

2021 -- S 0002

=====
LC000362
=====

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: Senators Goodwin, Ruggerio, McCaffrey, Lawson, Euer, Gallo, Felag,
Coyne, Cano, and Burke

Date Introduced: January 11, 2021

Referred To: Senate Health & Human Services

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 registered nurse, a licensed practical nurse, a medication
11 technician, and a certified nurse assistant.

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

14 (c) Commencing on July 1, 2021, nursing facilities shall provide a minimum daily average
15 of four and one-tenth (4.1) hours of direct nursing care per resident, per day, of which at least two
16 and eight-tenths (2.8) hours shall be provided by certified nurse assistants.

17 (d) Director of nursing hours and nursing staff hours spent on administrative duties or non-
18 direct caregiving tasks are excluded and may not be counted toward compliance with the minimum

1 staffing hours requirement in subsection (a) of this section.

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

6 (f) The department shall promulgate rules and regulations to amend the Rhode Island code
7 of regulations in consultation with stakeholders to implement these minimum staffing requirements
8 on or before July 1, 2021.

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

13 **23-17.5-33. Minimum staffing level compliance and enforcement program.**

14 (a) Compliance determination.

15 (1) The department shall submit proposed rules and regulations for adoption by January 1,
16 2022 establishing a system for determining compliance with minimum staffing requirements set
17 forth in § 23-17.5-32.

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

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

25 (b) Monetary penalties.

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

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

34 (3) Monetary penalties shall be imposed beginning on October 1, 2021 and quarterly

1 thereafter and shall be based on the latest quarter for which the department has data.

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

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

7 (6) The penalty for the first offense shall be two hundred percent (200%) of the cost of
8 wages and benefits for the missing staffing hours. The penalty shall increase to two hundred fifty
9 percent (250%) of the cost of wages and benefits for the missing staffing hours for the second
10 offense and three hundred percent (300%) the cost of wages and benefits for the missing staffing
11 hours for the third and all subsequent offenses.

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

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

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

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

24 (4) Nothing in this section diminishes a facility's right to appeal.

25 (d)(1) Beginning October 1, 2021, pursuant to rules and regulations established by the
26 department, funds that are received from financial penalties shall be used for technical assistance
27 or specialized direct care staff training.

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

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

32 **23-17.5-34. Nursing staff posting requirements.**

33 (a) Each nursing facility shall post its daily direct care nurse staff levels by shift in a public
34 place within the nursing facility that is readily accessible to and visible by residents, employees

1 and visitors. The posting shall be accurate to the actual number of direct care nursing staff on duty
2 for each shift per day. The posting shall be in a format prescribed by the director, to include:

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

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

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

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

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

11 (c) Each nursing facility shall report the information compiled pursuant to section (a) of
12 this section and in accordance with department of health regulations to the department of health on
13 a monthly basis in an electronic format prescribed by the director. The director shall make this
14 information available to the public on a quarterly basis on the department of health website,
15 accompanied by a written explanation to assist members of the public in interpreting the
16 information reported pursuant to this section.

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

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

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

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

1 (1) Be liable to the injured party for treble damages; and
2 (2)(i) Reinstate the employee, if the employee was terminated from employment in
3 violation of any provision of this section, or
4 (ii) Restore the resident to his or her living situation prior to such discrimination or
5 retaliation, including his or her housing arrangement or other living conditions within the nursing
6 facility, as appropriate, if the resident's living situation was changed in violation of any provision
7 of this section. For purposes of this section, "discriminate or retaliate" includes, but is not limited
8 to, the discharge, demotion, suspension or any other detrimental change in terms or conditions of
9 employment or residency, or the threat of any such action.
10 (f)(1) The nursing facility shall prepare an annual report showing the average daily direct
11 care nurse staffing level for the nursing facility by shift and by category of nurse to include:
12 (i) Registered nurses;
13 (ii) Licensed practical nurses;
14 (iii) Certified nursing assistants and medication technicians;
15 (iv) The use of registered and licensed practical nurses and certified nursing assistant staff
16 from temporary placement agencies; and
17 (v) The nurses and certified nurse assistant turnover rates.
18 (2) The annual report shall be submitted with the nursing facility's renewal application and
19 provide data for the previous twelve (12) months and ending on or after September 30th, for the
20 year preceding the license renewal year. Annual reports shall be submitted in a format prescribed
21 by the director.
22 (g) The information on nurse staffing shall be reviewed as part of the nursing facility's
23 annual licensing survey and shall be available to the public, both in printed form and on the
24 department's website, by nursing facility.
25 (h) The director of nurses may act as a charge nurse only when the nursing facility is
26 licensed for thirty (30) beds or less.
27 (i) Whenever the licensing agency determines, in the course of inspecting a nursing facility,
28 that additional staffing is necessary on any residential area to provide adequate nursing care and
29 treatment or to ensure the safety of residents, the licensing agency may require the nursing facility
30 to provide such additional staffing and any or all of the following actions shall be taken to enforce
31 compliance with the determination of the licensing agency:
32 (1) The nursing facility shall be cited for a deficiency and shall be required to augment its
33 staff within ten (10) days in accordance with the determination of the licensing agency;
34 (2) If failure to augment staffing is cited, the nursing facility shall be required to curtail

1 admission to the nursing facility:

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

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

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

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

11 **23-17.5-35. Staffing plan.**

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

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

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

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

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

28 **23-17.5-36. Enhanced training.**

29 The general assembly shall appropriate the sum of six hundred thousand dollars (\$600,000)
30 for use by the department of labor and training for the issuance of grants to eligible nursing facilities
31 for enhanced training for direct care and support services staff to improve resident quality of care
32 and address the changing health care needs of nursing facility residents due to higher acuity and
33 increased cognitive impairments. The department will work with stakeholders, including labor
34 representatives, to create the eligibility criteria for the grants. In order for facilities to be eligible

1 [they must pay their employees at least fifteen dollars \(\\$15.00\) per hour, have staff retention above](#)
2 [the statewide median, and comply with the minimum staffing requirements.](#)

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

5 **40-8-19. Rates of payment to nursing facilities.**

6 (a) Rate reform.

7 (1) The rates to be paid by the state to nursing facilities licensed pursuant to chapter 17 of
8 title 23, and certified to participate in Title XIX of the Social Security Act for services rendered to
9 Medicaid-eligible residents, shall be reasonable and adequate to meet the costs that must be
10 incurred by efficiently and economically operated facilities in accordance with 42 U.S.C. §
11 1396a(a)(13). The executive office of health and human services ("executive office") shall
12 promulgate or modify the principles of reimbursement for nursing facilities in effect as of July 1,
13 2011, to be consistent with the provisions of this section and Title XIX, 42 U.S.C. § 1396 et seq.,
14 of the Social Security Act.

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

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

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

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

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

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

27 (vi) Adjustment of rates by the change in a recognized national nursing home inflation
28 index to be applied on October 1 of each year, beginning October 1, 2012. This adjustment will not
29 occur on October 1, 2013, October 1, 2014, or October 1, 2015, but will occur on April 1, 2015.
30 The adjustment of rates will also not occur on October 1, 2017, October 1, 2018, and October 1,
31 2019. Effective July 1, 2018, rates paid to nursing facilities from the rates approved by the Centers
32 for Medicare and Medicaid Services and in effect on October 1, 2017, both fee-for-service and
33 managed care, will be increased by one and one-half percent (1.5%) and further increased by one
34 percent (1%) on October 1, 2018, and further increased by one percent (1%) on October 1, 2019.

1 The inflation index shall be applied without regard for the transition factors in subsections (b)(1)
2 and (b)(2). For purposes of October 1, 2016, adjustment only, any rate increase that results from
3 application of the inflation index to subsections (a)(2)(i) and (a)(2)(ii) shall be dedicated to increase
4 compensation for direct-care workers in the following manner: Not less than 85% of this aggregate
5 amount shall be expended to fund an increase in wages, benefits, or related employer costs of direct-
6 care staff of nursing homes. For purposes of this section, direct-care staff shall include registered
7 nurses (RNs), licensed practical nurses (LPNs), certified nursing assistants (CNAs), certified
8 medical technicians, housekeeping staff, laundry staff, dietary staff, or other similar employees
9 providing direct-care services; provided, however, that this definition of direct-care staff shall not
10 include: (i) RNs and LPNs who are classified as "exempt employees" under the Federal Fair Labor
11 Standards Act (29 U.S.C. § 201 et seq.); or (ii) CNAs, certified medical technicians, RNs, or LPNs
12 who are contracted, or subcontracted, through a third-party vendor or staffing agency. By July 31,
13 2017, nursing facilities shall submit to the secretary, or designee, a certification that they have
14 complied with the provisions of this subsection (a)(2)(vi) with respect to the inflation index applied
15 on October 1, 2016. Any facility that does not comply with terms of such certification shall be
16 subjected to a clawback, paid by the nursing facility to the state, in the amount of increased
17 reimbursement subject to this provision that was not expended in compliance with that certification.

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

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

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

33 (4)(i) By July 31, 2021, and July 31 of each year thereafter, nursing facilities shall submit
34 to the secretary or designee a certification that they have complied with the provisions of subsection

1 (a)(2)(vii) of this section with respect to the inflation index applied on October 1. The executive
2 office of health and human services (EOHHS) shall create the certification form which nursing
3 facilities must complete with information on how each individual eligible employee's compensation
4 increased, including information regarding hourly wages prior to the increase and after the
5 compensation increase, hours paid after the compensation increase and associated increased payroll
6 taxes. A collective bargaining agreement can be used in lieu of the certification form for represented
7 employees. All data reported on the compliance form is subject to review and audit by EOHHS.
8 The audits may include field or desk audits, and facilities may be required to provide additional
9 supporting documents including, but not limited to, payroll records.

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

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

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

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

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

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

1 the rates to those in effect on April 1, 2015, at the end of this twelve-month (12) period.

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

=====
LC000362
=====

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, appropriate six hundred
3 thousand dollars (\$600,000) for enhanced training to provide care for residents with increased
4 cognitive impairments and provide wage increases subject to the rate of inflation.

5 This act would take effect upon passage.

=====
LC000362
=====