

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 499) of Marc R. Pacheco and Susanna Segat for legislation to require nursing home corporations operating within the Commonwealth to maintain safe staffing levels. Health Care.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Nine.

AN ACT TO REQUIRE NURSING HOME CORPORATIONS OPERATING WITHIN THE COMMONWEALTH TO MAINTAIN SAFE STAFFING LEVELS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 111 is further amended by adding the following
2 section:—

3 Section 25K. The Department of Public Health shall not issue
4 or renew a license of a long-term care facility unless that facility
5 employs sufficient nursing personnel in order to provide contin-
6 uous twenty-four hour nursing care and service sufficient to meet
7 the needs of each resident in the nursing facility.

8 In order to provide such care, a long-term nursing facility shall
9 maintain a ratio of nursing staff to residents of at least:

- 10 Day Shift: 1 CNA to 6 residents
- 11 Evening Shift: 1 CNA to 10 residents
- 12 Night Shift: 1 CNA to 15 residents
- 13 Day Shift: 1 licensed nurse (R.N. or L.P.N.) to 15 residents
- 14 Evening Shift: 1 licensed nurse to 25 residents
- 15 Night Shift: 1 licensed nurse to 35 residents

16 (1) A day shift is defined as being eight (8) hours in length,
17 commencing between 6:00 a.m. and 8:00 a.m., and an afternoon
18 shift is defined as being eight (8) hours in length, commencing
19 between 2:00 p.m. and 4:00 p.m., and a night shift is defined as
20 being eight (8) hours in length, commencing between 10:00 p.m.
21 and midnight.

22 (2) Only certified nurse aides and licensed nurses who are
23 employed as direct care givers shall be counted in determining the
24 above ratios. No employee who provides services such as food
25 preparation, housekeeping, laundry, or maintenance services shall
26 be counted in determining the above ratios.

27 (3) The Department of Public Health shall impose a civil mone-
28 tary penalty upon any facility that fails to meet the staffing
29 requirements set forth in this section. The penalty shall be
30 imposed for each day on which the failure occurs. Penalties in the
31 range of \$3,050 to \$10,000 per day shall be imposed for deficien-
32 cies in staffing which constitute immediate jeopardy to resident
33 health or safety and for repeat deficiencies when a monetary
34 penalty has been previously imposed. Penalties in the range of
35 \$50 to \$3,000 per day shall be imposed for deficiencies in staffing
36 which do not constitute immediate jeopardy to resident health or
37 safety.

38 In addition to the penalty set forth above in this section, in any
39 action brought by or on behalf of a resident of a long-term care
40 facility, his/her heirs, and/or assigns, for negligent infliction of
41 harm or lack of adequate care, it shall be established that a failure
42 to meet the staffing requirements set forth above was in contribu-
43 tory cause of any injury sustained by a resident.

44 (4) Public Right to Staffing Information. A long-term care
45 facility shall post for each unit or floor and each shift the current
46 number of licensed and CNA nursing staff directly responsible for
47 resident care and the current ratios of residents to staff, which
48 show separately the number of residents to licensed nursing staff
49 and the number of residents to unlicensed nursing staff. In addi-
50 tion, such information shall be posted for the most recently con-
51 cluded cost reporting period in the form of average daily staffing
52 ratios for that period. This information must be posted in a manner
53 which is visible and accessible to all residents, their families,
54 caregivers, and potential consumers in each facility.

55 (5) Nursing Facility Whistle-Blower Provisions. Long-term
56 facility employees have the right to communicate deficiencies to
57 local, state, or federal authorities. Protected communications to
58 authorities include communication of alleged violation of laws
59 and regulations regarding the health and safety of residents or
60 communication of alleged fraud or misrepresentation regarding
61 such laws and regulations.

62 (6) No long-term care facility may retaliate or take any adverse
63 action against any employee who makes a protected communica-
64 tion. A long-term care facility that violates this section is subject
65 to a civil penalty up to \$25,000 for each violation or up to
66 \$100,000 for each violation if a pattern of such violations exists
67 within a five-year period. An employee whose rights under this
68 section are violated by a long-term care facility may bring suit
69 against such facility for compensatory and other damages, if any.

70 (7) In addition, no long-care facility may use public health care
71 funds to dissuade an employee from participating in an employee
72 organization. However, this provision does not apply to the costs
73 of attorneys or consultants assisting in collective bargaining with
74 a union or other employee organization.

