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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1797

02/27/2019 Authored by Sandstede; Lislegard; Xiong, T.; Masin; Her 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 adequate care requirement; requiring a
1.3 report; amending Minnesota Statutes 2018, section 144A.04, subdivision 7;
1.4 proposing coding for new law in Minnesota Statutes, chapter 256R.

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

1.6 Section 1. Minnesota Statutes 2018, section 144A.04, subdivision 7, is amended to read:

1.7 Subd. 7. ~~Minimum nursing staff~~ Adequate care requirement. The minimum staffing
1.8 standard for nursing personnel in certified nursing homes is as follows:

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

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

2.1 ~~determining a facility's census, the commissioner of health shall exclude the resident days~~
2.2 ~~claimed by the facility for resident therapeutic leave or bed hold days.~~

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

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

2.9 (b) For purposes of this subdivision, "productive hours of nursing personnel" means the
2.10 hours of all nurses, nursing assistants, and therapeutic medication aides providing on-duty,
2.11 direct hands-on resident care, or other direct hands-on care nursing duties, calculated on
2.12 the basis of each 24-hour period. The hours not included in productive hours of nursing
2.13 personnel include but are not limited to: vacations, supplemental holiday pay, sick leave,
2.14 in-service classroom training, and the hours of in-service training. Also not included in
2.15 productive hours of nursing personnel are hours of service by the director of nursing, the
2.16 assistant director of nursing, social workers, the minimum data set nurse, and nursing hours
2.17 separately reimbursed under chapter 256R.

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

2.25 (d) Calculation of productive nursing hours per resident day is performed by dividing
2.26 total productive hours of nursing personnel for each day by the number of residents on that
2.27 day. Calculation of productive nursing hours per standardized resident day is performed by
2.28 dividing total productive hours of nursing personnel for each day by the total of standardized
2.29 resident days for that day. Licensed nursing homes shall prepare monthly reports to the
2.30 commissioner according to instructions and on forms provided by the commissioner. The
2.31 filed reports are public documents and shall be posted in a prominent location at each nursing
2.32 home site for review by patients, visitors, and staff where applicable. Copies must be provided
2.33 to the facility's staff collective bargaining representative upon request.

3.1 (e) A nursing home with one or more instance in which the adequate care standard is
3.2 not met shall be issued a notice of noncompliance under section 144A.10, subdivision 5,
3.3 for a violation of this subdivision, and beginning April 15, 2020, shall be assessed a civil
3.4 fine according to clauses (1) to (3), subject to section 144A.10, subdivisions 7 and 8. For:

3.5 (1) the first occurrence of noncompliance in each six-month period, the fine shall be
3.6 \$250;

3.7 (2) each of the second and third occurrence in each six-month period, the fine shall be
3.8 \$500; and

3.9 (3) each occurrence over three occurrences in each six-month period, the fine shall be
3.10 \$1,000. An "occurrence of noncompliance" means either a day during which the actual
3.11 staffing levels fall below the standard required in paragraph (a) or (b), or an occurrence in
3.12 which data reported under paragraph (d) are determined by the commissioner to be materially
3.13 inaccurate.

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

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

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

3.21 **Sec. 2. [256R.461] NURSING FACILITY RATE INCREASES; NURSING HOME**
3.22 **PROVIDERS.**

3.23 Beginning January 1, 2020, nursing facilities may apply to the commissioner and the
3.24 commissioner shall allow rate increases to nursing facilities to cover the costs of complying
3.25 with the standards in section 144A.04. Applications shall be submitted to the commissioner
3.26 in a manner determined by the commissioner. In determining allowable rate increases, the
3.27 commissioner shall consider:

3.28 (1) the standards in section 144A.04, subdivision 7;

3.29 (2) actual productive hours of direct care, average hourly cost of employed staff, and
3.30 resident days by RUGs classification reported on a facility's most recent annual statistical
3.31 and cost report under this chapter; and

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

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