



**Department
of Health**

NURSING HOME MINIMUM NURSING STAFF REQUIREMENTS

**PUBLIC HEALTH LAW §2895-B(3) & 10 NYCRR § 415.13(B)(2)
ASSESSMENT & ENFORCEMENT OF PENALTIES FOR NONCOMPLIANCE**

February 20, 2026- WEBINAR

PUBLIC HEALTH LAW § 2895-B & 10 NYCRR § 415.13

Public Health Law §2895-b established Minimum Nursing Staffing Standards for New York State Nursing Homes.

- Beginning April 1, 2022, nursing homes must provide, at minimum:
 - 3.5 hours of care per resident per day (HPRD), with no less than
 - 1.1 HPRD by Licensed Practical Nurse (LPN) or Registered Nurse (RN)
 - 2.2 HPRD by Certified Nurse Aide (for 2022 includes nurse aides in training)
 - Must meet all HPRD requirements (3.5 Total, 2.2 CNA, 1.1 LPN or RN)
- Authorizes the NYS Commissioner of Health to establish civil penalties that consider specific mitigating circumstances.

PENALTIES FOR NONCOMPLIANCE

- Penalty of up to \$2,000 per day out of compliance in quarter
- Department has established a trifurcated, progressive penalty structure, with separate penalties for each minimum HPRD standard (1.1 RN/LPN HPRD, 2.2 CNA HPRD, 3.5 Total HPRD)
- Noncompliant facility is not fined for the HPRD standard(s) they were determined in compliance for the quarter
- Noncompliant facility is fined for days they failed to meet the HPRD standard(s) they were determined out of compliance for the quarter
 - Daily fine amounts are determined by the facility's actual applicable HPRD (1.1, 2.2, 3.5) on that day – increases as deficiency increases
 - Daily fines for a quarter will be determined by the number of quarters the facility is out of compliance in a calendar – increases as frequency increase



MITIGATING FACTORS

Penalties may be less than \$2,000 per day if the facility demonstrates, to the satisfaction of the Department, that the specified mitigating or aggravating factors during the quarter (10 NYCRR § 415.13) prevented compliance:

- Extraordinary Circumstances: natural disaster; declared emergency (national, State or municipal); catastrophic event
- Acute Labor Supply Shortage in the facility's location, as determined by the Commissioner of Health (revised methodology posted 2/9/2026)
- Verifiable Union Dispute
- Facility must submit formal penalty reduction request as prescribed by the Department.

EXTRAORDINARY CIRCUMSTANCE



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EXTRAORDINARY CIRCUMSTANCE

Penalty Adjustment Assessment

Department assesses facility's penalty reduction request based on the following criteria.

- Cited circumstance meets the statutory and regulatory meaning of an “Extraordinary Circumstance”
- Facility is in geographical area of a cited declared emergency
- Sufficient demonstration:
 - Circumstance impacted the facility and relevant staffing levels during the quarter (nursing titles with a deficient quarterly HPRD)
 - Required pandemic emergency plan (PHL § 2803(12)) and emergency/disaster plan (10 NYCRR § 415.26(f)) were prepared.
 - The facility sufficiently prepared for the emergency and executed emergency plans as applicable to maintain sufficient staffing levels.



EXTRAORDINARY CIRCUMSTANCE

Penalty Adjustment Assessment (cont.)

- Cited declared emergencies related to the COVID 19 pandemic and the associated widespread healthcare labor shortage will be evaluated as the mitigating factor of an acute labor supply shortage, if the Commissioner of Health has declared an applicable acute labor supply shortage for the quarter.

EXTRAORDINARY CIRCUMSTANCE

Penalty Adjustment

- If the Department accepts this mitigating factor, the period covered by the emergency is removed from the facility's quarterly average HPRD calculations
- The recalculated quarterly HPRDs will determine the penalty adjustment
 - If all three HPRDs meet compliance levels (3.5 HPRD, 2.2 HPRD, and 1.1 HPRD), all penalties are eliminated for the quarter
 - If any of the three HPRDs remain below compliance levels, the daily penalties for the period covered by the emergency are eliminated.

ACUTE LABOR SHORTAGE



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ACUTE LABOR SUPPLY SHORTAGE

Penalty Adjustment Assessment

- Department assesses facility's penalty reduction request based on the following criteria:
 - Commissioner of Health determined an Acute Labor Supply Shortage for the compliance quarter, in an area where the facility is located, and for nursing titles with HPRDs for which the facility was noncompliant
 - Sufficient demonstration:
 - Facility employed strategic measures during quarter to ensure resident health and safety and prevent certain adverse clinical events
 - Reasonable attempts during the quarter, focused on titles with deficient HPRDs
 - Recruit and attract prospective staff
 - Enhance productivity and retention of current staff



REASONABLE ATTEMPTS ASSESSMENT

Department assesses a facility's cited reasonable attempts based on the following:

- Facility sufficiently substantiates cited attempts to attain sufficient staffing levels during the quarter
 - Attempt targeted nursing titles with a deficient quarterly HPRD
 - Attempt was implemented or enhanced during the compliance quarter
 - Provided consistent and required information and documentation for cited attempt
- Department will classify cited reasonable attempts under three categories
 - Job Enhancements (prospective employees)
 - Recruitment efforts
 - Enhanced Productivity (current staff)

ACUTE LABOR SUPPLY SHORTAGE

Penalty Adjustment

- If the Commissioner of Health has declared the required acute labor supply shortage as specified, and
- If the Department determined that the facility employed sufficient strategic measures to ensure resident health and safety during quarter as specified,
- For each HPRD standard, the Department will apply a 1/3 penalty reduction for each category where the facility successfully demonstrated at least one reasonable attempt
 - Job Enhancements (prospective employees) – 1/3 penalty reduction
 - Recruitment efforts – 1/3 penalty reduction
 - Enhanced Productivity (current staff) – 1/3 penalty reduction
 - For example:
 - RA in Three categories – penalties will be reduced to \$0.00
 - RA in Two categories – penalties will be reduced by 2/3
 - RA in One category – penalties will be reduced by 1/3



COMMON APPLICATION DEFICIENCIES

Labor Shortage Determination – the facility submits a penalty reduction application despite the fact they are not in a region where the Commissioner has determined there is a labor shortage.

Timeliness – the effort(s) submitted by the facility does not reflect an action taken during the quarter to procure sufficient staffing during the period of non-compliance.

Evidentiary Standards – the facility did not provide information/documentation necessary to demonstrate that the submitted effort occurred.

THIS IS NEW FEEDBACK FOR THE NHs

COMMON APPLICATION DEFICIENCIES (CONT'D)

Agency Contract/Recruiters – Ensure that the submitted contract has been fully executed and signed by both parties

Job Fairs or Hiring Events - Include a copy of the materials distributed at an event the facility attended or hosted for prospective employees in addition to relevant event confirmations

Partnerships - Be sure to include a signed agreement between the facility and educational institution or health care facility. Submitting a list of affiliations is not useful and does not establish that a partnership was initiated with the facility.

Salary Increase - Provide the prior rate offered, and rate offered after the increase. The increase amount should be submitted in the form of a percentage or dollar amount.

Benefit Increase - Include a copy of the facility's benefit package. Often, we only receive a narrative that does not demonstrate that the facility increased benefits for staff during the Quarter.

Cash Bonuses - Specify the Bonus Amount and include a copy of the materials used to inform staff of the new or increased Referral Bonus, or prospective staff of the Sign-on Bonus. A list of staff who have received the bonus does not demonstrate the attempt took place during the quarter.

REQUEST FOR INFORMATION GUIDANCE

Often, we do not receive the information required to satisfy a reasonable attempt. When this occurs, the Department issues a request for information.

If you are contacted by our office to provide additional information, please provide an answer for all questions to the best of your ability.

- Please submit documentation in the form of pdf. or word documents. We are unable to open Hyperlinks, and Zip Files are often corrupt.
- If a start date is requested, please ensure the start date including Month, Day, and Year are provided.

Failure to provide information sufficient to address the request will result in the Department making a determination based on the information already available.

VERIFIABLE UNION DISPUTE



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VERIFIABLE UNION DISPUTE

Penalty Adjustment Assessment

Department assesses facility's penalty reduction request based on the following criteria:

- Cited union dispute existed during the quarter of noncompliance that impacted nursing titles subject to minimum staffing HPRD requirements
- Sufficient demonstration
 - Dispute directly involved nursing titles with a deficient quarterly HPRD
 - Dispute directly impacted staffing levels of relevant titles
 - Formal evidence of the cited union dispute

VERIFIABLE UNION DISPUTE

Penalty Adjustment

- If the Department accepts this mitigating factor, the period covered by the dispute is removed from the facility's quarterly average HPRD calculations.
- The recalculated quarterly HPRDs will determine the penalty adjustment
 - If all three HPRDs meet compliance levels (3.5 HPRD, 2.2 HPRD, and 1.1 HPRD), all penalties are eliminated for the quarter.
 - If any of the three HPRDs remain below compliance levels, daily penalties for the period covered by the emergency are eliminated.

ENFORCEMENT REFERRALS

- All facilities out of compliance are subject to enforcement and will be referred to the Department's Division of Legal Affairs
- Program referrals will include:
 - All determinations of noncompliance
 - Assessments of mitigating factors and recommended penalty reductions
 - Recommended penalty amount
- The authority to apply the actual penalty amount rests with the Division of Legal Affairs
- Following program referrals, the Division of Legal Affairs Bureau of Administrative Hearings will be the Department contact regarding enforcement.

QUESTIONS:

NHSAFESTAFFING@HEALTH.NY.GOV



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