

AMENDED IN ASSEMBLY APRIL 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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~~, *January 1, 2018*, 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:

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

1276.5. (a) (1) The department shall adopt regulations setting forth the minimum number of equivalent direct care service hours per patient required in intermediate care facilities, subject to the specific requirements of Section 14110.7 of the Welfare and Institutions Code.

(2) For the purposes of this 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 intermediate care facilities, except when the 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~~, January 1, 2018, 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

1 determines that the services of a skilled nursing and intermediate
2 care facility require the utilization of a registered nurse.

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

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

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

19 1276.65. (a) For purposes of this section, the following
20 definitions shall apply:

21 ~~(1) (A) “Direct caregiver” means a registered nurse, as referred~~
22 ~~to in Section 2732 of the Business and Professions Code, a licensed~~
23 ~~vocational nurse, as referred to in Section 2864 of the Business~~
24 ~~and Professions Code, a psychiatric technician, as referred to in~~
25 ~~Section 4516 of the Business and Professions Code, a certified~~
26 ~~nurse assistant, as defined in Section 1337 of this code, or a nurse~~
27 ~~assistant in an approved training program, as defined in Section~~
28 ~~1337, while the nurse assistant in an approved training program~~
29 ~~is performing nursing services as described in Sections 72309,~~
30 ~~72311, and 72315 of Title 22 of the California Code of Regulations.~~

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

38 *(1) (A) Except as provided in subparagraph (B), “direct*
39 *caregiver” means a registered nurse, as referred to in Section*
40 *2732 of the Business and Professions Code, a licensed vocational*

1 nurse, as referred to in Section 2864 of the Business and
2 Professions Code, a psychiatric technician, as referred to in
3 Section 4516 of the Business and Professions Code, or a certified
4 nursing assistant or a nursing assistant who is participating in an
5 approved training program, as defined in Section 1337, while
6 performing nursing services as described in Sections 72309, 72311,
7 and 72315 of Title 22 of the California Code of Regulations.

8 (B) A person serving as the director of nursing services in a
9 facility with 60 or more licensed beds is not a direct caregiver.

10 (2) "Licensed nurse" means a registered nurse, as referred to in
11 Section 2732 of the Business and Professions Code, a licensed
12 vocational nurse, as referred to in Section 2864 of the Business
13 and Professions Code, and a psychiatric technician, as referred to
14 in Section 4516 of the Business and Professions Code.

15 (3) "Skilled nursing facility" means a skilled nursing facility as
16 defined in subdivision (c) of Section 1250.

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

21 (c) (1) (A) Notwithstanding any other law, the State
22 Department of Public Health shall develop regulations that become
23 effective July 1, 2017, that establish a minimum staff-to-patient
24 ratio for direct caregivers working in a skilled nursing facility. The
25 ratio shall include as a part of the overall staff-to-patient ratio,
26 specific staff-to-patient ratios for licensed nurses and certified
27 nurse assistants.

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

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

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

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

38 (ii) For the purposes of this subparagraph, the following terms
39 have the following meanings:

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

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

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

7 (2) The department, in developing an overall staff-to-patient
8 ratio for direct caregivers, and in developing specific
9 staff-to-patient ratios for certified nurse assistants and licensed
10 nurses as required by this section, shall convert the requirement
11 under Section 1276.5 of this code and Section 14110.7 of the
12 Welfare and Institutions Code for 3.2 direct care hours per patient
13 day, and commencing July 1, 2017, except as specified in
14 paragraph (2) of subdivision (b) of Section 1276.5, for 4.1 direct
15 care service hours per patient day, including a minimum of 2.8
16 direct care service hours per patient day for certified nurse
17 assistants, and a minimum of 1.3 direct care service hours per
18 patient day for licensed nurses, and shall ensure that no less care
19 is given than is required pursuant to Section 1276.5 of this code
20 and Section 14110.7 of the Welfare and Institutions Code. Further,
21 the department shall develop the ratios in a manner that minimizes
22 additional state costs, maximizes resident access to care, and takes
23 into account the length of the shift worked. In developing the
24 regulations, the department shall develop a procedure for facilities
25 to apply for a waiver that addresses individual patient needs except
26 that in no instance shall the minimum staff-to-patient ratios be less
27 than the 3.2 direct care service hours per patient day, and,
28 commencing July 1, 2017, except as specified in paragraph (2) of
29 subdivision (b) of Section 1276.5, be less than the 4.1 direct care
30 service hours per patient day, required under Section 1276.5 of
31 this code and Section 14110.7 of the Welfare and Institutions Code.

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

38 (e) No later than January 1, 2019, and every five years thereafter,
39 the department shall consult with consumers, consumer advocates,
40 recognized collective bargaining agents, and providers to determine

1 the sufficiency of the staffing standards provided in this section
2 and may adopt regulations to increase the minimum staffing ratios
3 to adequate levels.

4 (f) (1) In a manner pursuant to federal requirements, effective
5 January 1, 2003, every skilled nursing facility shall post
6 information about resident census and staffing levels that includes
7 the current number of licensed and unlicensed nursing staff directly
8 responsible for resident care in the facility. This posting shall
9 include staffing requirements developed pursuant to this section
10 and an accurate report of the number of direct care staff working
11 during the current shift, including a report of the number of
12 registered nurses, licensed vocational nurses, psychiatric
13 technicians, and certified nurse assistants. The information shall
14 be posted on paper that is at least 8.5 inches by 14 inches and shall
15 be printed in a type of at least 16 point.

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

18 (A) An area readily accessible to members of the public.

19 (B) An area used for employee breaks.

20 (C) An area used by residents for communal functions,
21 including, but not limited to, dining, resident council meetings, or
22 activities.

23 (3) (A) Upon oral or written request, every skilled nursing
24 facility shall make direct caregiver staffing data available to the
25 public for review at a reasonable cost. A skilled nursing facility
26 shall provide the data to the requestor within 15 days after receiving
27 a request.

28 (B) For the purpose of this paragraph, "reasonable cost"
29 includes, but is not limited to, a ten-cent (\$0.10) per page fee for
30 standard reproduction of documents that are 8.5 inches by 14 inches
31 or smaller or a retrieval or processing fee not exceeding sixty
32 dollars (\$60) if the requested data is provided on a digital or other
33 electronic medium and the requestor requests delivery of the data
34 in a digital or other electronic medium, including electronic mail.

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

1 for violations of this section or to inspect for compliance with this
2 section.

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

6 (h) The requirements of this section are in addition to any
7 requirement set forth in Section 1276.5 of this code and Section
8 14110.7 of the Welfare and Institutions Code.

9 (i) In implementing this section, the department may contract
10 as necessary, on a bid or nonbid basis, for professional consulting
11 services from nationally recognized higher education and research
12 institutions, or other qualified individuals and entities not
13 associated with a skilled nursing facility, with demonstrated
14 expertise in long-term care. This subdivision establishes an
15 accelerated process for issuing contracts pursuant to this section
16 and contracts entered into pursuant to this section shall be exempt
17 from the requirements of Chapter 1 (commencing with Section
18 10100) and Chapter 2 (commencing with Section 10290) of Part
19 2 of Division 2 of the Public Contract Code.

20 (j) This section shall not apply to facilities defined in Section
21 1276.9.

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

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

26 14110.7. (a) In skilled nursing facilities, the minimum number
27 of equivalent direct care service hours shall be 3.2, except as set
28 forth in Section 1276.9 of the Health and Safety Code.

29 (b) Commencing July 1, 2017, in skilled nursing facilities,
30 except those skilled nursing facilities that are a distinct part of a
31 general acute care facility, the minimum number of equivalent
32 direct care service hours shall be 4.1, except as set forth in Section
33 1276.9 of the Health and Safety Code.

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

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

1 (e) In intermediate care facilities/developmentally disabled, the
2 minimum number of equivalent direct care service hours shall be
3 2.7.

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

6 14126.022. (a) (1) By August 1, 2011, the department shall
7 develop the Skilled Nursing Facility Quality and Accountability
8 Supplemental Payment System, subject to approval by the federal
9 Centers for Medicare and Medicaid Services, and the availability
10 of federal, state, or other funds.

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

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

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

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

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

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

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

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

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

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

5 (5) The department, in coordination with the State Department
6 of Public Health, shall report to the relevant Assembly and Senate
7 budget subcommittees by May 1, 2016, information regarding the
8 quality and accountability supplemental payments, including, but
9 not limited to, its assessment of whether the payments are adequate
10 to incentivize quality care and to sustain the program.

11 (b) (1) There is hereby created in the State Treasury, the Skilled
12 Nursing Facility Quality and Accountability Special Fund. The
13 fund shall contain moneys deposited pursuant to subdivisions (g)
14 and (j) to (m), inclusive. Notwithstanding Section 16305.7 of the
15 Government Code, the fund shall contain all interest and dividends
16 earned on moneys in the fund.

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

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

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

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

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

33 (c) No appropriation associated with this bill is intended to
34 implement the provisions of Section 1276.65 of the Health and
35 Safety Code.

36 (d) (1) There is hereby appropriated for the 2010–11 fiscal year,
37 one million nine hundred thousand dollars (\$1,900,000) from the
38 Skilled Nursing Facility Quality and Accountability Special Fund
39 to the California Department of Aging for the Long-Term Care
40 Ombudsman Program activities pursuant to Chapter 11

(commencing with Section 9700) of Division 8.5. It is the intent of the Legislature for the one million nine hundred thousand dollars (\$1,900,000) from the fund to be in addition to the four million one hundred sixty-eight thousand dollars (\$4,168,000) proposed in the Governor's May Revision for the 2010–11 Budget. It is further the intent of the Legislature to increase this level of appropriation in subsequent years to provide support sufficient to carry out the mandates and activities pursuant to Chapter 11 (commencing with Section 9700) of Division 8.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (E) The appeals process set forth in this paragraph shall be
37 exempt from Chapter 4.5 (commencing with Section 11400) and
38 Chapter 5 (commencing with Section 11500), of Part 1 of Division
39 3 of Title 2 of the Government Code. The provisions of Sections

1 100171 and 131071 of the Health and Safety Code shall not apply
2 to appeals under this paragraph.

3 (F) If a hearing decision issued pursuant to subparagraph (D)
4 is in favor of the State Department of Public Health, the skilled
5 nursing facility shall pay the penalties to the State Department of
6 Public Health within 30 days of the facility's receipt of the
7 decision. The penalties collected shall be deposited into the Skilled
8 Nursing Facility Minimum Staffing Penalty Account.

9 (G) The assessment of a penalty under this subdivision does not
10 supplant the State Department of Public Health's investigation
11 process or issuance of deficiencies or citations under Chapter 2.4
12 (commencing with Section 1417) of Division 2 of the Health and
13 Safety Code.

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

18 (h) Nothing in this section shall impact the effectiveness or
19 utilization of Section 1278.5 or 1432 of the Health and Safety Code
20 relating to whistleblower protections, or Section 1420 of the Health
21 and Safety Code relating to complaints.

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

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

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

31 (i) Immunization rates.

32 (ii) Facility acquired pressure ulcer incidence.

33 (iii) The use of physical restraints.

34 (iv) Compliance with the direct care service hours per patient
35 per day requirements pursuant to Section 1276.5 of the Health and
36 Safety Code.

37 (v) Resident and family satisfaction.

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

39 (B) Beginning in the 2017–18 fiscal year, compliance with the
40 direct care service hour requirements for skilled nursing facilities

1 established pursuant to Section 1276.65 of the Health and Safety
2 Code and Section 14110.7 of this code.

3 (C) If this act is extended beyond the dates on which it becomes
4 inoperative and is repealed, in accordance with Section 14126.033,
5 the department, in consultation with representatives from the
6 long-term care industry, organized labor, and consumers, beginning
7 in the 2013–14 rate year, shall incorporate additional measures
8 into the system, including, but not limited to, quality and
9 accountability measures required by federal health care reform
10 that are identified by the federal Centers for Medicare and Medicaid
11 Services.

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

16 (i) Compliance with state policy associated with the United
17 States Supreme Court decision in *Olmstead v. L.C. ex rel. Zimring*
18 (1999) 527 U.S. 581.

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

21 (iii) The use of chemical restraints.

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

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

1 (2) Notwithstanding paragraph (1), for the 2012–13 rate year
2 only, savings from capping the professional liability insurance cost
3 category pursuant to paragraph (1) shall remain in the General
4 Fund and shall not be transferred to the Skilled Nursing Facility
5 Quality and Accountability Special Fund.

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

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

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

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

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

39 (ii) The department shall articulate in a report to the fiscal and
40 appropriate policy committees of the Legislature the

1 implementation of an alternative mechanism as described in clause
2 (i) at least 90 days prior to any policy or budgetary changes, and
3 seek subsequent legislation in order to enact the proposed changes.

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

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

15 (4) Notwithstanding paragraph (1), if the department is unable
16 to pay the supplemental payments by April 30, 2014, then on May
17 1, 2014, the department shall use the funds available in the Skilled
18 Nursing Facility Quality and Accountability Special Fund as a
19 result of savings identified in subdivisions (k) and (l), less the
20 administrative costs required to implement subparagraphs (A) and
21 (B) of paragraph (3) of subdivision (b), in addition to any Medicaid
22 funds that are available as of December 31, 2013, to increase
23 provider rates retroactively to August 1, 2013.

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

31 (p) In implementing this section, the department and the State
32 Department of Public Health may contract as necessary, with
33 California's Medicare Quality Improvement Organization, or other
34 entities deemed qualified by the department or the State
35 Department of Public Health, not associated with a skilled nursing
36 facility, to assist with development, collection, analysis, and
37 reporting of the performance data pursuant to subdivision (i), and
38 with demonstrated expertise in long-term care quality, data
39 collection or analysis, and accountability performance measurement
40 models pursuant to subdivision (i). This subdivision establishes

1 an accelerated process for issuing any contract pursuant to this
2 section. Any contract entered into pursuant to this subdivision shall
3 be exempt from the requirements of the Public Contract Code,
4 through December 31, 2020.

5 (q) Notwithstanding Chapter 3.5 (commencing with Section
6 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
7 the following shall apply:

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

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

14 (r) Notwithstanding paragraph (1) of subdivision (n), if a final
15 judicial determination is made by any state or federal court that is
16 not appealed, in any action by any party, or a final determination
17 is made by the administrator of the federal Centers for Medicare
18 and Medicaid Services, that any payments pursuant to subdivisions
19 (a) and ~~(n)~~, *(n)* are invalid, unlawful, or contrary to any ~~provision~~
20 ~~of federal law or regulations~~, *regulation*, or of state law, these
21 subdivisions shall become ~~inoperative~~, *inoperative* and for the
22 2011–12 rate year, the rate increase provided under subparagraph
23 (A) of paragraph (4) of subdivision (c) of Section 14126.033 shall
24 be reduced by the amounts described in subdivision (j). For the
25 2013–14 and 2014–15 rate years, any rate increase shall be reduced
26 by the amounts described in subdivisions (j) to *(l)*, inclusive.

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