

GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

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Memo 26-13

To: Administrator, DNS, Owners, Operators, Nursing Supervisors, Interdisciplinary Team members and QA Committee

From: Michael A.L. Balboni, Executive Director and Mary Gracey-White RN, Director of Regulatory Compliance

Date: February 20, 2026

Re: NYSDOH Minimum Staffing Webinar

GNYHCFA participated in today's NYSDOH webinar presentation regarding assessment and enforcement of penalties for noncompliance with NYS PHL Section 2895-b related to minimum Staffing requirements of direct care staff (RN/LPN/CNA) for 3.5 hrs. per resident/per day (HPRD). As outlined in GNYHCFA Memo 26-12, twenty facilities were issued penalty letters to date. Key points during the presentation included:

- There will be no enforcement for 30 days after a facility receives a penalty assessment. The facility can choose to pay or await an enforcement letter and then can request a hearing with NYSDOH to challenge the findings.
- Facilities can continue to mitigate fines as previously outlined in NYSDOH -- that includes the following categories
 1. **Extraordinary Circumstances** such as a State of Declared Emergency with documentation to support the declared emergency including time frame and staff job titles affected
 2. **Acute Labor Shortage** to include documentation of any Commissioner declared staffing shortage in specified are in accordance with the Department of Labor methodology, all documented efforts to recruit, retain staff during that time frame. In addition, documentation on how the facility planned for, and prevented. any adverse events for residents.
 3. **Verified Union Dispute** including documentation.
- NYSDOH stated that facilities with lower hours per resident per day will result in an increased penalty. Fines will increase each quarter that the facility is not in compliance. All staffing information comes directly from CMS PBJ data.
- NYSDOH did not indicate when further penalty letters would be released but stated information would be provided prior. Facilities should ensure all roles of Operator, Administrator and back-up roles to these positions are current.

The webinar slides will be posted as pr NYSDOH all questions should be submitted to nhsafestaffing@health.ny.gov. Below please find links for February 9, 2026, Commissioner's Later on Staffing shortage as well as the FAQs that were also updated on February 9th, 2026.

Please note that for the NYC region and surrounding counties the current shortage designated by the Commissioner is only for the category of LPNs.

It is unclear how the DOH will proceed with additional homes and penalty assessments. DOH staff has indicated that process for determining liability is "very complicated and will take a long time to determine.

We realize that the lack of clarity regarding this process is very frustrating and we are working on a legislative, executive and political strategy to mitigate, if not eliminate these fine assessment processes. GNYHCFA will keep you updated as this issue evolves.

- https://www.health.ny.gov/facilities/nursing/minimum_staffing/docs/commissioners_determination_2026-02-09.pdf
- https://www.health.ny.gov/facilities/nursing/minimum_staffing/docs/faq.pdf