

AB 1183, 2008
Changes to AB 1629

Health and Safety Code

1324.21. (a) For facilities licensed under subdivision (c) of Section 1250, there shall be imposed each state fiscal year a uniform quality assurance fee per resident day. The uniform quality assurance fee shall be based upon the entire net revenue of all skilled nursing facilities subject to the fee, except an exempt facility, as defined in Section 1324.20, calculated in accordance with subdivision (b).

(b) The amount of the uniform quality assurance fee to be assessed per resident day shall be determined based on the aggregate net revenue of skilled nursing facilities subject to the fee, in accordance with the methodology outlined in the request for federal approval required by Section 1324.27 and in regulations, provider bulletins, or other similar instructions. The uniform quality assurance fee shall be calculated as follows:

(1) (A) For the rate year 2004-05, the net revenue shall be projected for all skilled nursing facilities subject to the fee. The projection of net revenue shall be based on prior rate year data. Once determined, the aggregate projected net revenue for all facilities shall be multiplied by 2.7 percent, as determined under the approved methodology, and then divided by the projected total resident days of all providers subject to the fee.

(B) Notwithstanding subparagraph (A), the Director of Health Care Services may increase the amount of the fee up to 3 percent of the aggregate projected net revenue if necessary for the implementation of Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

(2) For the rate year 2005-06 and subsequent rate years through and including the 2010-11 rate year, the net revenue shall be projected for all skilled nursing facilities subject to the uniform quality assurance fee. The projection of net revenue shall be based on the prior rate year's data. Once determined, the aggregate projected net revenue for all facilities shall be multiplied by 6 percent, as determined under the approved methodology, and then divided by the projected total resident days of all providers subject to the fee. The amounts so determined shall be subject to the provisions of subdivision (d).

(c) The director may assess and collect a nonuniform fee consistent with the methodology approved pursuant to Section 1324.27.

(d) In no case shall the fees collected annually pursuant to this article, taken together with applicable licensing fees, exceed the amounts allowable under federal law.

(e) If there is a delay in the implementation of this article for any reason, including a delay in the approval of the quality assurance fee and methodology by the federal Centers for Medicare and Medicaid Services, in the 2004-05 rate year or in any other rate year, all of the following shall apply:

(1) Any facility subject to the fee may be assessed the amount the

facility will be required to pay to the department, but shall not be required to pay the fee until the methodology is approved and Medi-Cal rates are increased in accordance with paragraph (2) of subdivision (a) of Section 1324.28 and the increased rates are paid to facilities.

(2) The department may retroactively increase and make payment of rates to facilities.

(3) Facilities that have been assessed a fee by the department shall pay the fee assessed within 60 days of the date rates are increased in accordance with paragraph (2) of subdivision (a) of Section 1324.28 and paid to facilities.

(4) The department shall accept a facility's payment notwithstanding that the payment is submitted in a subsequent fiscal year than the fiscal year in which the fee is assessed.

SEC. 4. Section 1324.23 of the Health and Safety Code is amended to read:

1324.23. (a) The Director of Health Care Services, or his or her designee, shall administer this article.

(b) The director may adopt regulations as are necessary to implement this article. These regulations may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of this article, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The regulations shall include, but need not be limited to, any regulations necessary for any of the following purposes:

(1) The administration of this article, including the proper imposition and collection of the quality assurance fee not to exceed amounts reasonably necessary for purposes of this article.

(2) The development of any forms necessary to obtain required information from facilities subject to the quality assurance fee.

(3) To provide details, definitions, formulas, and other requirements.

(c) As an alternative to subdivision (b), and notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article, in whole or in part, by means of a provider bulletin, or other similar instructions, without taking regulatory action, provided that no such bulletin or other similar instructions shall remain in effect after July 31, 2010. It is the intent of the Legislature that the regulations adopted pursuant to subdivision (b) shall be adopted on or before July 31, 2010.

SEC. 5. Section 1324.28 of the Health and Safety Code is amended to read:

1324.28. (a) This article shall be implemented as long as both of the following conditions are met:

(1) The state receives federal approval of the quality assurance fee from the federal Centers for Medicare and Medicaid Services.

(2) Legislation is enacted in the 2004 legislative session making an appropriation from the General Fund and from the Federal Trust Fund to fund a rate increase for skilled nursing facilities, as defined under subdivision (c) of Section 1250, for the 2004-05 rate year in an amount consistent with the Medi-Cal rates that specific facilities would have received under the rate methodology in effect as of July 31, 2004, plus the proportional costs as projected by

Medi-Cal for new state or federal mandates.

(b) This article shall remain operative only as long as all of the following conditions are met:

(1) The federal Centers for Medicare and Medicaid Services continues to allow the use of the provider assessment provided in this article.

(2) The Medi-Cal Long Term Care Reimbursement Act, Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, as added during the 2003-04 Regular Session by the act adding this section, is enacted and implemented on or before July 31, 2005, or as extended as provided in that article, and remains in effect thereafter.

(3) The state has continued its maintenance of effort for the level of state funding of nursing facility reimbursement for rate year 2005-06, and for every subsequent rate year continuing through the 2010-11 rate year, in an amount not less than the amount that specific facilities would have received under the rate methodology in effect on July 31, 2004, plus Medi-Cal's projected proportional costs for new state or federal mandates, not including the quality assurance fee.

(4) The full amount of the quality assurance fee assessed and collected pursuant to this article remains available for the purposes specified in Section 1324.25 and for related purposes.

(c) If all of the conditions in subdivision (a) are met, this article is implemented, and subsequently, any one of the conditions in subdivision (b) is not met, on and after the date that the department makes that determination, this article shall not be implemented, notwithstanding that the condition or conditions subsequently may be met.

(d) Notwithstanding subdivisions (a), (b), and (c), in the event of a final judicial determination made by any state or federal court that is not appealed, or by a court of appellate jurisdiction that is not further appealed, in any action by any party, or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services, that federal financial participation is not available with respect to any payment made under the methodology implemented pursuant to this article because the methodology is invalid, unlawful, or contrary to any provision of federal law or regulations, or of state law, this section shall become inoperative.

SEC. 6. Section 1324.29 of the Health and Safety Code is amended to read:

1324.29. The quality assurance fee shall cease to be assessed and collected on or after July 31, 2011.

SEC. 7. Section 1324.30 of the Health and Safety Code is amended to read:

1324.30. This article shall become inoperative on July 31, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

Welfare and Institutions Code

SEC. 49. Section 14126.027 of the Welfare and Institutions Code is

amended to read:

14126.027. (a) (1) The Director of Health Care Services, or his or her designee, shall administer this article.

(2) The regulations and other similar instructions adopted pursuant to this article shall be developed in consultation with representatives of the long-term care industry, organized labor, seniors, and consumers.

(b) (1) The director may adopt regulations as are necessary to implement this article. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe specific facts showing the need for immediate action.

(2) The regulations adopted pursuant to this section may include, but need not be limited to, any regulations necessary for any of the following purposes:

(A) The administration of this article, including the specific analytical process for the proper determination of long-term care rates.

(B) The development of any forms necessary to obtain required cost data and other information from facilities subject to the ratesetting methodology.

(C) To provide details, definitions, formulas, and other requirements.

(c) As an alternative to the adoption of regulations pursuant to subdivision (b), and notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article, in whole or in part, by means of a provider bulletin or other similar instructions, without taking regulatory action, provided that no such bulletin or other similar instructions shall remain in effect after July 31, 2010. It is the intent that regulations adopted pursuant to subdivision (b) shall be in place on or before July 31, 2010.

SEC. 50. Section 14126.033 of the Welfare and Institutions Code is amended to read:

14126.033. (a) This article, including Section 14126.031, shall be funded as follows:

(1) General Fund moneys appropriated for purposes of this article pursuant to Section 6 of the act adding this section shall be used for increasing rates, except as provided in Section 14126.031, for freestanding skilled nursing facilities, and shall be consistent with the approved methodology required to be submitted to the Centers for Medicare and Medicaid Services pursuant to Article 7.6 (commencing with Section 1324.20) of Chapter 2 of Division 2 of the Health and Safety Code.

(2) (A) Notwithstanding Section 14126.023, for the 2005-06 rate year, the maximum annual increase in the weighted average Medi-Cal rate required for purposes of this article shall not exceed 8 percent of the weighted average Medi-Cal reimbursement rate for the 2004-05 rate year as adjusted for the change in the cost to the facility to comply with the nursing facility quality assurance fee for the 2005-06 rate year, as required under subdivision (b) of Section 1324.21 of the Health and Safety Code, plus the total projected Medi-Cal cost to the facility of complying with new state or federal mandates.

(B) Beginning with the 2006-07 rate year, the maximum annual increase in the weighted average Medi-Cal reimbursement rate required for purposes of this article shall not exceed 5 percent of the weighted average Medi-Cal reimbursement rate for the prior fiscal year, as adjusted for the projected cost of complying with new state or federal mandates.

(C) Beginning with the 2007-08 rate year and continuing through the 2008-09 rate year, the maximum annual increase in the weighted average Medi-Cal reimbursement rate required for purposes of this article shall not exceed 5.5 percent of the weighted average Medi-Cal reimbursement rate for the prior fiscal year, as adjusted for the projected cost of complying with new state or federal mandates.

(D) For the 2009-10 and 2010-11 rate years, the maximum annual increase in the weighted average Medi-Cal reimbursement rate required for purposes of this article shall not exceed 5 percent of the weighted average Medi-Cal reimbursement rate for the prior fiscal year, as adjusted for the projected cost of complying with new state or federal mandates.

(E) To the extent that new rates are projected to exceed the adjusted limits calculated pursuant to subparagraph (A) to (D), inclusive, as applicable, the department shall adjust the increase to each skilled nursing facility's projected rate for the applicable rate year by an equal percentage.

(b) The rate methodology shall cease to be implemented on and after July 31, 2011.

(c) (1) It is the intent of the Legislature that the implementation of this article result in individual access to appropriate long-term care services, quality resident care, decent wages and benefits for nursing home workers, a stable workforce, provider compliance with all applicable state and federal requirements, and administrative efficiency.

(2) Not later than December 1, 2006, the Bureau of State Audits shall conduct an accountability evaluation of the department's progress toward implementing a facility-specific reimbursement system, including a review of data to ensure that the new system is appropriately reimbursing facilities within specified cost categories and a review of the fiscal impact of the new system on the General Fund.

(3) Not later than January 1, 2007, to the extent information is available for the three years immediately preceding the implementation of this article, the department shall provide baseline information in a report to the Legislature on all of the following:

(A) The number and percent of freestanding skilled nursing facilities that complied with minimum staffing requirements.

(B) The staffing levels prior to the implementation of this article.

(C) The staffing retention rates prior to the implementation of this article.

(D) The numbers and percentage of freestanding skilled nursing facilities with findings of immediate jeopardy, substandard quality of care, or actual harm, as determined by the certification survey of each freestanding skilled nursing facility conducted prior to the implementation of this article.

(E) The number of freestanding skilled nursing facilities that received state citations and the number and class of citations issued during calendar year 2004.

(F) The average wage and benefits for employees prior to the

implementation of this article.

(4) Not later than January 1, 2009, the department shall provide a report to the Legislature that does both of the following:

(A) Compares the information required in paragraph (2) to that same information two years after the implementation of this article.

(B) Reports on the extent to which residents who had expressed a preference to return to the community, as provided in Section 1418.81 of the Health and Safety Code, were able to return to the community.

(5) The department may contract for the reports required under this subdivision.

(d) This section shall become inoperative on July 31, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 51. Section 14126.034 is added to the Welfare and Institutions Code, to read:

14126.034. (a) (1) The department shall convene a workgroup of interested stakeholders to make recommendations to the department to ensure compliance with the intent of this article, as provided in subdivision (a) of Section 14126.02.

(2) (A) Interested stakeholders shall include consumers or their representatives, or both, including current or former skilled nursing facility residents, and family members of current or former skilled nursing facility residents, or both, seniors or their representatives, or both, skilled nursing facility representatives, labor representatives, and people with disabilities and disability rights advocates.

(B) A stakeholder workgroup of 18 members shall be convened representing interested stakeholders from the groups listed in subparagraph (A), with six members selected from each of the following areas of interest:

(i) Consumers.

(ii) Skilled nursing facility labor.

(iii) Skilled nursing facilities.

(C) Interested stakeholders within each of the areas of interest in subparagraph (B) shall nominate and select six members within their area of interest to serve on the stakeholder workgroup to represent their interests.

(D) The stakeholder workgroup shall also include representatives from the department, the Office of the State Long-Term Care Ombudsman, the State Department of Public Health, the Office of Statewide Health Planning and Development, with members appointed by their respective directors, or their designee, and may also include legislative staff, academics, and other state department representatives, including, but not limited to, representatives from the California Department of Aging and the State Department of Developmental Services.

(b) (1) Each stakeholder workgroup meeting shall be chaired by a facilitator from an organization independent of the department and any of the stakeholder groups, to the extent that foundation funding is made available for this purpose. If no funds are made available for this purpose, the department shall facilitate the stakeholder workgroup meetings.

(2) The consumers, skilled nursing facility labor, and skilled nursing facility stakeholder workgroup members shall each select one representative who will meet with the department and the facilitator

to develop meeting agendas after having solicited input from each representative's respective stakeholder group.

(3) To the extent that foundation funding is made available, stakeholder workgroup members shall receive reimbursement for any actual, necessary, and reasonable expenses incurred in connection with their duties as members of the workgroup.

(c) The department shall assign staff as needed to assist the stakeholder workgroup in carrying out its responsibilities.

(d) In developing recommendations, the stakeholder workgroup shall consider the structure of, and potential changes to, the facility-specific ratesetting system, developed pursuant to Section 14126.023, that may improve the quality of resident care. The stakeholder workgroup members may take into consideration the following factors, or any other factors deemed relevant to ensure the quality of resident care:

(1) Skilled nursing facility staffing levels, including, but not limited to, compliance with existing staffing requirements.

(2) Skilled nursing facility staff wages and benefits, including, but not limited to, geographic disparities in wages and benefits.

(3) Skilled nursing facility staff turnover and retention.

(4) Deficiency reports issued as a result of both surveys and complaint investigations, to the extent that they may be disclosed as public records, and the enforcement actions taken under federal certification and state licensing laws and regulations.

(5) Skilled nursing facility compliance with assessments required to ascertain residents' preference for, and ability to return to, the community as required by Section 1418.81 of the Health and Safety Code, including necessary follow through to assure care necessary for a resident to transition out of skilled nursing facility care and into the community.

(6) The extent to which this article encourages compliance with the United States Supreme Court decision in *Olmstead v. L.C. ex rel. Zimring* (1999) 527 U.S. 581, including using the ratesetting system to increase Olmstead compliance.

(7) Health care efficiency.

(8) Health care safety.

(9) The extent to which a pay-for-performance program may contribute to improving the quality of resident care and appropriate performance measures for a pay-for-performance program.

(10) Preventable emergency room visits and rehospitalizations.

(11) Resident and family satisfaction with care and resident's quality of life, including improvements on ways to measure satisfaction.

(12) Recommendations for methods to evaluate the effectiveness of the facility-specific ratesetting system, defined in Section 14126.023, in meeting the intent of this article, pursuant to Section 14126.02.

(13) Additional quality measures, included, but not limited to, adequate nutrition and ready availability of durable medical equipment.

(e) The department shall convene the stakeholder workgroup no later than one month following the effective date of this section. The stakeholder workgroup shall meet a minimum of six times through December 31, 2008. Subcommittees may be convened and meet as necessary.

(f) In addition to recommendations provided during stakeholder workgroup meetings, individual members of the stakeholder workgroup

and any other interested stakeholders may provide to the department any additional written recommendations on the items considered in the stakeholder workgroup meetings.

(g) The department shall provide technical assistance to the stakeholder workgroup to evaluate the feasibility of its recommendations so that the stakeholder workgroup will have the benefit of the department's analysis when discussing and reviewing proposed recommendations.

(h) The department shall review and analyze all recommendations from the stakeholder workgroup, individual workgroup members, and any other interested stakeholders, and, no later than March 1, 2009, the department shall deliver to the Legislature, both of the following:

(1) The complete recommendations of the stakeholder workgroup, individual workgroup members, and any other interested stakeholders.

(2) The department's analysis of the feasibility to implement the proposed recommendations.

(i) (1) The stakeholder workgroup may continue to meet to carry out its responsibilities pursuant to subdivision (d) for an extension period of up to one year. During this extension period, the stakeholder workgroup shall meet at least quarterly as agreed by the department and those members selected pursuant to paragraph (2) of subdivision (a).

(2) During the extension period the stakeholder workgroup's activities may include assisting the department or Legislature, or both, to enact improvements to the ratesetting system.

(j) The department shall seek partnership with one or more independent, nonprofit groups or foundations, academic institutions, or governmental entities providing grants for health-related activities, to support stakeholder workgroup efforts.

(k) The department shall seek necessary legislative changes to implement the stakeholder workgroup's recommendations that the department determines are feasible to implement as part of the reauthorization of this section.

(l) The department may meet the intent of this article, as stated in subdivision (a) of Section 14126.02, by using the stakeholder workgroup's recommendations in order to design an evaluation of the effectiveness of the facility-specific ratesetting system established pursuant to Section 14126.023.

(m) Implementation and administration of this section is not **dependent on the availability of foundation funding.**