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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

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

Introduced By: Representatives Quattrocchi, Nardone, Rea, Roberts, Place, and
Chippendale

Date Introduced: February 07, 2024

Referred To: House Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-17.5-32, 23-17.5-33, 23-17.5-34, 23-17.5-35 and 23-17.5-36 of
2 the General Laws in Chapter 23-17.5 entitled "Rights of Nursing Home Patients" are hereby
3 repealed.

4 **23-17.5-32. Minimum staffing levels.**

5 ~~(a) Each facility shall have the necessary nursing service personnel (licensed and non-~~
6 ~~licensed) in sufficient numbers on a twenty-four (24) hour basis, to assess the needs of residents,~~
7 ~~to develop and implement resident care plans, to provide direct resident care services, and to~~
8 ~~perform other related activities to maintain the health, safety, and welfare of residents. The facility~~
9 ~~shall have a registered nurse on the premises twenty-four (24) hours a day.~~

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

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

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

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

1 ~~resident, per day, of which at least two and forty four hundredths (2.44) hours shall be provided by~~
2 ~~certified nurse assistants.~~

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

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

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

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

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

20 **23-17.5-33. Minimum staffing level compliance and enforcement program.**

21 **(a) Compliance determination.**

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

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

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

32 **(b) Monetary penalties.**

33 ~~(1) The department shall submit proposed rules and regulations for adoption on or before~~
34 ~~October 15, 2021, implementing monetary penalty provisions for facilities not in compliance with~~

1 ~~minimum staffing requirements set forth in § 23-17.5-32.~~

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

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

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

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

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

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

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

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

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

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

34 ~~(d)(1) Pursuant to rules and regulations established by the department, funds that are~~

1 ~~received from financial penalties shall be used for technical assistance or specialized direct care~~
2 ~~staff training.~~

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

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

8 **23-17.5-34. Nursing staff posting requirements.**

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

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

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

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

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

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

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

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

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

34 ~~(2) The telephone number or internet website that a resident, employee, or visitor of the~~

1 ~~nursing facility may use to report a suspected violation by the nursing facility of a regulatory~~
2 ~~requirement concerning staffing levels and direct patient care.~~

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

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

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

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

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

24 ~~(i) Registered nurses;~~

25 ~~(ii) Licensed practical nurses;~~

26 ~~(iii) Certified nursing assistants;~~

27 ~~(iv) Medication technicians;~~

28 ~~(v) Licensed physical therapists;~~

29 ~~(vi) Licensed occupational therapists;~~

30 ~~(vii) Licensed speech language pathologists;~~

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

32 ~~(ix) Physical therapist assistants;~~

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

1 ~~(xi) The nurse and certified nurse assistant turnover rates.~~

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

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

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

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

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

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

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

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

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

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

29 **23-17.5-35. Staffing plan.**

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

34 ~~(b)(1) The staffing pattern shall include provisions for registered nurses, licensed practical~~

1 ~~nurses, certified nursing assistants, medication technicians, licensed physical therapists, licensed~~
2 ~~occupational therapists, licensed speech language pathologists, mental health workers who are also~~
3 ~~certified nurse assistants, physical therapist assistants, and other personnel as required.~~

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

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

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

14 ~~**23-17.5-36. Enhanced training.**~~

15 ~~The department of labor and training shall provide grants from its workforce development~~
16 ~~resources to eligible nursing facilities for enhanced training for direct care and support services~~
17 ~~staff to improve resident quality of care and address the changing healthcare needs of nursing~~
18 ~~facility residents due to higher acuity and increased cognitive impairments. The department will~~
19 ~~work with stakeholders, including labor representatives, to create the eligibility criteria for the~~
20 ~~grants. In order for facilities to be eligible they must pay their employees at least fifteen dollars~~
21 ~~(\$15.00) per hour, have staff retention above the statewide median, and comply with the minimum~~
22 ~~staffing requirements.~~

23 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 repeal a 2021 law that mandated minimum staffing levels and standards for
2 quality care for nursing homes and their residents with violations subject to monetary penalties.

3 This act would take effect upon passage.

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