

AMENDED IN SENATE AUGUST 15, 2016

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

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. *facility, as specified, and requires that skilled nursing facilities have a minimum of 3.2 nursing hours per patient day.* Existing law requires that ~~these~~ *the* staff-to-patient 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 replace the requirement for staff-to-patient ratios in skilled nursing facilities with a requirement for direct care service hours per patient day, as defined, which, commencing January 1, 2018, except as specified, would increase from 3.2 to 4.1 hours on a specified incremental basis by January 1, 2020.

~~This bill, instead, would require the department to develop regulations that become effective January 1, 2018, and include a minimum number of 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 direct care service hours per patient day to 4.1 hours on a specified incremental basis by January 1, 2020.~~

This bill would also authorize the State Department of Health Care Services and the State Department of Public Health to develop regulations to create a short-term waiver of the direct service hour requirements for skilled nursing facilities in order to address a shortage of available health care professionals, as specified. The bill would require the waivers to be reviewed annually and either renewed or revoked.

(2) Existing law requires the State Department of Public Health to adopt regulations setting forth the minimum number of equivalent nursing hours per patient required in skilled nursing and intermediate care facilities.

This bill would replace the term “nursing hours” with the term “direct care service hours,” as defined, for purposes of intermediate care facilities.

(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.

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 facilities to be the same as the 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:

1 SECTION 1. Section 1276.5 of the Health and Safety Code is
2 amended to read:
3 1276.5. (a) (1) The department shall adopt regulations setting
4 forth the minimum number of equivalent direct care service hours
5 per patient required in intermediate care facilities, subject to the
6 specific requirements of Section 14110.7 of the Welfare and
7 Institutions Code.
8 (2) For the purposes of this section, “equivalent direct care
9 service hours” means the number of hours of work performed per
10 patient day by aides, nursing assistants, or orderlies plus two times
11 the number of hours worked per patient day by registered nurses
12 and licensed vocational nurses (except directors of nursing in
13 facilities of 60 or larger capacity) and, in the distinct part of
14 facilities and freestanding facilities providing care for persons with
15 developmental disabilities or mental health ~~disorders~~ disorders,

1 by licensed psychiatric technicians who perform direct nursing
2 services for patients in intermediate care facilities, except when
3 the intermediate care facility is licensed as a part of a state hospital.

4 ~~(b) (1) (A) The department shall adopt regulations setting forth~~
5 ~~the minimum number of direct care service hours per patient~~
6 ~~required in skilled nursing facilities, subject to the specific~~
7 ~~requirements of Section 14110.7 of the Welfare and Institutions~~
8 ~~Code. However, notwithstanding Section 14110.7 of the Welfare~~
9 ~~and Institutions Code or any other law, the minimum number of~~
10 ~~direct care service hours per patient required in a skilled nursing~~
11 ~~facility shall be 3.2 hours, and, commencing January 1, 2018,~~
12 ~~nursing facilities shall be required to increase their direct care~~
13 ~~service hours incrementally, as described in this paragraph, except~~
14 ~~as provided in paragraph (2) or Section 1276.9.~~

15 ~~(B) Commencing January 1, 2018, 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 minimum~~
18 ~~number of direct care service hours of 3.5 per patient day, with~~
19 ~~2.4 hours per patient day for certified nursing assistants (CNAs)~~
20 ~~and 1.1 hours per patient day for licensed nurses, except as set~~
21 ~~forth in Section 1276.9.~~

22 ~~(C) Commencing January 1, 2019, skilled nursing facilities,~~
23 ~~except those skilled nursing facilities that are a distinct part of a~~
24 ~~general acute care facility or a state hospital, shall have a minimum~~
25 ~~number of direct care service hours of 3.8 per patient day, with~~
26 ~~2.6 hours per patient day for CNAs and 1.2 hours per patient day~~
27 ~~for licensed nurses, except as set forth in Section 1276.9.~~

28 ~~(D) Commencing January 1, 2020, skilled nursing facilities,~~
29 ~~except those skilled nursing facilities that are a distinct part of a~~
30 ~~general acute care facility or a state hospital, shall have a minimum~~
31 ~~number of direct care service hours of 4.1 per patient day, with~~
32 ~~2.8 hours per patient day for CNAs and 1.3 hours per patient day~~
33 ~~for licensed nurses, except as set forth in Section 1276.9.~~

34 ~~(2) Notwithstanding Section 14110.7 or any other law, the~~
35 ~~minimum number of direct care service hours per patient required~~
36 ~~in a skilled nursing facility that is a distinct part of a facility~~
37 ~~licensed as a general acute care hospital or that is operated by the~~
38 ~~State Department of State Hospitals shall be 3.2 hours per patient~~
39 ~~day, except as provided in Section 1276.9.~~

1 ~~(3) For purposes of this subdivision “direct care service hours”~~
2 ~~means the actual hours of work performed per patient day by a~~
3 ~~direct caregiver, as defined in Section 1276.65, without doubling~~
4 ~~the hours performed per patient day by registered nurses and~~
5 ~~licensed vocational nurses.~~

6 ~~(e)~~

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

11 ~~(d)~~

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

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

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

28 1276.65. (a) For purposes of this section, the following
29 definitions shall apply:

30 (1) (A) Except as provided in subparagraph (B), “direct
31 caregiver” means a registered nurse, as referred to in Section 2732
32 of the Business and Professions Code, a licensed vocational nurse,
33 as referred to in Section 2864 of the Business and Professions
34 Code, a psychiatric technician, as referred to in Section 4516 of
35 the Business and Professions Code, or a certified nursing assistant
36 or a nursing assistant who is participating in an approved training
37 program, as defined in Section 1337, while performing nursing
38 services as described in Sections 72309, 72311, and 72315 of Title
39 22 of the California Code of Regulations.

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

3 (2) “Licensed nurse” means a registered nurse, as referred to in
4 Section 2732 of the Business and Professions Code, a licensed
5 vocational nurse, as referred to in Section 2864 of the Business
6 and Professions Code, and a psychiatric technician, as referred to
7 in Section 4516 of the Business and Professions Code.

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

10 ~~(b) Notwithstanding any other law, the State Department of~~
11 ~~Public Health shall develop regulations that become effective~~
12 ~~January 1, 2018, and establish a minimum number of direct care~~
13 ~~service hours per patient day for direct caregivers working in a~~
14 ~~skilled nursing facility, as specified in subdivision (b) of Section~~
15 ~~1276.5. The regulations shall require that no less care be given~~
16 ~~than is required pursuant to Section 1276.5 and Section 14110.7~~
17 ~~of the Welfare and Institutions Code.~~

18 *(b) (1) (A) Notwithstanding Section 14110.7 of the Welfare*
19 *and Institutions Code or any other law, the minimum number of*
20 *direct care service hours per patient day required in a skilled*
21 *nursing facility shall be 3.2 hours, and, commencing January 1,*
22 *2018, skilled nursing facilities shall be required to increase their*
23 *direct care service hours incrementally, as described in this*
24 *paragraph, except as provided in paragraph (2) or Section 1276.9.*

25 *(B) Commencing January 1, 2018, skilled nursing facilities,*
26 *except those skilled nursing facilities that are a distinct part of a*
27 *general acute care facility or a state hospital, shall have a*
28 *minimum number of direct care service hours of 3.5 per patient*
29 *day, with 2.4 hours per patient day for certified nursing assistants*
30 *(CNAs) and 1.1 hours per patient day for licensed nurses, except*
31 *as set forth in Section 1276.9.*

32 *(C) Commencing January 1, 2019, skilled nursing facilities,*
33 *except those skilled nursing facilities that are a distinct part of a*
34 *general acute care facility or a state hospital, shall have a*
35 *minimum number of direct care service hours of 3.8 per patient*
36 *day, with 2.6 hours per patient day for CNAs and 1.2 hours per*
37 *patient day for licensed nurses, except as set forth in Section*
38 *1276.9.*

39 *(D) Commencing January 1, 2020, skilled nursing facilities,*
40 *except those skilled nursing facilities that are a distinct part of a*

1 *general acute care facility or a state hospital, shall have a*
2 *minimum number of direct care service hours of 4.1 per patient*
3 *day, with 2.8 hours per patient day for CNAs and 1.3 hours per*
4 *patient day for licensed nurses, except as set forth in Section*
5 *1276.9.*

6 *(2) Notwithstanding Section 14110.7 of the Welfare and*
7 *Institutions Code or any other law, the minimum number of direct*
8 *care service hours per patient required in a skilled nursing facility*
9 *that is a distinct part of a facility licensed as a general acute care*
10 *hospital or that is operated by the State Department of State*
11 *Hospitals shall be 3.2 hours per patient day, except as provided*
12 *in Section 1276.9.*

13 *(3) For purposes of this subdivision, "direct care service hours"*
14 *means the actual hours of work performed per patient day by a*
15 *direct caregiver, as defined in Section 1276.65, without doubling*
16 *the hours performed per patient day by registered nurses and*
17 *licensed vocational nurses.*

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

22 ~~(e)~~

23 *(d) The direct care service hour requirements of this section*
24 *shall be minimum standards only and shall be satisfied daily.*
25 *Skilled nursing facilities shall employ and schedule additional staff*
26 *as needed to ensure quality resident care based on the needs of*
27 *individual residents and to ensure compliance with all relevant*
28 *state and federal staffing requirements.*

29 ~~(d)~~

30 *(e) No later than ~~January 1, 2019~~, July 1, 2017, and every five*
31 *years thereafter, the department shall consult with consumers,*
32 *consumer advocates, recognized collective bargaining agents, and*
33 *providers to determine the sufficiency of the staffing standards*
34 *provided in this section and may adopt regulations to increase the*
35 *minimum staffing standards to adequate levels.*

36 ~~(e)~~

37 *(f) (1) In a manner pursuant to federal requirements, effective*
38 *January 1, 2003, every skilled nursing facility shall post*
39 *information about resident census and staffing levels that includes*
40 *the current number of licensed and unlicensed nursing staff directly*

1 responsible for resident care in the facility. This posting shall
2 include staffing requirements developed pursuant to this section
3 and an accurate report of the number of direct care staff working
4 during the current shift, including a report of the number of
5 registered nurses, licensed vocational nurses, psychiatric
6 technicians, and certified nurse assistants. The information shall
7 be posted on paper that is at least 8.5 inches by 14 inches and shall
8 be printed in a type of at least 16 point.

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

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

12 (B) An area used for employee breaks.

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

16 (3) (A) Upon oral or written request, every skilled nursing
17 facility shall make direct caregiver staffing data available to the
18 public for review at a reasonable cost. A skilled nursing facility
19 shall provide the data to the requestor within 15 days after receiving
20 a request.

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

28 (f)

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

36 (2) A violation of ~~the~~ any regulations developed pursuant to
37 this section may constitute a class “B,” “A,” or “AA” violation
38 pursuant to the standards set forth in Section 1424.

39 (g)

1 (h) The requirements of this section are in addition to any
2 requirement set forth in Section 1276.5 of this code and Section
3 14110.7 of the Welfare and Institutions Code.

4 ~~(h)~~

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

16 ~~(i)~~

17 (j) This section shall not apply to facilities defined in Section
18 1276.9.

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

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

23 14110.7. (a) In skilled nursing facilities, the minimum number
24 of direct care service hours *per patient day* shall be 3.2, except as
25 set forth in Section 1276.9 of the Health and Safety Code.

26 ~~(b) (1) The department shall adopt regulations setting forth the~~
27 ~~minimum number of direct care service hours per patient required~~
28 ~~in skilled nursing facilities, subject to the specific requirements of~~
29 ~~this section. However, notwithstanding~~ *Notwithstanding* this section
30 or any other law, the minimum number of direct care service hours
31 per patient required in a skilled nursing facility shall be 3.2 hours,
32 and, commencing January 1, 2018, skilled nursing facilities shall
33 be required to increase their direct care service hours incrementally,
34 as described in this subdivision, except as otherwise provided in
35 subdivisions (c) to (e), inclusive, and Section 1276.9 of the Health
36 and Safety Code.

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

1 2.4 hours per patient day for certified nursing assistants (CNAs)
2 and 1.1 hours per patient day for licensed nurses, except as set
3 forth in Section 1276.9 of the Health and Safety Code.

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

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

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

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

23 (e) In intermediate care facilities/developmentally disabled, the
24 minimum number of equivalent direct care service hours shall be
25 2.7.

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

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

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

39 (B) A freestanding pediatric subacute care facility, as defined
40 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 direct care service hours per patient per day requirements
8 pursuant to Section 1276.5 of the Health and Safety Code.

9 (2) (A) Beginning with the 2010–11 fiscal year, the State
10 Department of Public Health shall assess a skilled nursing facility,
11 licensed pursuant to subdivision (c) of Section 1250 of the Health
12 and Safety Code, an administrative penalty if the State Department
13 of Public Health determines that the skilled nursing facility fails
14 to meet the direct care service hours per patient per day
15 requirements pursuant to ~~Section 1276.5~~ 1276.65 of the Health
16 and Safety Code, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Nothing in this section shall impact the effectiveness or utilization of Section 1278.5 or 1432 of the Health and Safety Code

1 relating to whistleblower protections, or Section 1420 of the Health
2 and Safety Code relating to complaints.

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

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

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

12 (i) Immunization rates.

13 (ii) Facility acquired pressure ulcer incidence.

14 (iii) The use of physical restraints.

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

18 (v) Resident and family satisfaction.

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

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

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

33 (i) Compliance with state policy associated with the United
34 States Supreme Court decision in *Olmstead v. L.C. ex rel. Zimring*
35 (1999) 527 U.S. 581.

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

38 (iii) The use of chemical restraints.

39 (D) Beginning with the 2015–16 fiscal year, the department, in
40 consultation with representatives from the long-term care industry,

1 organized labor, and consumers, shall incorporate direct care staff
2 retention as a performance measure in the methodology developed
3 pursuant to this section.

4 (j) (1) Beginning with the 2010–11 rate year, and pursuant to
5 subparagraph (B) of paragraph (5) of subdivision (a) of Section
6 14126.023, the department shall set aside savings achieved from
7 setting the professional liability insurance cost category, including
8 any insurance deductible costs paid by the facility, at the 75th
9 percentile. From this amount, the department shall transfer the
10 General Fund portion into the Skilled Nursing Facility Quality and
11 Accountability Special Fund. A skilled nursing facility shall
12 provide supplemental data on insurance deductible costs to
13 facilitate this adjustment, in the format and by the deadlines
14 determined by the department. If this data is not provided, a
15 facility's insurance deductible costs will remain in the
16 administrative costs category.

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

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

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

36 (m) Beginning with the 2015–16 rate year, and each subsequent
37 rate year thereafter for which this article is operative, an amount
38 equal to the amount deposited in the fund pursuant to subdivisions
39 (k) and (l) for the 2014–15 rate year shall be deposited into the

1 Skilled Nursing Facility Quality and Accountability Special Fund,
2 for the purposes specified in this section.

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

9 (B) (i) The department may convene a diverse stakeholder
10 group, including, but not limited to, representatives from consumer
11 groups and organizations, labor, nursing home providers, advocacy
12 organizations involved with the aging community, staff from the
13 Legislature, and other interested parties, to discuss and analyze
14 alternative mechanisms to implement the quality and accountability
15 payments provided to nursing homes for reimbursement.

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

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

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

32 (4) Notwithstanding paragraph (1), if the department is unable
33 to pay the supplemental payments by April 30, 2014, then on May
34 1, 2014, the department shall use the funds available in the Skilled
35 Nursing Facility Quality and Accountability Special Fund as a
36 result of savings identified in subdivisions (k) and (l), less the
37 administrative costs required to implement subparagraphs (A) and
38 (B) of paragraph (3) of subdivision (b), in addition to any Medicaid
39 funds that are available as of December 31, 2013, to increase
40 provider rates retroactively to August 1, 2013.

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

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

22 (q) Notwithstanding Chapter 3.5 (commencing with Section
23 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
24 the following shall apply:

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

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

31 (r) Notwithstanding paragraph (1) of subdivision (n), if a final
32 judicial determination is made by any state or federal court that is
33 not appealed, in any action by any party, or a final determination
34 is made by the administrator of the federal Centers for Medicare
35 and Medicaid Services, that any payments pursuant to subdivisions
36 (a) and (n) are invalid, unlawful, or contrary to any federal law or
37 regulation, or state law, these subdivisions shall become inoperative
38 and, for the 2011–12 rate year, the rate increase provided under
39 subparagraph (A) of paragraph (4) of subdivision (c) of Section
40 14126.033 shall be reduced by the amounts described in

subdivision (j). For the 2013–14 and 2014–15 rate years, any rate increase shall be reduced by the amounts described in subdivisions (j) to (l), inclusive.

SEC. 6. The State Department of Health Care Services and the State Department of Public Health may develop regulations to create a short-term waiver of the direct service hour requirements established in Section 1276.65 of the Health and Safety Code and Section 14110.7 of the Welfare and Institutions Code, as amended by this act, for skilled nursing facilities in order to address a shortage of available health care professionals. At a minimum to qualify for a waiver, the departments shall require that a skilled nursing facility demonstrate that it offers wages that are sufficient to recruit qualified and appropriate staff, that the skilled nursing facility does not have a direct care service staff turnover rate that is higher than the state average, and that the facility is located in a designated workforce shortage area, as established by the California Healthcare Workforce Policy Commission. Waivers granted pursuant to these provisions shall be reviewed annually and either renewed or revoked.

~~SEC. 6.~~

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.