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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1200

03/04/2013 Authored by Fritz, Abeler, Morgan, Anzelc, Metsa and others
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act
1.2 relating to health; changing provisions for minimum nursing staff requirement;
1.3 requiring a report; amending Minnesota Statutes 2012, sections 144A.04,
1.4 subdivision 7; 256B.434, by adding a subdivision.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 144A.04, subdivision 7, is amended to read:

1.7 Subd. 7. **Minimum nursing staff requirement.** ~~Notwithstanding the provisions of~~
1.8 ~~Minnesota Rules, part 4655.5600, the minimum staffing standard for nursing personnel~~
1.9 ~~in certified nursing homes is as follows:~~

1.10 ~~(a) The minimum number of hours of nursing personnel to be provided in a nursing~~
1.11 ~~home is the greater of two hours per resident per 24 hours or 0.95 hours per standardized~~
1.12 ~~resident day. Upon transition to the 34 group, RUG-III resident classification system, the~~
1.13 ~~0.95 hours per standardized resident day shall no longer apply.~~

1.14 ~~(b) For purposes of this subdivision, "hours of nursing personnel" means the paid,~~
1.15 ~~on-duty, productive nursing hours of all nurses and nursing assistants, calculated on the~~
1.16 ~~basis of any given 24-hour period. "Productive nursing hours" means all on-duty hours~~
1.17 ~~during which nurses and nursing assistants are engaged in nursing duties. Examples~~
1.18 ~~of nursing duties may be found in Minnesota Rules, parts 4655.5900, 4655.6100, and~~
1.19 ~~4655.6400. Not included are vacations, holidays, sick leave, in-service classroom training,~~
1.20 ~~or lunches. Also not included are the nonproductive nursing hours of the in-service~~
1.21 ~~training director. In homes with more than 60 licensed beds, the hours of the director~~
1.22 ~~of nursing are excluded. "Standardized resident day" means the sum of the number of~~
1.23 ~~residents in each case mix class multiplied by the case mix weight for that resident class,~~
1.24 ~~as found in Minnesota Rules, part 9549.0059, subpart 2, calculated on the basis of a~~

facility's census for any given day. For the purpose of determining a facility's census, the commissioner of health shall exclude the resident days claimed by the facility for resident therapeutic leave or bed hold days.

(c) Calculation of nursing hours per standardized resident day is performed by dividing total hours of nursing personnel for a given period by the total of standardized resident days for that same period.

(d) A nursing home that is issued a notice of noncompliance under section 144A.10, subdivision 5, for a violation of this subdivision, shall be assessed a civil fine of \$300 for each day of noncompliance, subject to section 144A.10, subdivisions 7 and 8.

(a) Beginning January 1, 2014, the minimum staffing standard for productive, direct care nursing personnel in licensed nursing homes shall be the greater of four hours per standardized resident day.

(b) Beginning January 1, 2014, the minimum staffing standard for productive, direct care nursing personnel in licensed nursing homes shall be four hours per standardized day.

(c) For purposes of this subdivision, "productive hours of nursing personnel" means the hours of all nurses, nursing assistants, and therapeutic medication aides providing on-duty, direct, hands-on resident care, or other direct care nursing duties, calculated on the basis of each 24-hour period. The hours not included in productive hours of nursing personnel include but are not limited to: vacations, supplemental holiday pay, sick leave, in-service classroom training, supplemental holiday pay, the hours of in-service training director, the assistant director of nursing, the minimum data set nurse, and nursing hours separately reimbursed under section 256B.431, subdivision 2e.

(d) For purposes of this subdivision, "standardized resident day" means the sum of the number of residents in each case mix class multiplied by the case mix weight for that resident class, as published by the department, calculated on the basis of a facility's census each day. Changes of RUG class assignment shall not take effect until receipt of notification from the commissioner of health. For the purpose of determining a facility's census, the commissioner of health shall exclude the resident days claimed by the facility for resident therapeutic leave or bed hold days.

(e) Calculation of productive nursing hours per resident day is performed by dividing total productive hours of nursing personnel for each day by the number of residents on that day. Calculation of productive nursing hours per standardized resident day is performed by dividing total productive hours of nursing personnel for each day by the total of standardized resident days for that day. Licensed nursing homes shall prepare monthly reports to the commissioner according to instructions and on forms provided by the commissioner. The filed reports are public documents and shall be posted in a prominent

location at each nursing home site for review by patients, visitors, and staff. Copies must be provided to the facility's staff collective bargaining representative upon request.

(f) A nursing home with one or more instance in which the staffing standard is not met shall be issued a notice of noncompliance under section 144A.10, subdivision 5, for a violation of this subdivision, and beginning April 15, 2014, shall be assessed a civil fine according to clauses (1) to (3), subject to section 144A.10, subdivisions 7 and 8. For:

(1) the first occurrence of noncompliance in each six-month period, the fine shall be \$250;

(2) each of the second and third occurrence in each six-month period, the fine shall be \$500; and

(3) each occurrence over three occurrences in each six-month period, the fine shall be \$1,000. An "occurrence of noncompliance" means either a day during which the actual staffing levels fall below the standard required in paragraph (a) or (b). An occurrence in which data reported under paragraph (e) are determined by the commissioner to be materially inaccurate.

(g) The commissioner may allow exceptions to the definition of nursing staff to include other direct care staff, waive notices of noncompliance, and waive fines under extraordinary circumstances at the sole discretion of the commissioner.

(h) Fines collected under this subdivision shall be deposited in a special revenue account and shall be used by the commissioner for grants for education and training of direct care staff.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2012, section 256B.434, is amended by adding a subdivision to read:

Subd. 22. Nursing facility rate increases. Beginning January 1, 2014, nursing facilities may apply to the commissioner and the commissioner shall allow rate increases to nursing facilities to cover the costs of complying with the staffing standards in section 144A.04. Applications shall be submitted to the commissioner in a manner determined by the commissioner. In determining allowable rate increases, the commissioner shall consider:

(1) the direct care staffing standards in section 144A.04, subdivision 7;

(2) actual productive hours of direct care staffing, average hourly cost of employed staff, and resident days by RUGs classification reported on a facility's most recent annual statistical and cost report under section 256B.441; and

4.1 (3) the facility's statement of the number of hours, by discipline, that are required to
4.2 be added to current staffing in order to ensure compliance, not to exceed the difference
4.3 between the staffing standard and historic staffing levels by more than 20 percent.

4.4 **EFFECTIVE DATE.** This section is effective the day following final enactment.