



Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

August 11, 2023

DAL#: NH 23-13
Subject: Public Health Law § 2828 Compliance
Request for 2022 Financial Information

Dear Nursing Home Operator and Administrator:

Public Health Law (PHL) § 2828 sets forth minimum direct resident care spending requirements for residential health care facilities, to help ensure the highest quality of resident care and improve the safety and quality of life for all long-term residents in New York State. Title 10 of the New York Codes, Rules and Regulations (“10 NYCRR”) Section 415.34 implements the provisions of PHL § 2828. All residential health care facilities licensed pursuant to Article 28 of the PHL, except as provided in subdivision (c) of 10 NYCRR Section 415.34, must spend a minimum of 70% of revenue on direct resident care and a minimum of 40% of revenue on resident-facing staffing (wherein amounts spent on resident-facing staffing are included in the amount spent on direct resident care), and their total operating revenue must not exceed total operating and non-operating expenses by more than five percent.

The Department measures compliance with these requirements using financial information as specified in 10 NYCRR 415.34, in the residential health care facility annual cost report submitted to the Department of Health. Your facility’s mandatory financial reporting submitted to the Department pursuant to 10 NYCRR 86-1.2 and PHL § 2805-e, does not provide the relevant financial information necessary to determine compliance with the requirements of PHL § 2828 and 10 NYCRR 415.34.

The Department has developed a survey to collect the relevant information statutorily needed to make a determination on compliance with PHL § 2828 by your nursing home. The information in your 2022 acknowledged ICR report submitted to the Department and 2022 certified RHCF-2 report shall be the basis for what you provide through this survey. The survey form can be accessed by logging onto Health Commerce System (HCS) at: <https://commerce.health.state.ny.us>. On the HCS Home Page, click My Applications → click HERDS → click Data Entry and then select an Activity → *2022 Hospital-based Nursing Home Direct Resident Care Spending Financial Information Survey* (faxed or printed copies will not be accepted).

Regulations governing Medical Facilities are found in 10 NYCRR and include standards for reporting by residential health care facilities subject to Article 28 of the PHL, including hospital-based residential health care facilities. Specifically, 10 NYCRR § 86-2.6 requires financial and statistical reports be certified by the operator of the facility. The facility’s Administrator may enter data for this survey; however, the Operator of the nursing home, or an executive officer with authority to certify on behalf of the facility and Operator, must review the data, complete the certification statement, and submit the completed survey.

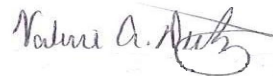
Please note that the *2022 Hospital-based Nursing Home Direct Resident Care Spending Financial Information Survey* **must be submitted to the Department no later than September 25, 2023.**

Failure to submit by the due date may lead to the determination that the facility was not in compliance with the statute and regulations referenced above.

We additionally advise you to ensure that the assigned roles for your facility in the Health Commerce System are current.

Questions pertaining to this DAL and survey requirements should be directed to NHSafeStaffing@health.ny.gov. Thank you for your anticipated cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Valerie A. Deetz". The signature is fluid and cursive, with a prominent loop at the end.

Valerie Deetz, Deputy Director
Office of Aging & Long-Term Care

cc: Adam Herbst
A. Villani
E. Johnson
J. Sheltry
B. Smith
K. Marks