

Minimum Nurse Staffing Requirements for Skilled Nursing Facilities in New York State

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NYS Public Health Law, Section 2895-b, requires that skilled nursing facilities must comply with minimum nurse staffing levels. Staffing for these facilities was mandated as of April 1, 2022. Skilled nursing facilities must employ or retain certified nurse aides, registered professional nurses, licensed practical nurses, or nurse aides in sufficient numbers to maintain minimum daily staffing hours per resident.

It is important that skilled nursing facilities adhere to the requirements or be subject to potential penalty. Also, the reputation of non-compliant skilled nursing facilities in all likelihood would be damaged.

Daily Staffing Requirements

The mandate requires a facility to maintain daily (including weekends and holidays) average nurse staffing hours equal to **3.5 hours of care per resident per day**, consisting of:

- 2.2 hours of certified nurse aide (CNA) and/or nurse aide (allowed only through December 31, 2022)
- 1.1 hours of registered professional nurse (RN) or licensed practical nurse (LPN)
- 0.2 hours of Other
 - Total: 3.5 hours

Reporting Requirements

The Affordable Care Act (ACA), which was signed into law in 2010, introduced Payroll Based Journal (PBJ) reporting as part of the ACA. At its core, PBJ reporting is designed to increase the amount of staffing data that's freely available for analysis and comparison.

All skilled nursing facilities across the country are required to submit data to the Centers for Medicare and Medicaid Services (CMS), on a quarterly basis, for all direct care staff (employed and contracted) working in their facility, including detailed shift logs. This reporting is the basis for determining a facility's compliance with the mandate beginning with the second quarter of 2022 (i.e., April 1, 2022).

NYS regulations indicate that compliance with the mandate will first be measured by comparing the facility's daily average hours per resident day in *each* of the three required categories (total nursing hours, CNA and RN/LPN) to the required mandate. A facility that, on average over the course of the quarter, falls below the mandate in *any* category will be considered non-compliant.

Staffing Shortages

As is well known, there is a health care worker shortage commonly referred to as a health care worker crisis. Because of the shortage, the New York State Governor suspended the original nurse staffing mandate that was supposed to become effective on January 1, 2022. The suspension delayed the implementation of the mandate through March 31, 2022. As such, April 1, 2022 is the first day New York skilled nursing facilities had to comply with the mandate.

LeadingAge NY, an association whose membership includes over 400 non-profit and public providers of long-term and post-acute care services, polled their nursing home members concerning their staffing shortages. Two-thirds of those who responded said that they've had to restrict admissions due to staffing

shortages. Of those responding, 49 percent said that they have had to close units; and, 30 percent had activated their emergency staffing plan.

Payroll Based Journal Results for NYS Facilities

Below are the statewide results of an analysis of the PBJ data for the second and third quarters of 2022. These results confirm the significance of the current workforce shortages. PBJ data can also be analyzed in such a way that drills down by county, region and/or individual facility.

Based on reporting for Q2 and Q3 2022, New York Facilities that were not compliant were as follows:

Quarter 2		
	# of Facilities	% Not Compliant
Less than 3.5 HPRD (Total)	409	68%
Less than 1.1 HPRD (RN & LPN)	218	36%
Less than 2.2 (CNA, NA, MA)	392	65%

Quarter 3		
	# of Facilities	% Not Compliant
Less than 3.5 HPRD (Total)	412	69%
Less than 1.1 HPRD (RN & LPN)	221	37%
Less than 2.2 (CNA, NA, MA)	400	67%

Q2 = 599 total facilities analyzed
Q3 = 598 total facilities analyzed
HPRD = hours per resident per day
RN = registered nurse; LPN = licensed practical nurse;
CNA = certified nurse aide; NA = nurse aide; MA = medical assistants

Penalties

A non-compliant facility shall have progressive penalties assessed based on the number of days per quarter in which the facility was below the minimum hourly requirements for **any** of the three categories. The State can impose a penalty of up to \$2,000 per day for each day in a quarter that a facility is out of compliance unless mitigating factors exist. Mitigating factors would include:

1. extraordinary circumstances such as, a natural disaster, a national, State or municipal emergency; or the facility experienced a catastrophic event that caused physical damage to the facility or impaired the ability of the facility personnel to access the facility
2. an acute labor supply shortage of nurse aides, certified nurse aides, LPNs or RNs exists in the Metropolitan and Nonmetropolitan Area in which the facility is located
3. a verifiable union dispute exists between the facility and nurse aides, certified nurse aides, LPNs or RNs employed or contracted by the facility

The State has the ability to levy penalties on noncompliant facilities as of April 1, 2022. [**Note:** As of the date of this article, no penalties have been assessed.]

It is crucial that facilities track and ensure compliance with this mandate. Penalties can add up very quickly. A facility (regardless of bed size) that is out of compliance for every day of one quarter faces fines of up to \$180,000 which grows to over \$720,000 annually.

Contact Us

PKF O'Connor Davies offers accounting, auditing, tax and consulting services to the health care sector. If you have any questions about the NYS mandated nursing staffing hours, please contact the partner in charge of your account or one of the following of our health care team:

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