

2020 -- H 7624

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LC004263  
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

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

Introduced By: Representatives Slater, Shekarchi, Williams, Bennett, and Vella-  
Wilkinson

Date Introduced: February 14, 2020

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 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 October 1, 2020, nursing facilities shall provide a minimum daily  
15 average of four and one-tenth (4.1) hours of direct nursing care per resident, per day, of which at  
16 least two 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  
18 non-direct caregiving tasks are excluded and may not be counted toward compliance with the

1 minimum 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  
7 code of regulations in consultation with stakeholders to implement these minimum staffing  
8 requirements on or before October 1, 2020.

9 (g) On or before January 1, 2023, 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  
16 1, 2021 establishing a system for determining compliance with minimum staffing requirements  
17 set forth in § 23-17.5-32.

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

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

27 (b) Monetary penalties.

28 (1) The department shall submit proposed rules and regulations for adoption on or before  
29 January 1, 2021 establishing monetary penalties for facilities not in compliance with minimum  
30 staffing requirements set forth in § 23-17.5-32.

31 (2) No monetary penalty may be issued for noncompliance during the implementation  
32 period, which shall extend from October 1, 2020 through December 31, 2020. If a facility is  
33 found to be noncompliant during the implementation period, the department shall provide a  
34 written notice identifying the staffing deficiencies and require the facility to provide a sufficiently

1 detailed correction plan to meet the statutory minimum staffing levels.

2 (3) Monetary penalties shall be imposed beginning on January 1, 2021 and quarterly  
3 thereafter and shall be based on the latest quarter for which the department has data.

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

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

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

14 (7) For facilities that have an offense in three (3) consecutive quarters, EOHHS shall  
15 deny any further Medicaid Assistance payments with respect to all individuals entitled to benefits  
16 who are admitted to the facility on or after January 1, 2021.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28           (e) No nursing facility shall discharge or in any manner discriminate or retaliate against  
29 any resident of any nursing facility, or any relative, guardian, conservator or sponsoring agency  
30 thereof or against any employee of any nursing facility or against any other person because the  
31 resident, relative, guardian, conservator, sponsoring agency, employee or other person has filed  
32 any complaint or instituted or caused to be instituted any proceeding under this chapter, or has  
33 testified or is about to testify in any such proceeding or because of the exercise by the resident,  
34 relative, guardian, conservator, sponsoring agency, employee or other person on behalf of

1 himself, herself or others of any right afforded by §§ 23-17.5-32, 23-17.5-33 and 23-17.5-34.  
2 Notwithstanding any other provision of law to the contrary, any nursing facility that violates any  
3 provision of this section shall:

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

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

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

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

15 (i) Registered nurses;

16 (ii) Licensed practical nurses;

17 (iii) Certified nursing assistants and medication technicians;

18 (iv) The use of registered and licensed practical nurses and certified nursing assistant  
19 staff from temporary placement agencies; and

20 (v) The nurses and certified nurse assistant turnover rates.

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

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

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

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

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

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

5           (3) If a continued failure to augment staffing is cited, the nursing facility shall be  
6 subjected to an immediate compliance order to increase the staffing, in accordance with § 23-1-  
7 21; or

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

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

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

15           **23-17.5-35. Staffing plan.**

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

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

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

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

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

32           **23-17.5-36. Enhanced training.**

33           The general assembly shall appropriate the sum of six hundred thousand dollars  
34 (\$600,000) for use by the department of labor and training for the issuance of grants to eligible

1 [nursing facilities for enhanced training for direct care and support services staff to improve](#)  
2 [resident quality of care and address the changing health care needs of nursing facility residents](#)  
3 [due to higher acuity and increased cognitive impairments. The department will work with](#)  
4 [stakeholders, including labor representatives, to create the eligibility criteria for the grants. In](#)  
5 [order for facilities to be eligible they must pay their employees at least fifteen dollars \(\\$15.00\) per](#)  
6 [hour, have staff retention above the statewide median, and comply with the minimum staffing](#)  
7 [requirements.](#)

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

10 **40-8-19. Rates of payment to nursing facilities.**

11 (a) Rate reform.

12 (1) The rates to be paid by the state to nursing facilities licensed pursuant to chapter 17 of  
13 title 23, and certified to participate in Title XIX of the Social Security Act for services rendered to  
14 Medicaid-eligible residents, shall be reasonable and adequate to meet the costs that must be  
15 incurred by efficiently and economically operated facilities in accordance with 42 U.S.C. §  
16 1396a(a)(13). The executive office of health and human services ("executive office") shall  
17 promulgate or modify the principles of reimbursement for nursing facilities in effect as of July 1,  
18 2011, to be consistent with the provisions of this section and Title XIX, 42 U.S.C. § 1396 et seq.,  
19 of the Social Security Act.

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

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

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

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

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

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

32 (vi) Adjustment of rates by the change in a recognized national nursing home inflation  
33 index to be applied on October 1 of each year, beginning October 1, 2012. This adjustment will  
34 not occur on October 1, 2013, October 1, 2014, or October 1, 2015, but will occur on April 1,

1 2015. The adjustment of rates will also not occur on October 1, 2017, October 1, 2018, and  
2 October 1, 2019. Effective July 1, 2018, rates paid to nursing facilities from the rates approved by  
3 the Centers for Medicare and Medicaid Services and in effect on October 1, 2017, both fee-for-  
4 service and managed care, will be increased by one and one-half percent (1.5%) and further  
5 increased by one percent (1%) on October 1, 2018, and further increased by one percent (1%) on  
6 October 1, 2019. The inflation index shall be applied without regard for the transition factors in  
7 subsections (b)(1) and (b)(2). For purposes of October 1, 2016, adjustment only, any rate increase  
8 that results from application of the inflation index to subsections (a)(2)(i) and (a)(2)(ii) shall be  
9 dedicated to increase compensation for direct-care workers in the following manner: Not less than  
10 85% of this aggregate amount shall be expended to fund an increase in wages, benefits, or related  
11 employer costs of direct-care staff of nursing homes. For purposes of this section, direct-care staff  
12 shall include registered nurses (RNs), licensed practical nurses (LPNs), certified nursing  
13 assistants (CNAs), certified medical technicians, housekeeping staff, laundry staff, dietary staff,  
14 or other similar employees providing direct-care services; provided, however, that this definition  
15 of direct-care staff shall not include: (i) RNs and LPNs who are classified as "exempt employees"  
16 under the Federal Fair Labor Standards Act (29 U.S.C. § 201 et seq.); or (ii) CNAs, certified  
17 medical technicians, RNs, or LPNs who are contracted, or subcontracted, through a third-party  
18 vendor or staffing agency. By July 31, 2017, nursing facilities shall submit to the secretary, or  
19 designee, a certification that they have complied with the provisions of this subsection (a)(2)(vi)  
20 with respect to the inflation index applied on October 1, 2016. Any facility that does not comply  
21 with terms of such certification shall be subjected to a clawback, paid by the nursing facility to  
22 the state, in the amount of increased reimbursement subject to this provision that was not  
23 expended in compliance with that certification.

24 (3) Commencing on October 1, 2020, any rate increase that results from application of the  
25 inflation index to subsections (a)(2)(i) and (a)(2)(ii) of this section or any other rate increase shall  
26 be dedicated to increase compensation for all eligible direct-care workers in the following manner  
27 on October 1, of each year. For purposes of this subsection, compensation increases are limited to  
28 base salary or hourly wage increases and associated payroll tax increases for eligible direct-care  
29 workers. This application of the inflation index shall apply for Medicaid reimbursement in  
30 nursing facilities for both managed care and fee-for-service. For purposes of this subsection,  
31 direct-care staff shall include registered nurses (RNs), licensed practical nurses (LPNs), certified  
32 nursing assistants (CNAs), certified medication technicians, housekeeping staff, laundry staff,  
33 dietary staff or other similar employees providing direct-care services; provided, however that  
34 this definition of direct-care staff shall not include:



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

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

5 (4)(i) By July 31, 2020, and July 31 of each year thereafter, nursing facilities shall submit  
6 to the secretary or designee a certification that they have complied with the provisions of  
7 subsection (a)(2)(vii) of this section with respect to the inflation index applied on October 1. The  
8 executive office of health and human services (EOHHS) shall create the certification form which  
9 nursing facilities must complete with information on how each individual eligible employee's  
10 compensation increased, including information regarding hourly wages prior to the increase and  
11 after the compensation increase, hours paid after the compensation increase and associated  
12 increased payroll taxes. A collective bargaining agreement can be used in lieu of the certification  
13 form for represented employees. All data reported on the compliance form is subject to review  
14 and audit by EOHHS. The audits may include field or desk audits, and facilities may be required  
15 to provide additional supporting documents including, but not limited to, payroll records.

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

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

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

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

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

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

10           SECTION 3. 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 -- NURSING HOME STAFFING AND QUALITY  
CARE ACT

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1           This act would mandate minimum staffing levels and standards for quality care for  
2 nursing homes and their residents with violations subject to monetary penalties, appropriate six  
3 hundred thousand dollars (\$600,000) for enhanced training to provide care for residents with  
4 increased cognitive impairments and provide wage increases subject to the rate of inflation.

5           This act would take effect upon passage.

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