



GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

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MEMO 23-19

TO: Administrator, DON, Director of Building, Social Work & QA Committee Members

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

DATE: June 30, 2023

RE: NYSDOH DAL 23-11 Required Minimum Nursing Staffing

NYS DOH released DAL NH 23-11 Required Minimum Nursing Staffing, attached. The DAL indicates that the DOH anticipates beginning assessments of compliance with the minimum nursing staffing requirements on July 10, 2023. In advance of this, **NYSDOH has scheduled a webinar for July 6th at 1:00 P.M.** Please register here: [Nursing Home Staffing Standards Educational Webinar registration - Webex](#)

As you are already aware, as of April 1, 2022, facilities have been 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) (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 provided 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.

The DAL informed all that compliance will be determined on a quarterly basis, beginning for the period of Quarter 2 of 2022, to be followed by subsequent periods.

- o Quarter 1 is the period January 1 through March 31, 2022
- o Quarter 2 is the period April 1 through June 30, 2022
- o Quarter 3 is the period July 1 through September 30, 2022
- o Quarter 4 is the period October 1 through December 31, 2022

Please note, initial 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 do not meet all 3 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 HCS.
- 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 an 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. The Department's Division of Legal Affairs will issue determinations to the facility, which will include the final penalty amount and instructions.

Any questions regarding this correspondence should be forwarded to NHSafeStaffing@health.ny.gov. GNYHCFA will be sure to update all as additional information becomes available.