

ASSEMBLY BILL

No. 2079

Introduced by Assembly Member Calderon

February 17, 2016

An act to amend Sections 1276.5 and 1276.65 of the Health and Safety Code, and to amend Section 14126.022 of, and to repeal and add Section 14110.7 of, the Welfare and Institutions Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2079, as introduced, Calderon. Skilled nursing facilities: staffing.

(1) Existing law provides for the licensure and regulation by the State Department of Public Health of health facilities, including skilled nursing facilities. Existing law requires the department to develop regulations that become effective August 1, 2003, that establish staff-to-patient ratios for direct caregivers working in a skilled nursing facility. Existing law requires that these ratios include separate licensed nurse staff-to-patient ratios in addition to the ratios established for other direct caregivers. Existing law also requires every skilled nursing facility to post information about staffing levels in the manner specified by federal requirements. Existing law makes it a misdemeanor for any person to willfully or repeatedly violate these provisions.

This bill would require the department to develop regulations that become effective July 1, 2017, and include a minimum overall staff-to-patient ratio that includes specific staff-to-patient ratios for certified nurse assistants and for licensed nurses that comply with specified requirements. The bill would require the posted information to include a resident census and an accurate report of the number of staff working each shift and to be posted in specified locations, including

an area used for employee breaks. The bill would require a skilled nursing facility to make staffing data available, upon oral or written request and at a reasonable cost, within 15 days of receiving a request. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law generally requires that skilled nursing facilities have a minimum number of nursing hours per patient day of 3.2 hours.

This bill would substitute the term “direct care service hours” for the term “nursing hours” and, commencing July 1, 2017, except as specified, increase the minimum number of direct care service hours per patient day to 4.1 hours.

(3) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions.

Existing law, the Medi-Cal Long-Term Care Reimbursement Act, operative until August 1, 2020, requires the department to make a supplemental payment to skilled nursing facilities based on specified criteria and according to performance measure benchmarks. Existing law requires the department to establish and publish quality and accountability measures, which are used to determine supplemental payments. Existing law requires, beginning in the 2011–12 fiscal year, the measures to include, among others, compliance with specified nursing hours per patient per day requirements.

This bill would also require, beginning in the 2017–18 fiscal year, the measures to include compliance with specified direct care service hour requirements for skilled nursing facilities.

(4) 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 1276.5 of the Health and Safety Code is
2 amended to read:

1276.5. (a) (1) The department shall adopt regulations setting forth the minimum number of equivalent ~~nursing direct care service~~ hours per patient required in ~~skilled nursing and~~ intermediate care facilities, subject to the specific requirements of Section 14110.7 of the Welfare and Institutions Code. ~~However, notwithstanding Section 14110.7 or any other law, commencing January 1, 2000, the minimum number of actual nursing hours per patient required in a skilled nursing facility shall be 3.2 hours, except as provided in Section 1276.9.~~

~~(b) (1) For~~

(2) ~~For the purposes of this section, “nursing subdivision, “direct care service hours” means the number of hours of work performed per patient day by aides, nursing assistants, or orderlies plus two times the number of hours worked per patient day by registered nurses and licensed vocational nurses (except directors of nursing in facilities of 60 or larger capacity) and, in the distinct part of facilities and freestanding facilities providing care for persons with developmental disabilities or mental health disorders by licensed psychiatric technicians who perform direct nursing services for patients in skilled nursing and intermediate care facilities, except when the skilled nursing and intermediate care facility is licensed as a part of a state hospital, and except that nursing hours for skilled nursing facilities means the actual hours of work, without doubling the hours performed per patient day by registered nurses and licensed vocational nurses.~~ *hospital.*

(2) ~~Concurrent with implementation of the first year of rates established under the Medi-Cal Long Term Care Reimbursement Act of 1990 (Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code), for the purposes of this section, “nursing hours” means the number of hours of work performed per patient day by aides, nursing assistants, registered nurses, and licensed vocational nurses (except directors of nursing in facilities of 60 or larger capacity) and, in the distinct part of facilities and freestanding facilities providing care for persons with developmental disabilities or mental health disorders, by licensed psychiatric technicians who performed direct nursing services for patients in skilled nursing and intermediate care facilities, except when the skilled nursing and intermediate care facility is licensed as a part of a state hospital.~~

(b) (1) The department shall adopt regulations setting forth the minimum number of equivalent direct care service hours per patient required in skilled nursing facilities, subject to the specific requirements of Section 14110.7 of the Welfare and Institutions Code. However, notwithstanding Section 14110.7 of the Welfare and Institutions Code or any other law, the minimum number of direct care service hours per patient required in a skilled nursing facility shall be 3.2 hours, and, commencing July 1, 2017, shall be 4.1 hours, except as provided in paragraph (2) or Section 1276.9.

(2) Notwithstanding Section 14110.7 or any other law, the minimum number of direct care service hours per patient required in a skilled nursing facility that is a distinct part of a facility licensed as a general acute care hospital shall be 3.2 hours, except as provided in Section 1276.9.

(3) For the purposes of this subdivision “direct care service hours” means the numbers of hours of work performed per patient day by a direct caregiver, as defined in Section 1276.65.

(c) Notwithstanding Section 1276, the department shall require the utilization of a registered nurse at all times if the department determines that the services of a skilled nursing and intermediate care facility require the utilization of a registered nurse.

(d) (1) Except as otherwise provided by law, the administrator of an intermediate care facility/developmentally disabled, intermediate care facility/developmentally disabled habilitative, or an intermediate care facility/developmentally disabled—nursing shall be either a licensed nursing home administrator or a qualified intellectual disability professional as defined in Section 483.430 of Title 42 of the Code of Federal Regulations.

(2) To qualify as an administrator for an intermediate care facility for the developmentally disabled, a qualified intellectual disability professional shall complete at least six months of administrative training or demonstrate six months of experience in an administrative capacity in a licensed health facility, as defined in Section 1250, excluding those facilities specified in subdivisions (e), (h), and (i).

SEC. 2. Section 1276.65 of the Health and Safety Code is amended to read:

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

(1) (A) “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. 1337 of this code, or a nurse assistant in an approved training program, as defined in Section 1337, while the nurse assistant in an approved training program is performing nursing services as described in Sections 72309, 72311, and 72315 of Title 22 of the California Code of Regulations.~~

(B) “Direct caregiver” also includes (i) a licensed nurse serving as a minimum data set coordinator and (ii) a person serving as the director of nursing services in a facility with 60 or more licensed beds and a person serving as the director of staff development when that person is providing nursing services in the hours beyond those required to carry out the duties of these positions, as long as these direct care service hours are separately documented.

(2) “Licensed nurse” 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, and a psychiatric technician, as referred to in Section 4516 of the Business and Professions Code.

~~(2)~~
(3) “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) (A) Notwithstanding any other ~~provision of law~~, the State Department of ~~Public Health Services~~ shall develop regulations that become effective ~~August 1, 2003, July 1, 2017~~, that establish a minimum staff-to-patient ratios ratio 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. The ratio shall include as a part of the overall staff-to-patient ratio, specific~~

1 *staff-to-patient ratios for licensed nurses and certified nurse*
2 *assistants.*

3 (B) (i) *For a skilled nursing facility that is not a distinct part*
4 *of a general acute care hospital, the certified nurse assistant*
5 *staff-to-patient ratios developed pursuant to subparagraph (A)*
6 *shall be no less than the following:*

7 (I) *During the day shift, a minimum of one certified nurse*
8 *assistant for every six patients, or fraction thereof.*

9 (II) *During the evening shift, a minimum of one certified nurse*
10 *assistant for every eight patients, or fraction thereof.*

11 (III) *During the night shift, a minimum of one certified nurse*
12 *assistant for every 17 patients, or fraction thereof.*

13 (ii) *For the purposes of this subparagraph, the following terms*
14 *have the following meanings:*

15 (I) *“Day shift” means the 8-hour period during which the*
16 *facility’s patients require the greatest amount of care.*

17 (II) *“Evening shift” means the 8-hour period when the facility’s*
18 *patients require a moderate amount of care.*

19 (III) *“Night shift” means the 8-hour period during which a*
20 *facility’s patients require the least amount of care.*

21 (2) ~~The department, in developing staff-to-patient ratios for~~
22 ~~direct caregivers an overall staff-to-patient ratio for direct~~
23 ~~caregivers, and in developing specific staff-to-patient ratios for~~
24 ~~certified nurse assistants and licensed nurses as required by this~~
25 ~~section, shall convert the existing requirement under Section 1276.5~~
26 ~~of this code and Section 14110.7 of the Welfare and Institutions~~
27 ~~Code for 3.2 nursing direct care hours per patient day of care day,~~
28 ~~and commencing July 1, 2017, except as specified in paragraph~~
29 ~~(2) of subdivision (b) of Section 1276.5, for 4.1 direct care service~~
30 ~~hours per patient day, including a minimum of 2.8 direct care~~
31 ~~service hours per patient day for certified nurse assistants, and a~~
32 ~~minimum of 1.3 direct care service hours per patient day for~~
33 ~~licensed nurses, and shall ensure that no less care is given than is~~
34 ~~required pursuant to Section 1276.5 of this code and Section~~
35 ~~14110.7 of the Welfare and Institutions Code. Further, the~~
36 ~~department shall develop the ratios in a manner that minimizes~~
37 ~~additional state costs, maximizes resident access to care, and takes~~
38 ~~into account the length of the shift worked. In developing the~~
39 ~~regulations, the department shall develop a procedure for facilities~~
40 ~~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 direct care service hours per patient-day day, and, commencing July 1, 2017, except as specified in paragraph (2) of subdivision (b) of Section 1276.5, be less than the 4.1 direct care service 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~~ only and shall be satisfied daily. 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~~, 2019, 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) (1) In a manner pursuant to federal requirements, effective January 1, 2003, every skilled nursing facility shall post information about *resident census* and staffing levels that includes 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~~ section and an accurate report of the number of direct care staff working during the current shift, including a report of the number of registered nurses, licensed vocational nurses, psychiatric technicians, and certified nurse assistants. The information shall be posted on paper that is at least 8.5 inches by 14 inches and shall be printed in a type of at least 16 point.

(2) The information described in paragraph (1) shall be posted daily, at a minimum, in the following locations:

- (A) An area readily accessible to members of the public.
- (B) An area used for employee breaks.
- (C) An area used by residents for communal functions, including, but not limited to, dining, resident council meetings, or activities.

(3) (A) Upon oral or written request, every skilled nursing facility shall make direct caregiver staffing data available to the

1 *public for review at a reasonable cost. A skilled nursing facility*
2 *shall provide the data to the requestor within 15 days after*
3 *receiving a request.*

4 *(B) For the purpose of this paragraph, “reasonable cost”*
5 *includes, but is not limited to, a ten-cent (\$0.10) per page fee for*
6 *standard reproduction of documents that are 8.5 inches by 14*
7 *inches or smaller or a retrieval or processing fee not exceeding*
8 *sixty dollars (\$60) if the requested data is provided on a digital*
9 *or other electronic medium and the requestor requests delivery of*
10 *the data in a digital or other electronic medium, including*
11 *electronic mail.*

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

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

22 (h) The requirements of this section are in addition to any
23 requirement set forth in Section 1276.5 of this code and Section
24 14110.7 of the Welfare and Institutions Code.

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

28 ~~(j)~~

29 (i) In implementing this section, the department may contract
30 as necessary, on a bid or nonbid basis, for professional consulting
31 services from nationally recognized higher education and research
32 institutions, or other qualified individuals and entities not
33 associated with a skilled nursing facility, with demonstrated
34 expertise in long-term care. This subdivision establishes an
35 accelerated process for issuing contracts pursuant to this section
36 and contracts entered into pursuant to this section shall be exempt
37 from the requirements of Chapter 1 (commencing with Section
38 10100) and Chapter 2 (commencing with Section 10290) of Part
39 2 of Division 2 of the Public Contract Code.

40 ~~(k)~~

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

SEC. 3. Section 14110.7 of the Welfare and Institutions Code is repealed.

~~14110.7. (a) The director shall adopt regulations increasing the minimum number of equivalent nursing hours per patient required in skilled nursing facilities to 3.2, in skilled nursing facilities with special treatment programs to 2.3, in intermediate care facilities to 1.1, and in intermediate care facilities/developmentally disabled to 2.7.~~

~~(b) (1) The director shall adopt regulations that shall establish the minimum number of equivalent nursing hours per patient required in the following, for the first year of implementation of the first year of rates established pursuant to this article:~~

~~(A) 2.6 hours for skilled nursing facilities.~~

~~(B) 1.9 hours for skilled nursing facilities with special treatment programs.~~

~~(C) 0.9 hours for intermediate care facilities.~~

~~(D) 2.2 hours for intermediate care facilities/developmentally disabled.~~

~~(2) The staffing standards established by paragraph (1) shall become effective concurrently with the establishment of the first reimbursement rates under this article.~~

~~(3) The director shall adopt regulations that establish the minimum number of equivalent nursing hours per patient required in skilled nursing facilities at 2.7 for the second year of implementation of rates established pursuant to this article.~~

~~(e) (1) The Legislature finds and declares all of the following:~~

~~(A) The one-year transition phase from 2.6 to 2.7 equivalent nursing hours allows ample time to restructure staffing.~~

~~(B) The 4 percent augmentation to reimburse for direct patient care, as defined in paragraph (2) of subdivision (b) of Section 14126.60, provides funds to cover additional expenses, if any, incurred by facilities to implement this staffing standard.~~

~~(2) Subject to the appropriation of sufficient funds, the department may adopt regulations to increase the minimum number of equivalent nursing hours required of facilities subject to this section per patient beyond 2.7 nursing hours per patient day.~~

~~(d) (1) The department shall identify those skilled nursing facilities that are in compliance with the 3.0 minimum double~~

1 nursing hour standards, as defined in subdivision (a) of Section
2 1276.5 of the Health and Safety Code, but have actual staffing
3 ratios below 2.5, as of July 1, 1990, and shall not enforce the 2.7
4 equivalent nursing hours with respect to those facilities until the
5 third year of implementation of the rates established under this
6 article.

7 (2) The department shall periodically review facilities that have
8 actual staffing ratios described in paragraph (1) to ensure that they
9 are making sufficient progress toward 2.7 hours.

10 (e) Notwithstanding paragraph (1) of subdivision (d),
11 commencing January 1, 2000, the minimum number of nursing
12 hours per patient day required in skilled nursing facilities shall be
13 3.2, without regard to the doubling of nursing hours as described
14 in paragraph (1) of subdivision (b) of Section 1276.5 of the Health
15 and Safety Code, and except as set forth in Section 1276.9 of the
16 Health and Safety Code.

17 SEC. 4. Section 14110.7 is added to the Welfare and
18 Institutions Code, to read:

19 14110.7. (a) In skilled nursing facilities, the minimum number
20 of equivalent direct care service hours shall be 3.2, except as set
21 forth in Section 1276.9 of the Health and Safety Code.

22 (b) Commencing July 1, 2017, in skilled nursing facilities,
23 except those skilled nursing facilities that are a distinct part of a
24 general acute care facility, the minimum number of equivalent
25 direct care service hours shall be 4.1, except as set forth in Section
26 1276.9 of the Health and Safety Code.

27 (c) In skilled nursing facilities with special treatment programs,
28 the minimum number of equivalent direct care service hours shall
29 be 2.3.

30 (d) In intermediate care facilities, the minimum number of
31 equivalent direct care service hours shall be 1.1.

32 (e) In intermediate care facilities/developmentally disabled, the
33 minimum number of equivalent direct care service hours shall be
34 2.7.

35 SEC. 5. Section 14126.022 of the Welfare and Institutions
36 Code is amended to read:

37 14126.022. (a) (1) By August 1, 2011, the department shall
38 develop the Skilled Nursing Facility Quality and Accountability
39 Supplemental Payment System, subject to approval by the federal

Centers for Medicare and Medicaid Services, and the availability of federal, state, or other funds.

(2) (A) The system shall be utilized to provide supplemental payments to skilled nursing facilities that improve the quality and accountability of care rendered to residents in skilled nursing facilities, as defined in subdivision (c) of Section 1250 of the Health and Safety Code, and to penalize those facilities that do not meet measurable standards.

(B) A freestanding pediatric subacute care facility, as defined in Section 51215.8 of Title 22 of the California Code of Regulations, shall be exempt from the Skilled Nursing Facility Quality and Accountability Supplemental Payment System.

(3) The system shall be phased in, beginning with the 2010–11 rate year.

(4) The department may utilize the system to do all of the following:

(A) Assess overall facility quality of care and quality of care improvement, and assign quality and accountability payments to skilled nursing facilities pursuant to performance measures described in subdivision (i).

(B) Assign quality and accountability payments or penalties relating to quality of care, or direct care staffing levels, wages, and benefits, or both.

(C) Limit the reimbursement of legal fees incurred by skilled nursing facilities engaged in the defense of governmental legal actions filed against the facilities.

(D) Publish each facility's quality assessment and quality and accountability payments in a manner and form determined by the director, or his or her designee.

(E) Beginning with the 2011–12 fiscal year, establish a base year to collect performance measures described in subdivision (i).

(F) Beginning with the 2011–12 fiscal year, in coordination with the State Department of Public Health, publish the direct care staffing level data and the performance measures required pursuant to subdivision (i).

(5) The department, in coordination with the State Department of Public Health, shall report to the relevant Assembly and Senate budget subcommittees by May 1, 2016, information regarding the quality and accountability supplemental payments, including, but

1 not limited to, its assessment of whether the payments are adequate
2 to incentivize quality care and to sustain the program.

3 (b) (1) There is hereby created in the State Treasury, the Skilled
4 Nursing Facility Quality and Accountability Special Fund. The
5 fund shall contain moneys deposited pursuant to subdivisions (g)
6 and (j) to (m), inclusive. Notwithstanding Section 16305.7 of the
7 Government Code, the fund shall contain all interest and dividends
8 earned on moneys in the fund.

9 (2) Notwithstanding Section 13340 of the Government Code,
10 the fund shall be continuously appropriated without regard to fiscal
11 year to the department for making quality and accountability
12 payments, in accordance with subdivision (n), to facilities that
13 meet or exceed predefined measures as established by this section.

14 (3) Upon appropriation by the Legislature, moneys in the fund
15 may also be used for any of the following purposes:

16 (A) To cover the administrative costs incurred by the State
17 Department of Public Health for positions and contract funding
18 required to implement this section.

19 (B) To cover the administrative costs incurred by the State
20 Department of Health Care Services for positions and contract
21 funding required to implement this section.

22 (C) To provide funding assistance for the Long-Term Care
23 Ombudsman Program activities pursuant to Chapter 11
24 (commencing with Section 9700) of Division 8.5.

25 (c) No appropriation associated with this bill is intended to
26 implement the provisions of Section 1276.65 of the Health and
27 Safety Code.

28 (d) (1) There is hereby appropriated for the 2010–11 fiscal year,
29 one million nine hundred thousand dollars (\$1,900,000) from the
30 Skilled Nursing Facility Quality and Accountability Special Fund
31 to the California Department of Aging for the Long-Term Care
32 Ombudsman Program activities pursuant to Chapter 11
33 (commencing with Section 9700) of Division 8.5. It is the intent
34 of the Legislature for the one million nine hundred thousand dollars
35 (\$1,900,000) from the fund to be in addition to the four million
36 one hundred sixty-eight thousand dollars (\$4,168,000) proposed
37 in the Governor's May Revision for the 2010–11 Budget. It is
38 further the intent of the Legislature to increase this level of
39 appropriation in subsequent years to provide support sufficient to

1 carry out the mandates and activities pursuant to Chapter 11
2 (commencing with Section 9700) of Division 8.5.

3 (2) The department, in partnership with the California
4 Department of Aging, shall seek approval from the federal Centers
5 for Medicare and Medicaid Services to obtain federal Medicaid
6 reimbursement for activities conducted by the Long-Term Care
7 Ombudsman Program. The department shall report to the fiscal
8 committees of the Legislature during budget hearings on progress
9 being made and any unresolved issues during the 2011–12 budget
10 deliberations.

11 (e) There is hereby created in the Special Deposit Fund
12 established pursuant to Section 16370 of the Government Code,
13 the Skilled Nursing Facility Minimum Staffing Penalty Account.
14 The account shall contain all moneys deposited pursuant to
15 subdivision (f).

16 (f) (1) Beginning with the 2010–11 fiscal year, the State
17 Department of Public Health shall use the direct care staffing level
18 data it collects to determine whether a skilled nursing facility has
19 met the ~~nursing~~ *direct care services* hours per patient per day
20 requirements pursuant to Section 1276.5 of the Health and Safety
21 Code.

22 (2) (A) Beginning with the 2010–11 fiscal year, the State
23 Department of Public Health shall assess a skilled nursing facility,
24 licensed pursuant to subdivision (c) of Section 1250 of the Health
25 and Safety Code, an administrative penalty if the State Department
26 of Public Health determines that the skilled nursing facility fails
27 to meet the ~~nursing~~ *direct care service* hours per patient per day
28 requirements pursuant to Section 1276.5 of the Health and Safety
29 Code as follows:

30 (i) Fifteen thousand dollars (\$15,000) if the facility fails to meet
31 the requirements for 5 percent or more of the audited days up to
32 49 percent.

33 (ii) Thirty thousand dollars (\$30,000) if the facility fails to meet
34 the requirements for over 49 percent or more of the audited days.

35 (B) (i) If the skilled nursing facility does not dispute the
36 determination or assessment, the penalties shall be paid in full by
37 the licensee to the State Department of Public Health within 30
38 days of the facility's receipt of the notice of penalty and deposited
39 into the Skilled Nursing Facility Minimum Staffing Penalty
40 Account.

(ii) The State Department of Public Health may, upon written notification to the licensee, request that the department offset any moneys owed to the licensee by the Medi-Cal program or any other payment program administered by the department to recoup the penalty provided for in this section.

(C) (i) If a facility disputes the determination or assessment made pursuant to this paragraph, the facility shall, within 15 days of the facility's receipt of the determination and assessment, simultaneously submit a request for appeal to both the department and the State Department of Public Health. The request shall include a detailed statement describing the reason for appeal and include all supporting documents the facility will present at the hearing.

(ii) Within 10 days of the State Department of Public Health's receipt of the facility's request for appeal, the State Department of Public Health shall submit, to both the facility and the department, all supporting documents that will be presented at the hearing.

(D) The department shall hear a timely appeal and issue a decision as follows:

(i) The hearing shall commence within 60 days from the date of receipt by the department of the facility's timely request for appeal.

(ii) The department shall issue a decision within 120 days from the date of receipt by the department of the facility's timely request for appeal.

(iii) The decision of the department's hearing officer, when issued, shall be the final decision of the State Department of Public Health.

(E) The appeals process set forth in this paragraph shall be exempt from Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2 of the Government Code. The provisions of ~~Section~~ Sections 100171 and 131071 of the Health and Safety Code shall not apply to appeals under this paragraph.

(F) If a hearing decision issued pursuant to subparagraph (D) is in favor of the State Department of Public Health, the skilled nursing facility shall pay the penalties to the State Department of Public Health within 30 days of the facility's receipt of the

1 decision. The penalties collected shall be deposited into the Skilled
2 Nursing Facility Minimum Staffing Penalty Account.

3 (G) The assessment of a penalty under this subdivision does not
4 supplant the State Department of Public Health's investigation
5 process or issuance of deficiencies or citations under Chapter 2.4
6 (commencing with Section 1417) of Division 2 of the Health and
7 Safety Code.

8 (g) The State Department of Public Health shall transfer, on a
9 monthly basis, all penalty payments collected pursuant to
10 subdivision (f) into the Skilled Nursing Facility Quality and
11 Accountability Special Fund.

12 (h) Nothing in this section shall impact the effectiveness or
13 utilization of Section 1278.5 or 1432 of the Health and Safety Code
14 relating to whistleblower protections, or Section 1420 of the Health
15 and Safety Code relating to complaints.

16 (i) (1) Beginning in the 2010–11 fiscal year, the department,
17 in consultation with representatives from the long-term care
18 industry, organized labor, and consumers, shall establish and
19 publish quality and accountability measures, benchmarks, and data
20 submission deadlines by November 30, 2010.

21 (2) The methodology developed pursuant to this section shall
22 include, but not be limited to, the following requirements and
23 performance measures:

24 (A) Beginning in the 2011–12 fiscal year:

25 (i) Immunization rates.

26 (ii) Facility acquired pressure ulcer incidence.

27 (iii) The use of physical restraints.

28 (iv) Compliance with the ~~nursing~~ *direct care service* hours per
29 patient per day requirements pursuant to Section 1276.5 of the
30 Health and Safety Code.

31 (v) Resident and family satisfaction.

32 (vi) Direct care staff retention, if sufficient data is available.

33 (B) *Beginning in the 2017–18 fiscal year, compliance with the*
34 *direct care service hour requirements for skilled nursing facilities*
35 *established pursuant to Section 1276.65 of the Health and Safety*
36 *Code and Section 14110.7 of this code.*

37 ~~(B)~~

38 (C) If this act is extended beyond the dates on which it becomes
39 inoperative and is repealed, in accordance with Section 14126.033,
40 the department, in consultation with representatives from the

1 long-term care industry, organized labor, and consumers, beginning
2 in the 2013–14 rate year, shall incorporate additional measures
3 into the system, including, but not limited to, quality and
4 accountability measures required by federal health care reform
5 that are identified by the federal Centers for Medicare and Medicaid
6 Services.

7 ~~(C)~~

8 (D) The department, in consultation with representatives from
9 the long-term care industry, organized labor, and consumers, may
10 incorporate additional performance measures, including, but not
11 limited to, the following:

12 (i) Compliance with state policy associated with the United
13 States Supreme Court decision in *Olmstead v. L.C. ex rel. Zimring*
14 (1999) 527 U.S. 581.

15 (ii) Direct care staff retention, if not addressed in the 2012–13
16 rate year.

17 (iii) The use of chemical restraints.

18 ~~(D)~~

19 (E) Beginning with the 2015–16 fiscal year, the department, in
20 consultation with representatives from the long-term care industry,
21 organized labor, and consumers, shall incorporate direct care staff
22 retention as a performance measure in the methodology developed
23 pursuant to this section.

24 (j) (1) Beginning with the 2010–11 rate year, and pursuant to
25 subparagraph (B) of paragraph (5) of subdivision (a) of Section
26 14126.023, the department shall set aside savings achieved from
27 setting the professional liability insurance cost category, including
28 any insurance deductible costs paid by the facility, at the 75th
29 percentile. From this amount, the department shall transfer the
30 General Fund portion into the Skilled Nursing Facility Quality and
31 Accountability Special Fund. A skilled nursing facility shall
32 provide supplemental data on insurance deductible costs to
33 facilitate this adjustment, in the format and by the deadlines
34 determined by the department. If this data is not provided, a
35 facility's insurance deductible costs will remain in the
36 administrative costs category.

37 (2) Notwithstanding paragraph (1), for the 2012–13 rate year
38 only, savings from capping the professional liability insurance cost
39 category pursuant to paragraph (1) shall remain in the General

1 Fund and shall not be transferred to the Skilled Nursing Facility
2 Quality and Accountability Special Fund.

3 (k) For the 2013–14 rate year, if there is a rate increase in the
4 weighted average Medi-Cal reimbursement rate, the department
5 shall set aside the first 1 percent of the weighted average Medi-Cal
6 reimbursement rate increase for the Skilled Nursing Facility Quality
7 and Accountability Special Fund.

8 (l) If this act is extended beyond the dates on which it becomes
9 inoperative and is repealed, for the 2014–15 rate year, in addition
10 to the amount set aside pursuant to subdivision (k), if there is a
11 rate increase in the weighted average Medi-Cal reimbursement
12 rate, the department shall set aside at least one-third of the weighted
13 average Medi-Cal reimbursement rate increase, up to a maximum
14 of 1 percent, from which the department shall transfer the General
15 Fund portion of this amount into the Skilled Nursing Facility
16 Quality and Accountability Special Fund.

17 (m) Beginning with the 2015–16 rate year, and each subsequent
18 rate year thereafter for which this article is operative, an amount
19 equal to the amount deposited in the fund pursuant to subdivisions
20 (k) and (l) for the 2014–15 rate year shall be deposited into the
21 Skilled Nursing Facility Quality and Accountability Special Fund,
22 for the purposes specified in this section.

23 (n) (1) (A) Beginning with the 2013–14 rate year, the
24 department shall pay a supplemental payment, by April 30, 2014,
25 to skilled nursing facilities based on all of the criteria in subdivision
26 (i), as published by the department, and according to performance
27 measure benchmarks determined by the department in consultation
28 with stakeholders.

29 (B) (i) The department may convene a diverse stakeholder
30 group, including, but not limited to, representatives from consumer
31 groups and organizations, labor, nursing home providers, advocacy
32 organizations involved with the aging community, staff from the
33 Legislature, and other interested parties, to discuss and analyze
34 alternative mechanisms to implement the quality and accountability
35 payments provided to nursing homes for reimbursement.

36 (ii) The department shall articulate in a report to the fiscal and
37 appropriate policy committees of the Legislature the
38 implementation of an alternative mechanism as described in clause
39 (i) at least 90 days prior to any policy or budgetary changes, and
40 seek subsequent legislation in order to enact the proposed changes.

(2) Skilled nursing facilities that do not submit required performance data by the department's specified data submission deadlines pursuant to subdivision (i) shall not be eligible to receive supplemental payments.

(3) Notwithstanding paragraph (1), if a facility appeals the performance measure of compliance with the ~~nursing direct care~~ *service* hours per patient per day requirements, pursuant to Section 1276.5 of the Health and Safety Code, to the State Department of Public Health, and it is unresolved by the department's published due date, the department shall not use that performance measure when determining the facility's supplemental payment.

(4) Notwithstanding paragraph (1), if the department is unable to pay the supplemental payments by April 30, 2014, then on May 1, 2014, the department shall use the funds available in the Skilled Nursing Facility Quality and Accountability Special Fund as a result of savings identified in subdivisions (k) and (l), less the administrative costs required to implement subparagraphs (A) and (B) of paragraph (3) of subdivision (b), in addition to any Medicaid funds that are available as of December 31, 2013, to increase provider rates retroactively to August 1, 2013.

(o) The department shall seek necessary approvals from the federal Centers for Medicare and Medicaid Services to implement this section. The department shall implement this section only in a manner that is consistent with federal Medicaid law and regulations, and only to the extent that approval is obtained from the federal Centers for Medicare and Medicaid Services and federal financial participation is available.

(p) In implementing this section, the department and the State Department of Public Health may contract as necessary, with California's Medicare Quality Improvement Organization, or other entities deemed qualified by the department or the State Department of Public Health, not associated with a skilled nursing facility, to assist with development, collection, analysis, and reporting of the performance data pursuant to subdivision (i), and with demonstrated expertise in long-term care quality, data collection or analysis, and accountability performance measurement models pursuant to subdivision (i). This subdivision establishes an accelerated process for issuing any contract pursuant to this section. Any contract entered into pursuant to this subdivision shall

1 be exempt from the requirements of the Public Contract Code,
2 through December 31, 2020.

3 (q) Notwithstanding Chapter 3.5 (commencing with Section
4 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
5 the following shall apply:

6 (1) The director shall implement this section, in whole or in
7 part, by means of provider bulletins, or other similar instructions
8 without taking regulatory action.

9 (2) The State Public Health Officer may implement this section
10 by means of ~~all-facility~~ *all-facility* letters, or other similar
11 instructions without taking regulatory action.

12 (r) Notwithstanding paragraph (1) of subdivision (n), if a final
13 judicial determination is made by any state or federal court that is
14 not appealed, in any action by any party, or a final determination
15 is made by the administrator of the federal Centers for Medicare
16 and Medicaid Services, that any payments pursuant to subdivisions
17 (a) and (n), are invalid, unlawful, or contrary to any provision of
18 federal law or regulations, or of state law, these subdivisions shall
19 become inoperative, and for the 2011–12 rate year, the rate increase
20 provided under subparagraph (A) of paragraph (4) of subdivision
21 (c) of Section 14126.033 shall be reduced by the amounts described
22 in subdivision (j). For the 2013–14 and 2014–15 rate years, any
23 rate increase shall be reduced by the amounts described in
24 subdivisions (j) to (l), inclusive.

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