide care for residents with increased cognitive impairments, provide a three-year
4 base rate staffing adjustment, and provide wage increases subject to the rate of inflation.

5 This act would take effect upon passage.

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