



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

June 30, 2023

Re: DAL NH 23-11 Required Minimum
Nursing Staffing for All Nursing Homes

Dear Nursing Home Operators and Administrators:

On June 18, 2021, Governor Andrew M. Cuomo signed into Law Chapter 156 of the Laws of 2021 creating section 2895-b of the Public Health Law (PHL) to be in effect January 1, 2022. Executive Order 4.4, issued by Governor Kathy Hochul on December 31, 2021, suspended implementation of the new law until April 1, 2022. The new law requires every nursing home, starting on April 1, 2022, to maintain at minimum daily average staffing hours equal to 3.5 hours of care per resident per day (HPRD) by a certified nurse aid (CNA) (or nurse aid until December 31, 2022), and a licensed practical nurse (LPN) or registered nurse (RN). Out of such 3.5 hours, no less than 2.2 HPRD shall be provide by a CNA, and no less than 1.1 HPRD shall be provided by a LPN or RN. Nursing homes that fail to adhere to the minimum staffing standards are subject to a civil penalty of up to \$2,000 per day out of compliance. Title 10 of the New York Codes, Rules and Regulations (10 NYCRR) Section 415.13 implements the provisions of PHL 2895-b.

This DAL is to inform you that the Department anticipates beginning assessments of compliance with the minimum nursing staffing requirements on July 10, 2023.

- Compliance will be determined on a quarterly basis.
 - Quarter 1 is the period January 1 through March 31
 - Quarter 2 is the period April 1 through June 30
 - Quarter 3 is the period July 1 through September 30
 - Quarter 4 is the period October 1 through December 31
- The Department will begin with compliance reviews for the period Quarter 2 of 2022, to be followed by subsequent quarterly periods.
- The Department will issue initial determinations of compliance based on the Center for Medicare and Medicaid Services Payroll Based Journal data for the review quarter, by comparing the quarterly average of the reported daily number of HPRD provided to each of the staffing requirements.
- Facilities that do not meet all three staffing requirements will be determined to be out of compliance.
- Notices of compliance and noncompliance will be disseminated to nursing home Administrators and Operators through the Health Commerce System Distribution Management System*.
- All facilities out of compliance are subject to Enforcement and imposition of the prescribed civil penalty.
 - Nursing homes found to be out of compliance that believe the initial determination was due to an error will have the opportunity to request a

redetermination by using the Department-prescribed forms to provide the required information. The Department will issue a subsequent notice of redetermination.

- Nursing homes found to be out of compliance that believe they can demonstrate the mitigating or aggravating factors set forth in 10 NYCRR § 415.13 may apply for a penalty reduction by using the Department prescribed form to provide the required information and evidentiary documentation.
- The Department's Division of Legal Affairs will issue determinations to the facility, which will include the final penalty amount and instructions.

*To ensure that you receive notices of compliance for your nursing home, it is essential that the facility's Health Commerce System roles of Administrator, Administrator- Backup, Operator, and Operator-Backup are current. Your organization's designated HCS Coordinator will be able to assist you.

In anticipation of commencing compliance reviews, we will be hosting a webinar to nursing home providers. The provider webinar is scheduled for July 6, 2023 at 1:00 P.M. Registration for this webinar can be found at <https://meetny-events.webex.com/weblink/register/rd94c5b37648e11c605f32fa1d0cd7dcf>. Your participation in the webinar is strongly encouraged. This webinar will be recorded. Following the webinar an FAQ will be posted to the public DOH website.

Any questions regarding this correspondence should be forwarded to NHSafeStaffing@health.ny.gov.

Thank you for your attention to this important issue affecting residents of nursing homes in New York State.

Sincerely,

Valerie Deetz
Deputy Director
Office of Aging and Long-Term Care

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