



SPONSOR: Sen. Marshall & Rep. DiPinto &
Sen. Blevins & Rep. Maier

DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 135

AS AMENDED BY

SENATE AMENDMENT NO. 5

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO RESIDENTIAL HEALTH FACILITIES
AND CERTIFIED NURSING ASSISTANT TRAINING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 11, Title 16, Delaware Code, by redesignating Subchapter VI as Subchapter VII.

Section 2. Amend Section 1161(e), Title 16, Delaware Code, by deleting that subsection in its entirety and substituting in lieu thereof, a new subsection "(e)" to read as follows:

"(e) 'Nursing services direct caregivers' shall mean certified nursing assistants, licensed practical nurses, registered nurses, advanced practice nurses, and nursing supervisors when and only when providing direct care of residential health facility residents. The director of nursing ("DON"), assistant director of nursing ("ADON"), and/or registered nurse assessment coordinator ("RNAC") may be designated as a nursing services direct caregiver, and counted in the direct care hours and minimum staffing ratios, when exigent circumstances require that they discontinue their administrative and managerial duties in order to provide direct care. Within 24 hours of the exigent circumstance(s) that require that the DON, ADON, and/or RNAC provide direct care, the facility shall notify the Division, in writing, of this emergency situation and provide documentation of the amount of direct care time that was provided by the DON, ADON, and/or RNAC."

Section 3. Amend Section 1161(f), Title 16, Delaware Code, by deleting subsection (f) in its entirety and by substituting in lieu thereof, a new subsection "(f)" to read as follows:

"(f) 'Nursing supervisor' shall mean an advanced practice nurse or registered nurse who is assigned to supervise and evaluate nursing services direct caregivers, no less than 25% of the nursing supervisor's time per shift. Up to 75% of the nursing supervisor's time per shift may be spent providing direct care. Registered nurses (RN) holding the following

positions may provide the supervision required of a nursing supervisor, and the supervision may be counted towards the minimum 25% supervision required per shift:

- (1) Director of Nursing ("DON").
- (2) Assistant Director of Nursing ("ADON").
- (3) Registered Nurse Assessment Coordinator ("RNAC").
- (4) Director of In-Service Education (RN).
- (5) Quality Improvement Coordinator Nurse (if an RN).
- (6) Nursing Home Administrator (if an RN).

An individual serving as a nursing supervisor must be an employee of the facility, thus excluding temporary employment agency personnel from serving in this capacity unless exigent circumstances exist. The term 'exigent circumstances' means a short-term emergency or other unavoidable situation, and all reasonable alternatives to the use of a temporary employee as a nursing supervisor have been exhausted. Within 24 hours of the exigent circumstances that require the use of temporary employment agency staffing to fill a nursing supervisor position in a residential health facility, the facility shall notify the Division, in writing, of the exigent circumstances and the expected duration. For any shift that exceeds the minimum RN/LPN shift ratio mandated by Section 1162, the amount of RN time that exceeds the minimum ratio may be counted towards the minimum 25% supervision required for that shift, provided, however, that said RN time was dedicated to supervisory functions. For those facilities that are not required by state or federal regulations to have a registered nurse on duty on each shift, a licensed practical nurse with 3 years long-term care experience may serve as a nursing supervisor, provided that no registered nurse is on duty. There shall be a nursing supervisor on duty and on-site at all times. By May 1, 2002, the Nursing Home Residents Quality Assurance Commission shall issue to the Governor and to the General Assembly a report evaluating the requirement that nursing supervisors spend a minimum of 25% of their time on supervisory functions. The purpose of the report is to determine if the required minimum amount of supervision time is appropriate and necessary, and whether it should be adjusted."

Section 4. Amend Section 1161, Title 16, Delaware Code, by inserting therein a new subsection (g), to read as follows:

"(g) 'Direct care' shall mean an activity performed by a nursing services direct caregiver that is specific to a resident.

Direct care activities are as follows:

- (1) 'hands-on' treatment or care, including, but not limited to, assistance with activities of daily living (e.g., bathing, dressing, eating, range of motion, toileting, transferring, and ambulation); medical treatments; and medication administration;

- (2) physical and psychosocial assessments;
- (3) documentation if conducted for treatment or care purposes;
- (4) care planning; and
- (5) communication with a family member or a health care professional or entity, regarding a specific resident."

Section 5. Amend subsections (b), (c), and (e), of §1162, Title 16, Delaware Code, by substituting "CNA" for "C.N.A." wherever it appears in those subsections and further by deleting the phrase "(or other direct caregivers)" after "CNA" in the heading for the CNA as found in all three staffing grids in subsections, (b), (c), and (e) of §1162, and by substituting in lieu thereof, the phrase "(or RN/LPN or NAIT serving as a CNA)".

Section 6. Amend Section 1162(c), Title 16, Delaware Code, by deleting the sentence beginning with the phrase, "Based on this information, the Commission will determine" and substituting in lieu thereof, a new sentence to read as follows:

"Based on this information, the Commission will determine if increasing the minimum nurse staffing levels to 3.28 hours of direct care with the corresponding increased required shift ratios is appropriate and necessary."

Section 7. Amend Section 1162(d), Title 16, Delaware Code, by deleting the sentence beginning with the phrase, "Based on this information, the Commission will determine" and by substituting in lieu thereof, a new sentence to read as follows:

"Based on this information, the Commission will determine if increasing the minimum nurse staffing levels to 3.67 hours of direct care with the corresponding increased required shift ratios is appropriate and necessary."

Section 8. Amend Section 1162, Title 16, Delaware Code, by deleting subsection (h) in its entirety and by redesignating subsections (f) through (m), as subsections (g) through (m), accordingly and further by inserting a new subsection "(f)" to read as follows:

"(f) An individual in a facility sponsored training program who has completed all but the final 37.5 hours of requisite classroom and clinical training to become a CNA may be counted in the direct care hours and minimum staffing shift ratios under the CNA staffing requirements given in subsections (b), (c), and (e) of this section. The individual shall be referred to as a Nursing Assistant in Training (NAIT). The Division of Long Term Care Residents Protection (Division) shall conduct a study of the Certified Nursing Assistant training programs in Delaware, both those sponsored by facilities and those sponsored by educational institutions. It shall report its findings to the Nursing Home Quality Residents Assurance Commission (Commission). The factors to be studied include, but are not limited to, the percentage of each training program's graduates who passed the Certified Nursing Assistant certification test and the number of attempts it took each graduate to become certified, along with the total number of hours, divided by classroom and clinical time, spent in the

overall Certified Nursing Assistant training program. The study shall encompass a period of six months commencing with the promulgation of the Certified Nursing Assistant regulations. The report shall be issued no later than two months after the completion of the study period. Based on the results of its study, the Division shall recommend to the Commission whether a Nursing Assistant while in training and prior to certification should be counted as a CNA in the minimum staffing ratios, and, if so, at what point in the training program."

Section 9. Amend Section 1162(h), Title 16, Delaware Code, by deleting the word "Finance" and by substituting in lieu thereof, the word "Financing".

Section 10. Amend Section 1162, Title 16, Delaware Code, by deleting in the newly designated subsection (i), the phrase "(b)-(f)" and by substituting in lieu thereof, the phrase "(b)-(h)", and further by deleting the phrase "who has not worked in Delaware within the previous three months as a director of nursing" as found following the phrase "After July 1, 2001, any newly hired director of nursing" and before the phrase "shall be an advanced practice nurse".

Section 11. Amend Section 1162(j), Title 16, Delaware Code, by deleting the language after "supervisory and administrative nursing staff," and by substituting in lieu thereof the following:

"in addition to the personnel listed in subsections (b)-(i) of this section: a full-time assistant director of nursing who is an advanced practice nurse or a registered nurse and a full-time equivalent director of in-service education who is an advanced practice nurse or a registered nurse."

Section 12. Amend Section 1162(k), Title 16, Delaware Code, by deleting said subsection in its entirety, and by substituting in lieu thereof a new subsection "(k)", to read as follows:

"(k) All residential health facilities licensed for fewer than 100 beds shall employ, at a minimum, in addition to the personnel listed in (b)-(i), a part-time assistant director of nursing who is an advanced practice nurse or a registered nurse and a part-time director of in-service education who is an advanced practice nurse or a registered nurse, in accordance with the following formula:

$$\frac{\text{Number of beds} \times 40}{100} = \text{hours per week minimum required for an assistant}$$

director of nursing and a director of in-service education.

A sub-acute transitional care unit of an acute care hospital, with 30 beds or fewer, is exempt from the provisions of this subsection provided that other licensed personnel perform the duties of this function."

Section 13. Amend Section 1162(l), Title 16, Delaware Code, by deleting the phrase "(b)-(d)", and by substituting in lieu thereof a new phrase to read "(b)-(e)".

Section 14. Amend Section 1163(a), Title 16, Delaware Code, by deleting in the first sentence, the word "activity" and substituting, in lieu thereof the word "activities".

Section 15. Amend Section 1163(b), Title 16, Delaware Code, by deleting subsection (b) it in its entirety and substituting in lieu thereof, a new subsection (b), to read as follows::

"(b) All residential health facilities licensed for fewer than 30 beds shall have, at a minimum, a part-time activities director as described in subsection (a) of this section, in accordance with the following formula:

$$\frac{\text{Number of beds} \times 40}{30} = \text{hours per week minimum required for an activities director.}$$

A sub-acute transitional care unit of an acute care hospital, with 30 beds or fewer, is exempt from the provisions of this subsection provided that other licensed personnel perform the duties of this function."

Section 16. Amend Section 1164, Title 16, Delaware Code, by inserting a new sentence at the end of the subsection to read as follows: "Any full-time food service manager with a minimum of three years experience as a full-time food service manager as of July 1, 2001 shall be exempt from the requirements of this subsection."

Section 17. Amend Section 1167, Title 16, Delaware Code, by deleting the phrase "§1162(g)" and by inserting in lieu thereof, the phrase "§1162(h)".