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State of California—Health and Human
 Services Agency
**California Department of
 Public Health**



EDMUND G. BROWN JR.
Governor

June 29, 2018

AFL 18-27

TO: Skilled Nursing Facilities

SUBJECT: Guidelines for 3.5 Direct Care Service Hours Per Patient Day (DHPPD) Staffing Audits Pursuant to the Authority Provided in Welfare and Institutions Code section 14126.022 (Supersedes AFL 11-19, 10-33, and 11-13)

AUTHORITY: Health and Safety Code (HSC) sections 1276.5 and 1276.65 and Welfare and Institutions Code (W&I) section 14126.022

All Facilities Letter (AFL) Summary

In accordance with HSC sections 1276.5 and 1276.65 and W&I section 14126.022, this notice provides guidelines for facility requirements during state audits for compliance with the 3.5 direct care service hours per patient day (DHPPD) staffing requirements, of which a minimum of 2.4 hours per patient day shall be performed by certified nurse assistants (CNAs).

These guidelines are limited to the implementation of W&I section 14126.022 and the Skilled Nursing Facility Quality and Accountability Supplemental Payment (QASP) System set forth therein. These guidelines are in addition to any other statutes and regulations applicable to a skilled nursing facility (SNF).

I. Overview

The California Department of Public Health (CDPH) conducts audits of random samples of open, active, freestanding SNFs for compliance with the minimum staffing requirements established by the Legislature. Beginning July 1, 2018, CDPH will conduct unannounced on-site staffing audits of all facilities to verify compliance with the 3.5 DHPPD staffing standard, with 2.4 DHPPD provided by CNAs. This standard does not assure that any given patient receives 3.5 hours of nursing care; it is the total number of nursing hours performed by direct caregivers per patient day divided by the average patient census.

Prior to July 1, 2019, CDPH will issue a notice of intent to issue an administrative penalty if the facility is in violation of HSC section 1276.5 (non-compliance with 3.2 NHPPD).

On or after July 1, 2019, CDPH will issue a notice of intent to issue an administrative penalty if the facility is in violation of HSC section 1276.65 (non-compliance with 3.5 DHPPD and/or 2.4 CNA DHPPD).

W&I section 14126.022 requires the Department to assess an administrative penalty to a SNF if the Department determines that the SNF fails to meet the applicable DHPPD requirements pursuant to either HSC sections 1276.5 or 1276.65, as follows:

- Fifteen thousand dollars (\$15,000) if the facility fails to meet the requirements for five percent or more of the audited days, up to 49 percent.
- Thirty thousand dollars (\$30,000) if the facility fails to meet the requirements for more than 49 percent of the audited days.

Once CDPH issues an administrative penalty, the SNF may appeal. All Facilities Letter (AFL) 11-20 addresses the appeal process.

A. The Audit Process

Upon entrance, the facility shall provide the audit or survey team a lockable room, power supply, chair, and a table sufficient to hold a laptop computer and audit documents. This room must provide sufficient privacy to allow for the review of confidential information. The CDPH auditor will then conduct an entrance conference with the facility's administrator or designee.

The CDPH auditor will provide the facility a list of selected dates taken from a 90-day period preceding the audit. The facility shall provide the auditor with requested documentation to determine compliance with staffing requirements for those specified days. The documentation requested will include payroll and personnel records, nursing payroll codes, assignment sheets, duty statements, job descriptions, registry invoices, and/or census and DHPPD forms. The facility shall also provide documentation of any CDPH approved 3.5 DHPPD and/or 2.4 DHPPD (CNA) waiver or present evidence that the facility submitted a waiver application to CDPH that is still under review.

Facilities that use electronic payroll systems must provide the auditor a paper copy of the payroll records. Auditors may use other documents, as stated in Section 6 (b) "Documentation," to verify the accuracy of the payroll records. The SNF may provide the other documents to the auditor electronically.

CDPH shall not accept documents or records that are incomplete, illegible, or inaccurate. CDPH shall not accept modifications made contemporaneously to the audit. To consider employees not captured in payroll records and those hired to perform duties other than direct care, documentation must delineate the time spent on nursing services. The facility shall either create an assignment sheet or use the attached "Nursing Staffing Assignment and Sign-In Sheet" (CDPH 530 and instructions) to record daily staffing assignments for these employees.

Only direct caregivers shall count toward DHPPD.

The facility shall provide the auditor with the patient census at either (a) the beginning of each shift if a facility has three (3) shifts within a 24-hour period or (b) the beginning of the 24-hour patient day and again both at 8 hours and 16 hours after the start of the 24-hour patient day, for all days requested. The facility shall provide the exact time it begins its patient day.

CDPH will equip auditors with a laptop computer that includes the DHPPD database and a portable printer. The auditor will enter data collected from the documentation into the DHPPD database. The database will compute the

daily DHPPD. Following entry of all data, the auditor will generate a report.

The automated calculation of 3.5 DHPPD is based on:

- (1) Patient day – the 24-hour period of time used to determine HSC sections 1276.5 and 1276.65 compliance;
- (2) Average census;
- (3) Number of hours worked by direct caregivers.

Specifically, the standard of 3.5 DHPPD is calculated as follows:

$$\frac{\text{Total number of actual nursing hours performed by direct caregivers per patient day}}{\text{The average census during the patient day}}$$

The standard of 2.4 DHPPD for CNAs is calculated as follows:

$$\frac{\text{Total number of actual nursing hours performed by CNAs per patient day}}{\text{The average census during the patient day}}$$

The auditor will conduct an exit conference with the facility administrator or designee to report the findings and conclude the audit process. The auditor will record the conference.

B. Regulatory Enforcement

Upon a finding of non-compliance during an on-site audit, a Statement of Deficiency will be issued for non-compliant days reviewed. A single deficiency will be issued for staffing non-compliance, for each staffing standard, regardless of the number of non-compliant days. If CDPH determines the facility's non-compliance warrants an administrative penalty, CDPH will issue a single administrative penalty regardless of the number of non-compliant days.

Evidence of a skilled nursing facility's non-compliance with the requirements of subsections (c)(1)(B) and (C) of section 1276.65 shall not be treated by CDPH as a violation under subsection (g) of section 1276.65 or section 1424 unless such non-compliance occurs on or after July 1, 2019 and the facility has not been granted a waiver by CDPH covering the period of the non-compliance.

Facilities with non-compliant days must submit a plan of correction to the Staffing Audits Section at the following address:

Staffing Audits Section
Licensing and Certification Program
Center for Health Care Quality
California Department of Public Health

1615 Capitol Avenue
P.O. Box 997377, MS 3203 Sacramento, CA 95899-7377

Facilities wishing to electronically submit the plan of correction may send a signed copy of the plan of correction in PDF format to the following email account: CDPHL&C-StaffingAudits@cdph.ca.gov. The facility must maintain the original signed plan of correction at the facility for a minimum of three years.

The facility will receive a finding of non-compliance with the 3.5 DHPPD and/or 2.4 DHPPD (CNA) requirement for each day audited for which the facility does not provide documentation.

Prior to July 1, 2019, CDPH will issue a notice of intent to issue an administrative penalty if the facility is in violation of HSC section 1276.5 (non-compliance with 3.2 NHPPD). On or after July 1, 2019, CDPH will issue a notice of intent to issue an administrative penalty if the facility is in violation of HSC section 1276.65 (non-compliance with 3.5 DHPPD and/or 2.4 CNA DHPPD).

W&I section 14126.022 requires the Department to assess an administrative penalty to a SNF if the Department determines that the SNF fails to meet the DHPPD requirements pursuant to HSC sections 1276.5 or 1276.65. The Department shall assess an administrative penalty to any facility that fails to meet the applicable standard for staffing requirements on any given day. Prior to July 1, 2019, the applicable standard for purposes of assessing this penalty is 3.2 NHPPD. On or after July 1, 2019, the applicable standard is 3.5 DHPPD and 2.4 DHPPD (CNA). The penalties shall be assessed as follows:

- Fifteen thousand dollars (\$15,000) if the facility fails to meet the requirements for five percent or more of the audited days up to 49 percent.
- Thirty thousand dollars (\$30,000) if the facility fails to meet the requirements for more than 49 percent of the audited days.

The Department may assess a deficiency for any other violation, per audit day.

Once CDPH issues an administrative penalty, the SNF may appeal. All Facilities Letter 11-20 addresses the appeal process.

II. Guidelines

Section 1: Definitions

- (a) **3.5 DHPPD Staffing Requirement** means the minimum number of actual nursing hours performed by direct caregivers per patient day.
- (b) **2.4 DHPPD (CNA) Staffing Requirement** means the minimum number of actual nursing hours performed by CNAs per patient day.
- (c) **Absent Patient** means a patient that is not in the facility or receiving services from the facility.
- (d) **Average Census** means the average of the census during a patient day. Average census is determined by adding the census for either (a) the beginning of each shift if a facility has 3 shifts within a 24-hour period or (b) the beginning of the 24-hour patient day and again both at 8 hours and 16 hours after the start of the 24-hour patient day, and dividing the total by 3. "Census period" means the period of time covered by the method chosen to figure the average census.

Method (a):

Census at Start of Shift 1 + Census at Start of Shift 2 + Census at Start of Shift 3 ÷ 3 =
Average Census

Method (b):

Census at Start of 24 Hour Patient Day + Census 8 Hours after Start of 24 Hour Patient
Day + Census 16 Hours after Start of 24 Hour Patient Day ÷ 3 = Average Census

- (e) **Bed Hold** means a bed that is held for a patient that the facility has transferred to a general acute care hospital or acute psychiatric hospital for purposes of hospitalization or therapeutic leave.
- (f) **DHPPD Calculation** means the number that results from dividing the actual nursing hours performed by direct caregivers per patient day by the average census.
- (g) **Department** means the California Department of Public Health (CDPH) or its designee.
- (h) **Direct Caregiver** means a registered nurse, as referred to in section 2732 of the Business and Professions Code; a licensed vocational nurse, as referred to in section 2864 of the Business and Professions Code; a psychiatric technician, as referred to in section 4516 of the Business and Professions Code; and a certified nurse assistant, or a nursing assistant participating in an approved training program, as defined in HSC section 1337, while performing nursing services as described in CCR Title 22, section 72309, section 72311, and section 72315.
- (i) **Direct Care Service Hours** has the same meaning as in HSC section 1276.65(a)(1).
- (j) **Director of Nursing Services** means the description provided in CCR Title 22, section 72327.

- (k) **Documentation** means a record, letter, or document that is accurate, legible, and complete. A confidential patient medical record is not considered “documentation” for the purposes of establishing nursing hours of a direct caregiver.
- (l) **Electronic Record** means documentation in an electronic format.
- (m) **Employee or Staff** means employee, registry staff as defined in CCR Title 22, section 72309, temporary staff, contract employee, terminated or “inactive” employee, or any person meeting the definition of a direct caregiver.
- (n) **Intermediate Care** means inpatient care given to patients who have need for skilled nursing supervision and need supportive care, but who do not require continuous skilled nursing care.
- (o) **Intermediate Care Facility (ICF)** means a facility described in HSC section 1250(d).
- (p) **Intermediate Care Patient** means a patient receiving intermediate care and occupying a licensed intermediate care bed used exclusively for patients receiving intermediate care.
- (q) **Licensed Nurse** means a registered nurse or a licensed vocational nurse.
- (r) **Nursing Hours** shall have the same meaning as in HSC section 1276.5 (b)(1).
- (s) **Nursing Services** means services defined in CCR Title 22, section 72309, section 72311 and section 72315.
- (t) **Patient** means the description provided in CCR Title 22, section 72077.
- (u) **Patient Day** means a 24-hour period which is used to determine compliance with HSC sections 1276.5 and 1276.5. The patient day can be no less and no longer than a 24-hour period.
- (v) **Skilled Nursing Facility** means the description provided in HSC section 1250 (c).

Section 2: DHPPD Computation

- (a) CDPH shall determine the DHPPD calculation by dividing the total number of actual nursing hours performed by direct caregivers per patient day by the Average Census.
- (b) Facilities shall anticipate individual patient needs for the activities of each shift and staff direct caregivers throughout the day to achieve a minimum of 3.5 DHPPD, with 2.4 hours per patient day performed by CNAs. In addition, skilled nursing facilities shall employ and schedule additional staff as needed to ensure patients receive nursing care based on their needs.
- (c) Any DHPPD that falls below 3.5 DHPPD and/or 2.4 DHPPD (CNA) for any day is out of compliance with the minimum standard, unless CDPH has approved a waiver for the facility.

Section 3: Direct Caregiver

Section 1(e) of these guidelines defines direct caregivers, not a facility's position title.

(a) CDPH shall include only nursing hours performed by direct caregivers in the DHPPD calculation.

(b) Employees are not direct caregivers if the facility fails to provide documentation that the employee is:

1. A licensed nurse, psychiatric technician, a certified nurse assistant, or a nursing assistant participating in an approved training program as defined in HSC section 1337; and
2. Performing nursing services.

(c) A licensed nurse serving as a minimum data set coordinator is a direct caregiver and CDPH will include the hours worked in producing resident assessments in the nursing hours computation. A person serving as the director of nursing services (DON) in a facility with 60 or more licensed beds or a director of staff development (DSD) is considered a direct caregiver when providing nursing services beyond the hours required to carry out the duties of these positions, as long as these additional nursing hours are separately documented.

(d) An employee is not acting as a direct caregiver if the employee is performing an activity referenced in section 4(c) of this AFL.

Section 4: Nursing Services

(a) Only services listed in CCR Title 22, section 72309, section 72311 and section 72315 are nursing services.

(b) Other than time spent on normal rest periods, or in the in-service training at the facility required by CCR Title 22, section 71847, CDPH will only include time spent providing nursing services in calculating the DHPPD.

(c) Activities that are not nursing services include:

1. Paid or unpaid time spent on meal periods, except that paid meal periods where the facility provides documentation that nursing services were continuously performed in lieu of a meal break shall be counted.
2. Nursing services provided by the same employee in the same shift to both skilled nursing patients and intermediate care patients, unless the facility provides documentation of the actual time spent performing nursing services to skilled nursing patients.
3. Staff time spent in non-nursing services functions such as restocking, scheduling, food preparation, housekeeping, laundry, maintenance, administrative and financial recordkeeping, and administrative maintenance of health records.
4. Nursing services that are provided in the same shift as non-nursing services by employees who are primarily engaged in non-nursing services unless the facility provides documentation of the actual time spent on nursing services.
5. Private duty nursing services performed by staff paid for or supplied by a patient, patient's family, guardian, conservator or other representative.
6. Staff vacation, holiday, or sick leave time.
7. Training, except for on-site in-service training. No more than two hours a month of in-service training offered at the facility where the staff are employed shall be counted.
8. Work performed by non-direct caregivers.

Section 5: Census

(a) The census does not include intermediate care patients.

(b) The facility shall either create a census and DHPPD form or use the attached “Census and Direct Care Service Hours per Patient Day” (CDPH 612 and instructions) to report daily DHPPD. The DON (or designee) must sign the form verifying the information is true and accurate. The census and DHPPD form must be typed or printed legibly. Failure to provide a complete, signed and legible form will result in a finding of non-compliance with the 3.5 and/or 2.4 minimum DHPPD requirements for each day the SNF does not provide the form. Do not include patient names on the “Census and Direct Care Service Hours per Patient Day” forms.

If the facility chooses to create a form, it must contain substantially similar information to the attached CDPH 612 and instructions. The form must include:

1. Facility name, address, and license number
2. Patient day date and the patient day start time
3. Total licensed SNF beds
4. Name of administrator and the DON or designee
5. Patient census at start of patient day
6. Scheduled nursing hours and the scheduled DHPPD
7. For the designated census periods:
 - a. Beginning census
 - b. Admissions
 - c. Transfers in
 - d. Other intakes that occurred
 - e. Discharges
 - f. Transfers out
 - g. Deaths, and
 - h. Other decreases that occurred
8. Total actual/final nursing hours at the end of each census period
9. Average census
10. The actual/final total nursing hours
11. Actual/Final DHPPD
12. An attestation statement signed by the DON or designee verifying they have reviewed the patient census and nursing hours information and acknowledge the information is true and correct.

Section 6: Documentation

Facilities must meet the following documentation requirements beginning July 1, 2018.

(a) The facility shall either create an assignment sheet or use the attached “Nursing Staffing Assignment and Sign-In Sheet” (CDPH 530 and instructions) to record daily staffing assignments to document nursing hours worked by employees not captured in payroll records or employees who are primarily engaged in duties other than nursing services, including employees who perform nursing services beyond the hours required to carry out their job duties. The “assignment sheet” must be typed or printed legibly and be substantially similar to the attached CDPH 530 and instructions. The DON (or designee) must sign the form verifying the information is complete, true, and accurate. Failure to provide a complete, signed, and legible form will result in a finding of non-compliance with the 3.5 or 2.4 DHPPD requirements for each day the SNF does not provide the form.

The “assignment sheet” must include the facility’s name and each of the following:

1. Patient day date
2. Location (such as wing, unit, etc.)
3. DON or designee, shift, and shift start time
4. Nursing services assignment by specifying each room and each bed that the direct caregiver is assigned during nursing hours worked
5. Printed full employee name
6. Employee discipline (such as CNA, RN, LVN, LPT), start and end time of the shift and start and end of the meal break
7. Employee’s original signature. CDPH will not accept initials and employees must sign for themselves. The employee’s signature verifies that the information provided on the form is true and accurate.

Do not include patient names on the “assignment sheet.”

If a direct caregiver worked during the patient day but was not included on the facility’s payroll record or time card (such as salaried staff), the facility must document the salaried employee’s detail of items 4 through 7 above and the total hours worked. The documentation must include the times the direct caregiver began and ended the shift as well as began and ended his/her meal break. The facility shall document on the “assignment sheet,” as indicated in guidelines 4 through 7 above, the registry, contract, or corporate staff who were direct caregivers.

(b) Each facility shall maintain current, complete, and accurate personnel and payroll records for all employees in accordance with Title 22, Section 72533. The facility shall provide the following documentation upon request:

1. Census and DHPPD (CDPH 612 or facility alternative form)
2. Nursing Staffing Assignment and Sign-In Sheet (CDPH 530 or facility alternative form)
3. Timecards
4. Payroll records and reports
5. Nursing payroll codes
6. Approved/signed registry invoices including registry staff detail

7. Patient census records (including the number of patient admissions, discharges, deaths, transfers, bed holds, and absent patients)
8. Staff roster
9. A list of all direct caregivers who are not listed in the facility's payroll reports or timecards
10. Health facility license and all "program flex" or waiver documentation approving admissions beyond a facility's licensed bed capacity
11. If applicable, records submitted to the Centers for Medicare and Medicaid Services (CMS), Medi-Cal, or insurance companies detailing the level of care provided to a resident for purposes of reimbursement
12. Personnel records for all facility staff. Personnel records for purposes of staffing compliance shall include:
 - A. Full name and home address
 - B. Professional license or registration number, if applicable, and the date of expiration
 - C. Occupation and employment classification
 - D. Information as to past employment and qualifications
 - E. Date of beginning employment
 - F. Date of employment termination
 - G. Documented evidence of facility orientation
 - H. Job duty statement
 - I. Performance evaluations
 - J. Birth date, if under 18 years old, and designation as a minor
 - K. Records of hours and dates worked including when the employee or staff begins and ends each work period, meal periods, split shift intervals, and total daily hours worked
 - L. For nursing assistants, proof of enrollment in an approved certification training program; proof of submission of LiveScan fingerprints to the California Department of Justice; and proof of competency for the nursing services(s) being performed (i.e., Form CDPH 276C and 276A)
 - M. For registry, temporary, or contract employees, the name of the temporary health services personnel agency.

(c) Facilities must provide approved waivers or documentation of a pending waiver application submitted pursuant to AFL 18-16, or Title 22 of the California Code of Regulations section 72329.2.

CDPH will not consider expired or revoked waivers.

(d) Facilities shall retain documentation listed in Section 6, subsections (a) and (b), for at least three years following employment termination. Facilities shall also retain no less than 90 days of documentation and make the documentation available at the facility for Department review. Upon request, the facility shall provide a copy of these records. Facilities that use electronic payroll systems must provide the auditor with the requested documentation either electronically from those systems or on paper. If the facility does not have the capability to produce electronic records, then CDPH will accept paper documentation.

(e) CDPH will issue a finding of non-compliance with the 3.5 or 2.4 DHPPD requirement for each day audited for which the SNF does not provide documentation.

(f) CDPH will deduct meal periods from the total nursing hours for the timeframes identified on the “assignment sheet.” CDPH will automatically deduct meal periods not identified on the “assignment sheet” or not clocked in and out on the payroll records from the total nursing hours at the rate of 30 minutes for every 6 hours worked or 1 hour for every 10 hours worked. For 10 or more hours of continuous time worked, where the employee only took 30 minutes of meal time and 30 minutes of meal time was paid, the facility must provide documentation the employee opted to be paid in lieu of the second 30 minute meal break.

(g) The requirements detailed in Sections 5 and 6 do not supersede federal regulations detailed in Title 42, Chapter 5, Part 483.35(g). CDPH may combine the requirements in Sections 5 and 6 with the federal requirements as long as the SNF meets both requirements.

If you have any questions regarding this AFL, please send an email to: CDPHL&C-StaffingAudits@cdph.ca.gov.

Sincerely,

Original signed by Scott Vivona

Scott Vivona
Assistant Deputy Director

Attachments:

Nursing Staff Assignment and Sign-in Sheet (CDPH 530 and Instructions)

Census and Direct Care Service Hours Per Patient Day (CDPH 612 and Instructions)

Notice of Intent to Issue an Administrative Penalty and Notice to Correct a Violation (CDPH 608)

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