

**Nursing Home Staffing Standards Webinar
Frequently Asked Questions (FAQ)**

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Acute Labor Supply Shortage

Q. Where can I find the Commissioner's determination on an acute labor supply shortage?

A. The Commissioner of Health's Determination on the Existence of an Acute Labor Supply Shortage (hereinafter, "Commissioner's Determination") will be made available on the DOH Nursing Home Minimum Staffing and Direct Resident Care Spending Public Webpage at https://health.ny.gov/facilities/nursing/minimum_staffing/index.htm.

Q. Has the Commissioner's Determination been made for the current quarter

A. Please see the Commissioner's Determination posted to the DOH Nursing Home Minimum Staffing and Direct Resident Care Spending Public Webpage referenced above for specific applicability guidance.

Q. How do you identify a labor supply shortage? If most of the skilled nursing facilities (SNFs) can't meet the requirement, does that have an impact on the commissioner's determination?

A. The Commissioner's Determination will be made in consultation with the New York State

Department of Labor (DOL) and will take into account job availability metrics developed and reviewed by DOL, which includes the list of job openings in New York State.

Q. Executive Order (EO) 4.22 was in effect until June 2023. Was this EO taken into consideration in the Commissioners determination?

A Generally, EO 4 will be taken into consideration to the extent it was in effect during the Quarters being assessed for compliance. At this point, the Commissioner, in consultation with DOL, has issued a Determination regarding the 2nd Quarter of 2022, the 3rd Quarter of 2022, and 4th Quarter of 2022. This Determination relies upon EOs 4.7 through 4.16 and states that such EOs support the determination that healthcare facilities, including residential health care facilities licensed by the State of New York in all Metropolitan and Nonmetropolitan Areas of New York State, were located in an area experiencing an acute labor supply shortage during the second, third and fourth quarters of 2022.

Q. It seems contradictory to have a State of Emergency regarding labor supply shortages (under Executive Order No. 4) but still have this law (Public Health Law § 2828) go into effect; can you address this apparent inconsistency?

A. The Commissioner, in consultation with the Department of Labor, has issued determinations regarding the 2nd Quarter of 2022, the 3rd Quarter of 2022, and 4th Quarter of 2022. The determination cites Executive Orders (EOs) 4.7 through 4.16 and states that such EOs support the determination that healthcare facilities, including residential health care facilities licensed by the State of New York in all Metropolitan and Nonmetropolitan Areas of New York State, were all located in an area experiencing an acute labor supply shortage during the second, third and fourth quarters of 2022. Provided a facility has made reasonable attempts to acquire new staff and taken appropriate steps to ensure the health and safety of its residents, it may be eligible for a penalty reduction based on the Commissioner's Determination.

*** Q. Are there considerations for very rural areas where there may not be a suitable pool of candidates?**

A. The methodology used to identify an acute labor supply shortage compares Nonmetropolitan Areas against the National Average and then compares Nonmetropolitan Areas against other Nonmetropolitan Areas. Areas where the provider-to-population ratio in the Nonmetropolitan Area is at least 10 percent below the national average overall or for Nonmetropolitan Areas have the option of requesting a penalty reduction. In addition, providers should continue to recruit necessary staff, noting that the State continues to invest in health care workforce through loan repayment opportunities and various other health care workforce initiatives.

*** Q. How is it possible that a shortage can exist in one county, and for facilities located in an adjacent county, how can it be determined not to have the same shortage?**

A. As established in regulation, the Department determines whether the facility is in an area with a shortage based on the Metropolitan and Nonmetropolitan Area in which the facility is located, as defined by the federal Bureau of Labor Statistics. Acute Labor Supply Shortage Determinations are not made on a county-by-county basis.

*** Q. In identifying acute labor shortages, did DOH take into consideration regional pay rates for the relevant titles or job availability metrics, including the list of job openings in NYS?**

A. The Department investigated Bureau of Labor Statistics (BLS) regional level job titles, median wage

rates, and average wages as potential indicators for labor market patterns. We concluded that wage rate data is not a viable metric for our use case in measuring the labor market as no relationship could be ascertained. This was also discussed with the Department of Labor who concurred with our research and calculations and endorsed our enhanced methodology.

*** Q. Which Bureau of Labor Statistics titles is the Department using to quantify ratios of nursing titles to population?**

A. When quantifying provider to population ratios, the Department utilizes the available Federal Bureau of Labor Statistics provider data for each nursing title specified in the Public Health Law 2895-b minimum hours per resident day requirements.

*** Q. Can a facility submit a penalty reduction request that challenges the Commissioner's Determination of a Labor Supply Shortage?**

A. Pursuant to statute and regulation, the Department may reduce penalties, if the Department determines, in its sole discretion, that during the period of non-compliance: the facility faced Extraordinary Circumstances; an Acute Labor Supply Shortage of nurse aides, certified nurse aides, licensed practical nurses, or registered nurses exists in the Metropolitan and Nonmetropolitan Area in which the facility is located; or a Verifiable Union Dispute existed between the facility and nurse aides, certified nurse aides, licensed practical nurses, or registered nurses employed or contracted by such facility.

Assessments of Compliance

Q. What is the expected turnaround time for DOH to make a decision on redetermination or penalty reduction requests made by nursing homes?

A. The Department will review redetermination requests and penalty reduction applications as soon as reasonably practicable after receipt of a completed application. Nevertheless, response time may vary based on the thoroughness of the application, how quickly the facility responds to requests for additional information, and the complexity of issues and facts involved.

Q. What is the time lag between the Payroll Based Journal (PBJ) data submission and when DOH will review the PBJ data and issue the compliance notice?

A. The Centers for Medicare & Medicaid Services (CMS) publishes the PBJ approximately four months after the close of a quarter. The Department will issue compliance notices as soon as reasonably practicable thereafter.

Q. What is the timeline that DOH expects to have the first round of compliance assessments completed? What is the timing of subsequent rounds?

A. The Department anticipates beginning assessments of compliance for the 2nd Quarter 2022 in July 2023. We will engage in compliance activities for subsequent quarters thereafter. The compliance notices disseminated at that point will include information regarding which specific period is covered.

Q. Will all outstanding quarters be released at the same time or just Q2 -2022?

A. Please see the answer to the previous question regarding the release of compliance determinations for quarterly compliance periods.

Q. How will DOH treat homes that do not have PBJ data for a specified quarter? (Once

the PBJ deadline is missed, a facility is not able to submit and no data for them is in the database.)

A. Nursing homes that do not appear in the PBJ for the quarter will be determined to be out of compliance. Facilities found to be out of compliance that do not agree with the determination will have the opportunity to request a redetermination using the Department-prescribed form, as explained during the July 6, 2023 webinar.

Q. What if the forthcoming federal guidance on staffing standards contradicts with or is different from the State standards?

A. The Department will assess the impact of any newly issued federal guidance or laws, if and when they are established, and will communicate any required changes to policy or procedure as soon thereafter as reasonably practicable.

Q. Occasionally our facility's LPNs work in CNA positions, meaning they are not functioning as LPNs. Can we count them as CNAs versus LPNs?

A. As required by Public Health Law § 2895-b, the Department will determine the Hours Per Resident Day (HPRD) using the hours for each title that were reported to the CMS PBJ and contained in the PBJ Public Use File for the review quarter. This answer therefore depends on how the LPN hours were reported to CMS.

Q. Is there an explanation as to why Respiratory Therapy (RT), Physical Therapy, Occupational Therapy, Speech Therapy staff, or other clinical staff are not included in the minimum staffing requirement assessment?

A. Public Health Law § 2895-b only governs the minimum requirements for Registered Nurses, Licensed Practical Nurses, and Certified Nurse Aides (including nurses in training for review periods in 2022) in New York State Nursing Homes.

Q. Are there any nursing homes that are exempt from this requirement – i.e., Specialty facilities or CCRCs?

A. All facilities licensed as “residential health care facilities” under Article 28 of the Public Health Law are included in the statutory requirements set forth in Public Health Law § 2895-b governing the minimum requirements for Registered Nurses, Licensed Practical Nurses, and Certified Nurse Aides.

Calculations of Hours Per Resident Day (HPRD)

Q. Is there any consideration for facilities that meet the overall hours per resident day (HPRD) but may not meet the individual job title and may use a LPN to replace a CNA due to shortage/call outs?

A. Nursing homes must meet the staffing requirements for all three nursing titles specified in Public Health Law § 2895-b to be in compliance with the statute. As required by Public Health Law § 2895-b, the Department will determine the Hours Per Resident Day (HPRD) using the

hours for each title that were reported to the PBJ contained in the PBJ Public Use File for the review quarter.

Q. Who is included in the staffing hours? For example, would the reported RN hours include the director of nursing or administrative nurses, or is it just floor nurses?

A. For the purposes of determining compliance, an individual shall not be counted while performing administrative services, as defined in the CMS PBJ for long-term care facilities.

Q. Can you please clarify the job codes that will be counted towards the staffing hours and ratios used, most notably RN/LPN areas?

A. The Department calculates staffing ratios using CMS's PBJ Public Use File data for the quarter. For the purpose of determining compliance, an individual shall not be counted while performing administrative services or when in training and not available to perform primary duties, as defined in the CMS PBJ for long-term care facilities. Please contact CMS for more information on which job codes are associated with RNs, LPNs, CNAs, and NAs.

Q. There are three columns for the HPRD; is the Department making that determination by the regular "Reported Hours per Resident per Day", or is it the "Case-Mix HRD" or "Case-Mix Adjusted HRD"?

A. The Department will calculate the Hours Per Resident Day (HPRD) using the Total Hours for each of the appropriate titles (RN, LPN and CNA) and the Resident Census from the Minimum Data Set (MDS) contained in the CMS PBJ Public Use File for the review quarter.

Q. Can you walk through the process of calculation for quarterly submission of all staffing requirements?

A. Using the CMS PBJ data for the quarter:

- The Department will calculate the total HPRD to determine compliance with the 3.5 HPRD requirement by:
 1. First calculating the total average staff hours for the quarter. To do this we will sum the daily hours reported for all of the applicable titles and divide this sum by the number of days reported to CMS.
 2. Then we will calculate the total average census for the quarter. To do this we will sum the daily Resident Census reported and divide this sum by the number of days reported to CMS.
 3. And finally, we will divide the calculated total average staffing hours by the calculated total average census.
- The Department will calculate the HPRD for the applicable titles to determine compliance with each the RN and/or LPN 1.1 and CNA 2.2 HPRD requirements by:
 1. First calculating the average staff hours for the appropriate titles for the quarter. To do this we will sum the daily hours reported for the applicable titles and divide this sum by the number of days reported to CMS.
 2. Then we will calculate the total HPRD provided by the applicable titles. To do this we will divide the calculated average staff hours for the applicable titles by the calculated total average census.

Q. Are CNA trainees counted in the HPRD assessment?

A. For review periods in the calendar year 2022, the HPRD hours for a CNA will include hours of care provided by nurse aides in training.

Q. Will the department be using the MDS census information that is used by CMS, or will you be getting the daily census from another source?

A. When initially determining whether a facility is compliant or non-compliant with minimum nursing staff requirements, the Department will calculate the Hours Per Resident Day (HPRD) using the Resident Census from MDS contained in the PBJ Public Use File for the review quarter.

Q. We have a respite program at our nursing home. Are those days included in census?

A. Please see the answer to the previous question regarding the census used in our calculations.

Health Commerce System

Q. How can I update my roles in the HCS?

A. The Commerce Accounts Management Unit (CAMU) at camu@its.ny.gov or 1-866-529-1890 option 1, and your HCS administrator, can assist you with making necessary updates.

Mitigating Factors

Q. Does the Declaration of a Statewide Disaster Emergency Due to Healthcare Staffing Shortages in the State of New York count as an extraordinary circumstance per 10 NYCRR § 415.13, providing that “a State or municipal emergency affecting the facility has been declared pursuant to Article 2-B of the Executive Law”?

A. If the Commissioner of Health has determined, in consultation with the Department of Labor, that there was an Acute Labor Supply Shortage in the area the facility is located in, facilities may apply for a penalty reduction by completing the application Schedule B for an Acute Labor Supply Shortage.

Facilities may also consider whether any “extraordinary circumstance” may also apply, separate from the acute labor supply shortage, to warrant mitigation. In such case, the facility must also submit Schedule A. In the event that a facility cites the Governor’s emergency declaration/Acute Labor Shortage as a mitigating factor, the Department will first assess Schedule B to determine whether an Acute Labor Supply Shortage exists and the facility has, to the satisfaction of the Department, demonstrated sufficient reasonable attempts to recruit staff and actions to ensure the health and safety of residents, before determining whether any other mitigating factors in Schedule A may also be implicated.

Q. Can a facility qualify for mitigation in the context of an acute labor supply shortage if it has reduced admissions, but has not taken the extraordinary steps of suspending them entirely or transferring residents to another facility?

- **If a facility is required to transfer residents in order to qualify for mitigation, but the residents do not initiate the transfer, how does the facility comply with federal regulations at 42 CFR § 483.15(c)(1)(i)?**

- **If a facility is required to transfer residents to qualify for mitigation, it will be difficult to find transfer destinations, given the existence of an acute labor supply shortage in the area. Will the Department assist with identifying other facilities to accept the residents?**

A. When evaluating the steps taken to ensure the health and safety of residents during a period of insufficient staffing and an acute labor supply shortage, as declared by the Commissioner of Health in the area the facility is located in, the Department will consider all actions taken by the facility over the course of the quarter, including but not limited to transferring residents when allowable by law and appropriate.

*** Q. Does the department take into account when a New York State of Emergency is issued? What about when the Governor issued a state of emergency related to nursing staffing?**

A. The Department may reduce penalties if the facility is located in an area impacted by a State or municipal emergency that has been declared pursuant to Article 2-B of the Executive Law or by the local authority having jurisdiction. The facility must submit a Penalty Reduction Application and demonstrate that this extraordinary circumstance impacted the facility by completing Schedule A.

If the Commissioner of Health has determined, in consultation with the Department of Labor, that there was an Acute Labor Supply Shortage in the area the facility is located in, facilities may apply for a penalty reduction by completing the application Schedule B for an Acute Labor Supply Shortage.

In the event that a facility cites the Governor's emergency declaration based on staffing shortages as a mitigating factor, the Department will first assess Schedule B to determine whether an Acute Labor Supply Shortage exists and whether the facility has, to the satisfaction of the Department, demonstrated sufficient reasonable attempts to recruit staff and took actions to ensure the health and safety of residents, before making a determination regarding any other mitigating factors in Schedule A.

*** Q. How do we know that we provided the information and documentation required by the Department to demonstrate the mitigating factors?**

A. As discussed during the February 20th webinar, please refer to the "November 15, 2023 Nursing Home Staffing Standards Webinar" posted on the Department's Minimum Staffing and Direct Resident Care Spending webpage at:

https://health.ny.gov/facilities/nursing/minimum_staffing/index.htm, as well as the instructions included in the Penalty Reduction Application, which provide detailed guidance on submission requirements for each mitigating factor. Facilities should additionally refer to any feedback included in Department requests for information issued subsequent to penalty reduction request application submissions. Provider specific questions should be directed to NHSafeStaffing@health.ny.gov.

Notices of Compliance/Non-compliance

Q. When can facilities expect initial compliance notices, and will each quarter be given/calculated separately?

A. The Department anticipates disseminating initial notices the week of July 24, 2023, barring any technical or other operational issues. Individual notices will be provided for each review period when the corresponding assessment cycle is completed. The compliance notices disseminated at that point will include information on what period is being covered.

Q. When will we begin seeing the notices on HCS?

A. Please see previous answer regarding the dissemination of notices.

Penalties

Updated February 9, 2026. Supersedes all previously written and verbal communications.

Q. If the facility meets two of the three requirements, will they be considered out of compliance and have to pay fines?

A. Nursing homes must meet the staffing requirements for all three nursing titles to be in compliance with the statute. Therefore, nursing homes that do not meet the requirement set forth for each nursing title will be subject to penalties. Nursing homes that believe they can demonstrate the mitigating factors set forth in regulation may apply for a penalty reduction using the forms prescribed by the Department.

Q. Could you please provide a chart or schedule of the progressive penalties to be imposed?

A. Prior to considering Mitigating Factors, the Department will establish a penalty of up to two thousand (2,000) dollars per day for each day in a quarter that a facility fails to meet the minimum nursing staffing level requirement(s) they were determined to be out of compliance with for the quarter. Based on the charts below:

Minimum 1.1 Hours Per Resident Day (HPRD) provided by a Registered Nurse or Licensed Practical Nurse (RN/LPN)

If the Department determines that the facility’s quarterly average of RN/LPN hours per resident per day (HPRD) was equal to or greater than the required 1.1 HPRD, no daily penalties will be assessed for this standard.

If the quarterly average of RN/LPN HPRD was determined to be below the requirement, daily penalties will be assessed as follows:

| Registered Nurse and/ or Licensed Practical Nurse Daily HPRD Hours (Range) | 1st Occurrence of Non-compliance in the Calendar Year | 2nd Occurrence of Non-compliance in the Calendar Year | 3rd Occurrence of Non-compliance in the Calendar Year | 4th Occurrence of Non-compliance in the Calendar Year |
|--|---|---|---|---|
| | Penalty/Day | Penalty/Day | Penalty/Day | Penalty/Day |
| 1.1 | \$0 | \$0 | \$0 | \$0 |
| 1 | \$88.00 | \$114.00 | \$152.00 | \$252.00 |
| 0.8 to 0.9 | \$108.00 | \$140.00 | \$186.00 | \$310.00 |
| 0.6 to 0.7 | \$136.00 | \$176.00 | \$232.00 | \$388.00 |
| 0 to 0.5 | \$280.00 | \$360.00 | \$480.00 | \$800.00 |

Minimum 2.2 Hours Per Resident Day (HPRD) provided by a Certified Nurse Aide (CNA)**

| If the Department determined that the facility's quarterly average of CNA hours per resident per day was equal to or greater than the required 2.2 HPRD, no daily penalties will be assessed for this standard. | | | | |
|---|---|---|---|---|
| If the quarterly average of CNA HPRD was determined to be below the requirement, daily penalties will be assessed as follows: | | | | |
| Certified Nurse Aide Daily HPRD Hours (Range) | 1st Occurrence of Non-compliance in the Calendar Year | 2nd Occurrence of Non-compliance in the Calendar Year | 3rd Occurrence of Non-compliance in the Calendar Year | 4th Occurrence of Non-compliance in the Calendar Year |
| | Penalty/Day | Penalty/Day | Penalty/Day | Penalty/Day |
| 2.2 | \$0 | \$0 | \$0 | \$0 |
| 1.9 to 2.1 | \$88.00 | \$114.00 | \$152.00 | \$252.00 |
| 1.5 to 1.8 | \$108.00 | \$140.00 | \$186.00 | \$310.00 |
| 1.1 to 1.4 | \$136.00 | \$176.00 | \$232.00 | \$388.00 |
| 0 to 1 | \$280.00 | \$360.00 | \$480.00 | \$800.00 |

**Certified Nurse Aides includes nurses in training for review periods in 2022

Minimum 3.5 Hours Per Resident Day (HPRD) provided by a Registered Nurse and/or Licensed Practical Nurse (RN/LPN), and a Certified Nurse Aide (CNA)**

| If the Department determined that the facility's quarterly average of total RN/LPN and CNA hours per resident per day was equal to or greater than the required 3.5 HPRD, no daily penalties will be assessed for this standard. | | | | |
|--|---|---|---|---|
| If the total quarterly average of RN/LPN and CNA HPRD was determined to be below the requirement, daily penalties will be assessed as follows: | | | | |
| Total Daily Registered Nurse, Licensed Practical Nurse, Certified Nurse Aide HPRD Hours (Range) | 1st Occurrence of Non-compliance in the Calendar Year | 2nd Occurrence of Non-compliance in the Calendar Year | 3rd Occurrence of Non-compliance in the Calendar Year | 4th Occurrence of Non-compliance in the Calendar Year |
| | Penalty/Day | Penalty/Day | Penalty/Day | Penalty/Day |
| 3.5 | \$0 | \$0 | \$0 | \$0 |
| 2.9 to 3.4 | \$44.00 | \$57.00 | \$76.00 | \$126.00 |
| 2.2 to 2.8 | \$54.00 | \$70.00 | \$93.00 | \$155.00 |
| 1.5 to 2.1 | \$68.00 | \$88.00 | \$116.00 | \$194.00 |
| 0 to 1.4 | \$140.00 | \$180.00 | \$240.00 | \$400.00 |

**Certified Nurse Aides includes nurses in training for review periods in 2022

If the Department accepts that mitigating factors impacted the facility's ability to provide sufficient staff, the penalty is eligible for a partial or full reduction during the period covered by the mitigating factor.

Q. The regulations call for “progressive penalties assessed based upon the number of days per quarter in which the daily staffing hours provided per resident fell below the minimum hourly requirements.” What formula, if any, will the Department use to establish “progressive” penalties based on number of days out of compliance?

A. Penalties of up to \$2,000 per day will be based on the levels of noncompliance in the quarter and frequency of noncompliance. The Department will assess daily penalties for the minimum hours per resident day standard(s) the facility was out of compliance for the quarter, based on the actual HPRD within set ranges and can increase based on the number of quarters the facility is out of compliance in the year. If the Department accepts a mitigating factor presented by the facility, the penalty is eligible for partial or full penalty reduction. See charts above.

Q. The civil penalty for non-compliance is “up to” \$2,000. Are there levels of non-compliance that would result in a penalty of less than \$2,000?

A. Please see answer to previous questions regarding penalty amounts.

Q. Is there a minimum penalty per day? Can you direct me to the statute indicating any minimums?

A. When determined appropriate, under the authority established by the Public Health Law § 2895-b, the Department can reduce the penalty to any amount between \$0 and \$2,000 per day. Public Health Law § 2895-b can be found at:

<https://www.nysenate.gov/legislation/laws/PBH/2895-B> and the regulations at 10 NYCRR § 415.13 can be found at <https://regs.health.ny.gov/>.

*** Q. Under the trifurcated penalty model, if you meet the 1.1 and the 2.2 but not the overall 3.5 you will not get a fine?**

A. No, that is incorrect. If the facility is in compliance with licensed nurse requirements and certified nurse aide requirements but out of compliance with the total nurse staffing standard (i.e., the 3.5), the facility is potentially subject to a penalty based on the failure to meet the total nurse staffing standard. Please review the chart provided in the Frequently Asked Questions document Revised February 9, 2026 and posted to the Nursing Home Minimum Staffing and Direct Resident Care Spending webpage at health.ny.gov/facilities/nursing/minimum_staffing/.

Assessed Penalties

*** Q. Does the Department plan to impose penalties going back to 2022?**

A. As required by statute and regulation, the Department will impose a penalty of up to two thousand (2,000) dollars per day for each day in a quarter that a facility fails to comply with the minimum nursing staff requirements going back to the effective date of Public Health Law § 2895-b.

*** Q. Am I correct in assuming if you are not on the published list of penalties then you are not going to be assessed a penalty for that period?**

A. No, that is incorrect. The absence of a particular facility from periodic postings does not indicate that penalties will not be assessed against that facility's violations during the posted compliance

periods.

*** Q. Were methodologies changed after the initial penalty assessments?**

A. The penalties posted to the Department's website reflect the Commissioner's Determination on an Acute Labor Supply Shortage that was updated on February 9, 2026. No initial penalty assessments were posted or communicated prior to February 9, 2026.

*** Q. Will the penalties be reinvested into programs to help facilities meet minimum staffing requirements?**

A. Public Health Law § 2895-b(5)(a) establishes that "fines and civil penalties collected by the commissioner pursuant to this section shall be deposited into a nursing home worker recruitment and safety fund established pursuant to section ninety-nine-ss of the state finance law to enhance the quality of employment for residential health care facility employees and assist in the recruitment and safety of residential health care facility staff." When appropriate the Department will provide additional information regarding the nursing home worker recruitment and safety fund recently enacted into law on December 19, 2025, and to take effect one year after enactment.

*** Q. Where are Assessed Penalties and the Commissioner's Acute Labor Shortage Determinations posted?**

A. The Department of Health (DOH) Nursing Home Minimum Staffing and Direct Resident Care Spending webpage can be found at

https://health.ny.gov/facilities/nursing/minimum_staffing/index.htm.

Redeterminations

Q. If a facility determines that the job title code was submitted in error to the PBJ system, can they correct the title through the Department's redetermination process?

A. If the nursing home believes the initial determination of non-compliance was due to an error in the CMS PBJ Public Use file, you will have the opportunity to request a redetermination using the forms prescribed by the Department.

Penalty Reduction Applications

*** Q. How would you enter the start date if you had multiple job fairs during the quarter and there is only one area to enter the start date on the penalty reduction application?**

A. In this instance, the facility should select the job fair they can provide the requested information and documentation to sufficiently demonstrate the reasonable attempt and use the date of that job fair, provided it is during the period of non-compliance.

*** Q. Would the department be willing to share examples of the types of responses to address noncompliance that have been approved, so we have a better sense of what you are looking for?**

A. Information regarding Penalty Reduction Application requirements is included in the November 15, 2023 Nursing Home Staffing Standards Webinar which is available on the Nursing Home Minimum Staffing and Direct Resident Care Spending webpage. When appropriate, the Department will issue additional guidance related to Penalty Reduction Applications.

*** Q. Are reasonable attempts not considered for penalty reduction if there are no mitigating**

factors, e.g. a labor shortage or union dispute ?

A. You are correct. A request for a penalty reduction can only be made for the following mitigating factors pursuant to statute and regulation: the facility faced Extraordinary Circumstances; an Acute Labor Supply Shortage of nurse aides, certified nurse aides, licensed practical nurses, or registered nurses exists in the Metropolitan and Nonmetropolitan Area in which the facility is located, as determined by the Commissioner; or a Verifiable Union Dispute existed between the facility and nurse aides, certified nurse aides, licensed practical nurses, or registered nurses employed or contracted by such facility.

*** Q. If a facility raises pay rates or implements bonuses in Q1, does it have to raise pay again or increase bonuses in Q2, 3, and 4? If a facility partners with educational institutions in Q1, must they find new institutions to partner with in Q2, 3, and 4?**

A. Each quarter the facility is out of compliance and seeking a reduction in the associated penalty, they should submit one attempt to recruit staff, one attempt to enhance the job and make it more attractive to potential applicants, and one attempt to enhance the productivity of their current staff. If the facility is consistently in violation of Public Health Law 2895-b and is seeking repeated reductions in their penalties, they may either increase or enhance their previous attempts or they may implement a different attempt to recruit staff, enhance their positions and/or increase the productivity of their staff.

*** Q. How does the information provided by the facility in the penalty reduction application translate into the adjustment, if any, of the various HPRDs?**

A. While the Department may re-calculate a facility's HPRD to determine the facility's penalty reduction based on an extraordinary circumstance or union dispute, the facility's Penalty Reduction Application does not impact their HPRD.

If a facility believes their HPRD is incorrect, they may submit a Redetermination Request. Additional information regarding Redetermination request is available on Pages 9 through 19 of the "November 15, 2023 Nursing Home Staffing Standards Webinar".

*** Q. The department after Q1 limited what reasonable attempts could be submitted essentially one per category. What if facilities had additional efforts the facility was not able to submit because the department submission website restricts how many reasonable attempts you are able to submit?**

A. Following the first compliance period submissions and in response to external stakeholder comments and questions regarding the scope of information nursing homes must submit when requesting a penalty reduction, the Department revised the penalty reduction request application and provided detailed guidance to lessen the administrative burden for nursing homes. Please refer to the "November 15, 2023 Nursing Home Staffing Standards Webinar" to learn of the efficiencies developed by the Department and the best practices for submitting Penalty Reduction documentation. The webinar presentation and recording are posted on the Department's Minimum Staffing and Direct Resident Care Spending webpage at:

https://health.ny.gov/facilities/nursing/minimum_staffing/index.htm. If a provider has a specific concern regarding their submission of reasonable attempts in the penalty reduction request application, please immediately reach out to NHSafeStaffing@health.ny.gov.

Request Forms

Q. Where can we find the forms to request a reconsideration of an erroneous determination and to request mitigation of penalties?

A. The electronic Request for Redetermination form and application for Penalty Reduction due to mitigating factors will be available through a link in the Notice of Non-compliance that will be sent to Nursing Home Administrators and Operators. The additionally required Request for Redetermination - Employee Detail Attachment is available on the DOH Nursing Home Minimum Staffing and Direct Resident Care Spending webpage at https://health.ny.gov/facilities/nursing/minimum_staffing/index.htm.

*** Q. Where do we submit our request for reduction?**

A. A link to the Penalty Reduction Application form is included with a facility's Notice of Non-Compliance.

Supplemental Staffing Funding

Q. When will the federal share of the \$187M in staffing funds be distributed?

A. The federal share of the \$187 million in staffing funds will be distributed when the Department receives approval from CMS.

Webinar Materials

Q. Please advise where the PowerPoint presentation slides and recording of the Nursing Home Minimum Staffing Standards Webinar can be found.

A. Presentation slides for the July 6, 2023 webinar, as well as a recording, were shared with nursing home operators, administrators, directors of nursing, HPN coordinators in the Health Commerce System and industry associations. They are also posted on the Department's Minimum Staffing and Direct Resident Care Spending webpage at: https://health.ny.gov/facilities/nursing/minimum_staffing/index.htm.

*** Q. I missed the webinar. Where can I find the recording?**

A. A recording of the February 20, 2026 webinar, as well as presentation slides, can be found on the Department of Health's Nursing Home Minimum Staffing and Direct Resident Care Spending webpage at https://health.ny.gov/facilities/nursing/minimum_staffing/index.htm.

Webpage

Q. Please provide the URL that was mentioned during the webinar.

A. The Department of Health (DOH) Nursing Home Minimum Staffing and Direct Resident Care Spending webpage can be found at https://health.ny.gov/facilities/nursing/minimum_staffing/index.htm.

This page can also be reached from the DOH Nursing Homes in New York State webpage at <https://health.ny.gov/facilities/nursing/>.