STATE OF NEW YORK

6346

2021-2022 Regular Sessions

IN SENATE

April 22, 2021

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to establishing standard nursing home staffing levels

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public health law is amended by adding a new section 2895-b to read as follows:

§ 2895-b. Nursing home staffing levels. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Certified nurse aide" means any person included in the nursing home nurse aide registry pursuant to section twenty-eight hundred three-j of this chapter.

(b) "Licensed nurse" means a registered professional nurse or licensed practical nurse licensed pursuant to article one hundred thirty-nine of the education law.

(c) "Staffing hours" means the hours reported by a nursing home to the federal Centers for Medicare and Medicaid Services through the payroll based journal for long-term care facilities.

(d) "Nurse aides" means any person who is included in the nurse aide hour component of the payroll based journal for long-term care facilities but has not yet been certified as a certified nurse aide.

2. Staffing standards. (a) The commissioner shall, by regulation, establish staffing standards for nursing home minimum staffing levels to meet applicable standards of service and care and to provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident of the facility. Compliance shall be determined quarterly by comparing the daily average of the number of hours provided per resident, per day, using the federal Centers for Medicare and Medicaid Services payroll based journal and the facility's average daily census on a daily basis.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(b) The commissioner shall establish, by regulation, civil penalties for facilities out of compliance with minimum staffing levels. Such regulations shall include a range of penalties to account for mitigating factors which shall include:

(i) extraordinary circumstances facing the facility, including, but not limited to, whether the facility has suffered through a natural disaster or other catastrophic event, an officially declared national emergency, or state or municipal emergency declared pursuant to article two-B of the executive law, which has been initially declared subsequent to the effective date of this section, or other such conditions or unforeseen circumstances as determined by the commissioner;

(ii) the frequency and nature of non-compliance; and

(iii) the existence of an acute labor supply shortage within a particular region. When determining if there is an acute labor supply shortage within a specific region in a specific quarter, or a shorter period of time as determined by the commissioner, the commissioner shall take into consideration the following factors: regional labor supply of available certified nurse aides, licensed practical nurses and registered nurses; regional pay rates for the relevant titles as determined by the federal department of labor, bureau of labor statistics; and evidence that the facility attempted to procure sufficient staffing.

(c) At least thirty days before any action is taken by the commissioner under paragraph (b) of this subdivision, the commissioner shall post the assessed penalties, and any mitigating factors that were considered in assessing the penalty on the department's website.

(d) In determining whether a nursing home has violated its obligations under this section, it shall not be a defense that such nursing home was unable to secure sufficient staff if the lack of staffing was foreseeable and could be prudently planned for, or involved routine staffing needs that arose due to typical staffing patterns, typical levels of absenteeism, or time off typically approved by the employer for vacation, holidays, sick leave, and personal leave.

(e) A civil penalty shall not be imposed under this section until after April first, two thousand twenty-two;

(f) Every nursing home shall:

(i) comply with the staffing standards under this section; and

(ii) employ sufficient staffing levels to meet applicable standards of service and care and to provide service and care and to provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident of the facility.

(g) Staffing standards established under this subdivision shall, at a minimum, be the staffing standards established under subdivision three of this section.

(h) The minimum staffing standard includes the hours which are required to be reported by a nursing home to the federal Centers for Medicare and Medicaid Services through the payroll based journal for long-term care for certified nursing assistants and licensed nurses. In determining compliance with the staffing standards under this subdivision, an individual shall not be counted while performing administrative services as defined in the payroll based journal for long-term care facilities.

3. Statutory standard. (a) Beginning January first, two thousand twenty-two every nursing home shall maintain daily average staffing hours equal to 3.5 hours of care per resident per day by a certified nurse aide, a licensed nurse or a nurse aide; provided that out of such 3.5 hours, no less than 2.2 hours of care per resident per day shall be

provided by a certified nurse aide or a nurse aide, and no less than 1.1 hours of care per resident per day shall be provided by a licensed nurse.

(b) Beginning January first, two thousand twenty-three and thereafter every nursing home shall maintain daily average staffing hours equal to 3.5 hours of care per resident per day by a certified nurse aide or a licensed nurse; provided that out of such 3.5 hours, no less than 2.2 hours of care per resident per day shall be provided by a certified nurse aide, and no less than 1.1 hours of care per resident per day shall be provided by a licensed nurse.

4. Public disclosure of staffing levels. (a) A nursing home shall post information regarding nurse staffing that the facility is required to make available to the public under section twenty-eight hundred five-t of this chapter. Information under this paragraph shall be displayed in a form approved by the department and be posted in a manner which is visible and accessible to residents, their families and the staff, as required by the commissioner.

(b) A nursing home shall post a summary of this section, provided by the department, in proximity to each posting required by paragraph (a) of this subdivision.

§ 2. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 3. This act shall take effect immediately.