



Senate

General Assembly

File No. 405

January Session, 2005

Substitute Senate Bill No. 996

Senate, April 19, 2005

The Committee on Public Health reported through SEN. MURPHY of the 16th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING NURSING HOME STAFFING LEVELS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-522 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2005*):

3 (a) The commissioner shall adopt regulations, in accordance with
4 chapter 54, concerning the health, safety and welfare of patients in
5 nursing home facilities, classification of violations relating to such
6 facilities, medical staff qualifications, record-keeping, nursing service,
7 dietary service, personnel qualifications and general operational
8 conditions. The regulations shall: (1) Assure that each patient admitted
9 to a nursing home facility is protected by adequate immunization
10 against influenza and pneumococcal disease in accordance with the
11 recommendations of the National Advisory Committee on
12 Immunization Practices, established by the Secretary of Health and
13 Human Services; (2) specify that each patient be protected annually
14 against influenza and be vaccinated against pneumonia in accordance

15 with the recommendations of the National Advisory Committee on
16 Immunization; and (3) provide appropriate exemptions for patients for
17 whom such immunizations are medically contraindicated and for
18 patients who object to such immunization on religious grounds.

19 (b) (1) As used in this subsection, "direct care" means hands-on-care
20 provided to residents of nursing home facilities, including, but not
21 limited to, feeding, bathing, toileting, dressing, lifting and moving
22 such residents, but does not include food preparation, housekeeping or
23 laundry services, except when such services are required to meet the
24 needs of any such resident on an individual situational basis. Direct
25 care shall not include care provided by paid feeding assistants, as
26 defined in 42 CFR 488.301.

27 (2) The Department of Public Health may, in accordance with the
28 provisions of section 19a-494, take disciplinary action against a nursing
29 home facility that without just cause, has substantially failed to comply
30 with the direct care provider levels prescribed in this section. The
31 department may, in accordance with the provisions of section 19a-494,
32 revoke or suspend the license of a nursing home facility if the
33 department determines that such facility has engaged in a continuous
34 pattern of failing to comply with the direct care provider staffing levels
35 prescribed in this section.

36 (3) (A) For the period from January 1, 2006, to December 31, 2006,
37 each nursing home facility shall maintain direct care provider staffing
38 levels at or above the following levels:

39 (i) During the day shift, one full-time employee for each ten
40 residents;

41 (ii) During the evening shift, one full-time employee for each fifteen
42 residents; and

43 (iii) During the night shift, one full-time employee for each twenty
44 residents.

45 (B) For the period from January 1, 2007, to December 31, 2007, each

46 nursing home facility shall maintain direct care provider staffing levels
47 at or above the following levels:

48 (i) During the day shift, one full-time employee for each seven
49 residents;

50 (ii) During the evening shift, one full-time employee for each twelve
51 residents; and

52 (iii) During the night shift, one full-time employee for each
53 seventeen residents.

54 (4) The direct care provider staff levels specified in subdivision (3)
55 of this subsection prescribe minimum direct care provider staffing
56 levels for a nursing home facility. Where an acuity system approved by
57 the Department of Public Health and adopted by a nursing home
58 facility indicates that additional direct care provider staff is required,
59 the nursing home facility shall staff at the higher staffing level. Not
60 later than January 1, 2007, the Department of Public Health shall
61 report, in accordance with section 11-4a of the general statutes, on the
62 effectiveness of the minimum staffing levels prescribed in subdivision
63 (3) of this subsection and shall offer recommended changes to such
64 minimum staffing levels to the joint standing committees of the
65 General Assembly having cognizance of matters relating to public
66 health and human services and the select committee on aging. The
67 department shall also report on the use of acuity systems as a basis for
68 determining minimum staffing levels.

69 (5) Any licensed nursing home facility that fails to comply with the
70 minimum staffing requirements of subdivision (3) of this subsection on
71 any day shall submit a report to the department, identifying the day
72 and the shift during which such noncompliance occurred and
73 specifying the reasons for and circumstances surrounding such
74 noncompliance. The report required by this subdivision shall be
75 submitted on a quarterly basis. If such facility fails to submit the report
76 required by this subdivision or intentionally misrepresents the
77 information contained in any such report, or if the commissioner

78 determines that there is sufficient evidence to support a finding that
 79 there exists a pattern of noncompliance by such facility with the
 80 minimum staffing requirements of subdivision (3) of this subsection,
 81 the commissioner may take action against such facility in accordance
 82 with sections 19a-524 to 19a-528, inclusive.

83 [(b)] (c) Nursing home facilities may not charge the family or estate
 84 of a deceased self-pay patient beyond the date on which such patient
 85 dies. Nursing home facilities shall reimburse the estate of a deceased
 86 self-pay patient, within sixty days after the death of such patient, for
 87 any advance payments made by or on behalf of the patient covering
 88 any period beyond the date of death. Interest, in accordance with
 89 subsection (a) of section 37-1, on such reimbursement shall begin to
 90 accrue from the date of such patient's death.

91 (d) The Commissioner of Public Health shall adopt regulations, in
 92 accordance with the provisions of chapter 54, to specify the policies
 93 and procedures that the department will utilize to approve the acuity
 94 system of a nursing home facility.

95 Sec. 2. Section 17b-340 of the general statutes is amended by adding
 96 subsection (j) as follows (*Effective January 1, 2006*):

97 (NEW) (j) Notwithstanding the provisions of this section, the
 98 Commissioner of Social Services shall reimburse nursing home
 99 facilities for the actual, allowable costs for direct care and indirect care
 100 at ninety-five per cent of actual allowable costs. For nursing home
 101 facilities in which Medicaid accounts for more than ninety per cent of
 102 patient days, the commissioner shall reimburse such facilities for an
 103 additional five per cent of allowable costs, excluding property and
 104 capital.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2005	19a-522
Sec. 2	January 1, 2006	17b-340

AGE *Joint Favorable Subst. C/R*

PH

PH *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Social Services, Dept.	GF - Cost	Significant	Significant
Public Health, Dept.	GF - Cost	111,450	288,900
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	24,340	155,730

Note: GF=General Fund

Municipal Impact: None

Explanation

Passage of the bill will result in costs to both the Departments of Public Health (DPH) and Social Services (DSS). These costs are associated with sequentially increasing mandatory minimum staffing levels for chronic and convalescent nursing homes and rest homes with nursing supervision over the two-year period commencing January 1, 2006, and monitoring their compliance with the new standards.

Department of Social Services

This bill phases in minimum direct care staffing standards for nursing homes. However, the bill is not clear whether "direct care staff" includes nurses, certified nurse aides, or both. Current DPH standards set the minimum number of hours of care a resident receives from nurses or nurse's aides. As the bill and the current regulations may deal with different types of staffing, a direct comparison with current practice cannot be done. Nursing facilities expended approximately \$970 million for direct care salaries, wages, fringe benefit and nurse pool/temporary staffing in 2004. Given the bill's rapid staff expansion over the course of two years, extremely large costs will be incurred under the Medicaid program, which pays for

roughly two-thirds of nursing home costs in the state. The full extent of these costs cannot now be calculated, as a direct comparison of staffing patterns cannot be done at this time. Additional federal financial participation of fifty percent of the increased costs would also result.

The bill also requires DSS to reimburse nursing homes at 95% of actual allowable costs for direct and indirect care. It further requires DSS to reimburse nursing homes with more than 90% Medicaid patient days an additional 5% of allowable costs. It is estimated that this provision would cost at least \$70 million annually, with additional costs possible depending upon the number of homes that exceed 90% Medicaid patient days.

Department of Public Health

The DPH would be required to adopt regulations, track and review quarterly data from 247 nursing homes and conduct additional on-site inspections to determine whether mandated direct care provider levels are being met. Licensure staff currently review nursing home staffing levels for the two-week period immediately preceding an unannounced on-site inspection. The department would also be responsible for approving acuity systems and reporting on the effectiveness of the new minimal staffing levels and the use of acuity systems. Finally, additional disciplinary actions against nursing homes may be undertaken.

FY 06 costs of \$111,450 will be incurred to support these activities. Included in this sum is \$107,450 to support seven-month salaries of one Supervising Nurse Consultant and one Health Program Associate, and the one-quarter year salaries of two Nurse Consultants, and one half-time Office Assistant. Also included is \$4,000 for associated equipment costs. In FY 07 a cost to DPH of approximately \$288,900 will result. (These costs would be supplemented by associated fringe

benefits costs of \$24,340 in FY 06 and \$155,730 in FY 07¹.

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated fringe benefit reimbursement rate as a percentage of payroll is 53.91%, effective July 1, 2004. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 22.65%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System.

OLR Bill Analysis

sSB 996

AN ACT CONCERNING NURSING HOME STAFFING LEVELS**SUMMARY:**

This bill phases in higher minimum direct care nursing home staffing standards over two years, starting January 1, 2006. It requires facilities to exceed the minimums, if needed, under an acuity system adopted by the facility and approved by Department of Public Health (DPH). The bill requires DPH to adopt regulations related to the acuity system and report on it and the new minimum staffing standards by January 1, 2007.

The bill also subjects nursing homes to certain reporting requirements on their staffing levels and to DPH disciplinary actions if they fail to comply with the minimum staffing levels or reporting requirements.

It also changes the way the Department of Social Services (DSS) pays nursing homes in its Medicaid program.

EFFECTIVE DATE: July 1, 2005, except for the change in DSS Medicaid payments to nursing homes, which takes effect on January 1, 2006.

DIRECT CARE DEFINED

The bill defines "direct care" as hands-on-care provided to residents that includes feeding, bathing, toileting, dressing, lifting, and moving residents. It does not include food preparation, housekeeping, or laundry, except when these services are required to meet a resident's needs on a case-by-case basis. It specifies that direct care does not include care provided by paid feeding assistants as allowed under federal law. (Feeding assistants are people trained specifically to feed residents or help them eat at mealtimes. Federal law allows nursing homes to employ feeding assistants and DPH is developing regulations to allow them.)

DIRECT CARE MINIMUM STAFF-TO-PATIENT RATIO PHASE-IN

Under the bill, required staff-to-patient ratios are as follows:

<i>Dates in Effect</i>	<i>Minimum Full-time Direct Care Staff-to-Patient Ratio By Shift</i>		
	<i>Day Shift</i>	<i>Evening Shift</i>	<i>Night Shift</i>
1/1/06 to 12/31/06	1:10	1:15	1:20
1/1/07 to 12/31/07	1:7	1:12	1:17

Current regulations require nursing homes to have adequate staff to meet residents' needs, but set specific minimums (calculated not as a ratio, but as hours per patient) only for licensed nurses and nurse's aides without reference to other direct care (see BACKGROUND).

Acuity Levels and Staffing Requirements

The bill specifies that these direct care provider standards are minimums. It requires that nursing homes have higher staffing levels when an acuity system approved by DPH and adopted by the nursing home indicates that more staff is required. "Acuity system," while not defined in the bill, appears to mean ways of measuring the differences in patients care levels; patients with more acute conditions need more care. The bill requires DPH to adopt regulations to specify the policies and procedures it will use to approve a nursing home's acuity system.

DPH Report on Minimum Staffing Levels and Acuity Systems

The bill requires DPH, by January 1, 2007, to report on the effectiveness of the higher minimum staffing levels, recommend changes, and report on the use of acuity systems as a basis for determining minimum staffing levels. DPH must submit this report to the Public Health, Human Services, and Aging committees.

DPH DISCIPLINARY ACTIONS FOR FAILURE TO COMPLY WITH MINIMUMS

The bill allows DPH to:

1. take certain disciplinary actions against a nursing home that, without just cause, substantially fails to comply with the minimum staffing levels and

2. revoke or suspend a nursing home's license if it determines the facility has engaged in a continuous pattern of failure to comply with the minimum staffing levels.

The disciplinary actions can include, singly or in combination, license revocation or suspension, censure, letter of reprimand, probationary status, temporary restrictions on acquiring other facilities, or issuance of an order compelling compliance.

NURSING HOME REPORTING, NONCOMPLIANCE, AND PENALTIES

The bill requires any licensed nursing home that fails to comply with the minimum staffing requirements on any day to submit a quarterly report to DPH identifying the day and the shift when the noncompliance occurred and specifying the reasons for it and the circumstances surrounding it. The bill allows the commissioner to take certain punitive actions against a home if:

1. it fails to submit the required report,
2. it intentionally misrepresents the information in the report, or
3. the commissioner determines that there is sufficient evidence to support a finding of a pattern of noncompliance with the minimum staffing requirements.

The commissioner may take several actions against the home including issuing a citation, which can result in various monetary civil penalties.

DSS MEDICAID NURSING HOME PAYMENTS CALCULATION

The bill requires DSS, in its Medicaid program, to pay nursing homes for 95% of actual allowable costs for direct and indirect care for the facilities' Medicaid patients and, if Medicaid patients comprise more than 90% of their patient days, to pay them an additional 5% of the allowable costs (excluding property and capital). (The statutes contain a complex cost-based formula with various caps on different costs for determining Medicaid payments to nursing homes, but the legislature for a number of years has limited potential increases in nursing homes' reimbursements to a specified percentage of prior-year reimbursements, regardless of actual costs.)

BACKGROUND

Current Connecticut Minimum Nurse Staffing Standards for Nursing Homes

DPH licenses two types of nursing homes: (1) chronic and convalescent care nursing homes (CCNHs), which provide skilled nursing care, and (2) rest homes with nursing supervision (RHNSs), which provide intermediate care. Most nursing home beds in the state are in CCNHs.

All nursing homes must have adequate staff to meet patients' needs. The Public Health Code sets specific minimum staffing requirements for CCNHs and RHNSs. Currently the minimums for RHNSs are lower than for CCNHs. The code does not currently refer to direct care provider staffing. It expresses the requirements in terms of number of hours of care a resident receives from nurses or nurse's aides. The nursing staff-to-patient hours per day are set separately for the periods from 7 a.m. to 9 p.m. and 9 p.m. to 7 a.m., as shown below:

<i>Direct Care Personnel</i>	<i>CCNH</i>		<i>RHNS</i>	
	<i>7 a.m. to 9 p.m.</i>	<i>9 p.m. to 7 a.m.</i>	<i>7 a.m. to 9 p.m.</i>	<i>9 p.m. to 7 a.m.</i>
Licensed Nursing Personnel	.47 hpp* (28 min.)	.17 hpp (10 min.)	.23 hpp (14 min.)	.08 hpp (5 min.)
Total Nurses and Nurse Aide Personnel	1.40 hpp (1 hr. 24 min.)	.50 hpp (30 min.)	.70 hpp (42 min.)	.17 hpp (10 min.)
*hpp: hours per patient Source: CT Regulations Section 19-13D-8t (m).				

COMMITTEE ACTION

Select Committee on Aging

Joint Favorable Substitute Change of Reference
Yea 13 Nay 0

Public Health Committee

Joint Favorable Report
Yea 16 Nay 8