

AMENDED IN SENATE MAY 4, 2015  
AMENDED IN SENATE APRIL 20, 2015

**SENATE BILL**

**No. 779**

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**Introduced by Senator Hall**

February 27, 2015

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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 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 July 1, 2016, and include a minimum overall staff-to-patient ratio that includes specific staff-to-patient ratios for certified nurse assistants and for licensed nurses that comply with specified requirements. The bill would require the posted information

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

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

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

(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 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.~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

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

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

(2) For the purposes of this subdivision, “direct care service hours” means the number of hours of work performed per patient day by aides, nursing assistants, or orderlies plus two times the number of hours worked per patient day by registered nurses and licensed vocational nurses (except directors of nursing in facilities of 60 or larger capacity) and, in the distinct part of facilities and freestanding facilities providing care for persons with developmental disabilities or mental health disorders by licensed psychiatric technicians who perform direct nursing services for patients in intermediate care facilities, except when the intermediate care facility is licensed as a part of a state hospital.

(b) (1) The department shall adopt regulations setting forth the minimum number of equivalent direct care service hours per patient required in skilled nursing facilities, subject to the specific requirements of Section 14110.7 of the Welfare and Institutions Code. However, notwithstanding Section 14110.7 of the Welfare and Institutions Code or any other law, the minimum number of direct care service hours per patient required in a skilled nursing facility shall be 3.2 hours, and, commencing July 1, 2016, shall be 4.1 hours, except as provided in paragraph (2) or Section 1276.9.

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

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

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

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

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

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

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

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

(B) “Direct caregiver” also includes (i) a licensed nurse serving as a minimum data set coordinator and (ii) a person serving as the director of nursing services in a facility with 60 or more licensed beds and a person serving as the director of staff development when that person is providing nursing services in the hours beyond

1 those required to carry out the duties of these positions, as long as  
2 these direct care service hours are separately documented.

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, except a skilled nursing~~  
10 ~~facility that is a distinct part of a facility licensed as a general acute~~  
11 ~~care hospital. 1250.~~

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

16 (c) (1) (A) Notwithstanding any other law, the State  
17 Department of Public Health shall develop regulations that become  
18 effective July 1, 2016, that establish a minimum staff-to-patient  
19 ratio for direct caregivers working in a skilled nursing facility. The  
20 ratio shall include as a part of the overall staff-to-patient ratio,  
21 specific staff-to-patient ratios for licensed nurses and certified  
22 nurse assistants.

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

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

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

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

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

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

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

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

1 (2) The department, in developing an overall staff-to-patient  
2 ratio for direct caregivers, and in developing specific  
3 staff-to-patient ratios for certified nurse assistants and licensed  
4 nurses *as* required by this section, shall convert the requirement  
5 under Section 1276.5 of this code and Section 14110.7 of the  
6 Welfare and Institutions Code for 3.2 direct care service hours per  
7 patient day care, and commencing July 1, 2016, *except as specified*  
8 *in paragraph (2) of subdivision (b) of Section 1276.5*, for 4.1 direct  
9 care service hours per patient day, including a minimum  
10 ~~staff-to-patient ratio for certified nurse assistants of 2.8 direct care~~  
11 ~~service hours per patient day for certified nurse assistants~~, and a  
12 ~~minimum staff-to-patient ratio for licensed nurses of 1.3 direct~~  
13 ~~care service hours per patient day, day for licensed nurses~~, and  
14 shall ensure that no less care is given than is required pursuant to  
15 Section 1276.5 of this code and Section 14110.7 of the Welfare  
16 and Institutions Code. Further, the department shall develop the  
17 ratios in a manner that maximizes resident access to care, and takes  
18 into account the length of the shift worked. In developing the  
19 regulations, the department shall develop a procedure for facilities  
20 to apply for a waiver that addresses individual patient needs except  
21 that in no instance shall the minimum staff-to-patient ratios be less  
22 than the 3.2 direct care service hours per patient day, and,  
23 commencing July 1, 2016, *except as specified in paragraph (2) of*  
24 *subdivision (b) of Section 1276.5*, be less than the 4.1 direct care  
25 service hours per patient day, required under Section 1276.5 of  
26 this code and Section 14110.7 of the Welfare and Institutions Code.

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

33 (e) No later than January 1, 2018, and every five years thereafter,  
34 the department shall consult with consumers, consumer advocates,  
35 recognized collective bargaining agents, and providers to determine  
36 the sufficiency of the staffing standards provided in this section  
37 and may adopt regulations to increase the minimum staffing ratios  
38 to adequate levels.

39 (f) (1) In a manner pursuant to federal requirements, effective  
40 January 1, 2003, every skilled nursing facility shall post

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

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

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

14 (B) An area used for employee breaks.

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

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

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

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

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

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

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

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

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

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

~~14110.7. (a) The director shall adopt regulations increasing the minimum number of equivalent direct care service hours per patient day required in~~

*14110.7. (a) In skilled nursing facilities to 4.1, in facilities, the minimum number of equivalent direct care service hours shall be 3.2, except as set forth in Section 1276.9 of the Health and Safety Code.*

*(b) Commencing July 1, 2016, in skilled nursing facilities, except those skilled nursing facilities that are a distinct part of a general acute care facility, the minimum number of equivalent direct care service hours shall be 4.1, except as set forth in Section 1276.9 of the Health and Safety Code.*

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

*(d) In intermediate care facilities to 1.1, and in facilities, the minimum number of equivalent direct care service hours shall be 1.1.*



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

4     ~~(b) (1) Commencing January 1, 2000, the minimum number of~~  
5     ~~direct care service hours per patient day required in skilled nursing~~  
6     ~~facilities shall be 3.2, and, except as provided in paragraph (2),~~  
7     ~~commencing July 1, 2016, the minimum number of direct care~~  
8     ~~service hours per patient day required in skilled nursing facilities~~  
9     ~~shall be 4.1, except as set forth in Section 1276.9 of the Health~~  
10    ~~and Safety Code.~~

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

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

17    14126.022. (a) (1) By August 1, 2011, the department shall  
18    develop the Skilled Nursing Facility Quality and Accountability  
19    Supplemental Payment System, subject to approval by the federal  
20    Centers for Medicare and Medicaid Services, and the availability  
21    of federal, state, or other funds.

22    (2) (A) The system shall be utilized to provide supplemental  
23    payments to skilled nursing facilities that improve the quality and  
24    accountability of care rendered to residents in skilled nursing  
25    facilities, as defined in subdivision (c) of Section 1250 of the  
26    Health and Safety Code, and to penalize those facilities that do  
27    not meet measurable standards.

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

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

34    (4) The department may utilize the system to do all of the  
35    following:

36    (A) Assess overall facility quality of care and quality of care  
37    improvement, and assign quality and accountability payments to  
38    skilled nursing facilities pursuant to performance measures  
39    described in subdivision (i).

1 (B) Assign quality and accountability payments or penalties  
2 relating to quality of care, or direct care staffing levels, wages, and  
3 benefits, or both.

4 (C) Limit the reimbursement of legal fees incurred by skilled  
5 nursing facilities engaged in the defense of governmental legal  
6 actions filed against the facilities.

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

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

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

16 (b) (1) There is hereby created in the State Treasury, the Skilled  
17 Nursing Facility Quality and Accountability Special Fund. The  
18 fund shall contain moneys deposited pursuant to subdivisions (g)  
19 and (j) to (l), inclusive. Notwithstanding Section 16305.7 of the  
20 Government Code, the fund shall contain all interest and dividends  
21 earned on moneys in the fund.

22 (2) Notwithstanding Section 13340 of the Government Code,  
23 the fund shall be continuously appropriated without regard to fiscal  
24 year to the department for making quality and accountability  
25 payments, in accordance with subdivision (m), to facilities that  
26 meet or exceed predefined measures as established by this section.

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

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

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

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

38 (c) No appropriation associated with this bill is intended to  
39 implement the provisions of Section 1276.65 of the Health and  
40 Safety Code.

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

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

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

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

1 (i) Fifteen thousand dollars (\$15,000) if the facility fails to meet  
2 the requirements for 5 percent or more of the audited days up to  
3 49 percent.

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

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

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

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

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

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

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

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

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

1 (E) The appeals process set forth in this paragraph shall be  
2 exempt from Chapter 4.5 (commencing with Section 11400) and  
3 Chapter 5 (commencing with Section 11500), of Part 1 of Division  
4 3 of Title 2 of the Government Code. The provisions of Section  
5 100171 and 131071 of the Health and Safety Code shall not apply  
6 to appeals under this paragraph.

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

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

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

22 (h) Nothing in this section shall impact the effectiveness or  
23 utilization of Section 1278.5 or 1432 of the Health and Safety Code  
24 relating to whistleblower protections, or Section 1420 of the Health  
25 and Safety Code relating to complaints.

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

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

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

35 (i) Immunization rates.

36 (ii) Facility acquired pressure ulcer incidence.

37 (iii) The use of physical restraints.

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

1 (v) Resident and family satisfaction.

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

3 (B) Beginning in the 2016–17 fiscal year, compliance with the  
4 direct care service hour requirements for skilled nursing facilities  
5 established pursuant to Section 1276.65 of the Health and Safety  
6 Code and Section 14110.7.

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

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

20 (i) Compliance with state policy associated with the United  
21 States Supreme Court decision in *Olmstead v. L.C. ex rel. Zimring*  
22 (1999) 527 U.S. 581.

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

25 (iii) The use of chemical restraints.

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

39 (2) Notwithstanding paragraph (1), for the 2012–13 rate year  
40 only, savings from capping the professional liability insurance cost

category pursuant to paragraph (1) shall remain in the General Fund and shall not be transferred to the Skilled Nursing Facility Quality and Accountability Special Fund.

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

(l) If this act is extended beyond the dates on which it becomes inoperative and is repealed, in accordance with Section 14126.033, beginning with the 2014–15 rate year, in addition to the amount set aside pursuant to subdivision (k), if there is a rate increase in the weighted average Medi-Cal reimbursement rate, the department shall set aside at least one-third of the weighted average Medi-Cal reimbursement rate increase, up to a maximum of 1 percent, from which the department shall transfer the General Fund portion of this amount into the Skilled Nursing Facility Quality and 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 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 this section. The department shall implement this section only in a manner that is consistent with federal Medicaid law and regulations, and only to the extent that approval is obtained from the federal Centers for Medicare and Medicaid Services and federal financial participation is available.

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

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



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

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

7 (q) Notwithstanding paragraph (1) of subdivision (m), if a final  
8 judicial determination is made by any state or federal court that is  
9 not appealed, in any action by any party, or a final determination  
10 is made by the administrator of the federal Centers for Medicare  
11 and Medicaid Services, that any payments pursuant to subdivisions  
12 (a) and (m), are invalid, unlawful, or contrary to any provision of  
13 federal law or regulations, or of state law, these subdivisions shall  
14 become inoperative, and for the 2011–12 rate year, the rate increase  
15 provided under subparagraph (A) of paragraph (4) of subdivision  
16 (c) of Section 14126.033 shall be reduced by the amounts described  
17 in subdivision (j). For the 2013–14 rate year, and for each  
18 subsequent rate year, any rate increase shall be reduced by the  
19 amounts described in subdivisions (j) to (l), inclusive.

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

29 ~~SEC. 7. Section 5 of this act shall only become operative if the~~  
30 ~~Medi-Cal Long-Term Care Reimbursement Act (Article 3.8~~  
31 ~~(commencing with Section 14126) of Chapter 7 of Part 3 of~~  
32 ~~Division 9 of the Welfare and Institutions Code) is operative on~~  
33 ~~January 1, 2016.~~