

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2079**

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**Introduced by Assembly Member Calderon**

February 17, 2016

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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~~ *bill, instead*, would require the department to develop regulations that become effective ~~July 1, 2017~~, *January 1, 2018*, 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; number of equivalent direct care service hours per patient day for direct caregivers working in skilled nursing facilities, as specified.~~ 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~~ *equivalent direct care service hours*” for the term “nursing hours” and, commencing January 1, 2018, except as specified, increase the minimum number of *equivalent direct care service hours per patient day to 4.1 hours; hours on a specified incremental basis by January 1, 2020.*

(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 requires the Director of Health Care Services to adopt regulations relating to the nursing hours provided per patient in skilled nursing facilities*

~~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.~~

*This bill would require the department to adopt regulations setting forth the minimum number of equivalent direct care service hours per patient required in skilled nursing facilities, at the same incrementally increasing rate as required above, except as specified.*

(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~~ “*equivalent 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) (A) 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 *equivalent* direct care service hours per patient required in a skilled nursing facility shall be 3.2 hours, and, commencing January 1, 2018, ~~shall be 4.1 hours~~, *nursing facilities shall be required to increase their equivalent direct care service hours incrementally, as described in this paragraph*, except as provided in paragraph (2) or Section 1276.9.

1 (B) Commencing January 1, 2018, skilled nursing facilities,  
2 except those skilled nursing facilities that are a distinct part of a  
3 general acute care facility or a state hospital, shall have a  
4 minimum number of equivalent direct care service hours of 3.5  
5 per patient day, with 2.4 hours per patient day for certified nursing  
6 assistants (CNAs) and 1.1 hours per patient day for licensed nurses,  
7 except as set forth in Section 1276.9.

8 (C) Commencing January 1, 2019, skilled nursing facilities,  
9 except those skilled nursing facilities that are a distinct part of a  
10 general acute care facility or a state hospital, shall have a  
11 minimum number of equivalent direct care service hours of 3.8  
12 per patient day, with 2.6 hours per patient day for CNAs and 1.2  
13 hours per patient day for licensed nurses, except as set forth in  
14 Section 1276.9.

15 (D) Commencing January 1, 2020, skilled nursing facilities,  
16 except those skilled nursing facilities that are a distinct part of a  
17 general acute care facility or a state hospital, shall have a  
18 minimum number of equivalent direct care service hours of 4.1  
19 per patient day, with 2.8 hours per patient day for CNAs and 1.3  
20 hours per patient day for licensed nurses, except as set forth in  
21 Section 1276.9.

22 (2) Notwithstanding Section 14110.7 or any other law, the  
23 minimum number of *equivalent* direct care service hours per patient  
24 required in a skilled nursing facility that is a distinct part of a  
25 facility licensed as a general acute care hospital *or that is operated*  
26 *by the State Department of State Hospitals* shall be 3.2 ~~hours~~, hours  
27 per patient day, except as provided in Section 1276.9.

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

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

35 (d) (1) Except as otherwise provided by law, the administrator  
36 of an intermediate care facility/developmentally disabled,  
37 intermediate care facility/developmentally disabled habilitative,  
38 or an intermediate care facility/developmentally disabled—nursing  
39 shall be either a licensed nursing home administrator or a qualified

1 intellectual disability professional as defined in Section 483.430  
2 of Title 42 of the Code of Federal Regulations.

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

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

12 1276.65. (a) For purposes of this section, the following  
13 definitions shall apply:

14 (1) (A) Except as provided in subparagraph (B), “direct  
15 caregiver” means a registered nurse, as referred to in Section 2732  
16 of the Business and Professions Code, a licensed vocational nurse,  
17 as referred to in Section 2864 of the Business and Professions  
18 Code, a psychiatric technician, as referred to in Section 4516 of  
19 the Business and Professions Code, or a certified nursing assistant  
20 or a nursing assistant who is participating in an approved training  
21 program, as defined in Section 1337, while performing nursing  
22 services as described in Sections 72309, 72311, and 72315 of Title  
23 22 of the California Code of Regulations.

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

26 (2) “Licensed nurse” means a registered nurse, as referred to in  
27 Section 2732 of the Business and Professions Code, a licensed  
28 vocational nurse, as referred to in Section 2864 of the Business  
29 and Professions Code, and a psychiatric technician, as referred to  
30 in Section 4516 of the Business and Professions Code.

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

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

37 ~~(c) (1) (A) Notwithstanding any other law, the State~~  
38 ~~Department of Public Health shall develop regulations that become~~  
39 ~~effective July 1, 2017, that establish a minimum staff-to-patient~~  
40 ~~ratio for direct caregivers working in a skilled nursing facility. The~~

ratio shall include as a part of the overall staff-to-patient ratio, specific staff-to-patient ratios for licensed nurses and certified nurse assistants.

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

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

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

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

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

(I) "Day shift" means the 8-hour period during which the facility's patients require the greatest amount of care.

(II) "Evening shift" means the 8-hour period when the facility's patients require a moderate amount of care.

(III) "Night shift" means the 8-hour period during which a facility's patients require the least amount of care.

(2) The department, in developing an overall staff-to-patient ratio for direct caregivers, and in developing specific staff-to-patient ratios for certified nurse assistants and licensed nurses as required by this section, shall convert the requirement under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code for 3.2 direct care hours per patient day, and commencing July 1, 2017, except as specified in paragraph (2) of subdivision (b) of Section 1276.5, for 4.1 direct care service hours per patient day, including a minimum of 2.8 direct care service hours per patient day for certified nurse assistants, and a minimum of 1.3 direct care service hours per patient day for licensed nurses, 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

1 that in no instance shall the minimum staff-to-patient ratios be less  
2 than the 3.2 direct care service hours per patient day, and,  
3 commencing July 1, 2017, except as specified in paragraph (2) of  
4 subdivision (b) of Section 1276.5, be less than the 4.1 direct care  
5 service hours per patient day, required under Section 1276.5 of  
6 this code and Section 14110.7 of the Welfare and Institutions Code.

7 (b) *Notwithstanding any other law, the State Department of*  
8 *Public Health shall develop regulations that become effective*  
9 *January 1, 2018, and establish a minimum number of equivalent*  
10 *direct care service hours per patient day for direct caregivers*  
11 *working in a skilled nursing facility, as specified in subdivision*  
12 *(b) of Section 1276.5. The regulations shall require that no less*  
13 *care be given than is required pursuant to Section 1276.5 and*  
14 *Section 14110.7 of the Welfare and Institutions Code.*

15 (d)

16 (c) ~~The staffing ratios to be developed pursuant to equivalent~~  
17 ~~direct care service hour requirements of this section shall be~~  
18 ~~minimum standards only and shall be satisfied daily. Skilled~~  
19 ~~nursing facilities shall employ and schedule additional staff as~~  
20 ~~needed to ensure quality resident care based on the needs of~~  
21 ~~individual residents and to ensure compliance with all relevant~~  
22 ~~state and federal staffing requirements.~~

23 (e)

24 (d) No later than January 1, 2019, and every five years thereafter,  
25 the department shall consult with consumers, consumer advocates,  
26 recognized collective bargaining agents, and providers to determine  
27 the sufficiency of the staffing standards provided in this section  
28 and may adopt regulations to increase the minimum staffing ratios  
29 standards to adequate levels.

30 (f)

31 (e) (1) In a manner pursuant to federal requirements, effective  
32 January 1, 2003, every skilled nursing facility shall post  
33 information about resident census and staffing levels that includes  
34 the current number of licensed and unlicensed nursing staff directly  
35 responsible for resident care in the facility. This posting shall  
36 include staffing requirements developed pursuant to this section  
37 and an accurate report of the number of direct care staff working  
38 during the current shift, including a report of the number of  
39 registered nurses, licensed vocational nurses, psychiatric  
40 technicians, and certified nurse assistants. The information shall

1 be posted on paper that is at least 8.5 inches by 14 inches and shall  
2 be printed in a type of at least 16 point.

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

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

6 (B) An area used for employee breaks.

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

10 (3) (A) Upon oral or written request, every skilled nursing  
11 facility shall make direct caregiver staffing data available to the  
12 public for review at a reasonable cost. A skilled nursing facility  
13 shall provide the data to the requestor within 15 days after receiving  
14 a request.

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

22 ~~(g)~~

23 (f) (1) Notwithstanding any other law, the department shall  
24 inspect for compliance with this section during state and federal  
25 periodic inspections, including, but not limited to, those inspections  
26 required under Section 1422. This inspection requirement shall  
27 not limit the department’s authority in other circumstances to cite  
28 for violations of this section or to inspect for compliance with this  
29 section.

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

33 ~~(h)~~

34 (g) The requirements of this section are in addition to any  
35 requirement set forth in Section 1276.5 of this code and Section  
36 14110.7 of the Welfare and Institutions Code.

37 ~~(i)~~

38 (h) In implementing this section, the department may contract  
39 as necessary, on a bid or nonbid basis, for professional consulting  
40 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 Contract Code.

(j)

(i) 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.

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

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

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

(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 this section. However, notwithstanding this section or any other law, the minimum number of equivalent direct care service hours per patient required in a skilled nursing facility shall be 3.2 hours, and, commencing January 1, 2018, skilled nursing facilities shall be required to increase their equivalent direct care service hours incrementally, as described in this subdivision, except as otherwise provided in subdivisions (c) to (e), inclusive, and Section 1276.9 of the Health and Safety Code.*

(2) *Commencing January 1, 2018, the skilled nursing facilities, except those skilled nursing facilities that are a distinct part of a general acute care facility or a state hospital, shall have a minimum number of equivalent direct care service hours of 3.5 per patient day, with 2.4 hours per patient day for certified nursing*

1 *assistants (CNAs) and 1.1 hours per patient day for licensed nurses,*  
2 *except as set forth in Section 1276.9 of the Health and Safety Code.*

3 *(3) Commencing January 1, 2019, skilled nursing facilities,*  
4 *except those skilled nursing facilities that are a distinct part of a*  
5 *general acute care facility or a state hospital, shall have a*  
6 *minimum number of equivalent direct care service hours of 3.8*  
7 *per patient day, with 2.6 hours per patient day for CNAs and 1.2*  
8 *hours per patient day for licensed nurses, except as set forth in*  
9 *Section 1276.9 of the Health and Safety Code.*

10 *(4) Commencing January 1, 2020, skilled nursing facilities,*  
11 *except those skilled nursing facilities that are a distinct part of a*  
12 *general acute care facility or a state hospital, shall have a*  
13 *minimum number of equivalent direct care service hours of 4.1*  
14 *per patient day, with 2.8 hours per patient day for CNAs and 1.3*  
15 *hours per patient day for licensed nurses, except as set forth in*  
16 *Section 1276.9 of the Health and Safety Code.*

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

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

22 (e) In intermediate care facilities/developmentally disabled, the  
23 minimum number of equivalent direct care service hours shall be  
24 2.7.

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

27 14126.022. (a) (1) By August 1, 2011, the department shall  
28 develop the Skilled Nursing Facility Quality and Accountability  
29 Supplemental Payment System, subject to approval by the federal  
30 Centers for Medicare and Medicaid Services, and the availability  
31 of federal, state, or other funds.

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

38 (B) A freestanding pediatric subacute care facility, as defined  
39 in Section 51215.8 of Title 22 of the California Code of

1 Regulations, shall be exempt from the Skilled Nursing Facility  
2 Quality and Accountability Supplemental Payment System.

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

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

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

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

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

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

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

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

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

32 (b) (1) There is hereby created in the State Treasury, the Skilled  
33 Nursing Facility Quality and Accountability Special Fund. The  
34 fund shall contain moneys deposited pursuant to subdivisions (g)  
35 and (j) to (m), inclusive. Notwithstanding Section 16305.7 of the  
36 Government Code, the fund shall contain all interest and dividends  
37 earned on moneys in the fund.

38 (2) Notwithstanding Section 13340 of the Government Code,  
39 the fund shall be continuously appropriated without regard to fiscal  
40 year to the department for making quality and accountability

1 payments, in accordance with subdivision (n), to facilities that  
2 meet or exceed predefined measures as established by this section.

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

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

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

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

14 (c) No appropriation associated with this bill is intended to  
15 implement the provisions of Section 1276.65 of the Health and  
16 Safety Code.

17 (d) (1) There is hereby appropriated for the 2010–11 fiscal year,  
18 one million nine hundred thousand dollars (\$1,900,000) from the  
19 Skilled Nursing Facility Quality and Accountability Special Fund  
20 to the California Department of Aging for the Long-Term Care  
21 Ombudsman Program activities pursuant to Chapter 11  
22 (commencing with Section 9700) of Division 8.5. It is the intent  
23 of the Legislature for the one million nine hundred thousand dollars  
24 (\$1,900,000) from the fund to be in addition to the four million  
25 one hundred sixty-eight thousand dollars (\$4,168,000) proposed  
26 in the Governor’s May Revision for the 2010–11 Budget. It is  
27 further the intent of the Legislature to increase this level of  
28 appropriation in subsequent years to provide support sufficient to  
29 carry out the mandates and activities pursuant to Chapter 11  
30 (commencing with Section 9700) of Division 8.5.

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

39 (e) There is hereby created in the Special Deposit Fund  
40 established pursuant to Section 16370 of the Government Code,

1 the Skilled Nursing Facility Minimum Staffing Penalty Account.  
2 The account shall contain all moneys deposited pursuant to  
3 subdivision (f).

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

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

18 (i) Fifteen thousand dollars (\$15,000) if the facility fails to meet  
19 the requirements for 5 percent or more of the audited days up to  
20 49 percent.

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

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

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

34 (C) (i) If a facility disputes the determination or assessment  
35 made pursuant to this paragraph, the facility shall, within 15 days  
36 of the facility's receipt of the determination and assessment,  
37 simultaneously submit a request for appeal to both the department  
38 and the State Department of Public Health. The request shall  
39 include a detailed statement describing the reason for appeal and

1 include all supporting documents the facility will present at the  
2 hearing.

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

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

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

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

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

19 (E) The appeals process set forth in this paragraph shall be  
20 exempt from Chapter 4.5 (commencing with Section 11400) and  
21 Chapter 5 (commencing with Section 11500), of Part 1 of Division  
22 3 of Title 2 of the Government Code. The provisions of Sections  
23 100171 and 131071 of the Health and Safety Code shall not apply  
24 to appeals under this paragraph.

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

31 (G) The assessment of a penalty under this subdivision does not  
32 supplant the State Department of Public Health's investigation  
33 process or issuance of deficiencies or citations under Chapter 2.4  
34 (commencing with Section 1417) of Division 2 of the Health and  
35 Safety Code.

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

1 (h) Nothing in this section shall impact the effectiveness or  
2 utilization of Section 1278.5 or 1432 of the Health and Safety Code  
3 relating to whistleblower protections, or Section 1420 of the Health  
4 and Safety Code relating to complaints.

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

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

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

14 (i) Immunization rates.

15 (ii) Facility acquired pressure ulcer incidence.

16 (iii) The use of physical restraints.

17 (iv) Compliance with the *equivalent* direct care service hours  
18 per patient per day requirements pursuant to Section 1276.5 of the  
19 Health and Safety Code.

20 (v) Resident and family satisfaction.

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

22 ~~(B) Beginning in the 2017–18 fiscal year, compliance with the~~  
23 ~~direct care service hour requirements for skilled nursing facilities~~  
24 ~~established pursuant to Section 1276.65 of the Health and Safety~~  
25 ~~Code and Section 14110.7 of this code.~~

26 ~~(C)~~

27 (B) If this act is extended beyond the dates on which it becomes  
28 inoperative and is repealed, in accordance with Section 14126.033,  
29 the department, in consultation with representatives from the  
30 long-term care industry, organized labor, and consumers, beginning  
31 in the 2013–14 rate year, shall incorporate additional measures  
32 into the system, including, but not limited to, quality and  
33 accountability measures required by federal health care reform  
34 that are identified by the federal Centers for Medicare and Medicaid  
35 Services.

36 ~~(D)~~

37 (C) The department, in consultation with representatives from  
38 the long-term care industry, organized labor, and consumers, may  
39 incorporate additional performance measures, including, but not  
40 limited to, the following:

1 (i) Compliance with state policy associated with the United  
2 States Supreme Court decision in *Olmstead v. L.C. ex rel. Zimring*  
3 (1999) 527 U.S. 581.

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

6 (iii) The use of chemical restraints.

7 ~~(E)~~

8 (D) Beginning with the 2015–16 fiscal year, the department, in  
9 consultation with representatives from the long-term care industry,  
10 organized labor, and consumers, shall incorporate direct care staff  
11 retention as a performance measure in the methodology developed  
12 pursuant to this section.

13 (j) (1) Beginning with the 2010–11 rate year, and pursuant to  
14 subparagraph (B) of paragraph (5) of subdivision (a) of Section  
15 14126.023, the department shall set aside savings achieved from  
16 setting the professional liability insurance cost category, including  
17 any insurance deductible costs paid by the facility, at the 75th  
18 percentile. From this amount, the department shall transfer the  
19 General Fund portion into the Skilled Nursing Facility Quality and  
20 Accountability Special Fund. A skilled nursing facility shall  
21 provide supplemental data on insurance deductible costs to  
22 facilitate this adjustment, in the format and by the deadlines  
23 determined by the department. If this data is not provided, a  
24 facility's insurance deductible costs will remain in the  
25 administrative costs category.

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

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

36 (l) If this act is extended beyond the dates on which it becomes  
37 inoperative and is repealed, for the 2014–15 rate year, in addition  
38 to the amount set aside pursuant to subdivision (k), if there is a  
39 rate increase in the weighted average Medi-Cal reimbursement  
40 rate, the department shall set aside at least one-third of the weighted



1 average Medi-Cal reimbursement rate increase, up to a maximum  
2 of 1 percent, from which the department shall transfer the General  
3 Fund portion of this amount into the Skilled Nursing Facility  
4 Quality and Accountability Special Fund.

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

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

17 (B) (i) The department may convene a diverse stakeholder  
18 group, including, but not limited to, representatives from consumer  
19 groups and organizations, labor, nursing home providers, advocacy  
20 organizations involved with the aging community, staff from the  
21 Legislature, and other interested parties, to discuss and analyze  
22 alternative mechanisms to implement the quality and accountability  
23 payments provided to nursing homes for reimbursement.

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

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

33 (3) Notwithstanding paragraph (1), if a facility appeals the  
34 performance measure of compliance with the direct care service  
35 hours per patient per day requirements, pursuant to Section 1276.5  
36 of the Health and Safety Code, to the State Department of Public  
37 Health, and it is unresolved by the department's published due  
38 date, the department shall not use that performance measure when  
39 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 be exempt from the requirements of the Public Contract Code, through December 31, 2020.

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

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

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

1 (r) Notwithstanding paragraph (1) of subdivision (n), if a final  
2 judicial determination is made by any state or federal court that is  
3 not appealed, in any action by any party, or a final determination  
4 is made by the administrator of the federal Centers for Medicare  
5 and Medicaid Services, that any payments pursuant to subdivisions  
6 (a) and (n) are invalid, unlawful, or contrary to any federal law or  
7 regulation, or state law, these subdivisions shall become inoperative  
8 ~~and~~ *and*, for the 2011–12 rate year, the rate increase provided under  
9 subparagraph (A) of paragraph (4) of subdivision (c) of Section  
10 14126.033 shall be reduced by the amounts described in  
11 subdivision (j). For the 2013–14 and 2014–15 rate years, any rate  
12 increase shall be reduced by the amounts described in subdivisions  
13 (j) to (l), inclusive.

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