

AMENDED IN SENATE JUNE 13, 2016

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, instead, would require the department to develop regulations that become effective January 1, 2018, and include a minimum 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 “equivalent direct care service hours” for the term “nursing hours” *as applicable to intermediate care facilities, and would substitute the term “direct care service hours” for the term “nursing hours” as applicable to skilled nursing facilities. The bill would define the term “direct care service 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 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 *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~~, *section*, “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, 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.

(B) Commencing January 1, 2018, 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 assistants (CNAs) and 1.1 hours per patient day for licensed nurses, except as set forth in Section 1276.9.

(C) Commencing January 1, 2019, skilled nursing facilities, except those skilled nursing facilities that are a distinct part of a

1 general acute care facility or a state hospital, shall have a minimum  
2 number of ~~equivalent~~ direct care service hours of 3.8 per patient  
3 day, with 2.6 hours per patient day for CNAs and 1.2 hours per  
4 patient day for licensed nurses, except as set forth in Section  
5 1276.9.

6 (D) Commencing January 1, 2020, skilled nursing facilities,  
7 except those skilled nursing facilities that are a distinct part of a  
8 general acute care facility or a state hospital, shall have a minimum  
9 number of ~~equivalent~~ direct care service hours of 4.1 per patient  
10 day, with 2.8 hours per patient day for CNAs and 1.3 hours per  
11 patient day for licensed nurses, except as set forth in Section  
12 1276.9.

13 (2) Notwithstanding Section 14110.7 or any other law, the  
14 minimum number of ~~equivalent~~ direct care service hours per patient  
15 required in a skilled nursing facility that is a distinct part of a  
16 facility licensed as a general acute care hospital or that is operated  
17 by the State Department of State Hospitals shall be 3.2 hours per  
18 patient day, except as provided in Section 1276.9.

19 (3) *For purposes of this subdivision “direct care service hours”*  
20 *means the actual hours of work performed per patient day by a*  
21 *direct caregiver, as defined in Section 1276.65, without doubling*  
22 *the hours performed per patient day by registered nurses and*  
23 *licensed vocational nurses.*

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

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

35 (2) To qualify as an administrator for an intermediate care  
36 facility for the developmentally disabled, a qualified intellectual  
37 disability professional shall complete at least six months of  
38 administrative training or demonstrate six months of experience  
39 in an administrative capacity in a licensed health facility, as defined

1 in Section 1250, excluding those facilities specified in subdivisions  
2 (e), (h), and (i).

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

5 1276.65. (a) For purposes of this section, the following  
6 definitions shall apply:

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

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

19 (2) “Licensed nurse” means a registered nurse, as referred to in  
20 Section 2732 of the Business and Professions Code, a licensed  
21 vocational nurse, as referred to in Section 2864 of the Business  
22 and Professions Code, and a psychiatric technician, as referred to  
23 in Section 4516 of the Business and Professions Code.

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

26 (b) Notwithstanding any other law, the State Department of  
27 Public Health shall develop regulations that become effective  
28 January 1, 2018, and establish a minimum number of ~~equivalent~~  
29 direct care service hours per patient day for direct caregivers  
30 working in a skilled nursing facility, as specified in subdivision  
31 (b) of Section 1276.5. The regulations shall require that no less  
32 care be given than is required pursuant to Section 1276.5 and  
33 Section 14110.7 of the Welfare and Institutions Code.

34 (c) The ~~equivalent~~ direct care service hour requirements of this  
35 section shall be minimum standards only and shall be satisfied  
36 daily. Skilled nursing facilities shall employ and schedule  
37 additional staff as needed to ensure quality resident care based on  
38 the needs of individual residents and to ensure compliance with  
39 all relevant state and federal staffing requirements.

(d) No later than January 1, 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 standards to adequate levels.

(e) (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 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 public for review at a reasonable cost. A skilled nursing facility shall provide the data to the requestor within 15 days after receiving a request.

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

(f) (1) Notwithstanding any other law, the department shall inspect for compliance with this section during state and federal periodic inspections, including, but not limited to, those inspections

1 required under Section 1422. This inspection requirement shall  
2 not limit the department's authority in other circumstances to cite  
3 for violations of this section or to inspect for compliance with this  
4 section.

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

8 (g) The requirements of this section are in addition to any  
9 requirement set forth in Section 1276.5 of this code and Section  
10 14110.7 of the Welfare and Institutions Code.

11 (h) In implementing this section, the department may contract  
12 as necessary, on a bid or nonbid basis, for professional consulting  
13 services from nationally recognized higher education and research  
14 institutions, or other qualified individuals and entities not  
15 associated with a skilled nursing facility, with demonstrated  
16 expertise in long-term care. This subdivision establishes an  
17 accelerated process for issuing contracts pursuant to this section  
18 and contracts entered into pursuant to this section shall be exempt  
19 from the requirements of Chapter 1 (commencing with Section  
20 10100) and Chapter 2 (commencing with Section 10290) of Part  
21 2 of Division 2 of the Public Contract Code.

22 (i) This section shall not apply to facilities defined in Section  
23 1276.9.

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

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

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

31 (b) (1) The department shall adopt regulations setting forth the  
32 minimum number of ~~equivalent~~ direct care service hours per patient  
33 required in skilled nursing facilities, subject to the specific  
34 requirements of this section. However, notwithstanding this section  
35 or any other law, the minimum number of ~~equivalent~~ direct care  
36 service hours per patient required in a skilled nursing facility shall  
37 be 3.2 hours, and, commencing January 1, 2018, skilled nursing  
38 facilities shall be required to increase their ~~equivalent~~ direct care  
39 service hours incrementally, as described in this subdivision, except

1 as otherwise provided in subdivisions (c) to (e), inclusive, and  
2 Section 1276.9 of the Health and Safety Code.

3 (2) Commencing January 1, 2018, the 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 minimum  
6 number of ~~equivalent~~ direct care service hours of 3.5 per patient  
7 day, with 2.4 hours per patient day for certified nursing assistants  
8 (CNAs) and 1.1 hours per patient day for licensed nurses, except  
9 as set forth in Section 1276.9 of the Health and Safety Code.

10 (3) Commencing January 1, 2019, 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 minimum  
13 number of ~~equivalent~~ direct care service hours of 3.8 per patient  
14 day, with 2.6 hours per patient day for CNAs and 1.2 hours per  
15 patient day for licensed nurses, except as set forth in Section 1276.9  
16 of the Health and Safety Code.

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

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

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

29 (e) In intermediate care facilities/developmentally disabled, the  
30 minimum number of equivalent direct care service hours shall be  
31 2.7.

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

34 14126.022. (a) (1) By August 1, 2011, the department shall  
35 develop the Skilled Nursing Facility Quality and Accountability  
36 Supplemental Payment System, subject to approval by the federal  
37 Centers for Medicare and Medicaid Services, and the availability  
38 of federal, state, or other funds.

39 (2) (A) The system shall be utilized to provide supplemental  
40 payments to skilled nursing facilities that improve the quality and



1 accountability of care rendered to residents in skilled nursing  
2 facilities, as defined in subdivision (c) of Section 1250 of the  
3 Health and Safety Code, and to penalize those facilities that do  
4 not meet measurable standards.

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

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

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

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

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

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

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

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

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

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

38 (b) (1) There is hereby created in the State Treasury, the Skilled  
39 Nursing Facility Quality and Accountability Special Fund. The  
40 fund shall contain moneys deposited pursuant to subdivisions (g)

1 and (j) to (m), inclusive. Notwithstanding Section 16305.7 of the  
2 Government Code, the fund shall contain all interest and dividends  
3 earned on moneys in the fund.

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

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

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

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

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

20 (c) No appropriation associated with this bill is intended to  
21 implement the provisions of Section 1276.65 of the Health and  
22 Safety Code.

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

37 (2) The department, in partnership with the California  
38 Department of Aging, shall seek approval from the federal Centers  
39 for Medicare and Medicaid Services to obtain federal Medicaid  
40 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 ~~equivalent~~ direct care service 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 ~~equivalent~~ 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.

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

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

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

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

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

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

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

25 (E) The appeals process set forth in this paragraph shall be  
26 exempt from Chapter 4.5 (commencing with Section 11400) and  
27 Chapter 5 (commencing with Section 11500), of Part 1 of Division  
28 3 of Title 2 of the Government Code. The provisions of Sections  
29 100171 and 131071 of the Health and Safety Code shall not apply  
30 to appeals under this paragraph.

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

37 (G) The assessment of a penalty under this subdivision does not  
38 supplant the State Department of Public Health's investigation  
39 process or issuance of deficiencies or citations under Chapter 2.4

1 (commencing with Section 1417) of Division 2 of the Health and  
2 Safety Code.

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

7 (h) Nothing in this section shall impact the effectiveness or  
8 utilization of Section 1278.5 or 1432 of the Health and Safety Code  
9 relating to whistleblower protections, or Section 1420 of the Health  
10 and Safety Code relating to complaints.

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

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

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

20 (i) Immunization rates.

21 (ii) Facility acquired pressure ulcer incidence.

22 (iii) The use of physical restraints.

23 (iv) Compliance with the ~~equivalent~~ direct care service hours  
24 per patient per day requirements pursuant to Section 1276.5 of the  
25 Health and Safety Code.

26 (v) Resident and family satisfaction.

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

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

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

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

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

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

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

1 of 1 percent, from which the department shall transfer the General  
2 Fund portion of this amount into the Skilled Nursing Facility  
3 Quality and Accountability Special Fund.

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

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

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

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

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

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

39 (4) Notwithstanding paragraph (1), if the department is unable  
40 to pay the supplemental payments by April 30, 2014, then on May

1 1, 2014, the department shall use the funds available in the Skilled  
2 Nursing Facility Quality and Accountability Special Fund as a  
3 result of savings identified in subdivisions (k) and (l), less the  
4 administrative costs required to implement subparagraphs (A) and  
5 (B) of paragraph (3) of subdivision (b), in addition to any Medicaid  
6 funds that are available as of December 31, 2013, to increase  
7 provider rates retroactively to August 1, 2013.

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

15 (p) In implementing this section, the department and the State  
16 Department of Public Health may contract as necessary, with  
17 California's Medicare Quality Improvement Organization, or other  
18 entities deemed qualified by the department or the State  
19 Department of Public Health, not associated with a skilled nursing  
20 facility, to assist with development, collection, analysis, and  
21 reporting of the performance data pursuant to subdivision (i), and  
22 with demonstrated expertise in long-term care quality, data  
23 collection or analysis, and accountability performance measurement  
24 models pursuant to subdivision (i). This subdivision establishes  
25 an accelerated process for issuing any contract pursuant to this  
26 section. Any contract entered into pursuant to this subdivision shall  
27 be exempt from the requirements of the Public Contract Code,  
28 through December 31, 2020.

29 (q) Notwithstanding Chapter 3.5 (commencing with Section  
30 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
31 the following shall apply:

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

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

38 (r) Notwithstanding paragraph (1) of subdivision (n), if a final  
39 judicial determination is made by any state or federal court that is  
40 not appealed, in any action by any party, or a final determination



1 is made by the administrator of the federal Centers for Medicare  
2 and Medicaid Services, that any payments pursuant to subdivisions  
3 (a) and (n) are invalid, unlawful, or contrary to any federal law or  
4 regulation, or state law, these subdivisions shall become inoperative  
5 and, for the 2011–12 rate year, the rate increase provided under  
6 subparagraph (A) of paragraph (4) of subdivision (c) of Section  
7 14126.033 shall be reduced by the amounts described in  
8 subdivision (j). For the 2013–14 and 2014–15 rate years, any rate  
9 increase shall be reduced by the amounts described in subdivisions  
10 (j) to (l), inclusive.

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