

HUMAN SERVICES – SAMPLE & FORM FOR NEW POSITION STATEMENTS

(Please complete this form for each new position statement.)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL: Long Term Care Personnel Standards for the Direct Provision of Patient Care

PROPOSAL: Support legislation that would amend § [32.1-127](#) of the Code of Virginia to increase direct care staffing levels for long term care to ensure better health outcomes and quality of care for medically frail individuals, including older adults and individuals with disabilities. .

SOURCE: Fairfax County Health Care Advisory Board; Fairfax Area Commission on Aging; Fairfax County Long Term Care Coordinating Council

BACKGROUND:

*(Briefly summarize why the position(s) is/are necessary to the County; list any pros/cons, note any previous Board of Supervisors action or previous General Assembly study or action on this issue; note any other helpful information. **This section should provide a synthesis of the proposal and should be no more than one paragraph, two if necessary; the Board wants concise information in the Legislative Program and Issue Paper. Please use “Additional Background Information” on the next page to more fully explain the proposal. If you are submitting more than one proposed position, please include background information for each position.)***

Long term care facilities, including nursing homes, skilled nursing facilities, and assisted living facilities, provide medical and personal care to people who are unable to live independently. Although long-term care residents often have significant and complex needs, current regulations fail to ensure that residents have access to quality and consistent care. The federal government does not regulate a minimum number of direct care hours in long-term care facilities and Virginia is one of 19 states with no required staffing standards— either staff-to-resident ratios or a minimum number of direct care hours. Many facilities are chronically understaffed, with annual turnover among assisted living Certified Nursing Assistants (CNAs) averaging 48.51% in 2020 (Senior Housing News, 24 Jan 2021) while the median turnover rate among nursing staff was 94% in nursing homes (Health Affairs, March 2021). Residents who do not receive proper care may end up with pressure ulcers (bedsores), infections, malnutrition, dehydration, and injuries from falls, or worse.

Delegate Vivian Watts (D-39) has sponsored legislation to address these issues for 16 years and did so again in the 2021 GA Session. Senator Jen Kiggans (R-7) also introduced legislation during the 2021 GA Session. Despite support by aging and disability organizations, legislation has repeatedly failed to pass primarily due to the fiscal impact. The General Assembly directed the Joint Commission on Health Care to study and make recommendations on nursing facility workforce and quality this year. Staff will present the study at the commission’s October 5, 2021 meeting. The BOS supported a related issue in the 2008 Human Services Issues Paper: “SUPPORT LEGISLATION AND FUNDING TO INCREASE NURSING HOME STAFFING AND STAFF TRAINING, AND TO IMPROVE JOB-SATISFACTION AND WORKING CONDITIONS AND STANDARDS FOR ALL LEVELS OF THE NURSING WORKFORCE (RNS, LPNS, CERTIFIED NURSES’ AIDES, PERSONAL CARE AIDES). FURTHER, SUPPORT LEGISLATION DESIGNED TO INCREASE THE NURSING WORKFORCE.”

ANY RELEVANT STATISTICS/DATA:

Data	Source
Virginia ranks 36 th in the nation overall for nursing homes in a comparative ranking based on care hours, staffing, health inspections, deficiencies, and complaints.	Families for Better Care Nursing Home Report Card ¹
Virginia ranks 43 rd in nation for Medicaid nursing facility spending per resident (\$115).	AARP Across the States Profiles of Long-Term Services and Supports (2018)
Virginia long-term care residents received fewer than 2 hours and 17 minutes of direct care per day.	Families for Better Care Nursing Home Report Card *
Virginia nursing home care ranks next to the bottom in the Mid-Atlantic Region.	Families for Better Care Nursing Home Report Card *
Virginia facilities have a higher-than-average number of fines, making the net cost higher than in other states — \$18,326 on average compared to \$12,120 nationally. Long-term stay residents also tend to deteriorate faster, losing too much weight and requiring more help with day-to-day activities at higher rates than the national average.	CMS
Virginia’s median hourly wage for nursing assistants in 2017 was \$12.78.	AARP Across the States Profiles of Long-Term Services and Supports (2018)
Of the 286 nursing homes in Virginia, 123 (43%) received a below average or much below average ranking in health inspections from the Centers for Medicare and Medicaid	CMS
Of the 286 nursing homes in Virginia, 122 (42%) received a below average or much below average ranking in staffing from the Centers for Medicare and Medicaid.	CMS
Nationwide, the five most frequent nursing facility complaints handled across all Long-Term Care Ombudsman programs were: <ol style="list-style-type: none"> 1. Improper eviction or inadequate discharge/planning 2. Unanswered requests for assistance 3. Lack of respect for residents, poor staff attitudes 4. Administration and organization of medications; and 5. Quality of life, specifically resident/roommate conflict 	Long-Term Care Ombudsman Program, Administration for Community Living
In 2018, CMS downgraded 19 Virginia nursing facilities in its quality rating system because they did not have enough registered nurses or did not provide necessary staffing data.	Joint Commission on Healthcare Study Resolution, December 2020

STAFF RECOMMENDATION:

(Do not fill out-- This will be indicated by the Legislative Director and County Executive)

¹ The Nursing Home Report Card utilizes staffing data and performance measures compiled by the Center for Medicare and Medicaid Services’ Nursing Home Compare and long-term care ombudsman complaint data collected by the Administration for Community Living.

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(Supplemental background information to be used by staff)

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ADDITIONAL BACKGROUND INFORMATION:

(Additional information may be necessary to fully develop the idea. Please assume that government relations staff may need additional technical information to fully explain the proposal and the necessity for the proposal.)

Many older adults and individuals with disabilities require long term care, including medical and supportive services for the Activities of Daily Living (ADLs): eating, toileting, bathing, and dressing. As the population ages, the demand for long term care, especially specialized care for people living with Alzheimer's and other forms of dementia, is expected to increase. Long term care is primarily provided in the private, for-profit sector, and the quality of care can vary among facilities and across jurisdictions.

One area of ambiguity that continues to elude Continuous Quality Improvement (CQI) is LTC staffing and personnel. Within the Commonwealth, inspections around direct care staffing are performed from a Quality Assurance perspective: retrospective and focused on the individual, not the system's performance or changing environment.

The lack of clear and consistent personnel standards across the Commonwealth's LTC facilities along with low Medicaid reimbursement rates for skilled nursing care makes recruiting and retaining highly qualified, dependable staff difficult due to low wages, limited benefits (paid sick leave), and stressful working conditions. Poor compensation for direct care workers has led many staff to secure additional employment at a second or third LTC facility to earn income to support their household's needs. The costs of working two or more jobs can have a deleterious effect on the personal health and welfare of staff, but so too for the medically frail communities they serve. Improper hygiene and etiquette (e.g., poor handwashing, not covering coughs and sneezes, reporting to work sick, etc.) increase the spread of *preventable* respiratory viruses, like influenza, RSV, pertussis, and now, COVID-19. Direct care staff who work at more than one LTC facility increase the risk of introducing outside illnesses and disease among vulnerable populations.

Despite the challenges above, many states outside the Commonwealth have established LTC personnel standards for direct care workers, implementing ratios of the number of staff to the number of residents or the number of staff to acuity-based care levels/service needs. Within the metropolitan region, Maryland is one such state, defining LTC personnel standards and proscribing enforcement at the local and state levels of government.

COVID-19 has magnified systemic problems regarding how long term care is delivered, financed, and enforced. As the pandemic begins to recede and the region begins to recover, addressing the gaps among long term care personnel should be prioritized.

Recent Bills Introduced to Address this Issue

Year	Bill	Outcome
2021	<p>HB 2156 Nursing home staffing and care standards; regulations, report. (Watts) Requires regulations establishing the staffing and care standards in nursing homes to require a minimum number of hours of direct care services to each resident per 24-hour period, which minimum increases in specified phases from 3.5 hours to 4.1 hours. The bill also directs the Joint Commission on Health Care to study issues related to establishment of a minimum number of hours of direct care services for nursing homes as part of its study of the nursing facility workforce authorized by the Commission on December 15, 2020, and to report its findings by December 1, 2021. The regulatory provisions of the bill have a delayed effective date of July 1, 2022.</p>	Left in House Appropriations
2021	<p>SB 1149 Nursing homes; standards of care and staff requirements, regulations. (Kiggans) Requires the State Board of Health to establish staffing and care standards in nursing homes to require a minimum of direct care services to each resident per 24-hour period as follows: (i) a minimum of one registered nurse or licensed practical nurse per 15 patients and one certified nursing assistant per eight patients during the daytime; (ii) a minimum of one registered nurse or licensed practical nurse per 20 patients and one certified nursing assistant per 12 patients during the evening; and (iii) a minimum of one registered nurse or licensed practical nurse per 30 patients and one certified nursing assistant per 15 patients during the nighttime. Such requirements may not apply during a health crisis, emergency, or during an outbreak of a communicable disease of public health threat. The bill requires nursing homes to complete a criminal background check on each employee prior to the start of employment and every five years thereafter that the employee remains employed. The bill also requires nursing homes to provide quarterly staff training on first aid, medication administration, and compliance with nursing home policies and procedures.</p>	Left in Senate Education and Health
2020	<p>HB 737 Nursing homes; standards of care. (Watts) Requires regulations establishing the staffing and care standards in nursing homes to require a minimum number of hours of direct care services to each resident per 24-hour period, which minimum increases in specified phases from 3.5 hours to 4.1 hours.</p>	Left in House Appropriations
2020	<p>SB 397 Nursing homes; VDH to convene work group related to increasing availability of clinical workforce. (Kiggans) Directs the Department of Health to convene a work group to review and make recommendations on increasing the availability of the clinical workforce for nursing homes in the Commonwealth. The work group shall include stakeholder groups as appropriate. The bill directs the Department to collaborate with the Department of Health Professions, the Governor's Chief Workforce Development Advisor, and other state agencies as appropriate. The bill directs the Department to report all recommendations to the Chairmen of the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions on or before November 15, 2020.</p>	Passed

2018	HB 309 Nursing homes; standards of care. (Watts) Increases the staffing and care standards in nursing homes to require a minimum of specific direct care services to each resident per 24-hour period.	Left in House HWI
2015	HB 1396 Nursing homes and assisted living facilities; staffing standards. (Leftwich) Directs the Board of Health and the State Board of Social Services to set staffing standards for nursing homes and assisted living facilities, respectively, which include staff-to-patient ratios sufficient to protect the health and safety of the residents of each.	Left in House HWI
2014	HB 568 Nursing homes; increases staffing and care standards. (Watts) Increases the staffing and care standards in nursing homes to require a minimum of specific direct care services to each resident per 24-hour period.	Left in House HWI

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

(List any organizations or groups, if any, which might be in favor of or against the proposed position)

Support: Aging and disability groups, including:

- Norther Virginia Aging Network (NVAN)
- AARP
- LeadingAge Virginia
- Virginia Elder Rights Coalition (VERC)
- Commonwealth Council on Aging (CCOA)

Opposition:

- Virginia Health Care Association
- Virginia Assisted Living Association
- Medical Facilities of America
- Other long-term care industry groups.

STAFF CONTACT PERSON(S):

*(Provide name and phone number of County staff person(s) best able to provide any additional research or necessary information) Jill Clark, Legislative Analyst, Office of Strategy Management; Human Services
Jacquie Woodruff, Legislative and Policy Supervisor, Adult & Aging Division, Department of Family Services; Sherryn Craig, Health Planner, Health Department*