

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1776

5 By: Representatives Evans, F. Allen, Barker, Beaty Jr., Bentley, M. Berry, Boyd, Bryant, Cavanaugh,
6 Cloud, Clowney, Coleman, Dalby, M. Davis, Dotson, Eaves, K. Ferguson, C. Fite, V. Flowers, D. Garner,
7 Haak, Hawks, M. Hodges, Jean, Jett, L. Johnson, Ladyman, Lundstrum, Maddox, J. Mayberry,
8 McCollum, Miller, Pilkington, Ray, Richardson, B. Smith, Speaks, Underwood, Vaught, Warren, Wing,
9 Womack
10 By: Senators D. Wallace, B. Ballinger, Bledsoe, L. Chesterfield, A. Clark, B. Davis, J. Dismang, L. Eads,
11 Flippo, T. Garner, Gilmore, K. Hammer, J. Hendren, Hester, Hill, B. Johnson, D. Sullivan
12

For An Act To Be Entitled

13
14 AN ACT TO MODERNIZE AND STRENGTHEN NURSING FACILITY
15 STAFFING STANDARDS AND REPORTING REQUIREMENTS; TO
16 ELIMINATE OUTDATED AND EXTRANEOUS STATE REQUIREMENTS
17 THAT DUPLICATE HIGHLY PROSCRIPTIVE FEDERAL STAFFING
18 AND DATA REPORTING REQUIREMENTS THAT ALL MEDICARE AND
19 MEDICAID NURSING FACILITIES FOLLOW; TO PROVIDE FOR A
20 MINIMUM AVERAGE NUMBER OF DIRECT CARE HOURS PER
21 RESIDENT PER DAY; AND FOR OTHER PURPOSES.
22

Subtitle

23
24
25 TO MODERNIZE AND STRENGTHEN NURSING
26 FACILITY STAFFING STANDARDS AND REPORTING
27 REQUIREMENTS.
28

29
30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
31

32 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

33 (a) The General Assembly finds that:

34 (1) Every state-licensed nursing facility certified to
35 participate in the federal Medicare program, the Arkansas Medicaid Program,
36 or both, must adhere to comprehensive, highly proscriptive federal



1 regulations, which are enforced by both the Centers for Medicare and Medicaid
 2 Services and the Department of Human Services in its role under federal law
 3 as the state survey agency;

4 (2) Except for one (1) private pay facility that is subject to
 5 state-level regulation only, every licensed nursing facility in this state is
 6 Medicare-certified, and all but two (2) are dually certified in the federal
 7 Medicare program and the Arkansas Medicaid Program;

8 (3) Federal requirements include standards, safeguards, and
 9 detailed, transparent data reporting on direct care staffing, with modern
 10 definitions of direct care services and staffing;

11 (4) Under federal law, Medicare and Medicaid nursing facilities
 12 are required to provide each resident with necessary direct care services
 13 based on individual assessments and individual, person-centered care plans,
 14 regardless of any requirements on facility staffing levels; and

15 (5) Current Arkansas laws and Department of Human Services rules
 16 on nursing facility staffing practices and staff reporting, which were first
 17 adopted decades ago:

18 (A) Are outdated and extraneous;

19 (B) Duplicate highly proscriptive federal regulations all
 20 nursing facilities must meet to participate in the federal Medicare program
 21 or the Arkansas Medicaid Program;

22 (C) Unnecessarily restrict the use of modern staffing
 23 practices permitted under federal regulations; and

24 (D) Fail to recognize the full range of professions
 25 available to care for the complex skilled needs of elderly nursing facility
 26 residents, including medication assistants, nurse practitioners, licensed
 27 therapists, physician assistants, and infection preventionists.

28 (b) It is the intent of the General Assembly to:

29 (1) Remove the outdated, extraneous, and duplicative state laws;

30 (2) Remove the unnecessarily restrictions regarding the use of
 31 modern staffing practices permitted under federal regulations; and

32 (3) Recognize the full range of professions available to care
 33 for the complex skilled needs of elderly nursing facility residents.

34
 35 SECTION 2. Arkansas Code § 20-10-211 is repealed.

36 ~~20-10-211. Facilities — Regulation of staffing.~~

1 ~~(a) The agency responsible for licensure and certification of long-~~
 2 ~~term care facilities shall promulgate appropriate rules prescribing minimum~~
 3 ~~staffing requirements for all long-term care facilities in the state. The~~
 4 ~~agency shall conform to the requirements of the Arkansas Administrative~~
 5 ~~Procedure Act, § 25-15-201 et seq., and other appropriate state laws in~~
 6 ~~promulgating and placing rules into effect.~~

7 ~~(b) Failure to comply with the rules promulgated by the appropriate~~
 8 ~~agency pursuant to subsection (a) of this section shall be cause for~~
 9 ~~revocation or suspension of the license or certification of any long-term~~
 10 ~~care facility.~~

11 ~~(c)(1) This section shall apply only to licensed nursing homes.~~

12 ~~(2) This section shall not be applicable to any facility of the~~
 13 ~~Division of Developmental Disabilities Services or to any other facility~~
 14 ~~operated by the State of Arkansas or any agency of the state.~~

15
 16 SECTION 3. Arkansas Code §§ 20-10-1401 and 20-10-1402 are amended to
 17 read as follows:

18 20-10-1401. Definitions.

19 As used in this subchapter:

20 ~~(1) "Day shift" means the period of 7:00 a.m. to 3:00 p.m.;~~

21 ~~(2)(A) "Direct care staff" means any nurse aide or licensed~~
 22 ~~nurse who provides direct, hands-on care to nursing facility residents.~~

23 ~~(B) "Direct care staff" shall not include:~~

24 ~~(i) Therapy personnel or personnel listed in § 20-~~
 25 ~~10-1404; or~~

26 ~~(ii) Medication assistive persons as defined in §~~
 27 ~~17-87-701;~~

28 ~~(3) "Evening shift" means the period of 3:00 p.m. to 11:00 p.m.;~~

29 ~~(4) "Midnight census" means the number of patients occupying~~
 30 ~~nursing home beds in a nursing facility at midnight of each day;~~

31 ~~(5) "Night shift" means the period of 11:00 p.m. to 7:00 a.m.;~~

32 ~~(6) "Nurse aide" means any person who meets the requirements~~
 33 ~~according to regulations adopted pursuant to 42 C.F.R. § 483.75(e), as it~~
 34 ~~existed on January 1, 2005; and~~

35 ~~(7)(A) "Nursing facility" means any building, structure, agency,~~
 36 ~~institution, or other place for the reception, accommodation, board, care, or~~

1 ~~treatment of more than three (3) unrelated individuals who, because of~~
 2 ~~physical or mental infirmity, are unable to sufficiently or properly care for~~
 3 ~~themselves, and for which reception, accommodation, board, care, and~~
 4 ~~treatment a charge is made.~~

5 ~~(B) However, "nursing facility" shall not include:~~

6 ~~(i) The offices of private physicians and surgeons;~~

7 ~~(ii) Residential care facilities;~~

8 ~~(iii) Assisted living facilities;~~

9 ~~(iv) Intermediate care facilities for individuals~~
 10 ~~with developmental disabilities;~~

11 ~~(v) Hospitals;~~

12 ~~(vi) Institutions operated by the United States~~
 13 ~~Government or licensed by the Division of Developmental Disabilities Services~~
 14 ~~of the Department of Human Services; or~~

15 ~~(vii) Any facility that is conducted by and for~~
 16 ~~those who rely exclusively upon treatment by prayer alone for healing in~~
 17 ~~accordance with the tenets or practices of any recognized religious~~
 18 ~~denomination.~~

19 (1) "Average Direct Care Hours Per Resident Day" means the total
 20 number of hours of direct care services provided by direct care staff in a
 21 month, divided by the number of calendar days in that month and the
 22 facility's average daily resident census for that month;

23 (2) "Certified nursing facility" means a nursing facility
 24 licensed by the Department of Human Services that is certified to participate
 25 in the federal Medicare program as a skilled nursing facility or in the
 26 Arkansas Medicaid Program as a nursing facility, or both;

27 (3)(A) "Direct care services" means:

28 (i) Nursing and nursing-related services;

29 (ii) Clinical, diagnostic, therapeutic, and
 30 rehabilitative services;

31 (iii) Physical, occupational, respiratory, and
 32 speech therapy services;

33 (iv) Delegated physician tasks;

34 (v) Behavioral health services;

35 (vi) Care management, care coordination, and care
 36 transition activities;

- 1 (vii) Medication administration;
- 2 (viii) Assistance with activities of daily living;
- 3 (ix) Assessment, evaluation, planning, and
- 4 implementation of care plans;
- 5 (x) Coordination and consultation with residents'
- 6 physicians and other healthcare providers; and
- 7 (xi) Other services and supports provided for
- 8 nursing facility residents in response to individual resident needs.

9 (B) "Direct care services" does not include food
 10 preparation, laundry, housekeeping, and other maintenance of a nursing
 11 facility's physical environment;

12 (4) "Direct care staff" means a person who provides any direct
 13 care services to a nursing facility resident through interpersonal contact
 14 with residents or resident care management, including without limitation:

- 15 (A) A licensed nurse;
- 16 (B) A nurse aide;
- 17 (C) A medication assistant;
- 18 (D) A physician;
- 19 (E) A physician assistant;
- 20 (F) A licensed physical or occupational therapist or
- 21 licensed therapy assistant;
- 22 (G) A registered respiratory therapist;
- 23 (H) A licensed speech-language pathologist;
- 24 (I) An infection preventionist; and
- 25 (J) Other licensed or certified healthcare professionals;

26 (5) "Federal direct care data system" means the national online
 27 data reporting system operated by the Centers for Medicare and Medicaid
 28 Services and used by nursing facilities participating in the federal Medicare
 29 program or the Arkansas Medicaid Program, or both, to electronically report
 30 detailed and standardized direct care and other staffing information;

31 (6) "Licensed nurse" means any registered nurse, licensed
 32 practical nurse, advanced practice registered nurse, or registered nurse
 33 practitioner;

34 (7) "Medicare and Medicaid requirements of participation" means
 35 the federal requirements established by the Centers for Medicare and Medicaid
 36 Services under 42 U.S.C. 1320a-7j, 42 U.S.C. 1395i-3, and 42 U.S.C. 1396r, as

1 existing on January 1, 2021, that a licensed nursing facility is required to
 2 follow to be certified as compliant with and participate in the federal
 3 Medicare program as a skilled nursing facility or the Arkansas Medicaid
 4 Program as a nursing facility, or both;

5 (8) "Medication assistant" means any medication assistive person
 6 who is qualified and certified under § 17-87-704;

7 (9) "Nurse aide" means any certified nurse aide or nurse aide in
 8 training consistent with federal and state nurse aide proficiency, training,
 9 education, and use requirements;

10 (10) "Nursing facility" means any entity licensed as a nursing
 11 facility by the department;

12 (11) "Nursing staff" means any licensed nurses, nurse aides, or
 13 medication assistants who are employed or contracted by a nursing facility;
 14 and

15 (12) "Private pay-only nursing facility" means a nursing
 16 facility licensed by the department that is not certified to participate in
 17 the federal Medicare program as a skilled nursing facility or in the Arkansas
 18 Medicaid Program as a nursing facility.

19
 20 20-10-1402. Staffing standards.

21 ~~(a) The Department of Human Services shall not issue or renew a~~
 22 ~~license of a nursing facility unless that facility employs the direct care~~
 23 ~~staff needed to provide continuous twenty-four-hour nursing care and service~~
 24 ~~to meet the needs of each resident of the nursing facility and the staffing~~
 25 ~~standards required by all state rules and federal regulations.~~

26 ~~(b)(1) Except for nursing facilities that the Office of Long-Term Care~~
 27 ~~designates or certifies as Eden Alternative nursing facilities or Green House~~
 28 ~~Project nursing facilities, the staffing standard required by this subchapter~~
 29 ~~shall be the minimum number of direct care staff required by nursing~~
 30 ~~facilities and shall be adjusted upward to meet the care needs of residents.~~

31 ~~(2)(A) The office shall promulgate staffing standards for~~
 32 ~~nursing facilities that the office designates or certifies as Eden~~
 33 ~~Alternative nursing facilities or Green House Project nursing facilities.~~

34 ~~(B) The department may develop a reimbursement methodology~~
 35 ~~or amend the reimbursement methodology in existence as of July 31, 2007, to~~
 36 ~~provide payment for staff that provides services or care to residents in the~~

1 ~~designated or certified Eden Alternative nursing facilities or Green House~~
2 ~~Project nursing facilities.~~

3 ~~(c) If a facility varies shift hours from the shift hours listed in §~~
4 ~~20 10 1401, the facility shall meet the staffing requirements for the shift~~
5 ~~listed in § 20 10 1403.~~

6 (a) As a condition of licensure by the Department of Human Services, a
7 nursing facility, except a private pay-only only nursing facility, shall:

8 (1)(A) Be certified to participate in the federal Medicare
9 program as a skilled nursing facility or in the Arkansas Medicaid Program as
10 a nursing facility, or in both.

11 (B) A certified nursing facility is subject to the
12 Medicare and Medicaid requirements of participation, including without
13 limitation federal requirements related to nursing and other direct care
14 staffing, directors of nursing, daily information posting, and staffing data
15 reporting through the federal direct care data system; and

16 (2) Provide each month direct care services by direct care staff
17 equivalent to at least three and thirty-six hundredths (3.36) Average Direct
18 Care Hours Per Resident Day.

19 (b)(1) On or before the fifteenth day of each month, a certified
20 nursing facility shall report electronically to the department the certified
21 nursing facility's actual Average Direct Care Hours Per Resident Day for the
22 prior month.

23 (2) Hours used in determining actual Average Direct Care Hours
24 Per Resident Day for each month shall be consistent with the certified
25 nursing facility's final staffing data submission to the federal direct care
26 data system for the applicable quarter and based on all direct care services
27 labor categories and all direct care staff job codes.

28 (3) When necessary to correct monthly report data following
29 quarterly data validation and based on the final staffing data reported in
30 the federal direct care data system for the applicable quarter, a certified
31 nursing facility shall promptly file an amended monthly report with the
32 department.

33 (4) In the event of a public health emergency, natural disaster,
34 other major emergency, or severe labor shortage, the department may
35 temporarily waive the Average Direct Care Hours Per Resident Day requirements
36 for any certified nursing facility or all certified nursing facilities in a

1 county or state.

2 (5) The department may audit these reports and request
3 documentation from the certified nursing facility to ensure compliance with
4 the requirements of this section.

5 (c) As a condition of licensure by the department, a private pay-only
6 nursing facility shall comply with all state requirements applicable to a
7 private pay-only nursing facility, including rules promulgated by the
8 department, and shall cooperate with the department audits, inspections, and
9 document requests.

10 (d)(1) The department shall promulgate rules as necessary to carry out
11 the provisions of this section.

12 (2) If the department promulgates rules, the rules shall:

13 (A) Apply to conditions and processes of state licensure;

14 (B) As applicable to a certified nursing facility, not
15 exceed or duplicate Medicare and Medicaid requirements of participation,
16 including staffing and data reporting requirements, except regarding Average
17 Direct Care Hours Per Resident Day requirements;

18 (C) Not require permission, waivers, or otherwise restrict
19 a nursing facility from engaging in staffing related practice permitted under
20 Medicare and Medicaid requirements of participation, including without
21 limitation:

22 (i) The engagement of services of direct care staff
23 and other personnel on a full-time or part-time basis and through employment,
24 contracting, and staffing agencies, or any combination thereof;

25 (ii) The use of fixed schedules, flex-time, rotating
26 shifts, split shifts, compressed work weeks, and other alternative staffing
27 schedules; and

28 (iii) The use of a universal worker model to assign
29 nurse aides other tasks, such as food service, laundry, and housekeeping, in
30 addition to direct care responsibilities with direct care and nondirect care
31 hours appropriately differentiated; and

32 (D) As applicable to a private pay-only nursing facility,
33 establish direct care services, staffing, and reporting requirements
34 equivalent to those applicable to a certified nursing facility under this
35 section or under Medicare and Medicaid requirements of participation.

36 (e) This section does not require or advise any specific or minimum

1 number of nursing staff hours, direct care staff hours, or hours of other
 2 services for any nursing facility resident.

3
 4 SECTION 4. Arkansas Code §§ 20-10-1403 through 20-10-1409 are
 5 repealed.

6 ~~20-10-1403. Ratio of staff to residents.~~

7 ~~(a) Except for nursing facilities that the Office of Long-Term Care~~
 8 ~~designates as Eden Alternative nursing facilities or Green House Project~~
 9 ~~nursing facilities, all nursing facilities shall maintain the following~~
 10 ~~minimum direct-care staffing to resident ratios:~~

11 ~~(1) One (1) direct-care staff to every six (6) residents for the~~
 12 ~~day shift. Of this direct-care staff, there shall be at least one (1)~~
 13 ~~licensed nurse to every forty (40) residents;~~

14 ~~(2) One (1) direct-care staff to every nine (9) residents for~~
 15 ~~the evening shift. Of this direct-care staff, there shall be at least one (1)~~
 16 ~~licensed nurse to every forty (40) residents; and~~

17 ~~(3) One (1) direct-care staff to every fourteen (14) residents~~
 18 ~~for the night shift. Of this direct-care staff, there shall be at least one~~
 19 ~~(1) licensed nurse to every eighty (80) residents.~~

20 ~~(b)(1) Licensed direct-care staff shall not be excluded from the~~
 21 ~~computation of the ratios of direct-care staff to residents while serving in~~
 22 ~~a staffing capacity that requires less education and training than is~~
 23 ~~commensurate with their professional licensure.~~

24 ~~(2) Licensed direct-care staff who serve in a staffing capacity~~
 25 ~~that requires less education and training than is commensurate with their~~
 26 ~~professional licensure shall not be restricted from providing direct-care~~
 27 ~~services within the scope of their professional licensure in order to be~~
 28 ~~included in the computation of the ratios of direct-care staff to residents.~~

29 ~~(c) Nursing facilities shall provide in-service training to their~~
 30 ~~direct-care staffs pursuant to rules promulgated by the office.~~

31 ~~(d) Upon any expansion of resident census by the facility, the~~
 32 ~~facility shall be exempt from any increase in staffing ratios for a period of~~
 33 ~~nine (9) consecutive shifts from the date of the expansion of resident~~
 34 ~~census.~~

35 ~~(e)(1) The computation of the direct-care minimum staffing ratios~~
 36 ~~shall be carried to the hundredth place.~~

1 ~~(2) If the application of the ratios listed in subsection (a) of~~
2 ~~this section results in other than a whole number of direct care staff for a~~
3 ~~shift or shifts, the number of required direct care staff shall be rounded to~~
4 ~~the next higher whole number when the resulting ratio, carried to the~~
5 ~~hundredth place, is fifty one hundredths (.51) or higher.~~

6 ~~(3) In no event shall a facility have fewer than one (1)~~
7 ~~licensed nurse per shift for direct care staff.~~

8 ~~(4) All computations shall be based on the midnight census for~~
9 ~~the day in which the shift or shifts begin.~~

10 ~~(f)(1) Facilities may vary the starting hour and the ending hour for~~
11 ~~up to twenty five percent (25%) of the minimum direct care staff of the day~~
12 ~~shift or the evening shift, or both, to meet resident care needs.~~

13 ~~(2) Before varying the starting hour and the ending hour of~~
14 ~~direct care staff of the day shift or the evening shift, the facility shall~~
15 ~~inform the office in writing of:~~

16 ~~(A) The resident care needs to be met by the change in~~
17 ~~starting and ending times of the shift;~~

18 ~~(B) The number of direct care staff to whom the changes~~
19 ~~will apply;~~

20 ~~(C) The starting hour and ending hour of the shift for the~~
21 ~~direct care staff to whom the change will apply; and~~

22 ~~(D) The length of time the variations will be used, if~~
23 ~~known.~~

24 ~~(3)(A) The facility shall receive written approval from the~~
25 ~~office before the facility may vary the starting hour and ending hour of a~~
26 ~~shift for selected direct care staff.~~

27 ~~(B) The office may deny approval upon determination that:~~

28 ~~(i) The reason for the request to vary the starting~~
29 ~~and ending time of a shift for selected direct care staff does not meet~~
30 ~~resident care needs;~~

31 ~~(ii) The facility was in a pattern of failure for~~
32 ~~any month in the three (3) months immediately preceding the request; or~~

33 ~~(iii) The variation will result in a period of more~~
34 ~~than two (2) hours in which there is less than the minimum required number of~~
35 ~~direct care staff under subsection (a) of this section.~~

36 ~~(C) The office may revoke approval to vary the starting~~

1 ~~and ending time of a shift for selected direct care staff if the office~~
 2 ~~determines that:~~

3 ~~(i) The approval has resulted in resident care needs~~
 4 ~~being unmet; or~~

5 ~~(ii) The facility is in a pattern of failure.~~

6 ~~(4) If a facility varies the starting and ending times for~~
 7 ~~direct care staff of the day shift or the evening shift, or both, the~~
 8 ~~facility shall be deemed to have met minimum staffing requirements for that~~
 9 ~~shift if the number of direct care staff whose starting and ending times are~~
 10 ~~varied and the number of direct care staff whose starting and ending times~~
 11 ~~are not varied together equal the number of direct care staff required for~~
 12 ~~the shift.~~

13
 14 ~~20-10-1404. Director of nurses.~~

15 ~~(a) In addition to the minimum direct care staffing ratios in § 20-10-~~
 16 ~~1403, each nursing facility shall employ a registered nurse to serve as~~
 17 ~~director of nurses.~~

18 ~~(b)(1) The director shall be a full-time employee and shall be~~
 19 ~~employed for no less than forty (40) hours per week.~~

20 ~~(2) An additional registered nurse shall be employed for a~~
 21 ~~minimum of sixteen (16) hours per week to ensure coverage seven (7) days a~~
 22 ~~week.~~

23
 24 ~~20-10-1405. Services provided.~~

25 ~~(a) An employee designated as a member of the direct care staff shall~~
 26 ~~not be required to provide services such as food preparation, housekeeping,~~
 27 ~~laundry, or maintenance services except as necessary to maintain a safe and~~
 28 ~~sanitary environment.~~

29 ~~(b) Persons employed to provide additional services such as food~~
 30 ~~preparation, housekeeping, laundry, or maintenance services shall not be~~
 31 ~~counted in determining the staffing ratios required by this subchapter unless~~
 32 ~~the persons are qualified to serve as and specifically scheduled in a direct-~~
 33 ~~care capacity.~~

34 ~~(c) A person employed to provide additional services shall count~~
 35 ~~toward the direct care staffing ratios only for the time in which the~~
 36 ~~facility can document that the person provides direct care services.~~

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~~20-10-1406.—Posting of personnel numbers.~~

~~(a)(1) Each nursing facility shall post daily at the beginning of each shift in a prominent place within twenty feet (20') of the main entrance of the nursing facility and in a location that is readily accessible and visible to residents and visitors the number of direct care staff on duty at each shift.~~

~~(2) The posting shall consist of a sign-in sheet signed by each staff member as the staff member reports to work, and the staff member shall indicate on the sheet the time of arrival and departure, all halls, wings, or corridors on which the staff member worked or was assigned, and the total number of hours worked.~~

~~(3) The title of the posting shall be printed in a type no smaller than 18-point type.~~

~~(4) Below the posting, the nursing facility shall post a diagram of the facility showing the location of each hall, wing, or corridor.~~

~~(b) The current number of residents shall be posted and filed with the staffing report for the same time period.~~

~~(c) These records shall be filed and saved by the nursing facility until the next survey or for eighteen (18) months, whichever is greater, and these records shall be available for review by any interested person upon a written request.~~

~~20-10-1407.—Report.~~

~~(a)(1) By the fifth day of each month, each nursing facility shall submit a written report of all shifts which failed to meet the minimum staffing requirements of this subchapter during the preceding month to the Office of Long-Term Care.~~

~~(2) Upon determination by the office that a pattern of failure to comply with the provisions of this subchapter has occurred, the nursing facility shall submit to the office on a monthly basis a report stating the ratios of direct care staff to residents for each shift, in addition to the requirements set forth in subdivision (a)(1) of this section.~~

~~(3) Each nursing facility also shall submit copies of all daily staffing logs for the same months for any reports required under subdivision (a)(1) or subsection (b) of this section.~~

1 ~~(b) The failure of a direct care staff member or members to sign the~~
 2 ~~posted sign in sheet in accordance with § 20-10-1406 shall not be considered~~
 3 ~~a violation of the staff resident ratios set forth in § 20-10-1403 if the~~
 4 ~~facility has other documentation that the staff member or members provided~~
 5 ~~direct care services for the dates and times stated by the facility.~~

6 ~~(c) The failure to meet the requirement regarding the posting of~~
 7 ~~current staff resident ratios set forth in § 20-10-1406 or the failure to~~
 8 ~~provide staffing reports, logs, or other documentation directly related to~~
 9 ~~minimum staffing standards to the office or the Division of Medical Services~~
 10 ~~of the Department of Human Services is a Class C violation in accordance with~~
 11 ~~§ 20-10-205.~~

12 ~~(d) "Pattern of failure" means that a facility did not meet the~~
 13 ~~minimum staffing requirements of this subchapter for more than twenty percent~~
 14 ~~(20%) of the total number of shifts for any one (1) month.~~

15 ~~(e)(1) The division may perform staffing audits, including random~~
 16 ~~staffing audits, of nursing facilities to determine and ensure compliance~~
 17 ~~with the requirements of this subchapter.~~

18 ~~(2) Facilities shall provide staffing reports, logs, or other~~
 19 ~~documentation upon request of the division.~~

20
 21 ~~20-10-1408. Penalties.~~

22 ~~(a) Upon a determination of a pattern of failure of a facility by the~~
 23 ~~Office of Long Term Care, the following penalties shall be applied to the~~
 24 ~~facility:~~

25 ~~(1) When the pattern of failure is more than twenty percent~~
 26 ~~(20%) but less than twenty five percent (25%) of the total number of shifts~~
 27 ~~for any one (1) month, the facility shall be assessed a fine of two thousand~~
 28 ~~five hundred dollars (\$2,500);~~

29 ~~(2) When the pattern of failure is twenty five percent (25%) or~~
 30 ~~higher but less than thirty percent (30%) of the total number of shifts for~~
 31 ~~any one (1) month, the facility:~~

32 ~~(A) Shall be assessed a fine of five thousand dollars~~
 33 ~~(\$5,000); and~~

34 ~~(B)(i) Shall be prohibited from admitting new residents~~
 35 ~~for a period of at least two (2) weeks beginning the next business day after~~
 36 ~~notification by the office to the facility of the pattern of failure and~~

1 continuing until the next business day after the facility submits a report
2 establishing that the facility was not in a pattern of failure for the time
3 during which the facility was prohibited from admitting new residents.

4 (ii) If the office subsequently determines that the
5 facility did not meet the minimum staffing standards requirements as alleged
6 in the report from the facility, the office shall prohibit the facility from
7 admitting new residents for a period of at least two (2) weeks, and
8 continuing until the next business day after the facility submits a new
9 report establishing that the facility was not in a pattern of failure for the
10 time in which the facility was prohibited from admitting new residents;

11 (3) When the pattern of failure is thirty percent (30%) or
12 higher of the total number of shifts for any one (1) month in a three-month
13 reporting period, the facility:

14 (A) Shall be assessed a fine of seven thousand five
15 hundred dollars (\$7,500); and

16 (B)(i) Shall be prohibited from admitting new residents
17 for a period of at least two (2) weeks beginning the next business day after
18 notification by the office to the facility of the pattern of failure and
19 continuing until the next business day after the facility submits a report
20 establishing that the facility was not in a pattern of failure for the time
21 during which the facility was prohibited from admitting new residents.

22 (ii) If the office subsequently determines that the
23 facility did not meet the minimum staffing standards requirements as alleged
24 in the report from the facility, the office shall prohibit the facility from
25 admitting new residents for a period of at least two (2) weeks and continuing
26 until the next business day after the facility submits a new report
27 establishing that the facility was not in a pattern of failure for the time
28 in which the facility was prohibited from admitting new residents; and

29 (4) If after five (5) days' notice from the office of the
30 imposition of a denial of new admissions, a facility admits new residents
31 during a period in which the facility is prohibited from admitting new
32 residents, the facility shall be assessed a fine of twenty five thousand
33 dollars (\$25,000) per new resident admitted.

34 (b) The penalties stated in this subchapter are supplemental to any
35 provisions in state or federal laws, rules, or regulations.

36 (c) Appeals from the imposition of any remedy imposed under this

1 ~~subchapter shall be made pursuant to § 20-10-208.~~

2 ~~(d)(1) When residents are relocated from facilities due to natural~~
3 ~~disaster or as a result of state or federal action, the Department of Human~~
4 ~~Services may waive some or all of the provisions of §§ 20-10-1403 and 20-10-~~
5 ~~1404 for facilities to which the residents are relocated.~~

6 ~~(2) Any waiver shall be limited to no more than three (3) months~~
7 ~~from the date of transfer.~~

8
9 ~~20-10-1409. Staffing standards—Definition.~~

10 ~~(a) The staffing standards as set forth in § 20-10-1403 are to be~~
11 ~~construed as nursing facility staffing standards above the 1989 standards~~
12 ~~established by the Office of Long-Term Care.~~

13 ~~(b)(1) If the Secretary of the Department of Human Services determines~~
14 ~~that the reimbursement methodology or available funding is insufficient or~~
15 ~~unable to pay for the minimum staffing standards under § 20-10-1403, the~~
16 ~~office, by rule, may modify the requirements of § 20-10-1403 to ensure~~
17 ~~minimum staffing funds.~~

18 ~~(2) If the Director of the Office of Long-Term Care determines~~
19 ~~that the minimum staffing standards under § 20-10-1403 or § 20-10-1404 have~~
20 ~~become insufficient at any time to ensure the health, safety, or welfare of~~
21 ~~nursing facility residents, by rule, the office may increase minimum staffing~~
22 ~~standards or otherwise promulgate rules to ensure the health, safety, or~~
23 ~~welfare of the nursing facility residents.~~

24 ~~(c)(1)(A) If the Director of the Office of Long-Term Care determines~~
25 ~~that minimum staffing standards should be increased pursuant to subdivision~~
26 ~~(b)(2) of this section, the Director of the Office of Long-Term Care shall~~
27 ~~certify the determination and any proposed regulatory increases to minimum~~
28 ~~staffing standards to the Director of the Division of Medical Services, who~~
29 ~~shall notify the Secretary of the Department of Human Services and the~~
30 ~~Legislative Council of the determination and whether sufficient appropriated~~
31 ~~funds exist to fund the costs to be incurred by the proposed changes to the~~
32 ~~minimum staffing standards.~~

33 ~~(B) As used in this subsection, “costs” means direct-care~~
34 ~~costs as defined in the Centers for Medicare & Medicaid Services Provider~~
35 ~~Reimbursement Manual as in effect January 12, 2001.~~

36 ~~(2) In no event shall minimum staffing standards be increased~~

1 ~~unless sufficient appropriated funds exist to fund the costs to be incurred~~
2 ~~by the proposed increases to minimum staffing standards.~~

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5 **APPROVED: 4/14/21**
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