

2022 -- S 2193

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO HEALTH AND SAFETY – RIGHTS OF NURSING HOME PATIENTS

Introduced By: Senators de la Cruz, Rogers, E Morgan, F Lombardi, Felag, and Raptakis

Date Introduced: February 08, 2022

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

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

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

4 (a)(1) 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 [\(2\) A facility may be granted relief from subsection \(a\)\(1\) of this section, provided that the](#)
10 [facility provides written request for relief to the department of health in accordance with the rules](#)
11 [and regulations promulgated by the department of health pursuant to subsection \(g\) of this section.](#)

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

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

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

1 (c)(i) Commencing on January 1, 2022, nursing facilities shall provide a quarterly
2 minimum average of three and fifty-eight hundredths (3.58) hours of direct nursing care per
3 resident, per day, of which at least two and forty-four hundredths (2.44) hours shall be provided by
4 certified nurse assistants.

5 (ii) Commencing on January 1, 2023, nursing facilities shall provide a quarterly minimum
6 of three and eighty-one hundredths (3.81) hours of direct nursing care per resident, per day, of
7 which at least two and six-tenths (2.6) hours shall be provided by certified nurse assistants.

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

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

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

18 [\(g\) On or before October 15, 2022, the department of health shall promulgate rules and](#)
19 [regulations establishing a system for determining whether a facility shall be granted an exception](#)
20 [to the minimum staffing requirements of this section.](#)

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

25 **23-17.5-33. Minimum staffing level compliance and enforcement program.**

26 (a) Compliance determination.

27 (1) The department shall submit proposed rules and regulations for adoption by October
28 15, 2021, establishing a system for determining compliance with minimum staffing requirements
29 set forth in § 23-17.5-32.

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

33 (3) The department shall use the quarterly payroll-based journal and the self-reported
34 census to calculate the number of hours provided per resident, per day and compare this ratio to the

1 minimum staffing standards required under § 23-17.5-32. Discrepancies between job titles
2 contained in § 23-17.5-32 and the payroll-based journal shall be addressed by rules and regulations.

3 (b) Monetary penalties.

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

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

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

15 (4) No monetary penalty shall be assessed to any facility that is granted an exception by
16 the department of health to the minimum staffing requirements pursuant to § 23-17.5-32.

17 ~~(4)~~(5) Monetary penalties shall be established based on a formula that calculates on a daily
18 basis the cost of wages and benefits for the missing staffing hours.

19 ~~(5)~~(6) All notices of noncompliance shall include the computations used to determine
20 noncompliance and establishing the variance between minimum staffing ratios and the department's
21 computations.

22 ~~(6)~~(7) The penalty for the first offense shall be two hundred percent (200%) of the cost of
23 wages and benefits for the missing staffing hours. The penalty shall increase to two hundred fifty
24 percent (250%) of the cost of wages and benefits for the missing staffing hours for the second
25 offense and three hundred percent (300%) of the cost of wages and benefits for the missing staffing
26 hours for the third and all subsequent offenses.

27 ~~(7)~~(8) For facilities that have an offense in three (3) consecutive quarters, EOHHS shall
28 deny any further Medicaid Assistance payments with respect to all individuals entitled to benefits
29 who are admitted to the facility on or after January 1, 2022, or shall freeze admissions of new
30 residents.

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

33 (2) The penalty may not be waived except as provided in subsection (c)(3) of this section,
34 but the department shall have the discretion to determine the gravity of the violation in situations

1 where there is no more than a ten percent (10%) deviation from the staffing requirements and make
2 appropriate adjustments to the penalty.

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

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

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

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

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

16 SECTION 2. 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 – RIGHTS OF NURSING HOME PATIENTS

1 This act would require the department of health to promulgate rules and regulations to
2 determine whether a nursing home facility shall be granted an exception from the minimum staffing
3 level requirements.

4 This act would take effect upon passage.

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