

SB3897



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3897

Introduced 1/21/2022, by Sen. Laura Fine

SYNOPSIS AS INTRODUCED:

210 ILCS 45/3-202.05

Amends the Nursing Home Care Act. Provides that, for the purpose of computing staff to resident ratios, direct care staff shall include resident attendants.

LRB102 23986 CPF 33192 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Nursing Home Care Act is amended by
5 changing Section 3-202.05 as follows:

6 (210 ILCS 45/3-202.05)

7 Sec. 3-202.05. Staffing ratios effective July 1, 2010 and
8 thereafter.

9 (a) For the purpose of computing staff to resident ratios,
10 direct care staff shall include:

- 11 (1) registered nurses;
- 12 (2) licensed practical nurses;
- 13 (3) certified nurse assistants;
- 14 (4) psychiatric services rehabilitation aides;
- 15 (5) rehabilitation and therapy aides;
- 16 (6) psychiatric services rehabilitation coordinators;
- 17 (7) assistant directors of nursing;
- 18 (8) 50% of the Director of Nurses' time; ~~and~~
- 19 (9) 30% of the Social Services Directors' time; and
- 20 (10) resident attendants.

21 The Department shall, by rule, allow certain facilities
22 subject to 77 Ill. Admin. Code 300.4000 and following (Subpart
23 S) to utilize specialized clinical staff, as defined in rules,

1 to count towards the staffing ratios.

2 Within 120 days of the effective date of this amendatory
3 Act of the 97th General Assembly, the Department shall
4 promulgate rules specific to the staffing requirements for
5 facilities federally defined as Institutions for Mental
6 Disease. These rules shall recognize the unique nature of
7 individuals with chronic mental health conditions, shall
8 include minimum requirements for specialized clinical staff,
9 including clinical social workers, psychiatrists,
10 psychologists, and direct care staff set forth in paragraphs
11 (4) through (6) and any other specialized staff which may be
12 utilized and deemed necessary to count toward staffing ratios.

13 Within 120 days of the effective date of this amendatory
14 Act of the 97th General Assembly, the Department shall
15 promulgate rules specific to the staffing requirements for
16 facilities licensed under the Specialized Mental Health
17 Rehabilitation Act of 2013. These rules shall recognize the
18 unique nature of individuals with chronic mental health
19 conditions, shall include minimum requirements for specialized
20 clinical staff, including clinical social workers,
21 psychiatrists, psychologists, and direct care staff set forth
22 in paragraphs (4) through (6) and any other specialized staff
23 which may be utilized and deemed necessary to count toward
24 staffing ratios.

25 (b) (Blank).

26 (b-5) For purposes of the minimum staffing ratios in this

1 Section, all residents shall be classified as requiring either
2 skilled care or intermediate care.

3 As used in this subsection:

4 "Intermediate care" means basic nursing care and other
5 restorative services under periodic medical direction.

6 "Skilled care" means skilled nursing care, continuous
7 skilled nursing observations, restorative nursing, and other
8 services under professional direction with frequent medical
9 supervision.

10 (c) Facilities shall notify the Department within 60 days
11 after the effective date of this amendatory Act of the 96th
12 General Assembly, in a form and manner prescribed by the
13 Department, of the staffing ratios in effect on the effective
14 date of this amendatory Act of the 96th General Assembly for
15 both intermediate and skilled care and the number of residents
16 receiving each level of care.

17 (d) (1) (Blank).

18 (2) (Blank).

19 (3) (Blank).

20 (4) (Blank).

21 (5) Effective January 1, 2014, the minimum staffing ratios
22 shall be increased to 3.8 hours of nursing and personal care
23 each day for a resident needing skilled care and 2.5 hours of
24 nursing and personal care each day for a resident needing
25 intermediate care.

26 (e) Ninety days after the effective date of this

1 amendatory Act of the 97th General Assembly, a minimum of 25%
2 of nursing and personal care time shall be provided by
3 licensed nurses, with at least 10% of nursing and personal
4 care time provided by registered nurses. These minimum
5 requirements shall remain in effect until an acuity based
6 registered nurse requirement is promulgated by rule concurrent
7 with the adoption of the Resource Utilization Group
8 classification-based payment methodology, as provided in
9 Section 5-5.2 of the Illinois Public Aid Code. Registered
10 nurses and licensed practical nurses employed by a facility in
11 excess of these requirements may be used to satisfy the
12 remaining 75% of the nursing and personal care time
13 requirements. Notwithstanding this subsection, no staffing
14 requirement in statute in effect on the effective date of this
15 amendatory Act of the 97th General Assembly shall be reduced
16 on account of this subsection.

17 (f) The Department shall submit proposed rules for
18 adoption by January 1, 2020 establishing a system for
19 determining compliance with minimum staffing set forth in this
20 Section and the requirements of 77 Ill. Adm. Code 300.1230
21 adjusted for any waivers granted under Section 3-303.1.
22 Compliance shall be determined quarterly by comparing the
23 number of hours provided per resident per day using the
24 Centers for Medicare and Medicaid Services' payroll-based
25 journal and the facility's daily census, broken down by
26 intermediate and skilled care as self-reported by the facility

1 to the Department on a quarterly basis. The Department shall
2 use the quarterly payroll-based journal and the self-reported
3 census to calculate the number of hours provided per resident
4 per day and compare this ratio to the minimum staffing
5 standards required under this Section, as impacted by any
6 waivers granted under Section 3-303.1. Discrepancies between
7 job titles contained in this Section and the payroll-based
8 journal shall be addressed by rule. The manner in which the
9 Department requests payroll-based journal information to be
10 submitted shall align with the federal Centers for Medicare
11 and Medicaid Services' requirements that allow providers to
12 submit the quarterly data in an aggregate manner.

13 (g) The Department shall submit proposed rules for
14 adoption by January 1, 2020 establishing monetary penalties
15 for facilities not in compliance with minimum staffing
16 standards under this Section. No monetary penalty may be
17 issued for noncompliance during the implementation period,
18 which shall be July 1, 2020 through December 31, 2021. If a
19 facility is found to be noncompliant during the implementation
20 period, the Department shall provide a written notice
21 identifying the staffing deficiencies and require the facility
22 to provide a sufficiently detailed correction plan to meet the
23 statutory minimum staffing levels. Monetary penalties shall be
24 imposed beginning no later than January 1, 2022 and quarterly
25 thereafter and shall be based on the latest quarter for which
26 the Department has data. Monetary penalties shall be

1 established based on a formula that calculates on a daily
2 basis the cost of wages and benefits for the missing staffing
3 hours. All notices of noncompliance shall include the
4 computations used to determine noncompliance and establishing
5 the variance between minimum staffing ratios and the
6 Department's computations. The penalty for the first offense
7 shall be 125% of the cost of wages and benefits for the missing
8 staffing hours. The penalty shall increase to 150% of the cost
9 of wages and benefits for the missing staffing hours for the
10 second offense and 200% the cost of wages and benefits for the
11 missing staffing hours for the third and all subsequent
12 offenses. The penalty shall be imposed regardless of whether
13 the facility has committed other violations of this Act during
14 the same period that the staffing offense occurred. The
15 penalty may not be waived, but the Department shall have the
16 discretion to determine the gravity of the violation in
17 situations where there is no more than a 10% deviation from the
18 staffing requirements and make appropriate adjustments to the
19 penalty. The Department is granted discretion to waive the
20 penalty when unforeseen circumstances have occurred that
21 resulted in call-offs of scheduled staff. This provision shall
22 be applied no more than 6 times per quarter. Nothing in this
23 Section diminishes a facility's right to appeal.

24 (Source: P.A. 101-10, eff. 6-5-19; 102-16, eff. 6-17-21.)