

AMENDED IN SENATE APRIL 20, 2015

SENATE BILL

No. 779

Introduced by Senator Hall

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 779, as amended, Hall. Skilled nursing facilities: certified nurse assistant staffing.

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

This bill would require the department to develop regulations that become effective ~~June~~ July 1, 2016, and include ~~separate a minimum overall staff-to-patient ratios ratio that includes specific staff-to-patient ratios~~ for certified nurse assistants *and for licensed nurses* that comply with specified requirements. The bill would require the posted information to include *a resident census and* an accurate report of the

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

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

This bill would substitute the term “direct care service hours” for the term “nursing hours” and, commencing July 1, 2016, except as specified, increase the minimum number of direct care service hours per patient day to 4.1.

(2)

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

Existing law, the Medi-Cal Long-Term Care Reimbursement Act, operative until August 1, 2015, 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 2016–17 fiscal year, the measures to include compliance with specified ~~certified nursing assistant staff-to-patient ratio requirements~~. *direct care service hour requirements for skilled nursing facilities*. The bill would make this provision contingent on the Medi-Cal Long-Term Care Reimbursement Act being operative on January 1, 2016.

(3)

(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 ~~nursing hours~~ *direct care*
5 *service hours* per patient required in ~~skilled nursing and~~
6 intermediate care facilities, subject to the specific requirements of
7 Section 14110.7 of the Welfare and Institutions Code. ~~However,~~
8 ~~notwithstanding Section 14110.7 or any other law, commencing~~
9 ~~January 1, 2000, the minimum number of actual nursing hours per~~
10 ~~patient required in a skilled nursing facility shall be 3.2 hours,~~
11 ~~except as provided in Section 1276.9.~~

12 ~~(b) (1)–~~

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

28 (b) (1) *The department shall adopt regulations setting forth the*
29 *minimum number of equivalent direct care service hours per*
30 *patient required in skilled nursing facilities, subject to the specific*
31 *requirements of Section 14110.7 of the Welfare and Institutions*
32 *Code. However, notwithstanding Section 14110.7 of the Welfare*
33 *and Institutions Code or any other law, the minimum number of*
34 *direct care service hours per patient required in a skilled nursing*
35 *facility shall be 3.2 hours, and, commencing July 1, 2016, shall*

1 *be 4.1 hours, except as provided in paragraph (2) or Section*
2 *1276.9.*

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

8 *(3) For the purposes of this subdivision, “direct care service*
9 *hours” means the number of hours of work performed per patient*
10 *day by a direct caregiver, as defined in Section 1276.65, and, in*
11 *the distinct part of facilities and freestanding facilities providing*
12 *care for persons with developmental disabilities or mental health*
13 *disorders, by licensed psychiatric technicians who perform direct*
14 *nursing services for patients in skilled nursing facilities.*

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

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

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

33 **SECTION 1.**

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

36 1276.65. (a) For purposes of this section, the following
37 definitions shall apply:

38 (1) (A) “Direct caregiver” means a registered nurse, as referred
39 to in Section 2732 of the Business and Professions Code, a licensed
40 vocational nurse, as referred to in Section 2864 of the Business

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

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

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

22 ~~(2)~~
23 (3) *“Skilled nursing facility” means a skilled nursing facility as*
24 *defined in subdivision (c) of Section 1250.* ~~*1250, except a skilled*~~
25 ~~*nursing facility that is a distinct part of a facility licensed as a*~~
26 ~~*general acute care hospital.*~~

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

31 (c) (1) (A) Notwithstanding any other law, the State
32 Department of Public Health shall develop regulations that become
33 effective ~~June~~ *July* 1, 2016, that establish *a minimum*
34 *staff-to-patient ratio* for direct caregivers working in a skilled
35 nursing facility. ~~These ratios~~ *The ratio shall include separate as a*
36 *part of the overall staff-to-patient ratio, specific staff-to patient*
37 *ratios for licensed nurse staff-to-patient ratios nurses and certified*
38 ~~*nurse assistant staff-to-patient ratios, in addition to the ratios*~~
39 ~~*established for other direct caregivers: assistants.*~~

(B) (i) 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 ~~five~~ *six* patients, or fraction thereof.

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

(III) During the night shift, *a minimum of* one certified nurse assistant for every ~~16~~ *17* patients, or fraction thereof.

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

(1)

(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 ~~more than minimal~~ *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 ~~ratios~~ *ratio* for direct caregivers, *and in developing specific staff-to-patient ratios for* certified nurse ~~assistants~~, *assistants* and licensed nurses required by this section, shall convert the ~~existing~~ requirement under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code for 3.2 ~~nursing direct care~~ *service* hours per patient day ~~of care~~ *care*, and commencing July 1, 2016, for 4.1 *direct care service hours per patient day, including a minimum staff-to-patient ratio for certified nurse assistants of 2.8 direct care service hours per patient day and a minimum staff-to-patient ratio for licensed nurses of 1.3 direct care service hours per patient day*, 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 that in no instance shall the minimum staff-to-patient ratios be less than the 3.2 ~~nursing direct care service hours per patient day~~, *and, commencing July 1, 2016, be less than the 4.1 direct care*

1 *service hours per patient day*, required under Section 1276.5 of
2 this code and Section 14110.7 of the Welfare and Institutions Code.

3 (d) The staffing ratios to be developed pursuant to this section
4 shall be minimum standards ~~only~~. *only and shall be satisfied daily*.
5 Skilled nursing facilities shall employ and schedule additional staff
6 as needed to ensure quality resident care based on the needs of
7 individual residents and to ensure compliance with all relevant
8 state and federal staffing requirements.

9 (e) No later than January 1, ~~2006~~, *2018*, and every five years
10 thereafter, the department shall consult with consumers, consumer
11 advocates, recognized collective bargaining agents, and providers
12 to determine the sufficiency of the staffing standards provided in
13 this section and may adopt regulations to increase the minimum
14 staffing ratios to adequate levels.

15 (f) (1) In a manner pursuant to federal requirements, effective
16 January 1, 2003, every skilled nursing facility shall post
17 information about *resident census* and staffing levels that includes
18 the current number of licensed and unlicensed nursing staff directly
19 responsible for resident care in the facility. This posting shall
20 include staffing requirements developed pursuant to this section
21 and an accurate report of the number of *direct care* staff working
22 ~~each shift~~. *during the current shift, including a report of the number*
23 *of registered nurses, licensed vocational nurses, psychiatric*
24 *technicians, and certified nurse assistants*. The information shall
25 be posted on paper that is at least 8.5 inches by 14 inches and shall
26 be printed in a font of at least 16 point.

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

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

30 (B) An area used for employee breaks.

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

34 (3) (A) Upon oral or written request, every skilled nursing
35 facility shall make direct caregiver staffing data available to the
36 public for review at a reasonable cost. A skilled nursing facility
37 shall provide the data to the requestor within 15 days after receiving
38 a request.

39 (B) For the purpose of this paragraph, “reasonable cost”
40 includes, but is not limited to, a ten-cent (\$0.10) per page fee for

1 standard reproduction of documents that are 8.5 inches by 14 inches
2 or smaller or a retrieval or processing fee not exceeding sixty
3 dollars (\$60) if the requested data is provided on a digital or other
4 electronic medium and the requestor requests delivery of the data
5 in a digital or other electronic medium, including electronic mail.

6 (g) (1) Notwithstanding any other law, the department shall
7 inspect for compliance with this section during state and federal
8 periodic inspections, including, but not limited to, those inspections
9 required under Section 1422. This inspection requirement shall
10 not limit the department's authority in other circumstances to cite
11 for violations of this section or to inspect for compliance with this
12 section.

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

16 (h) The requirements of this section are in addition to any
17 requirement set forth in Section 1276.5 of this code and Section
18 14110.7 of the Welfare and Institutions Code.

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

22 ~~(j)~~

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

34 ~~(k)~~

35 (j) This section shall not apply to facilities defined in Section
36 1276.9.

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

39 ~~14110.7. (a) The director shall adopt regulations increasing~~
40 ~~the minimum number of equivalent nursing hours per patient~~

1 required in skilled nursing facilities to 3.2, in skilled nursing
2 facilities with special treatment programs to 2.3, in intermediate
3 care facilities to 1.1, and in intermediate care
4 facilities/developmentally disabled to 2.7.

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

9 (A) 2.6 hours for skilled nursing facilities.

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

12 (C) 0.9 hours for intermediate care facilities.

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

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

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

22 (c) (1) The Legislature finds and declares all of the following:

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

25 (B) The 4 percent augmentation to reimburse for direct patient
26 care, as defined in paragraph (2) of subdivision (b) of Section
27 14126.60, provides funds to cover additional expenses, if any,
28 incurred by facilities to implement this staffing standard.

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

33 (d) (1) The department shall identify those skilled nursing
34 facilities that are in compliance with the 3.0 minimum double
35 nursing hour standards, as defined in subdivision (a) of Section
36 1276.5 of the Health and Safety Code, but have actual staffing
37 ratios below 2.5, as of July 1, 1990, and shall not enforce the 2.7
38 equivalent nursing hours with respect to those facilities until the
39 third year of implementation of the rates established under this
40 article.

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

4 ~~(e) Notwithstanding paragraph (1) of subdivision (d),~~
5 ~~commencing January 1, 2000, the minimum number of nursing~~
6 ~~hours per patient day required in skilled nursing facilities shall be~~
7 ~~3.2, without regard to the doubling of nursing hours as described~~
8 ~~in paragraph (1) of subdivision (b) of Section 1276.5 of the Health~~
9 ~~and Safety Code, and except as set forth in Section 1276.9 of the~~
10 ~~Health and Safety Code.~~

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

13 *14110.7. (a) The director shall adopt regulations increasing*
14 *the minimum number of equivalent direct care service hours per*
15 *patient day required in skilled nursing facilities to 4.1, in skilled*
16 *nursing facilities with special treatment programs to 2.3, in*
17 *intermediate care facilities to 1.1, and in intermediate care*
18 *facilities/developmentally disabled to 2.7.*

19 *(b) (1) Commencing January 1, 2000, the minimum number of*
20 *direct care service hours per patient day required in skilled nursing*
21 *facilities shall be 3.2, and, except as provided in paragraph (2),*
22 *commencing July 1, 2016, the minimum number of direct care*
23 *service hours per patient day required in skilled nursing facilities*
24 *shall be 4.1, except as set forth in Section 1276.9 of the Health*
25 *and Safety Code.*

26 *(2) The minimum number of direct care service hours per patient*
27 *day required in skilled nursing facilities that are a distinct part of*
28 *a facility licensed as a general acute care hospital shall be 3.2,*
29 *except as set forth in Section 1276.9 of the Health and Safety Code.*

30 ~~SEC. 2.~~

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

33 *14126.022. (a) (1) By August 1, 2011, the department shall*
34 *develop the Skilled Nursing Facility Quality and Accountability*
35 *Supplemental Payment System, subject to approval by the federal*
36 *Centers for Medicare and Medicaid Services, and the availability*
37 *of federal, state, or other funds.*

38 *(2) (A) The system shall be utilized to provide supplemental*
39 *payments to skilled nursing facilities that improve the quality and*
40 *accountability of care rendered to residents in skilled nursing*

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

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

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

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

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

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

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

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

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

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

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

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

1 payments, in accordance with subdivision (m), 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 ~~nursing~~ *direct care service* hours per patient per day
8 requirements pursuant to Section 1276.5 of the Health and Safety
9 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 ~~nursing~~ *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 Section
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 ~~nursing~~ *direct care service* hours per
18 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 2016–17 fiscal year, compliance with the
23 ~~certified nursing assistant staff-to-patient ratio requirements~~ *direct*
24 *care service hour requirements for skilled nursing facilities*
25 *established* pursuant to Section 1276.65 of the Health and Safety
26 ~~Code. Code and Section 14110.7.~~

27 (C) 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) The department, in consultation with representatives from
37 the long-term care industry, organized labor, and consumers, may
38 incorporate additional performance measures, including, but not
39 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 (j) (1) Beginning with the 2010–11 rate year, and pursuant to
8 subparagraph (B) of paragraph (5) of subdivision (a) of Section
9 14126.023, the department shall set aside savings achieved from
10 setting the professional liability insurance cost category, including
11 any insurance deductible costs paid by the facility, at the 75th
12 percentile. From this amount, the department shall transfer the
13 General Fund portion into the Skilled Nursing Facility Quality and
14 Accountability Special Fund. A skilled nursing facility shall
15 provide supplemental data on insurance deductible costs to
16 facilitate this adjustment, in the format and by the deadlines
17 determined by the department. If this data is not provided, a
18 facility's insurance deductible costs will remain in the
19 administrative costs category.

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

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

30 (l) If this act is extended beyond the dates on which it becomes
31 inoperative and is repealed, in accordance with Section 14126.033,
32 beginning with the 2014–15 rate year, in addition to the amount
33 set aside pursuant to subdivision (k), if there is a rate increase in
34 the weighted average Medi-Cal reimbursement rate, the department
35 shall set aside at least one-third of the weighted average Medi-Cal
36 reimbursement rate increase, up to a maximum of 1 percent, from
37 which the department shall transfer the General Fund portion of
38 this amount into the Skilled Nursing Facility Quality and
39 Accountability Special Fund.

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

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

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

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

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

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

(n) The department shall seek necessary approvals from the federal Centers for Medicare and Medicaid Services to implement

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

6 (o) In implementing this section, the department and the State
7 Department of Public Health may contract as necessary, with
8 California's Medicare Quality Improvement Organization, or other
9 entities deemed qualified by the department or the State
10 Department of Public Health, not associated with a skilled nursing
11 facility, to assist with development, collection, analysis, and
12 reporting of the performance data pursuant to subdivision (i), and
13 with demonstrated expertise in long-term care quality, data
14 collection or analysis, and accountability performance measurement
15 models pursuant to subdivision (i). This subdivision establishes
16 an accelerated process for issuing any contract pursuant to this
17 section. Any contract entered into pursuant to this subdivision shall
18 be exempt from the requirements of the Public Contract Code,
19 through December 31, 2013.

20 (p) Notwithstanding Chapter 3.5 (commencing with Section
21 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
22 the following shall apply:

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

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

29 (q) Notwithstanding paragraph (1) of subdivision (m), if a final
30 judicial determination is made by any state or federal court that is
31 not appealed, in any action by any party, or a final determination
32 is made by the administrator of the federal Centers for Medicare
33 and Medicaid Services, that any payments pursuant to subdivisions
34 (a) and (m), are invalid, unlawful, or contrary to any provision of
35 federal law or regulations, or of state law, these subdivisions shall
36 become inoperative, and for the 2011–12 rate year, the rate increase
37 provided under subparagraph (A) of paragraph (4) of subdivision
38 (c) of Section 14126.033 shall be reduced by the amounts described
39 in subdivision (j). For the 2013–14 rate year, and for each

1 subsequent rate year, any rate increase shall be reduced by the
2 amounts described in subdivisions (j) to (l), inclusive.

3 ~~SEC. 3.~~

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

13 ~~SEC. 4.~~

14 *SEC. 7.* Section 2 5 of this act shall only become operative if
15 the Medi-Cal Long-Term Care Reimbursement Act (Article 3.8
16 (commencing with Section 14126) of Chapter 7 of Part 3 of
17 Division 9 of the Welfare and Institutions Code) is operative on
18 January 1, 2016.