



House of Representatives

General Assembly

File No. 675

February Session, 2008

Substitute House Bill No. 5794

House of Representatives, April 17, 2008

The Committee on Appropriations reported through REP. MERRILL of the 54th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT IMPROVING NURSING STAFFING LEVELS AND ENFORCEMENT.

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

- 1 Section 1. (NEW) (*Effective July 1, 2008*) (a) As used in this section,
2 (1) "direct care" means hands-on care provided to residents of chronic
3 and convalescent nursing homes, including, but not limited to,
4 feeding, bathing, toileting, dressing, lifting and moving such residents,
5 but does not include (A) food preparation, housekeeping or laundry
6 services, except when such services are required to meet the needs of
7 any such resident on an individual situational basis, and (B) care
8 provided by paid feeding assistants, as defined in 42 CFR 488.301; (2)
9 "licensed nurse" means a person licensed under chapter 378 of the
10 general statutes, as a registered nurse or a licensed practical nurse; and
11 (3) "nurse's aide" means an individual providing nursing or nursing-
12 related services to residents in a chronic and convalescent nursing
13 home, but does not include an individual who is a health professional
14 otherwise licensed or certified by the Department of Public Health, or

15 who volunteers to provide such services without monetary
16 compensation.

17 (b) (1) For the period from October 1, 2008, to December 31, 2008,
18 the Department of Public Health shall require each chronic and
19 convalescent nursing home to provide total licensed nurse and nurse's
20 aide personnel at or above the following standard: From 12:00 a.m. to
21 11:59 p.m., 3.5 hours of direct care per resident;

22 (2) For the period from January 1, 2009, to April 30, 2009, the
23 department shall require each chronic and convalescent nursing home
24 to provide total licensed nurse and nurse's aide personnel at or above
25 the following standard: From 12:00 a.m. to 11:59 p.m., 3.9 hours of
26 direct care per resident; and

27 (3) On and after May 1, 2009, the department shall require each
28 chronic and convalescent nursing home to provide total licensed nurse
29 and nurse's aide personnel at or above the following standard: From
30 12:00 a.m. to 11:59 p.m., 4.2 hours of direct care per resident.

31 (c) As part of the required 4.2 total number of hours of direct care
32 provided, on and after May 1, 2009, there shall be a minimum staffing
33 ratio of:

34 (1) From 7:00 a.m. to 3:00 p.m., one full-time nurse's aide for each
35 five residents;

36 (2) From 3:00 p.m. to 11:00 p.m., one full-time nurse's aide for each
37 ten residents; and

38 (3) From 11:00 p.m. to 7:00 a.m., one full-time nurse's aide for each
39 fifteen residents.

40 Sec. 2. (NEW) (*Effective July 1, 2008*) (a) (1) In order to determine
41 whether chronic and convalescent nursing homes are in compliance
42 with the minimum direct care staffing hours specified in subsection (b)
43 of section 1 of this act on and after October 1, 2008, and the minimum
44 staffing ratios specified in subsection (c) of section 1 of this act on and

45 after May 1, 2009, during any annual inspection or follow-up
46 inspection, the Department of Public Health shall request copies of
47 each inspected facility's census records, schedules and payroll records
48 for the month immediately preceding the inspection. The Department
49 of Public Health shall compare schedules and payroll records to
50 determine whether or not the facility is in compliance with the
51 minimum direct care staffing standards pursuant to subsections (b)
52 and (c) of section 1 of this act. In making such determination, the
53 Department of Public Health shall exclude from its calculation any
54 hours paid but not worked, such as vacation time, sick time, personal
55 time or other form of paid time off, but shall include any hours worked
56 by temporary or agency staff.

57 (2) For the cost report year beginning October 1, 2009, and annually
58 thereafter, the Department of Social Services shall calculate the average
59 hours of direct care per resident per day at each facility by using the
60 statistics reported on the Medicaid cost reports submitted annually to
61 the department pursuant to section 17b-340 of the 2008 supplement to
62 the general statutes and dividing the total number of resident days
63 reported by the total number of licensed and unlicensed direct care
64 hours reported, exclusive of any hours reported as administrative for
65 licensed and unlicensed staff, the result of which calculation shall be
66 the average number of hours of direct care per resident per day on
67 average over the cost year. The department shall provide such
68 calculations to the Department of Public Health to assist the
69 Department of Public Health in determining compliance with the
70 direct care staffing hours required in subsection (b) of section 1 of this
71 act.

72 (b) If the Department of Public Health determines that a facility is
73 not in compliance with the minimum direct care staffing hours
74 specified in subsection (b) of section 1 of this act or the minimum direct
75 care staffing ratios specified in subsection (c) of section 1 of this act, the
76 department shall notify such facility of such finding and require such
77 facility to file a report with the department not later than fourteen days
78 after the date of such notice explaining (1) why the facility was not in

79 compliance at the time of determination, and (2) the facility's plan of
80 correction. If subsequent inspections or information reveal that the
81 facility has not implemented the plan of correction to meet the
82 minimum direct care staffing hours or minimum direct care staffing
83 ratios, the facility shall be required to file monthly staffing reports with
84 the department for a period of not less than one year after such finding
85 of noncompliance, or until three months after such facility is found in
86 compliance, whichever is longer.

87 (c) Upon receipt of any complaint against a facility by any person
88 alleging inadequate staff to meet the minimum direct care staffing
89 hours or minimum direct care staffing ratios, the Department of Public
90 Health shall inspect the records of such facility for the specific day,
91 days or period cited in such complaint.

92 Sec. 3. (NEW) (*Effective July 1, 2008*) On and after January 1, 2009,
93 and annually thereafter, the Department of Public Health shall issue a
94 report to the joint standing committees of the General Assembly
95 having cognizance of matters relating to human services and public
96 health on the average direct care staffing hours per resident per day
97 and minimum direct care staffing ratios for each chronic and
98 convalescent nursing home in the state, highlighting any that did not
99 meet the standards required pursuant to section 1 of this act.

100 Sec. 4. (NEW) (*Effective July 1, 2008*) The State Long-Term Care
101 Ombudsman, or his or her designee, may inspect the resident care
102 schedules and payroll records of any chronic and convalescent nursing
103 home during a visit to such facility to: (1) Advocate for one or more
104 residents; (2) respond to a complaint or inquiry; or (3) meet with a
105 resident council or family council. The Office of the Long-Term Care
106 Ombudsman shall report any lack of compliance with the mandated
107 minimum direct care staffing standards specified in section 1 of this act
108 to the Departments of Social Services and Public Health for further
109 action.

110 Sec. 5. (NEW) (*Effective July 1, 2008*) If a chronic or convalescent
111 nursing home fails to comply with the minimum direct care staffing

112 standards established pursuant to section 1 of this act, the
113 Commissioner of Social Services may recover all or any part of the
114 Medicaid funding allocated to such facility for the specific and
115 targeted purpose of increasing direct care staffing at such facility. Such
116 facility shall be allowed to retain a portion of the funds allocated to
117 improve its staffing ratio during the relevant time period as
118 determined by the commissioner.

119 Sec. 6. (NEW) (*Effective July 1, 2008*) In addition to any other
120 disclosures required under any provision of the general statutes, on
121 and after May 1, 2009, each chronic and convalescent nursing home
122 shall maintain and make publicly available information about staffing
123 schedules and ratios as follows:

124 (1) Each chronic and convalescent nursing home shall post for each
125 unit of the facility and for each shift the current number of licensed
126 and unlicensed nursing staff directly responsible for resident care and
127 the current ratios of residents to staff, which show separately the
128 number of residents to licensed nursing staff and the number of
129 residents to certified nurse's aides. This information shall be displayed
130 on a uniform form supplied by the Department of Public Health.

131 (2) Such information shall be posted for the most recently concluded
132 cost reporting period in the form of average daily staffing ratios for
133 that period.

134 (3) Such information shall be posted in a manner that is visible and
135 accessible to all residents, their families, caregivers and potential
136 consumers in each facility.

137 (4) A poster provided by the Department of Public Health that
138 describes the minimum staffing standards and ratios required
139 pursuant to section 1 of this act shall be posted in the same vicinity.

140 (5) A list, in at least 48-point type, showing the first and last names
141 of nursing staff on duty shall be posted at the beginning of each shift
142 prominently on each unit.

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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 09 \$
Department of Social Services	GF - Cost	44,500,000	115,000,000
Department of Public Health	GF - Cost	393,500	520,500
Comptroller - Fringe Benefits ¹	GF - Cost	93,900	289,400

Municipal Impact: None

Explanation

The bill increases the required hours of direct care in chronic and convalescent nursing homes (CCHs) in three steps: 3.5 hours per resident, per day by October 1, 2008; 3.9 hours by January 1, 2009 and 4.2 hours by May 1, 2009.

Annually, nursing homes must submit to the Department of Social Services (DSS) audited cost reports that detail direct care hours paid as defined by DSS. According to the 2006 annual cost reports, CCHs had a statewide average of 4.44 hours of paid direct care per resident, per day. These averages include hours paid to employees who may have been on sick or vacation leave. Therefore, an adjustment for paid leave must be made to these paid direct care averages to correlate to the actual staffed levels in the homes, as required by the bill. Based on a study by the Program Review and Investigation Committee, this reduction would represent approximately ½ hour per resident, per

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

day.

Utilizing this data, and factoring in fringe benefit costs for the homes, it is estimated that the annualized cost to the Medicaid program from the new staffing requirement would be \$115 million. It is estimated that the new staffing requirements would require increased staffing at 178 of the CCHs. Based on the phased implementation of these staffing levels required by the bill, these changes would have an estimated FY09 Medicaid cost of \$44.5 million.

The bill further requires that the final 4.2 hour minimum include specific staffing ratios by shift. Depending upon the census of each home, this requirement may lead homes to staff above the 4.2 minimum, which would increase the costs noted above.

It should be noted that these costs may vary as the current staffing patterns of nursing and nurses' aides may differ from home to home. The figures above assume that the current nurse/nurse's aide ratio would continue. However, should homes choose to meet the new requirements through only the addition of nurse's aides, the costs noted above would be reduced.

Additionally, the effort to hire a large number of additional staff in a relatively short time frame may increase the cost to hire staff at homes that are currently above the required staffing levels. A portion of these costs may be further passed on to the Medicaid program.

sHB 5021 (the budget bill, as reported by the Appropriations Committee) contains \$10 million to reflect increasing the minimum paid direct care hours per day to 4.1, effective March 1, 2009. The annualized cost of this initiative would be \$24 million. These figures relate to an increase in paid (not staffed) direct care hours for CCHs as reflected in their annual cost reports. These reports indicate that in 2006, CCH's had a paid average of 4.44 hours of direct care per resident, per day. Approximately 116 homes would be affected by this change. The level of funding included in sHB 5021 would translate to a CCH staffed level, as defined by this bill, of 3.6 hours of direct care

per resident, per day.

The Department of Public Health (DPH) would require additional resources to accommodate new responsibilities set forth within this bill. Staff would be needed to inspect detailed monthly payroll records during annual and follow up inspections, inspect records in response to any complaint alleging inadequate staffing, and assist in the development of an annual report.

An FY 09 cost of approximately \$393,500 would be associated with the three-quarter salaries of 8 positions, associated other expenses and one-time equipment costs. In FY 10 and subsequent fiscal years the annualized cost would be approximately \$520,500. Additional costs would be incurred for fringe benefits (\$93,900 FY 09; \$289,400 subsequent).

It should be noted that sHB 5021, as favorably reported, includes funding for 5 additional DPH staff to perform more frequent nursing home inspections. The agency's ability to do so would be mitigated to the extent that any of these resources are instead deployed to functions mandated within sHB 5794.

Section 5 of the bill allows DSS to recover Medicaid funding allocated to a home for increased staffing if a home fails to comply with the required staffing levels. Presuming DSS chose to recover such funds, the state would realize a savings in the Medicaid program. The extent of this savings would be dependent upon how many homes are non-compliant with the staffing requirement, and cannot be estimated at this time.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 5794

AN ACT IMPROVING NURSING STAFFING LEVELS AND ENFORCEMENT.

SUMMARY:

This bill:

1. phases in higher minimum direct care staffing standards in chronic and convalescent nursing homes (CCNH) over three years starting October 1, 2008;
2. requires the Department of Public Health (DPH), when inspecting homes, to consider compliance with direct care staffing standards;
3. requires noncompliant homes to meet new reporting requirements;
4. allows the Department of Social Services (DSS) to recover from noncompliant homes all or part of the Medicaid funding it gave them to increase direct care staffing;
5. requires homes to publicly disclose certain information about direct care staffing schedules and ratios starting May 1, 2009; and
6. directs DPH to adopt implementing regulations.

The bill applies only to CCNHs, which provide skilled nursing care.

EFFECTIVE DATE: July 1, 2008

§1 — MINIMUM DIRECT CARE STAFFING LEVELS

Definitions

The bill defines “direct care” as hands-on care provided to residents of nursing homes, including 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 likewise excludes 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.)

It defines “licensed nurse” as a state-licensed registered nurse or licensed practical nurse.

It also defines “nurse’s aide” as an individual who provides nursing or nursing-related services to chronic and convalescent nursing home residents. It does not include a health professional otherwise licensed or certified by DPH or a volunteer.

Minimum Direct Care Staffing Levels

Under the bill, a CCNH must maintain aggregate licensed nurse and nurse’s aide staffing levels over a 24-hour period at or above the following:

1. beginning October 1, 2008, at least 3.5 hours of direct care per resident;
2. beginning January 1, 2009, at least 3.9 hours of direct care per resident; and
3. beginning May 1, 2009, at least 4.2 hours of direct care per resident.

Current law requires a CCNH to maintain aggregate licensed nurse and nurse’s aide staffing levels of at least 1.9 hours of direct care per resident per day (see BACKGROUND).

The bill also requires homes to meet the following nurse’s aide-to-patient ratios beginning May 1, 2009:

Shift	Minimum Full-time Nurse's Aides to Resident Ratio
7:00 a.m to 3:00 p.m (day shift)	1:5
3:00 p.m. to 11:00 p.m (evening shift)	1:10
11:00 p.m to 7:00 a.m. (night shift)	1:15

§§ 2, 4, & 5 — COMPLIANCE

DPH Inspections

The bill requires DPH, when conducting an annual or follow-up inspection, to determine a home's compliance with minimum direct care staffing standards. To make its determination, the department must request copies of and compare the home's census records, schedules, and payroll records for the month immediately before the inspection. It must include in its determination any hours worked by temporary or agency staff but must exclude any paid time off, including sick, vacation, or personal time.

DSS Cost Reports

Starting October 1, 2009, the bill requires DSS to use annual cost reports submitted by each home to determine the home's average hours of direct care per resident per day. To make its calculation, DSS must divide the total number of resident days reported by the total number of licensed and unlicensed direct care hours, excluding any administrative hours. It must provide these calculations to DPH to help DPH determinate the home's compliance with minimum direct care staffing standards.

Currently, nursing homes annually submit financial information to

DSS for the purpose of per-diem rate setting. The information, which DSS audits, includes expenditures, revenue, paid hours worked, and balance sheet data.

DPH Corrective Action Plan

The bill requires DPH to notify a facility if it is noncompliant with the direct care staffing standards. The facility must file a report with DPH within 14 days of the notification explaining the reason for its noncompliance and its corrective action plan. If DPH finds that the facility has not implemented its corrective action plan, the facility must file monthly staffing reports with DPH for at least one year or until three months after the facility is found in compliance, whichever is longer.

Complaints

If DPH receives a complaint against a facility alleging inadequate staffing levels, the bill requires it to inspect the home's records for the period cited in the complaint.

Long Term Care Ombudsman

The bill allows the state long-term care ombudsman, or her designee, to inspect the resident care schedules and payroll records of any CCNH when visiting the facility to advocate for one or more resident, respond to a complaint or inquiry, or meet with a resident or family council.

The ombudsman must report any noncompliance with the new staffing standards to DSS and DPH for follow-up.

Medicaid Funding

The bill allows the DSS commissioner to recover all or part of the facility's Medicaid funding allocated for increasing the facility's direct care staffing if a home fails to comply with minimum direct care standards. The commissioner may allow a facility to keep a portion of the funds allocated to improve its staffing ratio. The bill does not specify at which point DSS may consider a nursing home to be in non-

compliance (e.g., when the home fails to implement its DPH corrective action plan or at any time a home does not meet minimum staffing standards)

§ 6 — DISCLOSURES

Starting May 1, 2009, the bill requires CCNHs to publicly disclose information about staffing schedules and ratios. They must post, for each unit and shift, the current number of licensed and unlicensed direct care nursing staff, displaying current staff-to-patient ratios for licensed nurses and certified nurse's aides separately and in the form of average daily staffing ratios based on the most recently concluded cost reporting period. They must post the information (1) in a way that is visible and accessible to all residents and their families, caregivers, and potential consumers and (2) on a uniform form that DPH provides.

The homes must also display in the vicinity of the other posted information, a poster, provided by DPH, describing the minimum staffing standards and ratios.

The bill also requires that at the beginning of each shift, homes must prominently post on each unit, a list in at least 48 point font of the first and last names of nursing staff on duty.

§ 3 — REPORTING REQUIREMENTS

Starting January 1, 2009, the bill requires DPH to report to the Human Services and Public Health committees on the average direct care staffing hours per resident per day and the minimum direct care staffing ratios for each CCNH in the state. The report must highlight those facilities that did not comply with bill's standards.

BACKGROUND

Current Minimum Nurse Staffing Standards for Nursing Homes

DPH licenses nursing homes at two levels of care: (1) CCNHs, which provide skilled nursing care, and (2) rest homes with nursing supervision (RHNS), which provide intermediate care. A nursing

home can be licensed at one or both levels of care.

Minimum staffing requirements for CCNHs and RHNSs are set by regulation (Conn. Agencies Reg. § 19-13 D8t). The actual standards vary somewhat depending on whether the nursing home is providing CCNH or RHNS levels of care. Most of the nursing home beds in the state are CCNHs. The nurse-to-resident 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. and are less for RHNSs than for CCNHs, as shown below.

Direct Care Personnel	CCNH		RHNS	
	7 a.m. to 9 p.m.	9 p.m. to 7 a.m.	7 a.m. to 9 p. m.	9 p. m. to 7 a. m.
Licensed Nursing Personnel	. 47 hours per patient (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.)

Related Bills

SB 385, reported by the Aging, Public Health, and Appropriations committees requires nursing homes to maintain minimum staffing levels of 2.32 nurse's aide direct care hours per patient per day and 1.18 licensed nurse direct care hours per patient per day. It also contains inspection, reporting, and enforcement provisions.

HB 5864, reported by the Public Health and Appropriations committees, phases in the same minimum nursing home staffing levels

over a three-year period for both CCNHs and RHNSs, but does not include nurse's aide-to-resident ratios.

SB 32, reported by the Human Services and Appropriations committees, has provisions on enforcement and financial reporting requirements for nursing homes.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute Change of Reference
Yea 15 Nay 3 (03/18/2008)

Appropriations Committee

Joint Favorable Substitute
Yea 43 Nay 9 (03/28/2008)