

## Assembly Bill No. 1075

### CHAPTER 684

An act to add Section 1276.65 to the Health and Safety Code, and to amend Section 14126.02 of the Welfare and Institutions Code, relating to health facilities.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 10, 2001.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1075, Shelley. Skilled nursing facilities: staffing ratios.

Existing law provides for the licensure and regulation of health facilities, including skilled nursing facilities, by the State Department of Health Services. Existing law specifies various minimum staff-to-patient ratio requirements in skilled nursing facilities. A violation of these provisions by health facilities is subject to criminal sanction.

This bill would require the department to develop regulations that become effective August 1, 2003, that establish staff-to-patient ratios with regard to direct caregivers, as defined, working in a skilled nursing facility.

The bill would require a skilled nursing facility to post information about staffing levels. The bill would make a violation of the regulations subject to citation and fine. The bill would make the implementation of the staffing ratio requirements set forth in the bill contingent on an appropriation in the annual Budget Act or another statute.

Because the bill would change the definition of a crime with regard to health facilities, it would impose a state-mandated local program.

The bill would require the department, no later than January 1, 2006, and every 5 years thereafter, to consult with designated entities to determine the sufficiency of the staffing standards, and would authorize the department to adopt regulations to increase the minimum staffing ratios to adequate levels.

Existing law requires the department to perform a specified review of the current Medi-Cal reimbursement system and submit a report.

This bill would, instead, require the department to implement a facility-specific rate-setting system by August 1, 2004, subject to federal approval, and to submit status reports on this implementation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Skilled nursing facilities need adequate staffing levels in order to provide the quality of care that patients deserve.

(2) Compliance with minimum staffing requirements will be increased if residents, residents' families, facility employees, and state inspectors can determine easily whether or not a skilled nursing facility is in compliance.

(3) It is difficult for residents, residents' families, facility employees, and state inspectors to monitor a skilled nursing facility's compliance with a staffing standard based on the nursing hours per patient day provided by a facility.

(4) The State Department of Health Services is responsible for adopting regulations prescribing the staffing requirements for skilled nursing facilities.

(5) The department is required to examine alternative rate methodology models for a new Medi-Cal reimbursement system for skilled nursing facilities.

(b) It is the intent of the Legislature to enact legislation that does all of the following:

(1) Creates a mechanism to increase minimum staffing requirements to a level that assures high quality care for patients.

(2) Requires that minimum staffing requirements be set forth as ratios of patients per direct caregiver, so that residents, residents' families, facility employees, state inspectors, and others may assist in ensuring compliance with the law.

(c) It is further the intent of the Legislature that the department, consistent with its regulatory responsibility and legislative mandates, act as expeditiously as possible to implement the provisions of this act to ensure compliance with the timeframes set forth in this act.

SEC. 2. Section 1276.65 is added to the Health and Safety Code, to read:

1276.65. (a) For purposes of this section, the following definitions shall apply:

(1) "Direct caregiver" means a registered nurse, as referred to in Section 2732 of the Business and Professions Code, a licensed



vocational nurse, as referred to in Section 2864 of the Business and Professions Code, a psychiatric technician, as referred to in Section 4516 of the Business and Professions Code, and a certified nurse assistant, as defined in Section 1337.

(2) “Skilled nursing facility” means a skilled nursing facility as defined in subdivision (c) of Section 1250.

(b) A person employed to provide services such as food preparation, housekeeping, laundry, or maintenance services shall not provide nursing care to residents and shall not be counted in determining ratios under this section.

(c) (1) Notwithstanding any other provision of law, the State Department of Health Services shall develop regulations that become effective August 1, 2003, that establish staff-to-patient ratios for direct caregivers working in a skilled nursing facility. These ratios shall include separate licensed nurse staff-to-patient ratios in addition to the ratios established for other direct caregivers.

(2) The department in developing staff-to-patient ratios for direct caregivers and licensed nurses required by this section shall convert the existing requirement under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code for 3.2 nursing hours per patient day of care and shall ensure that no less care is given than is required pursuant to Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code. Further, the department shall develop the ratios in a manner that minimizes additional state costs, maximizes resident access to care, and takes into account the length of the shift worked. In developing the regulations, the department shall develop a procedure for facilities to apply for a waiver that addresses individual patient needs except that in no instance shall the minimum staff-to-patient ratios be less than the 3.2 nursing hours per patient day required under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code.

(d) The staffing ratios to be developed pursuant to this section shall be minimum standards only. Skilled nursing facilities shall employ and schedule additional staff as needed to ensure quality resident care based on the needs of individual residents and to ensure compliance with all relevant state and federal staffing requirements.

(e) No later than January 1, 2006, and every five years thereafter, the department shall consult with consumers, consumer advocates, recognized collective bargaining agents, and providers to determine the sufficiency of the staffing standards provided in this section and may adopt regulations to increase the minimum staffing ratios to adequate levels.



(f) In a manner pursuant to federal requirements, effective January 1, 2003, every skilled nursing facility shall post information about staffing levels that include the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. This posting shall include staffing requirements developed pursuant to this section.

(g) (1) Notwithstanding any other provision of law, the department shall inspect for compliance with this section during state and federal periodic inspections including, but not limited to, those inspections required under Section 1422. This inspection requirement shall not limit the department's authority in other circumstances to cite for violations of this section or to inspect for compliance with this section.

(2) A violation of the regulations developed pursuant to this section may constitute a class "B", "A", or "AA" violation pursuant to the standards set forth in Section 1424.

(h) The requirements of this section are in addition to any requirement set forth in Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code.

(i) Initial implementation of the staffing ratio developed pursuant to requirements set forth in this section shall be contingent on an appropriation in the annual Budget Act or another statute.

(j) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this section shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contracts Code.

(k) This section shall not apply to facilities defined in Section 1276.9.

SEC. 3. Section 14126.02 of the Welfare and Institutions Code is amended to read:

14126.02. (a) It is the intent of the Legislature to devise a Medi-Cal long-term care reimbursement methodology that more effectively ensures individual access to appropriate long-term care services, promotes quality resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with all applicable state and federal requirements, and encourages administrative efficiency.

(b) (1) The department shall implement a facility-specific rate-setting system by August 1, 2004, subject to federal approval, that reflects the costs and staffing levels associated with quality of care for



residents in nursing facilities, as defined in subdivision (k) of Section 1250 of the Health and Safety Code, which shall include hospital-based nursing facilities.

(2) The department shall examine several alternative rate methodology models for a new Medi-Cal reimbursement system for skilled nursing facilities to include, but not be limited to, consideration of the following:

(A) Classification of residents based on the resource utilization group system or other appropriate acuity classification system.

(B) Facility specific case mix factors.

(C) Direct care labor based factors.

(D) Geographic or regional differences in the cost of operating facilities and providing resident care.

(E) Facility-specific cost based rate models used in other states.

(c) The department shall submit to the Legislature a status report on the implementation of this section on April 1, 2002, April 1, 2003, and April 1, 2004.

(d) The alternatives for a new system described in paragraph (2) of subdivision (b) shall be developed in consultation with recognized experts with experience in long-term care reimbursement, economists, the Attorney General, the federal Centers for Medicare and Medicaid Services, and other interested parties.

(e) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care reimbursement systems. The rate-setting system specified in subdivision (b) shall be developed with all possible expedience. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this subdivision shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contracts Code.

SEC. 4. The State Department of Health Services may adopt emergency regulations to implement the applicable provisions of this act in accordance with rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. Initial emergency regulations and the first readoption of those



regulations shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the first readoption of those regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and each shall remain in effect for no more than 180 days.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

