



GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

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MEMO 24-04

TO: Administrator, DON, CFO's, Owners & Operators

FROM: Mary Gracey- White RN, BSN, QCP Director of Regulatory Compliance

DATE: January 17, 2024

RE: NYSDOH Minimum Staffing Level Compliance Reviews– Quarter 3 of 2022

As you may be aware the NYSDOH has informed Associations and Facilities that they will initiate nursing home 3.5 Hours Per Resident Day (HPRD) compliance assessments for **Quarter 3 - 2022** in accordance with New York State Public Health Law, Section 2895-b. **Quarter 3 is the period July 1 through September 30, 2022.** GNYHCFA requested feedback from the Department on Quarter 2 submissions that members submitted to request penalty reductions. NYSDOH indicated that **facilities will receive notification directly on Quarter 2 submission** results and that very few facilities had no penalties, however for most facilities penalties were significantly reduced.

As a review, the NYS PHL Section 2895 facilities are required 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) and a licensed practical nurse (LPN) or registered nurse (RN). Out of the 3.5 hours, no less than 2.2 HPRD shall be provided by a CNA, and no less than 1.1 HPRD shall be provided by an LPN or RN. Nursing homes that do not adhere to the minimum staffing standards are subject to a civil penalty. Determinations of compliance will be based on the Center for Medicare and Medicaid Services Payroll Based Journal (PBJ) 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 are out of compliance are subject to Enforcement and imposition of the prescribed civil penalty. Nursing Homes out of compliance, but believe the determination was due to a PBJ error, can request a redetermination. If a Nursing Home is out of compliance but believes they can demonstrate 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.

Facilities will receive letters determining their status for Quarter 3 via a NYSDOH letter in their HCS account. GNYHCFA had prepared some materials to aid members if seeking a penalty reduction. Please see the attached and apply to Quarter 3, July 1 through September 30, 2022, if needed

NYSDOH indicated that they have taken steps to create efficiencies in the assessment process which were shared during the webinar held November 15, 2023 and which can be found at https://www.health.ny.gov/facilities/nursing/minimum_staffing/.

Please be reminded that current PBJ data submission is due February 14, 2024. Facilities should make all efforts to review their data prior to this date, including job codes and validation reports prior to February 14, 2024.

If you have any questions regarding this, please contact the Association and/or forward to NHSafeStaffing@health.ny.gov.