

Skilled Nursing Facility Guidance Document – Minimum Staffing Requirements Effective 4/1/22

Disclaimer: This document has been developed in response to minimum staffing regulations found in Public Health Law 2805-b & 10 NYCRR 415.13. On July 6, 2023, the NYS Department of Health held a webinar regarding the process for minimum staffing level compliance reviews. NYSHFA is providing the following tool to assist providers requesting a penalty reduction due to mitigating factors, specifically labor supply shortages. An Acute Labor Supply Shortage in a facility’s location will be determined by the Commissioner of Health and posted on the [DOH website](#).

This document is meant to be a resource and does not guarantee a facility’s request for a penalty reduction. Prior to submitting a request for a penalty reduction to the Department it is highly recommended that you consult with your facility’s counsel on this matter.

See the attached tool for further guidance.

Requirement

The facility shall maintain daily average staffing hours equal to 3.5 hours of care per resident per day	Certified Nurse Aides (CNA) Licensed Practical Nurses (LPN) Registered Professional Nurses (RN)
<i>No Less Than 2.2 hours</i> of care per resident per day	Certified Nurse Aides (CNA)
<i>No Less Than 1.1 hours</i> of care per resident per day	Licensed Practical Nurse (LPN) Registered Professional Nurse (RN)
= 3.3 hours total	Care may be provided by a CNA, LPN, or RN for the remaining 0.2 hours (this is meant for flexibility)

**Please note that nurse aides (NAs) and temporary nurse aides (TNAs) hours only count for the period of 4/1/22 through 12/31/22. As of 1/1/23, they are no longer included in the hours of care per resident per day.*

Methodology

Facility compliance will be determined by the Department on a quarterly basis. Initial determination will be based on review of CMS Payroll Based Journal (PBJ) data. It is strongly recommended facilities review their PBJ submission to ensure they properly include hours of direct care staff included in the regulation. (PBJ provider resources are available [here](#)). **Timely submission to PBJ is imperative.**

1. Calculate quarterly average HPRD for all nursing titles (3.5 HPRD)
2. Calculate quarterly average HPRD for specific nursing titles (2.2 & 1.1 HPRD)
3. Compare quarterly averages to staffing requirements

Noncompliance is failure to meet **any of the three** HPRD requirements (3.5 total, 2.2 CNA, 1.1 LPN or RN).

Documentation Recommendations

Facilities should **make their best efforts to accurately document all actions taken to comply with the minimum staffing regulation. This includes reasonable attempts to procure sufficient staffing and steps taken to ensure resident health and safety.**

The following tool outlines “reasonable attempts” delineated in the *NYSDOH Application – Labor Supply Shortage* presented in a webinar conducted 7/6/2023, as well as other measures/data that may prove helpful to show the facility made reasonable attempts to procure sufficient staffing and took the necessary steps to ensure resident health and safety.

<p align="center">EXAMPLES OF ACTIONS TO DEMONSTRATE “REASONABLE ATTEMPTS”</p> <p align="center"><i>(As outlined in the NYSDOH Application – Labor Supply Shortage provided during the webinar conducted July 6, 2023; subject to change at any time at the discretion of the Department)</i></p>	<p align="center">DATE(S) COMPLETED</p>
<ul style="list-style-type: none"> • Agency Contract • Benefit Increases (for new hires) • Cash Bonuses (current & prospective employees) • Job Fairs/Hiring Events • Online Job Advertisements (general) • Online Job Advertisements (social media) • Partnership (education institutions) • Partnership (other healthcare facility) • Recruiters • Relocation Assistance (prospective employees) • Base Salary Increases (prospective employees) • Sponsoring International Candidates • Traditional Advertising (multimedia) • Traditional Advertising (print) • Transportation • Union Outreach/Programs • Increased Pay (overtime, weekend, or shift differential) • Education/Training 	

<p style="text-align: center;">Other measures/data that may prove helpful to show the facility made reasonable attempts to procure sufficient staffing and took necessary steps ensure resident health and safety</p>	<p style="text-align: center;">DATE(S) COMPLETED</p>
<ul style="list-style-type: none"> • Assistance with Childcare • Building a Positive Work Culture <ul style="list-style-type: none"> - Advancement Opportunities - Employee Satisfaction Surveys - Professional Development - Recognition Events - Retention Efforts • Community Outreach • Tuition Reimbursement • Use of Resident Assistants to identify/assist with resident needs (RAs) • Use of Paid Feeding Assistants (PFAs) (*please note, RAs & PFAs do not count in CNA hours) • Attendance of Webinars/Conventions (regarding staff development and/or retention) • Outreach to Surge and Flex Operations Center (1-917-909-2676) or Regional Office • Evaluation of Tasks and Reassignment (those tasks completed by certified and licensed staff that may be delegated to other disciplines if within scope of practice) 	

Enforcement Actions

All facilities out of compliance are subject to enforcement of up to \$2,000 dollars per day.

Progressive penalty per day based on:

- Level of noncompliance in quarter – actual daily hours
- Available data and Department’s assessment of application for penalty reduction (if applicable)
- Frequency of non-compliance – number of quarters in year

Department’s Division of Legal Affairs will issue:

- Notice to facility via the Health Commerce System (HCS)
- Final penalty amount and mitigating factors considered
- Possible actions

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