

1 **H. B. 2142**

2
3 (By Delegates Hatfield and Perdue)

4 [Introduced January 12, 2011; referred to the
5 Committee on Health and Human Resources then Finance.]

6 **FISCAL**
7 **NOTE**

8
9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto seven new sections, designated §16-5C-21,
12 §16-5C-22, §16-5C-23, §16-5C-24, §16-5C-25, §16-5C-26 and
13 §16-5C-27, all relating to nursing homes; requiring adequate
14 staffing, specifying certain staff to resident ratios;
15 providing enforcement provisions; including civil penalties;
16 requiring a study committee; providing enhanced training
17 requirements for nurse aides; and providing a grant program
18 for projects aimed at reducing employee turnover in nursing
19 homes.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto seven new sections, designated §16-5C-21,
23 §16-5C-22, §16-5C-23, §16-5C-24, §16-5C-25, §16-5C-26 and
24 §16-5C-27, all to read as follows:

1 **ARTICLE 5C. NURSING HOMES.**

2 **§16-5C-21. Legislative findings.**

3 The Legislature finds and declares:

4 (1) There is a large and growing population of senior and
5 disabled persons who require nursing facility care;

6 (2) Significant staffing resources are necessary to provide
7 quality care to our senior citizens and people with disabilities
8 who reside in nursing homes;

9 (3) Nursing homes which receive public money should be
10 required to provide at all times staffing resources to meet the
11 minimum levels necessary to provide quality care to each resident;
12 and

13 (4) Nursing homes which receive public money have a
14 responsibility to report to residents, their families and to the
15 taxpayers of the state, the staffing levels that they provide for
16 the residents in their care.

17 **§16-5C-22. Definitions and scope.**

18 (a) For purposes of sections twenty-one through twenty-seven
19 of this article:

20 (1) "Licensed personnel" means registered professional nurses
21 and licensed practical nurses.

22 (2) "Direct caregivers" means certified nurse assistants,
23 licensed practical nurses and registered professional nurses.

24 (b) The minimum standards and ratios provided in section

1 twenty-three of this article apply to all residents, regardless of
2 their payment source. No waiver of these standards is allowed.

3 (4) A registered professional nurse as nursing supervisor on
4 duty at all times twenty-four hours per day, seven days per week.

5 (c) A long-term care facility shall maintain a ratio of
6 licensed personnel to residents of no less than:

7 (1) One to fifteen during the morning shift;

8 (2) One to twenty during the afternoon shift; and

9 (3) One to thirty during the night-time shift.

10 (d) A long-term facility shall maintain a ratio of direct
11 caregivers to residents of no less than:

12 (1) One to five during the morning shift;

13 (2) One to ten during the afternoon shift; and

14 (3) One to fifteen during the night-time shift.

15 (e) An employee designated as a member of the nursing staff
16 may not provide services which include food preparation,
17 housekeeping, laundry or maintenance services. A person employed
18 to provide services which include food preparation, housekeeping,
19 laundry or maintenance services may not provide nursing care to
20 residents and may not be counted in determining ratios pursuant to
21 subsection (c) of this section.

22 (f) The ratios outlined in this section are minimum standards
23 only. Nursing homes shall employ additional staff if needed to
24 ensure quality resident care.

1 **§16-5C-23. Study committee.**

2 (a) Beginning July 1, 2011, and every five years after that,
3 the Joint Committee on Government and Finance shall appoint a
4 committee that shall at a minimum, include consumers or their
5 advocates, or both, workers or their representatives, or both, and
6 providers. The committee shall conduct a study to assess whether
7 the staffing ratios and standards outlined in this article are
8 sufficient to meet residents' needs. If the staffing ratios and
9 standards are insufficient, the committee shall make
10 recommendations to the Joint Committee on Government and Finance on
11 how the ratios should be adjusted.

12 (b) The committee shall contract with experts in the field of
13 nurse staffing research and long-term care to recommend a
14 methodology for determining appropriate levels of staffing based on
15 acuity. Nursing homes are required to adjust caregiver to resident
16 ratios upwards, according to this methodology in order to meet the
17 needs of residents with higher acuity levels or those requiring
18 rehabilitation.

19 **§16-5C-24. Disclosure; public right to staffing information.**

20 (a) A nursing home shall post for each wing or floor, or both,
21 of the facility and for each shift the current number of licensed
22 and unlicensed nursing staff directly responsible for resident care
23 and the current ratios of residents to staff, which show separately
24 the number of residents to licensed nursing staff and the number of

1 residents to direct caregivers. This information shall be
2 displayed on a form supplied by the director.

3 (b) The information shall be posted for the most recently
4 concluded cost reporting period in the form of average daily
5 staffing ratios for that period. This information must be posted
6 in a manner visible and accessible to all residents, their
7 families, caregivers and potential consumers in each facility. A
8 poster provided by the director which will describe the minimum
9 staffing standards and ratios shall be posted in the same vicinity.

10 **§16-5C-25. Enforcement; civil penalties.**

11 (a) The director shall impose a civil monetary penalty upon
12 any facility that fails to meet the staffing requirements of this
13 article. The penalty shall be imposed for each day on which the
14 failure occurs.

15 (b) The amount of the penalty shall be determined as follows:

16 (1) Penalties from \$3,050 to \$10,000 per day shall be imposed
17 for deficiencies in staffing which constitute immediate jeopardy to
18 resident health or safety and for repeat deficiencies when a
19 monetary penalty has been previously imposed.

20 (2) Penalties from \$50 to \$3,000 per day shall be imposed for
21 deficiencies in staffing which do not constitute immediate jeopardy
22 to resident health or safety.

23 (c) In addition to the penalty set forth in subsections (a)
24 and (b) of this section, in any action brought by or on behalf of

1 a resident of the facility, his or her heirs or assigns, for
2 intentional or negligent infliction of harm or lack of adequate
3 care, it shall be established that a failure to meet the staffing
4 requirements of this article was a contributory cause of any injury
5 sustained by the resident.

6 (d) The director shall impose a civil monetary penalty upon
7 any facility that fails to meet the posting requirements in section
8 twenty-four of this article. The penalty is \$1,000 for each day
9 the facility failed to meet fully the posting requirements.

10 (e) All civil penalties collected by the director shall be
11 deposited in the State Treasury to the credit of the General Fund.

12 **§16-5C-26. Nurse aide training requirements.**

13 (a) The Legislature finds:

14 (1) Federal regulations established by the Omnibus Budget and
15 Reconciliation Act of 1987 require that certified nurse aides in
16 nursing homes complete a minimum of seventy-five hours of training.
17 Since 1987, the nursing home population has changed dramatically.
18 Residents now have much higher acuity levels than in the past and
19 many more have dementia. As a result, the job responsibilities of
20 certified nurse aides are increasingly complex. Experts agree the
21 training requirements are not sufficient to prepare certified nurse
22 aides to serve this changed population. Many states have
23 instituted training requirements for certified nurse more stringent
24 than the federal seventy-five hour requirement.

1 (2) In addition to inadequate training for the direct care
2 workforce, astronomically high employee turnover rates jeopardize
3 the quality of care for nursing home residents. According to a
4 recently published survey conducted for the American Health Care
5 Association, the average annualized turnover rate for certified
6 nurse aides in West Virginia nursing homes is nearly seventy-eight
7 percent, higher than the national average of seventy-six percent.

8 (3) To protect West Virginia residents, the state should
9 increase the amount of training required, improve the training
10 curriculum, and establish a competitive grant program to encourage
11 innovative programs to reduce turnover.

12 (b) (1) The Secretary of the Department of Health and Human
13 Resources shall increase the amount of training required for
14 certified nurse aides to one hundred sixty hours of training. This
15 amount shall include seventy-five hours of classroom training and
16 eighty-five hours of supervised practical training.

17 (2) To improve the quality of instruction, approved training
18 for certified nurse aides, the secretary shall require a ratio of
19 no more than twenty-four students to one registered nurse
20 instructor for classroom training, and eight students to one
21 licensed nurse for supervised practical training.

22 (3) The secretary shall modify curriculum requirements for
23 state approved nurse aide training programs to include more focus
24 on:

1 (A) Technical skills needed to prevent malnutrition and
2 dehydration;

3 (B) Social skills necessary to prevent abuse such as conflict
4 resolution;

5 (C) Stress management and diversity training; and

6 (D) More thorough training on skills needed to address the
7 unique needs of individuals with dementia.

8 (4) The secretary shall, in addition to the one hundred sixty
9 hours of training required for certification, require all first
10 time certified nurse aides to undergo a one-week orientation with
11 a mentor. During the orientation, the certified nurse aide may not
12 have unsupervised contact with residents. Certified nurse aides
13 who have been in good standing for a minimum of three years are
14 qualified to be designated as mentors.

15 **§16-5C-27. Grants for employee retention programs.**

16 (a) The secretary shall establish, from funds appropriated for
17 the program or other available funds, a competitive grant program
18 to assist in reducing employee turnover in nursing homes. The
19 program shall, at a minimum provide:

20 (1) The award of grants to partnerships for two-year periods;

21 (2) The grants may be used to:

22 (A) Establish labor management committees;

23 (B) Establish specialized training programs above and beyond
24 the one hundred and sixty hour requirement;

1 (C) Provide wage increases for certified nurse aides who serve
2 as mentors;

3 (D) Establish career ladder programs;

4 (E) Improve workplace safety; or

5 (F) To assist in implementing other initiatives to reduce
6 turnover and improve resident care, as approved by the secretary.

7 (b) (1) The secretary shall appoint a volunteer advisory
8 council to review applications and make recommendations to the
9 secretary as to which should be funded. At a minimum the council
10 shall be composed of individuals appointed to represent:

11 (A) Nursing facility management;

12 (B) Consumer interests;

13 (C) Worker interests; and

14 (D) Nonprofit or public organizations specializing in
15 workforce development.

16 (2) A majority of the representatives on the council must be
17 individuals representing nonmanagement interests.

18 (3) For purposes of this section an individual representing:

19 (A) Consumer interests may include the ombudsman responsible
20 for the region, a family council representative or other individual
21 approved by the residents as representing their interests; and

22 (B) Worker interests is the collective bargaining agent or
23 other democratically elected representative of the direct care
24 workforce.

1 (c) (1) To be eligible to receive a grant, a partnership shall
2 submit an application in the manner prescribed by the secretary.

3 (2) The application must illustrate that the proposal has been
4 developed in consultation with and approved by nursing facility
5 management, consumer and worker representatives in the facility or
6 facilities it is intended to be implemented.

7 (3) Applications submitted by unionized nursing facilities
8 must submit a letter of support from the collective bargaining
9 agent for that facility.

10 (4) Eligible partnerships include nursing facilities, labor
11 organizations or joint efforts of both entities. Partnerships may
12 cover more than one facility if the eligibility requirements are
13 met for each facility.

14 (5) Each eligible entity that is awarded a grant shall submit
15 a mid-term report after one year of the grant cycle and a final
16 report within thirty days of the completion of the grant cycle to
17 the secretary and the advisory council.

NOTE: The purpose of this bill is to provide for the adequate staffing of nursing homes and training of nursing home staff.

These sections are new; therefore, they have been completely underscored.